

Cooperative Compliance: SWOT Analysis for the Brazilian CONFIA Program

Conformidade Cooperativa: Análise SWOT para o Programa CONFIA Brasileiro

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ABSTRACT: Cooperative compliance ensures that the taxpayer–Tax Administration relationship is based on transparency, mutual trust, and preventive actions of assistance and collaboration. These three foundations are formalized into six characteristics, two of which (transparency and disclosure) apply to taxpayers and five of which (commercial awareness, fairness, proportionality, transparency, and responsiveness) apply to the Tax Administration. This article discusses cooperative compliance concepts, requirements, advantages, tax control framework (TCF), tax risk, and governance issues. It then considers some Brazilian initiatives, highlighting the exposure of the CONFIA proposal as a cooperative compliance program of the Brazilian Revenue Service (RFB). Using a SWOT analysis based on international experiences, we discuss the strengths, weaknesses, opportunities, and threat points for success in implementing the CONFIA program. Additionally, we offer recommendations regarding how to ensure an environment of increasing cooperation in the tax field in order to reduce tax litigation, which is a chronic problem of the Brazilian tax system. Cooperation between taxpayers and Tax Administration should be based on the responsibility of both parties operating under mutual trust and not tolerating opportunistic behavior on either side of the tax relationship.

KEY WORDS: Cooperative Compliance; Tax Administration; Taxpayer; Tax Advisor; Trust.

RESUMO: O cumprimento cooperativo assegura que a relação entre o contribuinte e a Administração Fiscal se baseia na transparência, confiança mútua, e ações preventivas de assistência e colaboração. Estas três bases estão formalizadas em seis características, duas das quais (transparência e divulgação) aplicam-se aos contribuintes e cinco delas (consciência comercial, equidade, proporcionalidade, transparência e capacidade de resposta) aplicam-se à administração fiscal. Este artigo discute conceitos de conformidade cooperativa, requisitos, vantagens, quadro de controlo fiscal (TCF), risco fiscal, e questões de governação. Em seguida, considera algumas iniciativas brasileiras, destacando a exposição da proposta do CONFIA como um programa de conformidade cooperativa da Receita Federal do Brasil (RFB). Utilizando uma análise SWOT baseada em experiências internacionais, discutimos os pontos fortes, fracos, oportunidades e pontos de ameaça para o sucesso na implementação do programa CONFIA. Além disso, oferecemos recomendações sobre como assegurar um ambiente de crescente cooperação no domínio fiscal, a fim de reduzir os litígios fiscais, que é um problema crónico do sistema fiscal brasileiro. A cooperação entre os contribuintes e a administração fiscal deve basear-se na responsabilidade de ambas as partes, operando sob confiança mútua e não tolerando comportamentos oportunistas de ambos os lados da relação fiscal.

PALAVRAS-CHAVE: Conformidade cooperativa; contribuinte; administração fiscal; CONFIA; confiança.

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1. Introduction

Tax uncertainty is an ongoing game in tax relationship that is played by both taxpayers and Tax Administrations. On the one hand, taxpayers must fulfil a growing range of transparency obligations, including completing several reports and disclosing procedures designed to reduce tax. On the other hand, Tax Administrations are expected to make efficient and effective use of their new compliance tools. An excessive amount of information can cause paralysis, especially in a scenario where the Tax Administration has minimal resources at its disposal¹.

In this context, cooperative compliance is an organizational strategy used to establish a relationship with taxpayers based on good faith, trust, and transparency. Its main goal is to promote voluntary tax compliance and reduce conflict². Following calls for greater fiscal security, some countries have implemented compliance instruments³. However, the actions of the Brazilian Tax Administration have historically been of a primarily repressive nature, prioritizing audits on facts practiced for years by taxpayers and the issuance of infraction notices⁴.

Approaches such as cooperative compliance in taxation can be seen as a “new tax governance” founded on several core elements, namely: (1) a more collaborative relationship between the Tax Administration and regulated entities based on the recognition that regulation can operate most effectively when it incorporates the context-specific experiences of private actors and relevant expertise; (2) giving regulated entities greater autonomy to design their internal processes to meet broadly defined outcomes; and (3) a focus on developing regulatory strategies that place responsibility on organizations for their tax compliance and that attempt to foster internal motivations to support compliance⁵. This new approach to tax governance underpins a broad shift in regulation, prioritizing everything from ex post-discovery of tax violation to ex-ante anticipation and prevention and self-discovery through internal tax compliance systems.

Indeed, compliance with tax obligations is becoming more complex daily, and, in response, tax professionals now contribute to tax collection by serving as social collaborators. Tax advisors, like accountants and tax lawyers, often provide assistance and information to taxpayers, thus facilitating voluntary compliance with tax obligations. However, a negative view of the figure of the tax advisor often prevails, with them being blamed for implementing planning mechanisms and strategies that have led to tax noncompliance. On the other hand, the suitable position concerning legal and economic knowledge held by these professionals makes it easier for them to be instruments of collaboration for the Tax Administration and to

¹ KATARZYNA BRONZEWSKA / ALICJA MAJDAŃSKA, “The New Wave of Cooperative Compliance Programmes and the Impact of New Technology - Tax Research Platform - IBFD”, *European Taxation*, 59.2/3, 2019, pp. 99–105.

² RONALD RUSSO / JOOST ENGELMOER / MÁRIO H MARTINI, “Cooperative Compliance in the European Union: An Introduction to the European Trust and Cooperation Approach”, *Bulletin for International Taxation*, 76.2, 2022.

³ JEFFREY OWENS / JONATHAN LEIGH PEMBERTON, *Cooperative Compliance: A Multi-Stakeholder and Sustainable Approach to Taxation*, Amsterdam, Netherlands, Wolters Kluwer, 2021.

⁴ CARLOS OTÁVIO FERREIRA DE ALMEIDA, “Notas Sobre Litigiosidade Tributária e Compliance Cooperativo No Brasil”, *Revista de Direito Tributário Atual*. São Paulo, Instituto Brasileiro de Direito Tributário, 40, 2018, p. 472.

⁵ SJOERD GOSLINGA / MAARTEN SIGLÉ, AND ROBBERT VELDUIZEN, “Cooperative Compliance, Tax Control Frameworks and Perceived Certainty About the Tax Position in Large Organisations”, *Journal of Tax Administration*, 5.1, 2019, p. 41.

be the architects and designers of tax compliance as well as tax avoidance and tax evasion practices⁶.

In this article, the cooperative compliance program is discussed. Firstly, we describe its objective and performance premises. Then we discuss cooperative compliance challenges, illustrating the challenges that democratic nations will face in structuring a new way to formalize the relationship between taxpayer and Tax Administration. After that, Brazilian initiatives are discussed, highlighting the exposure of the CONFIA proposal as a program of the *Receita Federal do Brasil*. Finally, using a SWOT analysis based on international experiences, we discuss the opportunities, threats, and strengths and weaknesses associated with the CONFIA program. Additionally, we offer some recommendations to ensure an environment of increasing cooperation in the tax field.

