Scientific Research Publishing

Beijing Law Review, 2023, 14, 1640-1651
https://www.scirp.org/journal/blr
ISSN Online: 2159-4635
ISSN Print: 2159-4627

Conditional and Unconditional Tax Incentives from a Legal Certainty Perspective

Hendrick Pinheiro[1], **Estevão Horvath**[2]

[1]National Law School, Federal University of Rio de Janeiro, Rio de Janeiro, Brazil
[2]Law School, Pontifical Catholic University of São Paulo, São Paulo, Brazil
Email: hen_drick@usp.br, estevaoh@hotmail.com

How to cite this paper: Pinheiro, H., & Horvath, E. (2023). Conditional and Unconditional Tax Incentives from a Legal Certainty Perspective. *Beijing Law Review, 14,* 1640-1651.
https://doi.org/10.4236/blr.2023.144089

Received: September 13, 2023
Accepted: October 30, 2023
Published: November 2, 2023

Copyright © 2023 by author(s) and Scientific Research Publishing Inc.
This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).
http://creativecommons.org/licenses/by/4.0/

Open Access

Abstract

This article deals with the subject of conditioned and unconditioned tax incentives from the perspective of legal certainty. The proposed research problem questions the levels of predictability induced in the system in each of its modalities. The primary hypothesis assumes that the conditioned incentive programs provide more predictability and, therefore, fulfill the principle of legal certainty within the system to a greater extent. This is a qualitative research with a postpositivist bias, which adopts the hypothetical-deductive method, based on a dogmatic bibliographic review of texts from the Brazilian legal framework, jurisprudence and Legal Sciences texts. In the end, the initial hypothesis is proven in view of the fact that only conditioned incentive programs guarantee the immutability of conditions during their duration, being the alternative that induces more predictability in the system and, thus, provides legal certainty.

Keywords

Fiscal Policy, Tax Incentive, Tax Benefit, Expectations, Immutability

1. Introduction

The economic promotion by means of tax incentives is a form of State intervention in the economic domain (Marques Neto, 2015: p. 445) and it configures a mechanism to stimulate economic activity (Ribas & Pinheiro, 2020: p. 286).

Tax incentive programs can be conditioned or unconditional, depending on the existence (or not) of counterparts to be made by the beneficiaries (Torres, 2005: p. 132; Alho Neto, 2021: p. 88). Considering that such modalities are subject to different legal disciplines, the proposed research problem questions the levels of predictability induced in the system in each of these modalities from the

perspective of legal certainty.

The primary hypothesis is that conditional incentive programs provide more predictability and, therefore, fulfill the principle of legal certainty in the system to a greater extent. The hypothesis is based on the provisions of art. 178 of the Brazilian National Tax Code (CTN), which limits the effects of revoking conditional exemptions, to analyze the scope and effects of this rule for this class of incentives and question what guarantees are applicable to unconditioned programs.

To test this proposition, a qualitative research (Guba & Lincoln, 1994) with a post-positivist bias (Andrade, 2006) is carried out, which adopts the hypothetical-deductive method, based on a dogmatic bibliographic review (Adeodato, 1998) of texts from the Brazilian legal framework, case law and legal science texts.

This article is developed in two parts. The first part presents the characteristics of fiscal policy in Brazil and the differences between unconditional incentives, introduced horizontally and uniformly in the system, and conditional incentives, which require counterparts from beneficiaries. Starting from this difference, the second part seeks to demonstrate, from the perspective of legal certainty, the treatment offered by the legal system for each of these modalities, and thus, demonstrate the degree of predictability to which the beneficiary is submitted in each case.

2. Tax Policy and Tax Incentives

Fiscal policy uses financial instruments to promote changes in certain aspects of social life, such as the management of public expenses and the regulation of public income (Baleeiro, 1959: p. 16). It represents one of the aspects of economic policy (Bercovici, 2012) and operates through the mobilization of instruments of direct action by the State (Nusdeo, 1977: p. 89). Among the instruments placed at its disposal are tax and financial instruments (Silva, 2009: p. 88), which can be mobilized in the pursuit of economic balance (Baleeiro, 1959: p. 19).

