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Governance and Risk Management in Taxation

Springer

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ISSN 2509-7873 ISSN 2509-7881 (electronic)
Accounting, Finance, Sustainability, Governance & Fraud: Theory and Application
ISBN 978-981-10-2295-1 ISBN 978-981-10-2297-5 (eBook)
DOI 10.1007/978-981-10-2297-5

Library of Congress Control Number: 2016949592

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer Nature Singapore Pte Ltd.
The registered company address is: 152 Beach Road, #22-06/08 Gateway East, Singapore 189721, Singapore

Foreword

The corporate governance issue has been studied for less than three decades and can be considered a relatively new subject. Studies and discussions on corporate governance have gained increasing prominence in the corporate environment strongly impacting the market, in the media and in academia.

Corporate governance systems may have different characteristics according to the economic, political, regulatory, and legal standpoint in a country and is also regarded as a dynamic system with practices in the process of evolution, which have been improved in recent decades. A good governance system helps strengthen companies.

However, the degree of sophistication of the discussions surrounding the issue has gained new and diverse developments. Currently, one aspect highlighted is the increasing demand for new monitoring and control mechanisms, especially when it comes to the separation of ownership and control between shareholders and managers.

Within this system of governance, one of the board of directors' responsibilities is to ensure that the board preemptively identifies the main risks to which organizations are exposed, and their probability of occurrence, the financial exposure to these risks and measures and procedures adopted for their prevention or mitigation.

Also it is the duty of this collegiate who continuously supervises the management in respect of such risks. It is worth noting that for a good governance system, it is necessary that it be properly managed so that administrators have subsidies at the time of decision making.

According to the study of Solomon and Kroehn (2002, pp. 68–72), quoted by the author, a survey of PWC points Brazil as the country where large companies spend more time trying to understand the maze of rules and requirements to meet obligations to the tax authorities.

Therefore, we can evaluate the relevance of this book to the Brazilian market and the importance that managerial information systems play in identifying tax risks within the governance structure of the companies.

Also important to note that the author has developed and tested a Model of Corporate Risk Management for the identification, implementation, management, and monitoring of risks by the companies surveyed, based on the existing theoretical framework. The difference, however, lies in the fact that, in the face of lack of theoretical framework of a Specific Model of Tax Risk Management, the author has developed and tested a framework of specific analysis of tax risk management (GRTrib) that may be used by the market.

I repeat, therefore, the opportunity and utilitarian importance of this book.

2016

Heloisa Belotti Bedicks
General Superintendent of the Brazilian
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Preface

Much has been talked about—in-print and broadcast media, seminars, conferences, and doctrine—the importance of corporate governance and sustainability in corporate life. In this book, we demonstrate that the tax governance—that must be seen as part of corporate governance—adds value (in the short, medium and long term) to their owners and stakeholders as well as help to make enterprises more sustainable and less risky in the context of the principles of good corporate governance.

The countries' tax system is a set of laws and principles that impose, to enterprises and individuals, a number of taxes, which will be used to enable the state to aim its social, economic, and political objectives. Therefore, paying taxes has a reason for being, which is to enable the government to provide to the citizens the infrastructure and essential services such as health, education, transportation, housing, and security.

However, taxpayers will not have to pay more tax than they actually are legally required. As well, they can not pay less tax than, in fact, have legally to pay. Taxation is the main path for the state to play its role—because, for lack of funds, he could not offer individuals the existential minimum to which they are entitled as citizens—taxation should be limited by law that every taxpayer has to organize and enjoy their own property.

Then, it comes the tax governance, a concept which sometimes is treated as management and planning of taxes, or as tax planning, or even as corporate governance. In fact, the tax governance is contained in corporate governance, as well as tax planning is contained in the strategic plan. Therefore, tax governance, management and planning of taxes, and tax planning are terms that are similar and converge toward the same goal.

To simplify the understanding, we say that through tax governance, the enterprise seeks to identify the most beneficial event of levy of taxes (which implies less disbursement of financial resources) in order to allow its operational activities, usually encumbered in order more heavily, can be benefited by reducing tax burden or even inserted in the context of non-levy of taxes. In addition, the enterprise must minimize the possibility of generating tax risks; i.e., it should seek to reduce tax risks and allow more transparency and consistency of its financial statements.