2. Rethinking the relationship between taxpayer and tax authorities

The “cops and robbers” approach, which has governed interactions between taxpayers and Tax Administrations, is rooted in Becker's theory of crime. The Tax Administration approach that followed Becker's theory of crime suggested that taxpayers, as utility maximizers, always engage in a cost-benefit analysis to determine whether or not to pay taxes⁷. According to Allingham and Sandmo⁸, the weaker the deterrence mechanisms (audit probability and penalty rate), or the higher the tax rate, the lower the degree of anticipated tax compliance. Based on these assumptions, tax systems adopt strict and punitive regulations. Tax Administrations should make their power known and, as such, in their relationship with taxpayers, they should assume a role based on authority and control⁹.

2.1. What is cooperative compliance?

Cooperative compliance (initially called enhanced relationship) emerged as an initiative in 2005. In a 2008 Organization for Economic Co-operation and Development (OECD) Report, at the 4th Meeting of the Tax Administration Forum (TAF) held in Cape Town, governments considered for the first time a relationship that favors collaboration over confrontation and which is anchored more in mutual trust than in enforceable obligations. This implies a

⁶ JOSÉ ANGEL GÓMEZ REQUENA, “El Asesor Fiscal En El Cumplimiento Cooperativo: Representación y Últimas Tendencias Para Limitar Su Responsabilidad”, *Revista Forum Fiscal*, 264, 2020, pp. 3–4.

⁷ MÁRIO H. MARTINI / RONALD RUSSO / YAVHENII PANKOV, “Russia - An Analysis of the Russian Tax Monitoring Programme in Light of the OECD Concept of Cooperative Tax Compliance and the Experience of Other Countries”, *European Taxation*, 61.1, 2021, p. 31.

⁸ MICHAEL G. ALLINGHAM / AGNAR SANDMO, “Income Tax Evasion: A Theoretical Analysis”, *Journal of Public Economics*, 1.3, 1972.

⁹ ANTONIO LOPO MARTINEZ / MARCELO LOPES BELLO COELHO, “Tax Morals and the Brazilian Citizen: An Empirical Study”, *Cadernos EBAPE.BR*, 17.3, 2019, pp. 607–8.

willingness on the part of both Tax Administrations and taxpayers to go beyond mere compliance with their legal obligations¹⁰.

An important milestone emerged from the TAF's meeting. The following conclusions stand out: (a) tax intermediaries play an essential role in helping the taxpayer and promoting aggressive tax planning; (b) administrations react in different ways, some by establishing a registry and control of tax intermediaries, and others by disclosing aggressive tax schemes; (c) although the tax intermediary may offer these aggressive schemes, the taxpayer determines the strategy and the degree of tax risk, which is more critical to large taxpayers; (d) risk management is an essential tool that Tax Administrations use to achieve an optimal application of resources and reaction to changes; (e) for excellent risk management, it is essential to have updated, relevant, and reliable information, the best source being taxpayers themselves; if possible, this could be obtained through an administration-taxpayer relationship based on rapid communication and transparency; (f) the characteristics of this relationship should be as follows: (i) understanding based on knowledge of the company's environment; (ii) impartiality; (iii) proportionality; (iv) transparency; and (v) agility¹¹.

The cooperation between Tax Administrations and taxpayers is based on three pillars: mutual trust, understanding, and transparency. These three foundations are formalized into seven characteristics, two of which (transparency and disclosure) apply to taxpayers and the remaining five of which (commercial awareness, fairness, proportionality, transparency, and responsiveness) apply to the Tax Administration. In July 2013, the OECD followed up the 2018 report with a new report entitled "*Cooperative Compliance: A Framework, From Enhanced Relationship to Cooperative Compliance*." The renamed concept is best characterized by "transparency in exchange for certainty"¹².

A cooperative compliance system is based, above all, on trust, through all agencies that directly or indirectly exercise functions related to taxation. Whether they are legislative, judicial, supervisory, or regulatory, they must all behave coherently. In this way, disappointments due to the feeling of injustice and discrimination are avoided, which helps to encourage taxpayers to maintain their voluntary cooperation with tax authorities¹³.

In sum, this new approach implies a dynamic process in which each of the parties must leave behind the mistrust of the past and begin a new and renewed phase inspired by mutual trust. Taxpayers should metabolize this new role by assuming that they must pay their "fair share of taxes" based on the duty to contribute to the general burden¹⁴. On the other side, a new

¹⁰ PAULO CHICO DE LA CÁMARA, "Compliance Tributario & Principio de Buena Fe: ¿cómo Sentar Unas Sólidas Bases Para Una Mejora de Las Relaciones Cooperativas?", *Revista Española de Derecho Financiero*, 189, 2021, pp. 20-24.

¹¹ JAUME MENÉNDEZ FERNÁNDEZ, "El Compliance Tributario: un escalón más hacia la transparencia fiscal", *Carta Tributaria*, 48, 2019, p. 12.

¹² Co-Operative Compliance: A Framework; from Enhanced Relationship to Co-Operative Compliance, ed. by OECD (Paris, OECD, 2013).

¹³ CARLOS OTÁVIO FERREIRA DE ALMEIDA, "Compliance Cooperativo: Uma Nova Realidade Entre Administração Tributária e Contribuintes", *Revista Direito Tributário Internacional Atual*, 2, 2017), p. 80.

¹⁴ PEDRO JOSÉ CARRASCO PARRILLA, "Compliance tributario y contratación pública en España", in *Desarrollo en Brasil, España y la Unión Europea: hacia la construcción de un nuevo orden global sostenible* (Ediciones de la Universidad de Castilla-La Mancha, 2021), pp. 63-92.

basis for a “good administration” was to be laid, inspired by the principles of the prohibition of arbitrariness, objectivity, and efficiency, and based on good faith.

At the level of the European Union, several steps have already been taken to establish a cooperative compliance system. Directive 2016/1164/EC sets rules against tax avoidance practices that directly impact the functioning of the internal market. Furthermore, at the end of 2016, the European Commission drew up guidelines for a European Taxpayer's Code, which seeks to ensure greater transparency concerning the rights and obligations of parties and encourage administrations to adopt a more service-oriented approach. Following this first step, the DAC 6 Directive¹⁵ (for which the transposition deadline was December 31, 2019, with obligations entering into force on July 1, 2020) introduces significant new developments in this area, leading to changes in relationship and responsibilities¹⁶.

2.2. The taxpayer in the cooperative compliance approach

A taxpayer participating in a cooperative compliance program must disclose how they handle their tax affairs. It is necessary to create a tax control framework (TCF) that measures whether a taxpayer is in tax compliance and can ensure compliance, while for Tax Administrations, it is necessary to demonstrate a deep understanding of the taxpayer's business and industry. The compliance tools applied need to be objective and proportionate, and the Tax Administration must react to taxpayer inquiries transparently, promptly, and objectively.

The current trend is to integrate the tax issues into corporate governance, explicitly assigning tax responsibility to the board of directors. Boards should establish the general guidelines for tax policy and strategy and the good governance structure, i.e., tax risk control, compliance model, oversight mechanisms, and transparency. Integrating tax policy and tax risk management and supervision within the framework of good corporate governance is intended to increase compliance with strictly corporate objectives and establish an instrument for improving tax compliance as a tax control mechanism that tax authorities can use. In addition, good corporate tax governance is a tool for governments in the fight against corporate tax evasion and avoidance¹⁷.