From the economics perspective, it is generally accepted that the main objective of fiscal policy is to obtain and maintain economic stability, which means maintaining a stable rate of economic growth, without identifying substantial rates of unemployment and price increases. Such stability requires an increase in aggregate demand and productive capacity (Due, 1963: p. 513).

In short, fiscal policy can be defined, in a broad sense, as "an instrument available to the Government to modify economic structures, such as to correct economic-financial imbalances in its budget" and, in a strict sense, as "fiscal measures carried out by the Government in order to restore not only the balance of the economy, but above all, the increase in the employment rates as well" (Sampaio, 1991: p. 220).

Tax policy is one of the aspects of fiscal policy, which can be used both with the objective of raising revenue and with the objective of regulating certain sectors or intervening in the economy (Pinheiro, 2021: p. 82). Tax incentives are a

tax policy tool and can be used as countercyclical measures to achieve economic objectives (Andrade, 2021: p. 321).

The use of tax policy instruments to correct economic imbalances configures the administrative activity of promotion, destined to support the development of public interest activities (Mello, 1983: p. 17), in a paradigm that moves away from an authoritarian posture in favor of the collaboration between administration and citizen (Moreira Neto, 2001: p. 513).

Positive tax incentives implemented by means of tax policy may include "tax relief measures that generate a reduction or deferral of production costs, such as exemption, reduction of rates, deferral or installment payment of taxes" (Marques Neto, 2015: p. 445). In this context, it is legal for tax policy in general to establish a certain level of favorable taxation for a given activity (unconditional incentives) or a program to reduce this rate for taxpayers who adhere and commit to making investments or delivering other counterparts (conditioned incentives). In the first case, the protected values are equality and contributive capacity, which ensure symmetrical treatment of taxpayers. In the second, the program seeks to achieve extra fiscal values (such as the promotion of economic development), which are equally relevant and justify the unequal treatment given to a specific group of taxpayers (Pinheiro, 2023: p. 173).

Understanding the difference between conditional incentive programs and other economic incentive instruments (such as a general reduction in the level of taxation of a given activity), implemented by means of fiscal policy, is fundamental when it comes to the levels of predictability guaranteed to taxpayers.

2.1. Unconditional Tax Incentives

The role of the State in regard with tax instruments in fiscal policy can manifest itself in several ways; one of them is the setting of taxation levels for each activity. This modality of action is very common to discourage certain activities or the consumption of goods considered uninteresting to society in the form of the so-called "pigouvian tax" (Posner & Masur, 2015) or "sin taxes" (Badenes-Plá & Jones, 2003).

If the objective is to stimulate a certain activity, the federative entity can set an attractive level of taxation uniformly applicable to all agents in a sector, without any kind of counterpart or condition to be made by the beneficiary. These are the so-called static tax benefits (Nabais, 2017: p. 402). This modality configures a kind of "stimulus", in which the reduction of the tax burden of certain productive activities aims to "relieve internal resources, which are unique to that company, aiming at capitalization, by reducing disbursements" (Melo Filho, 1976: p. 154). This can be done by selectively fixing rates or by means of unconditional exemptions.

This type of incentive has the advantage of uniformly treating all agents (already established or intending ones) in a given sector, and its justification is associated with the implementation of the principles of equality in taxation and the ability to pay, taken as an aspect of horizontal equality (Schoueri, 2007: p.

252) (article 150, II, and article 145, paragraph 2, of the Brazilian Federal Constitution).

Unconditional tax incentives are, therefore, incentive measures implemented horizontally by means of a fiscal policy in the form of stimuli that uniformly affect a set of taxpayers (egalitarian), without the requirement of any counterpart or condition to be fulfilled by the beneficiary (static tax benefits).

