


VALUE CREATION, CORPORATE INCOME TAXATION AND TAX EVASION – AN OVERVIEW

Sandra Cristina Capa Farragola Santos Capitão^A, Cândido Jorge Carvalho Peres Moreira^B, Catarina Carvalho Peres Terrinca^C, João Manuel Afonso Gerales^D



ARTICLE INFO	ABSTRACT
<p>Article history: Received: May, 28th 2024 Accepted: July, 26th 2024</p>	<p>Objective: Globally present the status of the main Portuguese corporate income taxes, as well as a general and theoretical overview of their aggregation, in terms of the effective tax burden. The informal economy and tax evasion problem will also be exposed, as a global approach to its implications, measures to combat and the relationship with the evolution of the tax burden.</p>
<p>Keywords: Corporate Taxation; Fraud; Economic Value; IRC; Laffer's Curve.</p> <div data-bbox="172 1003 480 1249" style="text-align: center;">  </div>	<p>Method: was made a brief approach to the Laffer Curve at the Corporate Income Tax level, Municipal Surcharge and effective tax payment, contextualizing “Pagamento por Conta” and Additional “Pagamento por Conta” and of the state of the art of the parallel economy and tax evasion, regarding existing measures for prevention and combat.</p> <p>Results and Discussion: The central point in the current determination of the tax base is the assumption that the creation of value is, therefore, income corresponding to the accounting result after adjustments. However, this does not consider the company's financial effort of effectively generating this result. It is therefore important to discuss more than new adjustments that may be necessary or changes to the rates' usage with differential installments, an effective change in the tax base, replacing its current calculation, by determination via added value.</p> <p>Research Implications: The hypothetical change in the corporate income taxation tax base, witch for the time being is the generated result, after being subject to some corrections, to effectively tax the business creation of value instead.</p> <p>Originality/Value: Regardless of the maintenance of penalties for less correct behavior the application of the tax calculation on the value created would an equitable encourage taxation, making the creation of value effectively subject to tax and not the simply difference in income and corrected expenses, bringing into the determination of the tax base the cost of generating the result, thus, considering the whole company.</p> <p>Doi: https://doi.org/10.26668/businessreview/2024.v9i9.4941</p>

^A Master in Taxation. Instituto Superior de Contabilidade e Administração de Lisboa, Instituto Politécnico de Lisboa. Lisbon, Portugal. E-mail: jsantoscapiatao@hotmail.com

^B PhD in Management. Instituto Superior de Contabilidade e Administração de Lisboa, Instituto Politécnico de Lisboa. Lisbon, Portugal. E-mail: cjperes@iscal.ipl.pt Orcid: <https://orcid.org/0000-0001-5499-2402>

^C PhD Student in Economic and Business Sciences. Instituto Superior de Contabilidade e Administração de Lisboa, Instituto Politécnico de Lisboa. Lisbon, Portugal.

E-mail: ccterrinca@iscal.ipl.pt Orcid: <https://orcid.org/0009-0007-2043-1616>

^D PhD in Strategic Management and Positioning. Instituto Superior de Contabilidade e Administração de Lisboa, Instituto Politécnico de Lisboa. Lisbon, Portugal.

E-mail: jmgeraldes@iscal.ipl.pt Orcid: <https://orcid.org/0000-0002-6271-6181>

CRIAÇÃO DE VALOR, TRIBUTAÇÃO DO RENDIMENTO DAS SOCIEDADES E EVASÃO FISCAL – UMA VISÃO GERAL

ABSTRACT

Objetivo: Apresentar globalmente o estado dos principais impostos sobre o rendimento das sociedades portuguesas, bem como uma visão geral e teórica da sua agregação, em termos de carga fiscal efectiva.

Serão também expostos o problema da economia informal e da evasão fiscal, numa abordagem global às suas implicações, às medidas de combate e à relação com a evolução da carga fiscal.

Método: foi feita uma breve abordagem da Curva de Laffer ao nível do Imposto sobre o Rendimento das Pessoas Coletivas, Derrama Municipal e pagamento efetivo do imposto, contextualizando o “Pagamento por Conta” e o “Pagamento por Conta” Adicional e do estado da arte da economia paralela e evasão fiscal, no que diz respeito às medidas existentes de prevenção e combate.

Resultados e Discussão: O ponto central na atual determinação da base tributável é o pressuposto de que a criação de valor é, portanto, receita correspondente ao resultado contábil após ajustes. Porém, isso não considera o esforço financeiro da empresa para efetivamente gerar esse resultado.