In this new relation, we can extract the following characteristics of cooperative compliance programs: (a) they deal with the relationship between the Tax Administration and taxpayers; (b) cooperation is given priority over confrontation, as a result of which prevention is given priority over repression (imposition of penalties); and (c) as a consequence of this last characteristic, there is a tendency to reduce litigiousness, in addition to avoiding the imposition

¹⁵ The EU Council Directive 2011/16 in relation to cross-border tax arrangements, known as DAC 6, aims at transparency and fairness in taxation.

¹⁶ MARIA ÁNGELES GUERVÓS MAÍLLO, “Buenas Prácticas y Transparencia Fiscal”, *Revista Quincena Fiscal*, 22, 2020, pp. 16–20.

¹⁷ JOSE M CALDERÓN, “Corporate Tax Governance 2.0: The Role of Tax Control Frameworks Following the OECD/G20 Base Erosion and Profit Shifting Project”, *Bulletin for International Taxation*, 74.3, 2020, p. 110).

of penalties, with a possible increase in tax collection allowing for an increase in the rate of voluntary (not forced) tax compliance. Among the main characteristics of the proposed cooperative tax regulation model proposed, the following stand out: (a) the encouragement of cooperation, information sharing, and convergence of interests between Tax Administration and taxpayers; (b) the prioritization of transparency, dialogue, and preventive conflict resolution; (c) the possibility of taxpayer participation in the elaboration of the applicable regulation; (d) the forecast and concession of benefits and bonuses (“carrots”) as incentives to the compliance behavior; and (e) the coexistence of incentives and rewards with punitive measures, the latter applying only to recalcitrant taxpayers with noncompliance behavior, while prioritizing, as to the others, collaboration and the preventive solution of conflicts¹⁸.

The scope of application of the cooperative compliance reminds us of the classic “prisoner's dilemma,” in that the administration will put pressure on “intermediaries” and “taxpayers” to reveal how much they know about this abusive practice since the one who “informs” could comply with their obligation and be forgiven of this responsibility, causing damage to the other contracting party. However, if everyone were to remain silent, that is to say, “keep quiet” according to the well-known “Nash equilibrium” of game theory, following the classic Latin saying “*aequam memento rebus in arduis servare mentem*” (keeping a calm mind in difficult times), it is likely that this obligation would expire within four years of discovering its existence, which would have to be proven by any means of evidence valid in law.

Cooperative compliance activities are on the rise. Indeed, consolidating this trend is an excellent way to attract capital and investors, assuming that the level of demand from consumers and society is growing every day, tending to privilege those companies that conduct themselves ethically and responsibly in their routine actions¹⁹. Therefore, the legal systems must provide a series of rules that promote the implementation of these Codes of Good Practices. Furthermore, these guidelines or codes of conduct bring innumerable benefits to companies by reducing their levels of exposure to risks or situations that could compromise their liability²⁰.

For this reason, the tax area takes on particular relevance in corporate compliance agendas. In essence, it is intended that, with a series of actions or guidelines provided in these Codes, the proper compliance with tax obligations is promoted, tax risks can be detected at an early stage, and the necessary measures can be established to correct them and, of course, how to address and minimize the tax contingencies that may arise. The timely payment of taxes, the implementation of accounting practices consistent with Generally Accepted Accounting Principles (GAAP), external audits, and compliance by the company—as an employer—with

¹⁸ ALINE VITALIS, “Tax Compliance and Cooperative Tax Regulation”, *DIREITO GV Law Review*, 15.1, 2019, p. 20.

¹⁹ JOSE M CALDERÓN, “The OECD International Compliance Assurance Programme: Just a New Multilateral and Cooperative Model of Tax Control for Multinational Enterprises?”, *Bulletin for International Taxation*, 72.12, 2018, p. 14.

²⁰ CÉSAR GARCÍA NOVOA / ROSA CABALLERO PERDOMO, “El Compliance Tributario, La Relación y Las Nuevas Relaciones Fiscales. Su Implantación En España y En America Latina”, *Revista de Fiscalidad Internacional y Negocios Transnacionales*, 12, 2019.

specific tax obligations that affect its payroll, should be part, among other assumptions, of the integrity and transparency policy of a reliable company.

a) Requirements for a successful cooperative compliance program

For the most collaborative relationship between the parties to be achieved and maintained, both the Treasury and the taxpayers must follow certain model assumptions. The representatives of the Tax Administration must have commercial knowledge about the business developed by the company, the practices usually followed by the market, the cost and expense structure, the sources of revenue, the profit margin, the competitiveness in the economic sector, etc.

They must make impartial decisions as well as exercising proportionality in the topics dealt with and giving preference to the most relevant issues. In addition, they must guarantee greater openness about their procedures and legislative interpretations and answer questions quickly. The overall aim must be to provide companies with the information they need to comply with the “letter of the law” and the objectives pursued with the tax rules. In turn, taxpayers must ensure that they act with openness and transparency in regard to the tax authorities.

The goal is no longer to report as little as possible to the tax authorities but to ensure that the company's tax treatment and controls comply with the law and that the company is committed to correctly assessing and collecting the taxes due²¹. Thus, improving access to information is one of the central requirements for ensuring better tax compliance.

Indeed, Tax Administrations cannot improve their effectiveness and efficiency if they do not have accurate information about taxpayers, their activities, and the transactions they have entered. It is not surprising, then, that one of the current priorities for Tax Administrations is to increase access to information so as to reduce systemic blind spots because processing, interpreting, and ultimately making use of all available data is a significant challenge in itself²². For example, in Figure 1, it is possible to see the main requirements of the cooperative compliance program:

²¹ PEDRO CARLOS ANTUNES DIAS, “Compliance cooperativo: uma análise sobre a isonomia tributária do modelo conceitual proposto pela OCDE”, 2019, pp. 6–9.

²² ALICJA MAJDANSKA / PEDRO GUILHERME LINDENBERG SCHOUERI, “Tax Compliance in the Spotlight – The Challenges for Tax Administrations and Taxpayers”, *Bulletin for International Taxation*, 71.11, 2017, p. 632.

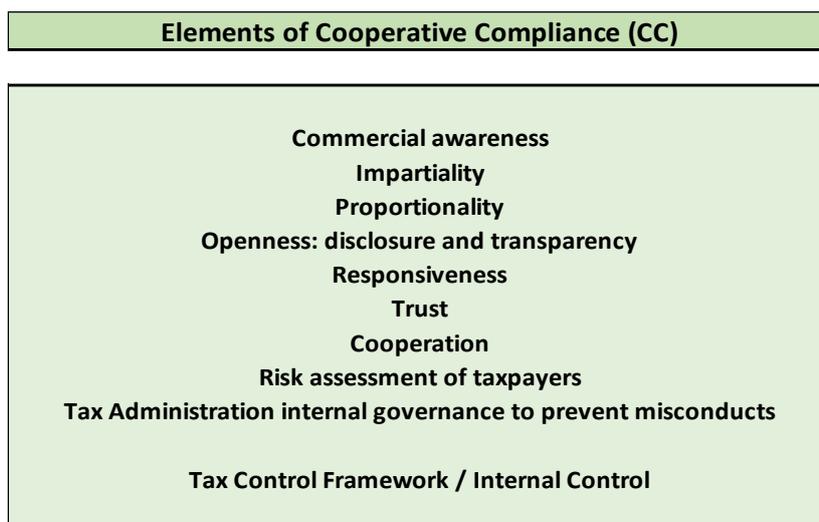


Figure 1: Crucial elements for the success of a CC program

Source: Prepared by the author

b) Advantages of a cooperative compliance program

Among the advantages of a CC program are that the taxpayer reduces insecurity because of the gain in certainty and clarity through a service coordinated in conjunction with the Tax Administration; of the prior knowledge of the compliance costs in the various tax authorities and the respective chance to reduce them; of the commercial/business perception to be developed in the scope of the inspection activities; of the simplification of the decision systems in the area of the administrative-tax process; of the administration's timely response to consultations and return of resources and credits. The tax authorities, in turn, have greater predictability and security in tax collection due to the gain in transparency with the voluntary disclosure of information; tremendous respect for the spirit of the law by companies; open and transparent dialogue with the private sector; cooperation in assessing tax risks; assistance in understanding business and commercial practices, as well as improved use of tax risk management systems, thus enhancing the use of tax risk management systems.