2.2. Conditional Tax Incentives

The situation is different when this stimulus is structured in the form of an incentive program accessible only to agents who commit to fulfilling certain conditions ("dynamic benefits") (Nabais, 2017: p. 402).

Conditional tax incentive programs constitute a true public policy, in which the actions of the State within fiscal policy are structured to achieve certain pre-defined objectives and targets (Tomé, 2011: p. 211).

It is a finalistic stimulus with the intent of achieving objectives external to taxation itself, that is, extrafiscal (Ávila, 2009: pp. 166-167). The deficit of equality between subjects encompassed by the program and other subjects to regular taxation is justified by the extrafiscal objectives which are intended to be achieved (Ribas & Pinheiro, 2018: p. 238).

In this context, the protected constitutional value, which authorizes the "derogation" of equality among taxpayers (article 150, II, of the Brazilian Federal Constitution), is the reduction of regional inequalities, the objective of the economic order provided for in article 170, VII, of the Federal Constitution (Melo, 2015: p. 77).

When these programs contemplate specific conditions to be carried out by the agent who intends to have access to a certain favorable tax condition, there is the true establishment of a contract (Polizelli, 2013: p. 141) between the taxpayer and the Estate, conditions that are guaranteed for the specified period, even if the program is terminated. This guarantee is linked to the principle of legal certainty, within the meaning of legitimate expectation, and is expressly provided for in article 178 of the CTN.

Conditional tax incentives are also tax incentive measures implemented via fiscal policy; in this case, however, the favorable tax conditions are restricted to a set of taxpayers who, in order to access favorable conditions, must submit to a set of conditions (dynamic tax benefits). In this scenario, there is no denying that there would be unequal treatment between taxpayers who are in the same economic situation. Nevertheless, this treatment would derive from an objective that transcends the purpose of raising funds to finance public spending (fiscal purpose), that is, it would be a tax incentive, a rule with an extrafiscal purpose (Pinheiro, 2023: p. 173).

2.3. Difference between Conditioned and Unconditioned Incentives

Unconditional incentives automatically reach a set of beneficiaries or operations

described by the law. On the other hand, the access to conditioned incentives depends on fulfilling requirements and achieving counterparts (Torres, 2005: p. 132).

Unconditioned incentives are static, as the promotion targets already consolidated situations or activities that automatically benefit from the tax rules. In contrast, conditioned incentives are dynamic, as the granting of advantages depends on the future adoption of a behavior, represented by the fulfillment of conditions (Nabais, 2017: p. 402).

In unconditioned incentives, all taxpayers who fall into a given situation are treated uniformly in relation to the benefit, whereas, in conditioned incentives, the benefit is restricted to those who those who undertake to carry out the conditions required by law (Schoueri, 2007: p. 252).

Conditional and unconditional incentives have different legal treatment in terms of predictability as they are subject to different rules in the event of revocation.

3. Legal Certainty and Legitimate Expectation

Certainty is a value that underpins any republican legal order, imposing absolute incompatibility of state action with surprise and guaranteeing predictability in relations between Public Administration and citizens (Ataliba, 2011: p. 169). Predictability is tied to the duty of the State, not to act in such a way as to surprise society. Such guarantee aims to curb arbitrariness (formal sense) and induce the acceptability of decisions due to their rationality (material sense) (Ávila, 2015: p. 358).

Although the existence of a legal system per se already guarantees a minimum state of trust for individuals, based on the instruments that promote the certainty of the law (legality) and the stability of the system (legal framework), its consolidation depends on a state of regular application of legal norms and predictability in relation to their effects (Marques Neto & Pinheiro, 2020: p. 71).