Importa, portanto, discutir mais do que novos reajustes que se façam necessários ou alterações na utilização das tarifas com parcelamento diferenciado, uma efetiva mudança na base tributável, em substituição ao seu cálculo atual, pela determinação via valor adicionado.

Implicações da investigação: A hipotética alteração da base tributável do imposto sobre o rendimento das sociedades, que por enquanto é o resultado gerado, depois de sujeito a algumas correções, para efetivamente tributar a criação de valor empresarial.

Originalidade/Valor: Independentemente da manutenção de penalidades por comportamentos menos corretos a aplicação do cálculo do imposto sobre o valor criado constituiria um incentivo equitativo à tributação, tornando a criação de valor efetivamente sujeita a imposto e não a simples diferença de receitas e despesas corrigidas, trazendo para a determinação da base tributária o custo de geração do resultado, considerando assim toda a empresa.

Palavras-chave: Curva de Laffer, Fraude, IRC, Tributação Empresarial, Valor Económico.

CREACIÓN DE VALOR, IMPUESTO DE SOCIEDADES Y EVASIÓN FISCAL - VISIÓN DE CONJUNTO

RESUMEN

Objetivo: Presentar globalmente la situación de los principales impuestos portugueses sobre la renta de las sociedades, así como una visión general y teórica de su agregación, en términos de presión fiscal efectiva. También se expondrá el problema de la economía sumergida y de la evasión fiscal, como aproximación global a sus implicaciones, medidas de lucha y relación con la evolución de la presión fiscal.

Método: se hizo una breve aproximación a la Curva de Laffer a nivel del Impuesto de Sociedades, Recargo Municipal y pago efectivo de impuestos, contextualizando el «Pagamento por Conta» y el «Pagamento por Conta Adicional» y del estado del arte de la economía paralela y de la evasión fiscal, en cuanto a las medidas de prevención y combate existentes.

Resultados y Discusión: El punto central en la determinación actual de la base imponible es la suposición de que la creación de valor es, por lo tanto, la renta correspondiente al resultado contable después de ajustes. Sin embargo, esto no considera el esfuerzo financiero de la empresa para generar efectivamente este resultado. Por lo tanto, es importante discutir más que nuevos ajustes que puedan ser necesarios o cambios en el uso de las tasas con cuotas diferenciales, un cambio efectivo en la base imponible, sustituyendo su cálculo actual, por la determinación vía valor agregado.

Implicaciones de la Investigación: El hipotético cambio en la base imponible del Impuesto sobre Sociedades, bruja por el momento es el resultado generado, después de ser objeto de algunas correcciones, para gravar efectivamente la creación empresarial de valor en su lugar.

Originalidad/Valor: Independentemente del mantenimiento de penalizaciones por comportamientos menos correctos la aplicación del cálculo del impuesto sobre el valor creado fomentaría una tributación equitativa, haciendo que la creación de valor sea efectivamente objeto de tributación y no la simple diferencia de ingresos y gastos corregidos, llevando a la determinación de la base imponible el coste de generación del resultado, considerando así, el conjunto de la empresa.

Palabras clave: Impuesto de Sociedades, Fraude, Valor Económico, IRC, Curva de Laffer.

1 INTRODUCTION

The evolution of economies worldwide as well as every Countries recurring and growing financing needs are increasingly leading the legislator to seek to adapt ways of meeting those needs.

The challenge is to simultaneously be as efficient as possible, both in increasing tax revenue and in the respective collection, preventing the growth of economic informality and tax evasion, whilst maintaining, on the horizon, not strangling the formal economy, or in accordance with Kishtainy (2018) as Jean Batiste Colbert told us in the 17th century: “The art of taxation consists of plucking the goose in order to guarantee the greatest quantity of feathers with the least possible quacking”.

It's important that there is value creation, and at different levels: accounting, market, company, shareholder, acquisition, goodwill and liquidation values.

More and more entities must comment on the performance and financial situation of companies. Financial performance appears not as the translation of an obligation, but, according to Cohen (1996), as the expression of the objectives that organizations set for themselves.

A company creates economic value when the rate of return on invested capital exceeds the cost of capital.

For the value creation process to be sustainable, managers' performance must be measured, using metrics related to shareholder value. It's important to align their interests with the shareholders', and lead managers to make decisions based not only on theirs, but also on the shareholders' ones.