Taxpayers who embark on such programs expect certainty and clarity regarding tax items in return, as these bring greater security when structuring and planning their business. In addition, an approach to the authorities results in a greater understanding of the corporate reality, creating awareness of both the business issues and the compliance costs incurred by companies. Therefore, CC regimes, first, ensure a more transparent environment. This way, divergences as to possible interpretations of the law are dealt with in a coordinated manner, helping to change the profile of the work of these authorities, which stop acting so heavily in

an investigative manner and start following more closely the business reality that, once understood, facilitates the application of the existing system²³.

One way to reduce litigiousness is for The Administration to assess compliance risks and segment or group taxpayers according to the threats detected. Through tax risk management, ex-post controls (preventive versus repressive action) disappear, and taxpayers are monitored according to their tax risk. The lower the risk, the greater the assistance and information provided by the administration to taxpayers.

Additionally, it is expected that CC will allow the tax authorities to exercise a higher level of assertiveness in their tax collection forecasts since the taxpayers targeted by CC represent a significant percentage of the tax collection. Taxpayers also benefit from collaborative compliance programs materialized in the opportunity to reduce doubts and resolve tax disputes more quickly. It also ensures greater certainty for taxpayers, helping them to manage tax risks and reducing the need for financial provisions for tax and audit risks. An additional positive characteristic of the approaches based on CC is the possibility of implementing them utilizing non-statutory rules issued by the tax administration, without the need for changes in laws or regulatory norms.

Any taxpayer, regardless of their tax relationships and profiles, is part of the tax management system according to two segmentation variables: (a) their contributory shape, which is defined by the tax obligations they are subject to according to their legal and economic personality (salaried employee, self-employed professional, commercial company, resident or non-resident, pensioner, etc.); and (b) their taxpaying behavior, which is defined by the tax conscience that governs their actions as taxpayers.

Based on TIPKE's classification, we could, in a simplified and schematic way, categorize the different profiles of citizens when dealing with the Tax Administration into four types of taxpayers: (i) taxpayer: any person who correctly pays his taxes, performs an economic activity, is registered in the tax census, and contributes to the Gross Domestic Product (GDP); (ii) bad taxpayer: any person who does not pay all his taxes, either by mistake, or because he has discovered a legal mechanism that enables him to pay less, or because he is convinced that he will not be found out; he also carries out an economic activity, is registered in the tax census, and contributes to the GDP; (iii) defrauder taxpayer: any person or entity that should contribute but expressly does not do so; they carry out an economic activity, are not registered with the tax authorities, and contribute to its GDP; structural and planned fraud also fall under this heading, (iv) delinquent: any person who simulates economic activity in order to benefit from tax refunds on a large scale by deceiving the tax administration; he is registered, does not perform economic activity, and does not contribute to the GDP²⁴.

Another advantage of a CC program is that it lowers the legal insecurity of those taxpayers classified as low risk and allows the tax administration to allocate available resources to enforce

²³ EDUARDO FERNANDES ARANDAS, "Compliance Tributário Cooperativo Como Instrumento de Melhoria Do Ambiente Tributário, Aspectos Gerais", *Revista Direito Tributário Atual*, 39, 2018, p. 122.

²⁴ KLAUS TIPKE and others, *Steuerrecht*, 23 Auflage, Köln, Otto Schmidt, 2018.

compliance with higher tax risk rates, thus fostering mutual trust in applying the tax system. In this way, it is possible to distinguish different categories of taxpayers based on their risk profile (e.g., taxpayers with a higher tax risk profile). This risk profile then determines the type of relationship the taxpayer may have with the tax authority. Likewise, the kind of relationship that the taxpayer may have with the tax authorities will depend on this risk profile. The classification of taxpayers according to their tax risk will also allow the Tax Administration to organize the appropriate preventive, dissuasive, or sanctioning measures for noncompliance based on a responsive approach.

It is essential to bear in mind that the administration will have to address each of these profiles in different ways to maximize efficiency in its operation. The change towards a cooperative model implies a mutation in the tax application schemes present up to now. First, it is worth remembering which is the prevailing paradigm for the application of taxes at present. The tax system is no longer based on the essential adoption of administrative liquidation acts that the Tax Administration issues and notifies taxpayers, but on self-assessments. Moreover, the system also relies on the necessary intervention of private parties who do the administration's work.

This phenomenon, which some authors have called the privatization of tax management, changed the application of the tax system forever, transferring to the taxpayer, through self-assessments, a large part of the work previously carried out by the administration, and making the requirements of legal certainty that should surround the system of duties of collaboration particularly important. Therefore, we should suppose it is the private individuals who apply the tax law.

c) Tax risk management and certification policies

CC requires transparency, and transparency requires the implementation of tax risk management models. Tax risk management can be carried out in several ways. Firstly, it can be done through a company's self-regulation techniques; that is, companies that adhere to the code should draw up a Manual of Good Tax Practices.

The Manual must refer to good practices, indicate the body or subject responsible for them, and propose corrective measures for their non-observance. At the same time, the whistleblowing channel for possible noncompliance must be regulated. And this, following the Anglo-Saxon line of encouraging the reporting of tax noncompliance (encouragement of whistleblowers), qualifies as the maximum expression of tax transparency in the company. Therefore, it is necessary to regulate the forms of reporting, the protection measures for whistleblowers, the company's obligations to verify and process the reports, and the channel's relationship with data protection. In addition, the status of a taxpayer as compliant must be certified, which will require that some entity officially verifies compliance by taxpayers and companies using compliance standards.

Different cooperative legal compliance programs can be analyzed according to the following instruments: (i) companies have clarity on how to achieve CC (clarity); (ii) look ahead and act in real time to ensure that tax uncertainties are prevented or detected when they occur (timeliness); (iii) put effort into tax (non-tax)-related operations; (iv) make compliance with laws and regulations easy and noncompliance difficult (enforcement); (v) actively engage taxpayers, their representatives, and other stakeholders in order to achieve better understanding and cooperation between the parties involved²⁵.