The principle of legitimate expectation is a corollary of legal certainty, tied to the guarantee that the law will be applied in order to assure legal repercussions compatible with a situation considered predictable (Torres, 2004: p. 222). This notion of legal certainty, together with the predictability of legal norms application in the system, is directly linked to the rules that govern the succession of legal norms (Couto e Silva, 2015: p. 46). Given the typical economic repercussions of taxation, the Federal Constitution in Brazil ensures a holding period rule (annual or a ninety-day period) in order to mitigate the effects of a rule that implies an increase in the tax burden (article 150, III, "b" and "c").

The grandfather policy in tax law seeks to protect taxpayers both from tax increases, pure and simple, and from the revocation of favorable conditions established by an exemption, for example. The repeal of tax rules that establish exemptions—whether conditional or unconditional—has the same impact as the increase in taxes and, for this reason, the grandfather rule also applies to this situation (Borges, 2001: p. 95).

However, as follows, although the revocation of an unconditional incentive must respect the grandfather policy in tax law, there is no prohibition in the legal system for their implementation. The same does not occur with conditional exemptions, provided with a certain degree of "immutability", in the name of protecting legitimate expectation and the acquired right of taxpayers.

3.1. Unconditional Incentives and Retrospective Applicability

The incentive to economic activities, structured from tax tools, can contemplate all taxpayers of a sector with the uniform reduction of tax rates, or even by means of an unconditional exemption rule, which removes from the incidence rule certain products, services or revenues ("static benefits") (Nabais, 2017: p. 402). In this modality, if there is a change of direction in the fiscal policy that leads to the revocation of the unconditional incentive program, the Brazilian legal system only provides for the annual and ninety-day period of the grandfather policy as rules to induce predictability and, therefore, guarantee legal certainty (Borges, 2001: p. 95).

The Federal Constitution (CF) guarantees that the collection of this increase shall not be enforced in the fiscal year and "before ninety days have elapsed from the date on which the law was issued" (article 150, "b" and "c", CF) (Brasil, 1988). Thus, the change of a tax policy, with the reestablishment or increase of the rate of a certain tax, must necessarily obey the grandfather clause in tax law. However, there is no limit that prohibits the administrator from doing so, as long as it is supported by law (Alho Neto, 2021: p. 88).

The legal system ensures the possibility of revocation of an unconditional incentive by means of law. Dealing specifically with exemptions, Paulo de Barros Carvalho teaches: "being exemption a creature of the law, it can be abrogated or partially revoked (derogated) at the discretion of the legislator at any time" (Carvalho, 2018: p. 490). As Roque Antonio Carrazza explains:

> If the exemption has undetermined duration, the political person who grants it may revoke it, in whole or in part, at any time, at its sole discretion, provided, of course, that it does so by law, respecting, when applicable, the grandfather policy. Such revocation may be express or implied. It is expressed when the political person simply declares that the benefit no longer exists ("the exemption is revoked"). It is implied when it creates (or "re-creates") an authentic taxation to the one who was the object of the exemption.
>
> The revocation of an exemption with an undetermined duration, even if costly, does not generate, for the taxpayer, neither the right to be indemnified, nor, much less, the right to continue enjoying the benefit purely and simply. The taxpayer only has the right to have the grandfather policy respected (in relation, obviously, to the taxes on which it is levied).
>
> The law cannot bind the future legislator. Otherwise, over time, the exercise of the legislative function could be seriously compromised, or even made

> unfeasible. In fact, this is exactly why the irrevocable law suffers from unconstitutionality. (Carrazza, 2009: p. 382)

The same rationale for exemptions applies to the reestablishment of a rate that had been reduced in order to "stimulate" a certain economic sector. This tax increase is not prohibited by the legal system, as long as it is established by law, respecting the grandfather policy.

The analysis of case law also indicates the possibility of suppressing unconditional incentive programs, provided that the grandfather policy is respected. The Brazilian Federal Supreme Court has already decided that not only the direct increase in taxes attracts the application of the ninety-day period grandfathering, but also the increase triggered by the revocation of exemptions for the same reasons of legal certainty that are inherent to the grandfather policy (Brasil, 2006; Brasil, 2018a).