We understand that as a precept of good corporate governance practice, the tax governance should be a cooperative process between the senior management and the board of directors. It is up to the senior management develops, sometimes with the help of external consultants and proposals for management and planning of taxes, which must be analyzed, evaluated, criticized, and finally approved by the board of directors, which thus becomes coresponsible for the good tax governance practices. The enterprise that conducts business from tax compliance undoubtedly minimizes risks of questioning by the tax authorities, which can scratch your image and consequently decrease its value in the marketplace.

In many countries, the complexity of their tax system is undeniable. In the case of the Brazilian one, the tax legislation is complex and dynamic and technologically sophisticated. Because of this, it has occasioned the need for enterprises to organize their businesses, under appropriate tax governance. The tax burden on Brazilian enterprises is considered one of the highest in the world. Therefore, for the efficient and effective tax compliance, good tax governance practices are essential, both to avoid possible questioning by the tax authorities as to allow a reasonable tax savings.

Therefore, efficient and sustainable enterprise from the tax point of view (regardless in which country it is) is one that seeks to identify with the requisite notice the legal and tax alternatives less costly to achieve their business objectives and adopt a set of coordination procedures, control and review in order to minimize the possibility of generating tax contingencies. We remind you that from the owners' point of view the obligation of senior management of the enterprise to plan its business, in order to increase—in a continuous, permanent, and sustainable manner—its revenues and reduce their costs (including tax), to make it increasingly profitable, respecting the good corporate governance.

It is worth remembering that one of the principles of good corporate governance is that the board has to provide the strategic direction of the enterprise, covering aspects of short, medium, and long term. The tax governance such as risk mitigation and scavenging of tax burden reduction opportunities should be seen as part of strategic planning, one of the ways to make it more profitable and sustainable.

For all this to occur is very important that the enterprise has and uses a managerial information system that produces information to the senior management and to the board of directors who can identify, analyze, treat, and monitor the corporate risks, including the tax ones.

The Part I of this book is intended to provide an overview of the theoretical referential that served to support its writer and is structured into six chapters: introduction to the theme of the book; the complexity, dynamism, and sophistication of the Brazilian Tax System (STN); the main corporate taxes of the STN; cases of extension of the tax responsibility of the enterprise to its owners and administrators; the corporate governance and the risk society; and the tax governance in the context of risk management.

The Part II is structured into three chapters and intended to provide an overview regarding the context of the academical research conducted by the writer of this book in terms of research theme, the research question, the research general objective, the research specific objectives, the research justification and contributions, as well as an overview of the methodological procedures used in this research.

Specifically, it is meant to show the design or type of research in which the researcher chose to write this monograph and the process he used for the collection, analysis, and interpretation of data obtained in the research. Additionally, it is proposed to present the results found and the final considerations. Such research intended to verify how the Brazilian enterprises of XXX Group use their managerial information system (SIG) to identify tax risks *vis-à-vis* the theoretical referential presented in the Part I of this book.

This book serves as a helpful resource for enterprises, practitioners, academic community, as well as for tax governance as a species of corporate governance genus. It focuses on the academic research conducted by the author in a Brazilian enterprise group of advertising and publicity services. The research was justified mainly because the enterprises of such a group will be able to use the resources and procedures of managerial information detected and recommended by the researcher to identify tax risks that may be incurring and thus minimize the possibility of questioning by the tax authorities, which may result in issuance of notices of violation, with fines and default interest and even the extent of their responsibility to their administrators.

Thus, it aims to enable those enterprises to become more efficient, effective, and sustainable from the tax point of view. Additionally, the research was justified by allowing the academic community and other economic segment enterprises to benefit from the results as well as replicate, test, and use the structure (framework) of deployment, management, and monitoring a Model of Corporate Risk Management (GRCorp) and a Specific Model of Tax Risk Management (GRTrib) developed by the researcher (Fig. 8.1).

I dedicate this book to my parents, William (*in memoriam*) and Angela, the training they have given me, and my wife Lucinalva and my son Daniel, for their patience and support they have given me in the most difficult hours of this academic journey.