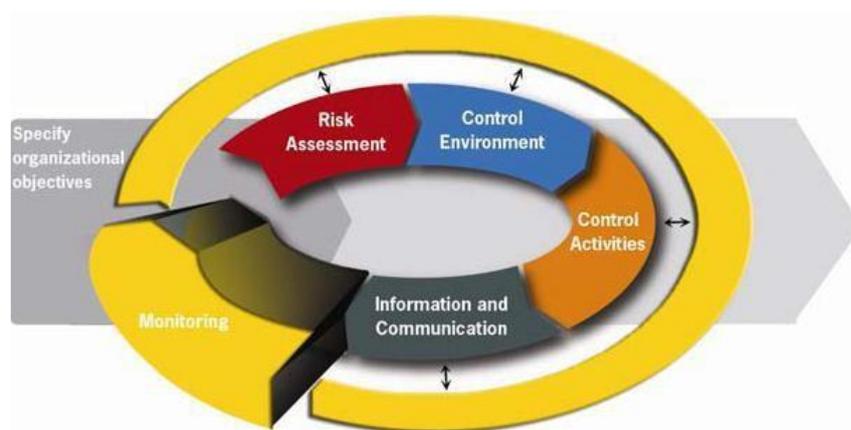


Figure 2: Tax Control Framework for risk tax management by taxpayers
Source: COSO ERM Components²⁶

2.3. Cooperative compliance in Brazil

In Brazil, notions of implementing a more friendly relationship with the taxpayer are still relatively tentative, especially considering that Brazil is part of the current group of 50 members of the OECD Forum on Tax Administration. As a result, the Brazilian relationship between the tax authorities—covering the three federative spheres, despite the many differences within each municipal, state, and federal tax administration—and the taxpayers has been marked by distrust on both sides. Through the administration's lens, one can see tax evaders on a massive scale. At the same time, from the perspective of taxpayers, one can identify vindictive and opportunistic authorities, always on the prowl to produce new interpretations of the rules that result in tax assessments. Thus, insecurity is consolidated in all its vitality.

After more than a decade of experience with CC programs, it seems they are here to stay and that they are being implemented by an increasing number of jurisdictions. These programs

²⁵ DAMY W. COLON, "Legal Security Differences: Co-Operative Comparison Between The United Kingdom And The Netherlands", *Archives of Business Research*, 5.3, 2017.

²⁶ See: <https://www.coso.org/SitePages/Guidance-on-Enterprise-Risk-Management.aspx?web=1>.

have evolved and will continue to grow, supported by new technologies, which will take CC to an even higher level. Brazil, starting now, can learn from these experiences and develop a robust and advanced program in the best interests of taxpayers and Tax Administration.

a) Previous experiences in Brazil

The customs program Authorized Economic Operator (AEO) can be classified as a Brazilian federal experience that adopts principles and methodology in common with CC. The Normative Instruction RFB 1,985, of October 29, 2020, lists transparency, public-private partnership, and risk management as principles of the program, as occurs in cooperative compliance. Therefore, it is possible to deduce that this model develops as a consequence of trust between the parties. Trade operators seek to demonstrate reliability in their actions in foreign trade and customs authorities, feeling confident that these operators' behavior is reliable, choosing to reduce certain controls in exchange for a more collaborative, open, and transparent relationship. In addition, the legislation that established the AEO provides benefits to participating companies (in particular, the simplification of customs procedures) and creates additional obligations, such as the duty to consult the tax authorities if they have questions regarding customs legislation.

Still, at the federal level, it is worth noting that the monitoring of large taxpayers that was established in 2020 through RFB Ordinance No. 4,888 of December 07, 2020, and seeks, according to the objectives set in its art. 3º I—to subsidize the RFB's senior management with timely information on the tax behavior of the largest taxpayers; II—to act close to the taxable event of the tax obligation; III—to know, in a systemic way, the economic-tax behavior of the largest taxpayers; IV—produce analysis on the most relevant negative variations that result, or may result, in a fall in actual or potential revenue; V—promote tax compliance initiatives with the significant taxpayers, prioritizing actions for self-regularization; and VI—forward proposals for action to be implemented by the areas responsible for specific work processes.

The Brazilian IRS (RFB) has opened RFB Public Consultation No. 4/2018 to receive opinions on a compliance program (Pro-Compliance) to be launched, which aims to “encourage companies to adopt good practices to avoid misconduct, through the establishment of a classification of taxpayers according to the degree of risk they represent.” As stated in the explanatory memorandum of the Public Consultation, Pro-Compliance aims to promote good relationships between the tax and customs administration and the taxpayer, based on the following principles: I—respect for the citizen; II—integrity; III—legality; IV—fiscal transparency; V—good faith, including the ethical duty to pay taxes; VI—legal security, with the predictability of conduct; VII—collaborative capacity with the tax and customs administration; and VIII—fair competition among economic agents. In addition to Pro-Compliance, the National Treasury Attorney's Office also held a public hearing on the Tax Positive Cadastre. In short, the federal Tax Administration already coexists healthily with several initiatives that encourage voluntary

compliance, lacking only the behavioral change to move from a conflictive relationship to a more friendly one.

Another important initiative in Brazil is the Tax Compliance Incentive Program—“*Nos Conformes*,” of the State of São Paulo, established by State Complementary Law No. 1.320, of April 6, 2018. The program seeks to create the conditions needed to build a relationship of reciprocal trust between the tax authorities and taxpayers and to do so adopts the following principles: simplification of the tax system; good faith and predictability of conduct; legal certainty; publicity and transparency; and legal competition among economic agents. “*Nos Conformes*” seeks to facilitate and encourage tax compliance by reducing compliance costs and simplifying tax legislation. To this end, it points out that the São Paulo State Tax Administration must disclose its understanding of the concrete application of tax legislation and transparently present its criteria for classifying taxpayers. Another novelty of the complementary state law is creating a classification (rating) of the taxpayers of the Tax on Operations Related to the Circulation of Goods and Services on Interstate and Intercity Transportation and Communication—ICMS, i.e., classification of the business taxpayers of the State Treasury.

In early 2021, in Rio de Janeiro and Espírito Santo, the RFB had already created the Regional Tax and Customs Compliance Program (PRC), regulated by SRRF07 Ordinance No. 5 of January 18, 2021. The PRC aims to encourage the self-regularization of tax obligations before initiating a tax procedure by providing the necessary instructions for proper compliance. As an example, under the CRP, self-regularization of the delivery of Federal Tax Debits and Credits Statements (DCTFs) was allowed after the Tax Authorities sent a compliance alert to taxpayers classified as “differentiated” under RFB Ordinance No. 5,018 of December 21, 2020, that is, those who had not delivered their DCTFs, or who had submitted them with zero or “close to zero” amounts.

b) CONFIA—Brazilian Tax Cooperative Compliance Program

On April 20, 2021, RFB Ordinance No. 28/2021 was published in the *Federal Official Gazette*, establishing the Management Committee responsible for the Tax Cooperative Compliance Program (“CONFIA”) of Federal Revenue of Brazil²⁷. The basis of CONFIA is trust (“CONFIA” means trust in Portuguese), justified by a structure of corporate tax governance, tax control, and risk management in taxpayers. Its goal is to promote benefits for the Tax Administration, taxpayers, and society, maintaining the equality of tax treatment among taxpayers.

The Committee will be responsible for defining the guidelines for the creation and operation of CONFIA within the RFB. It is incumbent upon the Committee, among others, (i) to approve the dialogue forum with the presence of representative entities and companies; (ii) to evaluate

²⁷ See in Portuguese: <https://www.gov.br/receitafederal/pt-br/aceso-a-informacao/acoes-e-programas/confia>.

the proposals forwarded by the dialogue forum and propose the issue of RFB normative acts relating to the CONFIA Model, the Code of Good Tax Practices ("CBPT"), and the guidelines for the Tax Control Framework ("TCF"); and (iii) to establish specialized taxpayer monitoring teams, as well as the practice of other acts necessary to ensure the operationalization of the program.