This situation is well illustrated by the case of the Special Regime for Reintegration of Tax Values for Exporting Companies (REINTEGRA). This program, created by Law n. 13,043/2014, brought the possibility of taking PIS and COFINS credit on revenue earned from exports to the initial percentage of 3%. However, Decrees no. 8415/2015 and no. 85,433/2015 changed the tax benefit by reducing the use to 1%. When analyzing this case, the Brazilian Federal Supreme Court has unanimously established the understanding that it would not be possible to repeal or reduce an unconditional tax incentive without observing the ninety-day period of the grandfather policy, contained in items b and c of item III, article 150 of the Federal Constitution, as it would represent an indirect increase in the tax burden (Brasil, 2018b).

Thus, any review of the fiscal policy that implies the increase of rates or the revocation of unconditional exemptions is not prohibited. It is sufficient that the effects of this rule are produced in the following financial year and with a minimum of ninety days in advance between the effectiveness of the rule and the enactment of the law that instituted it (Pinheiro, 2023: p. 51).

3.2. Conditional Incentives and Its Immutability

As in the previous case, the conditional incentives are subject to the grandfather policy in the event of their revocation, as they represent the increase in the tax burden then in force (Borges, 2001: p. 95). However, they differ from the previous ones (unconditioned), as they enjoy a greater degree of the taxpayer's legitimate expectation, insofar as article 178 of the CTN does not authorize its revocation or modification during the established term, provided that the taxpayer continues to respect the conditions established by law.

The purpose of the norm contained in article 178 is to preserve exemptions for a definite term and subject to certain conditions, which are not included in "this prerogative of legislative freedom that Parliaments are entitled to within constitutional limits" (Carvalho, 2018: p. 490).

The legitimate expectation, in the case of conditional incentives, is carried out

with the application of the rule on article 178 of the CTN, even in cases where the norm that granted them is later deemed illegal or unconstitutional (Torres, 2005). In this extreme situation, legality is interpreted together with the legitimate expectation to maintain the parameters that determine the extent of the possibility of revocation or annulment (Ávila, 2006).

Article 178 of the CTN ensures the immutability of conditional exemptions, which means that it is not just the term that guarantees the application of this rule, but the fact that the taxpayer undertakes to comply with a set of conditions provided for by law.

In conditional exemptions and for a fixed term, the application of the most favorable "exceptional" rule is not automatic, depending on an order from the tax authority that recognizes compliance with the requirements under the terms of article 179 of the CTN (Pinheiro, 2023: p. 47). The act of granting, by itself, does not ensure that the favorable conditions shall be maintained during the fixed term. In this context, article 179, paragraph 2, of the CTN guarantees that the order does not generate an acquired right, and the benefit may be revoked — strictly speaking, annulled, as it is not a matter of discretionary act by the Administration—ex officio, if non-compliance with the program requirements is identified (article 155 of the CTN).

In order for there to be an acquired right to the immutability of the incentive rules during the period of effectiveness, as recommended by article 178 of the CTN, it is essential that the taxpayer meets the requirements established by law (Borges, 2001). Once the exemption is granted and the requirements are met, the beneficiary's subjective right to its maintenance is born (Fagundes, 1959: p. 2).

In relation to these conditional incentives, case law supports the taxpayer's legitimate expectation that there will be full compliance with them. In this sense, there is a summary of the Brazilian Federal Supreme Court (Precedent 544) that prohibits the suppression of the so-called "onerous" exemptions granted under certain conditions and for a fixed period of time (Brasil, 1969). In these cases, legitimate expectation guarantees the maintenance of the conditions initially offered in exchange for the required conditions.

This expectation of full compliance is understood by the Superior Court of Justice as an acquired right of the taxpayer, which cannot be removed from any subsequent law, in accordance with the principle of legal certainty (Brasil, 2019).