I thank God; my advisor of the master's degree Prof. Dr. Henrique Formigoni; my advisor of the Ph.D. degree Roberto Vertamatti, Ph.D.; the members of the examing table of both degrees, for the shared knowledge and wisdom; and the executives of the enterprises of the XXX Group, which did not hesitate to provide their valuable time to work, so that the research could be carried out. Finally, I thank Prof. Dr. Kiymet Caliyurt and Springer for the invitation to write this book and its publication.

São Paulo, Brazil Arnaldo Marques de Oliveira Neto
2016

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About the Author

Arnaldo Marques de Oliveira Neto is a Brazilian business consultant with 28 years of experience in the tax and corporate areas, in national and international audit, and in consulting firms. He started his career in Arthur Andersen (American audit and consulting firm) where worked for 14 years in 3 different states of Brazil. He was international partner of Mazars & Guerrad (French audit and consulting firm), partner and member of the board of directors of Performance Auditoria e Consultoria (Brazilian audit and consulting firm), and partner of Branco Consultores (Brazilian tax consulting firm). In 2011, he decided to found Marques Consultoria (Brazilian business administration consulting firm).

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He is coauthor of the book Gestão e planejamento de tributos (Tax management and planning), FGV, 2º Ed., 2011, and author of the collective work book Gestão dos stakeholders (Stakeholders management), Saraiva, 2010. e-mail: amarques@fgvmail.br

Abbreviations and Acronyms

ADIN	Direct Inconstitutionality Action
ATIS	Actual Taxable Income System (*Sistemática do Lucro Real*)
BACEN	Central Bank of Brazil
BI	Business Intelligence
BOVESPA	São Paulo Stock Exchange
BRL	Brazilian Reals Currency
CA	Board of Directors
CCO	Chief Controlling Officer
CDA	Tax Active Debt Certificate
CEO	Chief executive officer
CF/88	Federal Constitution of 1988
CFO	Chief financial officer
CIDE	Contribution for Intervention in the Economic Domain Tax
CNI	National Industry Confederation
CNJ	National Council of Justice
COFINS	Contribution to the Financing of Social Security Tax
CONFAZ	National Council of Fiscal Policy
COSO	The Committee of Sponsoring Organizations of the Tradeway Commission
CPC	Code of Civil Procedure
CRM	Customer relation management
CS	Cumulative system
CSC	Shared services center
CSLL	Social Contribution on Profits Tax
CTN	National Tax Code
CVM	Securities and Exchange Commission of Brazil
DARF	Collection Document of Federal Taxes
DTIS	Deemed Taxable Income System (*Sistemática do Lucro Presumido*)
DW	Data warehousing
ECD	Digital Accounting Bookkeeping

EFD	Digital Tax Bookkeeping
ERP	Enterprise resource planning
GRCorp	Model of Corporate Risk Management
GRTrib	Specific Model of Tax Risk Management
HTC	Harmonized Tariff Code
I.E.	Tax on Exports
I.I.	Tax on Imports
IBGC	Brazilian Institute of Corporate Governance
IBPT	Brazilian Institute of Tax Planning
ICMS	Tax on Movement of Goods and on Rendering Services
IN	Normative instruction
INPI	National Institute of Industrial Property
IOF	Tax on Financial Transactions
IPEA	Institute for Applied Economic Research
IPI	Tax on Manufactured Product
IRPJ	Federal Corporate Income Tax
IRRF	Withholding Income Tax
JCP	Interest on Shareholders' Equity
LIBOR	London Interbank Offered Rate
MEGRT	Specific Map Control of Corporate Tax Risks
MGRC	General Map Control of Corporate Risks
NCS	Non-cumulative system
NF-e	Electronic Invoice
OECD	Organization For Economic Co-Operation And Development
PGFN	General Attorney of the National Treasury
PIB	Gross domestic product
PIS	Contribution to the Social Integration Program Tax
PWC	PricewaterhouseCoopers
RFB	Internal Revenue Service of Brazil
SCM	Supply chain management
SIG	Managerial information system
SOD	State of destination
SOO	State of origin
SOX	Sarbanes-Oxley Act
SPED	Public Digital Bookkeeping System
STB	Brazilian Tax System
STF	Federal Supreme Court
STJ	Superior Court of Justice
STN	National tax system
TCR	Thin capitalization rules
TI	Information technology
TPR	Transfer pricing rules
USD	United States Dollar
VAT	Value-added tax

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