CONFIA's initial objective is the controlled implementation of a pilot project for a cooperative compliance program, based on TADAT (Tax Administration Diagnostic Assessment Tool) and the models proposed by the OECD, and adapted to the characteristics of the IRS and Brazilian taxpayers. In the first stage of construction, the priority will be to work cooperatively with entities representing the largest taxpayers in a working group and to design the model of the program and its constituent elements (code of good tax practices, tax control framework, or adhesion agreement, among others) from its inception.

In this sense, the establishment of the CONFIA Management Committee is essential for the definition of guidelines and the approval of proposals for the program to be built collaboratively between the RFB and taxpayers in dialogue forums. This could be considered the beginning of a new milestone in the federal tax system, with increased taxpayer satisfaction with the Tax Administration, reducing the costs of tax bureaucracy, the tax gap, and increasing mutual trust through transparency.

The intention is that the program's guidelines was structured throughout 2021 to begin a pilot with a small group of companies in 2022. After this stage, the Revenue Service will implement the program and expand and improve it over time. The issues will be discussed between taxpayers and the Tax Authorities. One point that should attract much interest is the seeking of guidance from the tax authorities on applying tax legislation. Under current rules, companies submit questions through a formal procedure called consultation solution. The answers with the revenue's interpretation on how they should act arrive in 150 days on average. The aim is to create a structure that allows a kind of customized consultation solution. In other words, the company could open operations and planning for the tax authorities in order to provide their opinion in advance, avoiding tax collections usually made years after the business has been done. In short, transparency is exchanged for legal security.

c) Development of the Code of Good Tax Practices

The Code of Good Tax Practices (CBPT) is an instrument that configures Tax Administration not as a procedure of opposing parties but as a collaboration for a common purpose. Note that the CBPT constitutes a soft law instrument which attempts to balance the relationship between the Tax Administration and the taxpayer based on the parties' good faith and mutual trust. Thus, the companies who subscribe to the code commit themselves to adopting the following practices: avoid the use of opaque structures for tax purposes, such as the use of special-purpose vehicles through tax havens or territories that do not cooperate with the tax

authorities; collaborate with the Tax Agency in the detection and search for solutions concerning fraudulent practices that may be developed in the markets in which they are present; and inform the Board of Directors, by the person responsible for the company's tax affairs, of the tax policies being applied and of the tax consequences of the operations and matters that must be submitted for approval by the Board of Directors. For its part, the Tax Administration undertakes to take into account the administrative precedents and to ensure that the interpretation of the rules is carried out in respect of the unity of criteria of the administration itself; to publish the criteria it will use in its control procedures as long as they can be applied generally; to establish adequate procedures so that taxpayers can resolve any doubts regarding the tax treatment to be laid; and to favorably consider the explanatory information of the criteria used by the taxpayers²⁸.

Through the Code of Good Tax Practices, both the administration and the taxpayers voluntarily accept guidelines to improve the application of the tax system. Likewise, taxpayers willingly receive guidelines to enhance the application of the tax system. From the tax debtor's perspective, these guidelines involve avoiding opaque structures for tax purposes and collaborating in the detection and search for fraudulent tax practices that may develop in the markets, while for companies they involve informing the governing body of the tax policies applied to the organization during the fiscal year. For its part, the administration must not only prevent potential problematic aspects that could lead to the elements that lead taxpayers to not duly comply with their tax obligations; they should also collaborate in order to solve the specific problems affecting taxpayers by providing correct and timely information on their particular case²⁹.

In the new era of compliance, tax professionals, including accountants and tax lawyers, will play a significant role as social partners. They operate on the front line, and thanks to their work, they facilitate the pedagogy of the tax culture, informing taxpayers of the application of the tax system and ensuring compliance with tax obligations that are increasingly complex and numerous in our tax system. The levels of representation of the tax advisor in a broad sense are as follows: (i) acting as an advisor; (ii) serving as an assistant to the taxpayer in the proceedings; We have collated the three possible types of liability that a tax professional may incur: civil, tax, and criminal.

3. Swot Analysis for Cooperative Compliance in Brazil

This part of the report employs a SWOT analysis to assess the strengths and weaknesses, opportunities, and threats associated with the adoption of the CONFIA program in Brazil.

²⁸ AURORA RIBES RIBES, "La inteligencia artificial al servicio del "compliance tributario"", *Civitas. Revista española de derecho financiero*, 188, 2020, pp. 125-70.

²⁹ EVA MARÍA GIL CRUZ, "Principales Contingencias En Materia Tributaria Objeto de Controversia. Propuestas Para La Mutua Cooperación", *Revista Quincena Fiscal*, 18, 2020.

3.1. Strengths

In the case of Brazil, the adoption of a CC program does not demand legislative changes, but only agreements formalized directly with the taxpayer. In the same way, the entrance in a CC program is commonly offered to a particular class of taxpayers that must satisfy objective criteria, such as complexity of structure or operations and participation in the tax collection. However, the fact is that this entrance depends, in the last degree, on the level of risk that the candidate taxpayer represents to tax compliance. Thus, those considered to be high risk are unlikely to participate in a CC program. Instead, they will have to improve their risk assessment through increasingly compliant behavior until they meet the entry requirements.

The implementation of a CC project requires, at first, a change in the parameters and routines adopted by the tax authorities. It is not enough to displace or admit public agents only, but, above all, to enable them to operate with a different system, which migrates from the traditional repressive approach to a proactive one. Therefore, for the tax authorities to engage in a joint activity with the taxpayer, it is necessary to promote an effective change of culture and behavior to gain the credibility required to induce the taxpayer to tax compliance. In particular, the transposition of tax information to digital platforms can maximize its value through cross-checking of information. For example, the Public Digital Bookkeeping System (SPED) allows the cross-checking of the tax information provided by different taxpayers.

3.2. Weaknesses

In Brazil, due to the legal tax system itself, some weaknesses may arise even before implementing this project. First of all, it should be noted that the actual assessment of the tax liability is a mandatory and binding activity under the penalty of functional liability³⁰. Some programs implemented could be considered an initial phase of this change, even though there is considerable prejudice and distrust in the relationship between the tax authorities and taxpayers in Brazil. We need only to remember that there is no widespread vision of what taxation is for and how the proceeds are used, not to mention the widespread corruption in the media, which only aggravates the attempts to implement these programs. Another difficulty or stimulus that may arise in implementing such programs is the degree of litigation existing in tax matters, with vacillating interpretative positions of the collecting agency and the justice agencies.

Restoring trust and promoting collaboration between the Tax Administration and taxpayers is always a desirable objective, which can also be based on the principles of legal certainty and efficiency of the administration and the principle of proportionality. However, the truth is that,

³⁰ MICHELL PRZEPIORKA, "Compliance Cooperativo–Possibilidades e Desafios", *Revista ABRADT Fórum de Direito Tributário*, 3.5, 2019, p. 128.

on many occasions, the origin of distrust is to be found in the increase in aggressive tax planning by large companies and the reaction of the administration against such practices³¹.