In the case of conditional exemptions, case law understands that it would be unfair for the taxpayer, who is the beneficiary of the exemption for a fixed term, to be surprised by supervening changes that withdraw the exemption, under penalty of violating the acquired right (São Paulo, 2010; São Paulo, 2015).

Another recurring issue in case law concerns cases in which the federative entity grants the benefit of reducing the rate and, by means of legal changes, suppresses the granted incentive, which is understood as a violation of the acquired right to the exemption. For instance, it is possible to take the case of the State Law of Rio de Janeiro n. 6331/2012, which provided for a tax incentive for manufacturers of textile products, fabric items, clothing and accessories, with the

fixed term of the 31st of December, 2018, at a rate of 2%. However, Decree no. 45,607/2016 increased the ICMS rate to be collected to 3%, reducing the tax incentive and denying the effectiveness of article 178 of the CTN.

In view of this situation, the Court of Justice of Rio de Janeiro understood that the increase would constitute a harm to the acquired right, since it suppressed the tax incentive previously agreed and already incorporated into the taxpayer's assets, which had a legitimate expectation of enjoying the benefit throughout the established legal period (Rio de Janeiro, 2018; Rio de Janeiro, 2019). That is to say, the immutability of the conditional exemption would be assured (Rio de Janeiro, 2020).

Therefore, it seems to be possible to say that the case law recognizes the acquired right to the immutability of tax incentives granted for a fixed term, whether in the form of complete exemption, or by means of the reduction of the rate.

4. Results and Findings

The Brazilian legal system is considering that the grandfather policy is sufficient to induce predictability to agents by not establishing any other barrier to the revocation of unconditional exemptions. There is no guarantee of a term for maintenance of the incentive; just that, if there is any alteration that implies an increase in the load, this will be operated for the future, which would guarantee an advance of at least ninety days.

It is fundamental to understand that a fiscal policy option that seeks to stimulate a certain activity by reducing tax rates or creating exemptions that do not require any type of condition or consideration has the advantage of promoting equality, but the disadvantage of not guaranteeing the maintenance of these conditions for a specified period.

Conditional tax incentive programs reveal a superior level of protection to the legitimate expectations given the immutability of their conditions during the concession period. This advantage becomes more evident if we compare them with unconditional incentives or linear reductions in the tax burden, whose only constraints intend to guarantee the predictability of relations for the taxpayer, that is, the need to be provided by law and the respect for the grandfather policy.

5. Conclusion

Tax incentive programs are an alternative for managing economic stimuli by means of fiscal policy, aiming at achieving economic policy objectives.

However, from the perspective of legal certainty, the differences in protection offered by the legal system for conditional and unconditional programs require a more detailed reflection on how they will be structured.

Conditional tax incentive programs (dynamic benefits) are a form of action by the State within fiscal policy and can be used to encourage investments or other economic and social objectives.

Such conditioned programs, from the perspective of legal certainty, provide taxpayers with greater predictability, as they are the guarantee of maintenance of the conditions offered by the concession period provided for by law.

On the other hand, horizontally structured incentives (static benefits), in the form of an attractive rate or an unconditional incentive, without the prediction of counterparts to be offered by the beneficiaries and a term of effectiveness, suffer from the insecurity derived from the freedom available to the legislator to review the parameters of fiscal policy.

In this sense, the hypothesis that conditional tax incentive programs offer greater predictability given their immutability, and as far as the initial conditions are met, is confirmed.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

Adeodato, J. M. (1998). Bases para uma metodologia da pesquisa em direito. *Revista da Faculdade de Direito de São Bernardo do Campo, 4,* 171-187. https://revistas.direitosbc.br/index.php/fdsbc/article/view/661

Alho Neto, J. S. (2021). *Interpretação e aplicação de benefícios fiscais*. IBDT.

Andrade, J. M. A. (2006). *Interpretação da norma tributária*. MP Editora.

Andrade, J. M. A. (2021). Conflito entre poderes no processo orçamentário e tributário: Análise de um caso. In C. A. Takano, & S. R. C. Barreto (Eds.), *Direito tributário e interdisciplinaridade: Homenagem a Paulo Ayres Barreto* (pp. 309-337). Noeses.

Ataliba, G. (2011). *República e constituição* (3rd ed.). Malheiros.

Ávila, H. (2006). Benefícios fiscais inválidos e a legítima expectativa dos contribuintes. *Revista Internacional de Direito Tributário, 5,* 93-109.

Ávila, H. (2009). *Teoria da igualdade tributária* (2nd ed.). Malheiros.

Ávila, H. (2015). *Teoria da segurança jurídica* (3rd ed.). Malheiros.

Badenes-Plá, N., & Jones, A. M. (2003). Addictive Goods and Taxes: A Survey from an Economic Perspective. *Revista de Economía Pública, 167,* 123-153.

Baleeiro, A. (1959). *Cinco aulas de finanças e política fiscal*. Universidade da Bahia.

Bercovici, G. (2012). Política econômica e direito econômico. *Revista Fórum de Direito Financeiro e Econômico—RFDFE, 1,* 389-406.

Borges, J. S. M. (2001). *Teoria geral da isenção tributária* (3rd ed.). Malheiros.

Brasil (1969). Supremo Tribunal Federal. *Súmula, 544,* 5935.

Brasil (1988). *Constitution of the Federative Republic of Brazil*. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

Brasil (2006). *Supremo Tribunal Federal. Medida Cautelar em Ação Direta de Inconstitucionalidade No. 2325, Rel. Min. Marco Aurélio, Tribunal Pleno, DJ 06 Oct. 2006.*

Brasil (2018a). *Supremo Tribunal Federal. Agravo em Recurso Extraordinário n. 1053254, Rel. Min. Roberto Barroso, 1ª T., DJe 240, 13 Nov. 2018.*

Brasil (2018b). *Supremo Tribunal Federal. Agravo em Recurso Extraordinário n. 1091378,*

Rel. Min. Edson Fachin, 2ª T., DJe 189, 11 Sep. 2018.

Brasil (2019). *Superior Tribunal de Justiça. Recurso Especial 1310341/AM, Rel. Min. Gurgel de Faria, 1ª T., DJe 25 Feb. 2019.*

Carrazza, R. A. (2009). *Curso de direito constitucional tributário* (6th ed.). Malheiros.

Carvalho, P. B. (2018). *Curso de direito tributário* (29th ed.). Saraiva.

Couto e Silva, A. (2015). O princípio da segurança jurídica no direito público brasileiro e o direito da administração pública de anular seus próprios atos administrativos: o prazo decadencial do art. 54 da Lei do Processo Administrativo da União. In A. Couto e Silva (Ed.), *Conceitos fundamentais do direito no Estado constitucional* (pp. 43-90). Malheiros.

Due, J. F. (1963). *Government Finance: An Economic Analysis* (3rd ed.). Richard D. Irwin.

Fagundes, M. S. (1959). Revogabilidade das isenções tributárias. *Revista de Direito Administrativo, 58,* 1-10.

Guba, E. G., & Lincoln, Y. S. (1994). Competing Paradigms in Qualitative Research. In N. K. Denzin, & Y. S. Lincoln (Eds.), *Handbook of Qualitative Research* (pp. 105-117). Sage.

Marques Neto, F. A. (2015). Fomento. In M. S. Z. D. Pietro (Ed.), *Tratado de direito administrativo* (vol. 4, pp. 403-508). Revista dos Tribunais.

Marques Neto, F. A., & Pinheiro, H. (2020). A impossibilidade de desvinculação de receita de doação ao Fundo Municipal da Criança e do Adolescente. *Revista de Direito Administrativo, 279,* 59-77. https://doi.org/10.12660/rda.v279.2020.82005

Mello, C. A. B. (1983). *Prestação de serviços públicos e administração indireta* (2nd ed.). RT.