3.3. Opportunities

Implementing a CC model should deliver benefits for the Tax Administration, taxpayers, and the state. It should increase tax revenues by promoting tax compliance and making tax compliance more manageable. In addition, developing the program can significantly contribute to securing the timely payment of the correct tax. CC may also promote good governance more widely from the state's perspective. As such, it is a tax measure that, on the one hand, incentivizes tax compliance and, on the other, supports the Tax Administration's ability to address the problem of non-compliant taxpayers.

CC programs are valuable tools for the Tax Administration to deal with new issues that arise daily due to changes in the productive business process or legislative arena. These programs should focus on the interests of taxpayers who wish to comply with the tax norms, even though there is a lack of trust and room due to reduced confidence and space for institutional dialogue. Additionally, the scarcity of public resources oriented to inspection imposes the need for greater rationality in tax compliance policies. In this sense, the focus on programs based on relevant taxpayers and interested in cooperating shows itself as another tool to assist in collecting and reducing the effects that failures in the inspection may generate on the market.

It is recommended to set up a self-regulation system through a "Technical Compliance Committee" in certain companies. They may integrate it into their current internal structure as a General Compliance Department, now adding the figure of a tax expert who would oversee this area to safeguard against the risk of tax noncompliance. It should be noted that the company's compliance management must be comprehensive and unified, reinforcing all the regions in which the entity may be vulnerable. Indeed, this internal body must ensure compliance in all business areas that generate a risk of noncompliance (commercial, labor, criminal, and tax).

Building confidence in internal control structures is essential for new regulatory strategies such as CC programs. The TCF concept highlights the central importance of these structures to the idea of CC. Thus, an integral component of CC is an internal control system that is sufficiently robust to provide the tax authority with the assurance that all relevant tax risks can be disclosed on time and that tax returns are filed on time and are complete and correct. Thus, taxpayers joining a CC program must be committed to improving the quality of their TCFs.

Improving the quality of a TCF can provide more certainty to an organization about its tax position. CC programs encourage organizations to enhance their TCFs, and this can benefit

³¹ RONALD RUSSO / MARIO HENRIQUE MARTINI, "The International Compliance Assurance Programme Reviewed: The Future of Cooperative Tax Compliance?", *Bulletin for International Taxation*, 73.9, 2019, pp. 359-60.

those organizations. Improving the quality of a TCF also leads to better tax compliance and thus helps the tax authorities, so it becomes a win-win game. For developing countries, CC can help address the practical challenges these economies encounter in modernizing their tax policies and administrations to deal with base erosion and profit shifting and the recommendations derived from the OECD/G20 BEPS initiative³².

3.4. Threats

Effective CC cannot tolerate practices that damage the taxpayer's confidence and the credibility of the state. Programs such as the amnesty and remission programs determined by the federal, state, and municipal governments challenge the taxpayer who pays his tax burden promptly. Tax amnesties could, in effect, allow taxpayers to avoid contentious litigation. If used consistently, this could prevent the formation of a consistent body of case law. However, it destroys tax morale when it is used repeatedly, especially those who comply with their obligations on time. Furthermore, not escaping the same context, the tax war between federal entities, the intervention of other public agencies to obtain data entrusted confidentially to the tax authorities through voluntary or the waiver of revenue capable of compromising the balance of public accounts reduce the general welfare.

Criticism may arise regarding a CC program of a legal nature concerning conflicts with constitutional and administrative law, such as the need for equal treatment before the law and the issue of confidentiality of taxpayer information. A program of this nature should deal very carefully with these issues in Brazil and should comply with constitutional rules and be in tune with ensuring the confidentiality of this information³³. The conflict ratio in tax matters is an endemic evil that is not easy to combat unless we act at its root by implementing effective mechanisms to prevent ex-ante this diagnosed litigiousness. As in a disease, it would be desirable to know where the source of infection is, so that it is possible to intervene directly in curing it by establishing an agile conflict resolution system

Although the concept of CC generally does not result in a different or more favorable tax outcome for the taxpayer (, its benefits may indirectly impact the taxpayer's finances. In this case, Brazil offers additional help within its CC programs that directly affect the taxpayer's tax liability. Considering that the program's benefits are available only to its participants, there is a risk that the principle of legal equality, fundamental to most legal frameworks, may be violated. Programs that provide direct economic advantages require scrutiny. Therefore, the examination of CC programs should be focused on compliance with the formal conception of the principle of equality.

³² JONATHAN LEIGH PEMBERTON / ALICJA MAJDANSKA, "Can Cooperative Compliance Help Developing Countries Address the Challenges of the OECD/G20 Base Erosion and Profit Shifting Initiative?", *Bulletin for International Taxation*, 70.10, 2016, p. 600).

³³ ANNA-MARIA HAMBRE, "Cooperative Compliance in Sweden: A Question of Legality", *Journal of Tax Administration*, 5.1, 2019.

Changing a relation based on distrust, repressive and retroactive audits over many years to real-time audit systems is difficult. Under the latter, there should be greater reliance on a taxpayer's willingness and ability to be compliant. Consequently, Tax Administrations must have a well-balanced transformation plan for CC to succeed³⁴. Cooperative compliance will fail without the buy-in of the individuals who must enforce it. Tax Administration civil servants must be appropriately trained in this new audit approach, while Tax inspectors must be given tools (technology), guidelines (work instructions), and, if necessary, a legal framework that they can rely on. It is crucial to have in mind that nothing is more damaging to a relationship built on trust and transparency than mismanaged expectations³⁵.

<p>Strengths</p> <ol style="list-style-type: none"> 1. Benefits for the taxpayer (certainty, reduction of costs, real-time working, decrease of risk, reputation gains) 2. Benefits for tax authorities 3. Tax Control Framework (TCF) 4. Division of work (no duplication of work) 5. Selectivity—selected taxpayers 6. Voluntary character 7. Minimization of aggressive tax planning. 	<p>Weaknesses</p> <ol style="list-style-type: none"> 1. Dispute solving—settlements 2. Equality perception 3. The rule of law requirements 4. Lack of transparency 5. Lack of sanctions for misbehavior 6. Cancellation of cooperation 7. Performance measurement
<p>Opportunities</p> <ol style="list-style-type: none"> 1. Large taxpayer management 2. Tax risk management 3. Risk rating 4. Corporate governance 5. Public relationship tool 6. International cooperative compliance 7. CSR 	<p>Threats</p> <ol style="list-style-type: none"> 1. Relying too much on risk rating 2. Lack of tax expertise/remuneration issues for tax authorities 3. Implementation 4. Privacy and confidentiality 5. Exchange of information according to double tax treaties 6. Social factors 7. Opportunistic behavior of both parties

Figure 3: SWOT analysis for Brazil

³⁴ EELCO VAN DER ENDEN / KATARZYNA BRONZEWSKA, "The Concept of Cooperative Compliance", *Bulletin for International Taxation*, 68.10, 2014, p. 572.

³⁵ KATARZYNA BRONZEWSKA, *Cooperative Compliance: A New Approach to Managing Taxpayer Relations*, IBFD Doctoral Series, volume 38, Amsterdam, The Netherlands, IBFD, 2016.

4. Recommendations for the Brazilian CONFIA program

This part of the article offers some technical recommendations that should be implemented to ensure the success of the cooperative compliance program and reduce the alarming degree of tax litigiousness in Brazil.