Melo Filho, A. (1976). *Teoria e prática dos incentivos fiscais*. Eldorado Tijuca.

Melo, A. J. M. (2015). Premissas para uma abordagem jurídica dos incentivos fiscais. In H. B. Machado (Ed.), *Regime jurídico dos incentivos fiscais* (pp. 54-90). Malheiros.

Moreira Neto, D. F. (2001). *Curso de direito administrativo: parte introdutória* (12th ed.). Forense.

Nabais, J. C. (2017). *Direito fiscal* (10th ed.). Almedina.

Nusdeo, F. (1977). *Da política econômica ao direito econômico*. Habilitation Thesis, Law School, University of São Paulo.

Pinheiro, H. (2021). *Transação tributária, planejamento e controle*. Fórum.

Pinheiro, H. (2023). *Controle de programas de incentivo tributário pelo TCU*. Fórum.

Polizelli, V. B. (2013). *Contratos fiscais: viabilidade e limites no contexto do direito tributário brasileiro*. Doctoral Thesis, University of São Paulo.

Posner, E. A., & Masur, J. S. (2015). Toward a Pigouvian State. *University of Pennsylvania Law Review, 164,* 93-147.

Ribas, L. M., & Pinheiro, H. (2018). Transação tributária como política pública e importância do gasto tributário como critério de controle. *Nomos, 38,* 231-242.

Ribas, L. M., & Pinheiro, H. (2020). Incentivos tributários no combate à COVID-19: A inaplicabilidade do princípio da subsidiariedade. In L. L. P. Sobrinho, C. Calgaro, & L. S. Rocha (Eds.), *Covid-19: Democracia e poder* (pp. 276-292). Univali.

Rio de Janeiro (2018). *Tribunal de Justiça. Apelação n. 0260992-76.2016.8.19.0001, Rel. Des. Márcia Ferreira Alvarenga, 17ª Câmara Cível, DJe 07 Nov. 2018.*

Rio de Janeiro (2019). *Tribunal de Justiça. Apelação n. 0199304-45.2018.8.19.0001, Rel.*

Des. Mônica Costa Di Piero, 8ª Câmara Cível, DJe 17 Dec. 2019.

Rio de Janeiro (2020). *Tribunal de Justiça. Apelação n. 0002270-38.2016.8.19.0064, Rel. Des. Lucio Durante, 19ª Câmara Cível, DJe 05 Jun. 2020*.

Sampaio, E. R. (1991). *Instituições de ciência das finanças, uma abordagem econômico-financeira*. Forense.

São Paulo (2010). *Tribunal de Justiça. Apelação n. 0113525-53.2006.8.26.0000, Rel. Des. Arthur Del Guércio, 15ª Câmara de Direito Público, DJe 10 Jun. 2010*.

São Paulo (2015). *Tribunal de Justiça. Apelação n. 0011701-68.2005.8.26.0038, Rel. Des. Rezende Silveira, 15ª Câmara de Direito Público, DJe 06 May. 2015*.

Schoueri, L. E. (2007). Livre concorrência e tributação. In V. D. Oliveira Rocha (Ed.), *Grandes questões atuais do direito tributário* (pp. 241-271). Dialética.

Silva, G. A. (2009). *A política tributária como instrumento de desenvolvimento* (2nd ed.). ESAF.

Tomé, F. D. P. (2011). A extrafiscalidade tributária como instrumento para concretizar políticas públicas. In E. M. D. Santi (Ed.), *Tributação e desenvolvimento, homenagem ao Professor Aires Barreto* (pp. 403-508). Quartier Latin.

Torres, H. T. (2004). *Direito constitucional tributário e segurança jurídica*. RT.

Torres, R. L. (2005). Anulação de incentivos fiscais: efeitos no tempo. *Revista Dialética de Direito Tributário, No. 121,* 127-146.