— *Enhancing the use of the tax rulings as an agile instrument for a cooperative relationship*

To achieve significant improvements to the current system, the legislator could make tax ruling an even more agile and efficient mechanism for communication between the administration and taxpayers. Furthermore, to achieve the desired fluidity, the response periods currently available should be reduced, for less than six months, to avoid the taxpayer sometimes having to make a blind decision at that time due to ignorance of the position of the Tax Administration concerning the issue raised. However, this objective is not achievable if the Tax Administration does not increase the number of people involved in decision making.

— *An incentive to make use of legislative interpretative provisions*

Parallel to the clarifying function of the decisions issued, the interpretive work of the interpretative provisions should also be highlighted. We advocate the regular use of this instrument, which can be of great help in the interpretation of certain precepts. The aforementioned normative instrument is binding and mandatory for all Tax Administration bodies (tax application and review bodies such as the Administrative Tribunals), requiring its publication in the *DOU (Official Journal of the Union)*, reinforcing the principle of legal certainty.

— *Audit selection of taxpayers based on their track record and risks*

In any case, relief measures for taxpayers who comply with a historical record should be combined with coercive and punitive measures for those who habitually disperse income to the Treasury. Indeed, this type of repressive measures is not exactly popular, but as also stated by Thomas Hobbes, in *Leviathan*, “*Covenants, without the sword, are but words and of no strength to secure a man at all.*” Those that do not comply must be called to account.

— *The “concretization” of precepts containing “indeterminate legal concepts”*

The indiscriminate use of “indeterminate legal concepts” is fertile ground for generating permanent conflicts between the administration and citizens. Moreover, in many cases, the administration enjoys a wide margin of discretion, which will lead to the Courts having to exercise a posteriori a “negative” jurisdictional control on all those occasions in which the administration defines concepts. Therefore, one should try to identify the “sticking points” in the current regulations and prepare reports that could be used to undertake reforms to resolve

specific known niches of tax conflicts. The solution undoubtedly lies in gradually transforming the excessive casuistry of “technical discretion” recognized by the current tax regulations in favor of the administration, redirecting it to “regulated” cases for the benefit of legal certainty. The issue is not trivial since, in regulated powers, the administration can only verify whether the objective fact required in the defined budget follows what is required in the applicable provision, thus reducing the control of the jurisdiction exclusively to the compliance or noncompliance of the administrative action.

— *Implement a mandatory conciliation mechanism before a tax lawsuit*

It would be desirable for the process to be configured as an extraordinary resource that only functions when it is impossible to reach a prior agreement between the parties. In terms of economic efficiency, both for its high cost and duration until the final judgment and its legal effectiveness, the parties should be offered alternatives to prevent this “confrontation” from increasing the conflict until it reaches a judicial dispute. In the sphere of private law, alternative conflict resolution formulas (mediation, conciliation, and arbitration) have been gaining prominence for many years as an effective means of conflict resolution due to their greater flexibility and adaptability to the search for and achievement of social peace. Instruments of this nature should also be valued in the tax field.

5. Final remarks

The role of taxation has changed for modern corporations: paying taxes is no longer considered a simple cost. Still, it has become a tax role with strategic importance at the corporate level. Moreover, contemplative tax transparency standards decisively affect companies' tax strategies: greater transparency in tax compliance will require disclosure on the company's or group's tax effective payment, as well as detail on the use of tax incentives and subsidies.

Cooperative compliance ensures that the legal-tax relationship is based on transparency, mutual trust, and preventive actions of assistance and collaboration, which is achieved through good tax practices. Thus, they all aim to cultivate relationships based on trust, transparency, and legal security, both within the organization and with external stakeholders and society. Therefore, the adoption of a cooperative compliance paradigm has a dual purpose: on the one hand, it provide organizations with guidelines for the implementation of a compliance system aimed at minimizing tax risks, and, on the other hand, it facilitates the creation of detection and correction mechanisms, as well as learning canons to avoid them in the future, should they occur. This fact highlights the need for all organizations to have management and control systems applied to prevent, detect, manage, and mitigate tax risks.

One of the most important points to consider is the possibility of certifying the practical application of the Good Tax Practices Manual, which will allow firms to demonstrate, before

the Tax Administration or courts, their willingness to comply with tax obligations. Indeed, it may be essential for all companies to adapt their compliance protocols to a specific standard. The certification could therefore be used as evidence of the absence of fraudulent intent on the part of the entity.

In defining and adopting the tax compliance management system, it is first necessary to assess tax risks that affect the entity to identify, evaluate, and prioritize these risks for periodic review. In addition, the companies' Board of Directors and Senior Management play a leading role in this context, as they become responsible for compliance and observation of the system. Their roles include leading the design and cultivating a compliance culture within the companies. Furthermore, creating a tax compliance body is anticipated to promote and oversee the implementation and effectiveness of the system. Finally, the companies must provide the proper establishment, operation, compliance, improvement, and system control resources. In this sense, the Brazilian Tax Administration assessment is required to determine the role that will be played by this low-risk segmentation approach in regards to taxpayers who have adopted a tax compliance model and joined the CBPT.

Additionally, there is a need to delve deeper into penalties for noncompliance, both administrative and criminal. The adaptation of the new tax compliance protocol should undoubtedly serve as a modulating index in qualifying potential sanctioning procedures. Plus, the implementation of tax compliance as a mechanism for managing and controlling tax risks and cooperative tax compliance is a fact that affects all companies and should continue to evolve. Thus, companies should incorporate tax compliance into their internal practices as an essential part of the overall system of good governance, transparency, and compliance.

Putting all this together, it becomes clear that there is no question that tax compliance is here to stay. However, it must be emphasized that companies will need centralized tax data platforms (tax data hub) with first-class analytical capability to enable them to manage information in a tax-ready format to help the tax function in companies automate their processes more efficiently. These technology platforms will allow a transformation process in terms of tax data management. In addition, it would be advisable that these technology platforms, which help manage tax compliance principles, could connect bi-directionally with the IRS systems. The latter's validation would provide a guarantee of reliability for business systems.

Cooperation between public bodies and taxpayers is based on the responsibility of both. Collaboration needs to be supported by a legal rule with the rank of law principles and criteria scattered throughout the legal system, as well as in the different forums of good practices, so that they are perceived not only as guiding criteria but also as mandatory for both parties. In this way, an increasingly sought-after legal certainty in applying the tax system and a model of cooperative compliance are to be followed.

The remarkable digitalization, associated with the appreciation of the ethical behavior of taxpayers and Tax Administration, nurtures a favorable environment for a paradigm shift from

tax control to cooperation. However, the challenge is not simple. Although very well-intentioned, CONFIA will require re-awakening the administration's human resources to a new cooperative mentality. It will seek to ensure the highest levels of tax compliance, with higher collections and less litigation.

To succeed, CONFIA will require broad participation of taxpayer and tax administration representatives. Therefore, it is necessary to encourage a Forum of Constant Dialogue to search for solutions and even the technical discussion of controversial legal issues, avoiding tax litigation. CONFIA can be valuable for the Brazilian tax administration, preventing potential conflicts. As well beneficial to the taxpayer by obtaining continuous guidance and monitoring, greater legal security, and lower compliance costs.

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