Economic Value Added (EVA), is the most publicized and used measure by companies to assess economic value. EVA results from the difference between the return on invested capital and the cost of capital. A positive value means that in that period the company created value, on the other hand, a negative value indicates that there was destruction of value.

For Lobo (2011), it isn't necessary an increase in taxes, what is necessary is an increase in the wealth produced, combined with maintaining the stability of public expenditure.

From greener to progressive taxes, from fees, subsidies and exemptions, from their evolution to the replacement of some by others. On the one hand, seeking greater equity and, on the other, the evolution of tax collection efficiently, over the years we have seen several implementations, changes and adjustments in this area.

The object of this study focuses on presenting a general view of the Portuguese income tax burden, despite some particularities including policies to combat tax evasion and manipulation or tax management of results, since even companies with losses pay income taxes, via “Tributação Autónoma”, Special or Additional “Pagamento por Conta”, although some of these may be reimbursed, when they have to be paid, they can be an obstacle to the company’s financial health, as they don’t truly tax the value creation, but simply the result or profit

To this end, was made a brief approach to the Laffer Curve, reflecting the balance between the tax rate and the revenue collected, at the Corporate Income Tax level, Municipal Surcharge and effective tax payment, contextualizing “Pagamento por Conta” and Additional “Pagamento por Conta”. There was also a brief presentation of parallel economy and tax evasion’s the state of the art, the latter regarding existing measures for prevention and combat.

2 LAFFER CURVE

High taxes, sometimes by diminishing the consumption of the taxed commodities, and sometimes by encouraging smuggling, frequently afford a smaller revenue to Government than what might be drawn from more moderate taxes Adam Smith (1776).

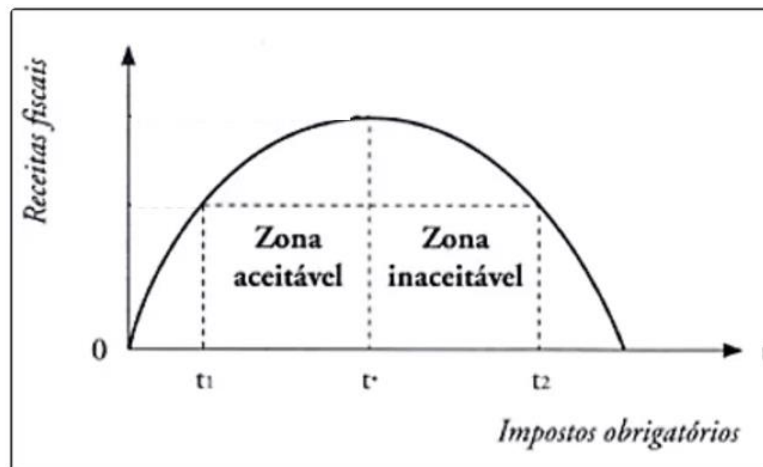
With the financial bailouts and the endebtness of the European Union, fiscal policy has been discussed by different countries, and, as mentioned by Oliveira and Costa (2015, p. 29):

Rescued countries can face a Laffer effect: if tax rates keep increasing, tax revenues will decrease where they have not yet decreased, and hence fiscal deficits and debts will not be reduced.

According to Artur Laffer (2004), there is such a rate that it allows maximizing the State revenue without harming the economies, and an increase in tax rates beyond this critical point will produce an adverse effect and instead of continuing to allow the tax collection to increase it would instead reduce the amount collected by the State.

Figure 1

Laffer's Curve



Source: Adapted Laffer (2004)

Figure 1 seeks to relate the tax rate's elasticity with the revenue collected, and how to find this balance point, or by other words, in a generic and global sense, what would be the rate that, without affecting the proper functioning of the economy, maximizes taxes' revenue?

Several studies have been carried out regarding tax rates and the revenue collected, particularly in euro zone countries, as mentioned by Heijman and Van Ophem (2005), Azevedo (2014) and Espanhol (2014). In the study carried out to estimate the Laffer Curve for the euro zone, choosing the taxes that contribute most to public revenue, Spanish (2014), concluded that there is evidence of the Laffer Curve for the Euro Zone for Value Added Tax (VAT) and Personal Income Tax (IRS), while for Corporate Income Tax (IRC), we reach the opposite conclusion. It should be noted that Portuguese optimal rate is 30% for IRC and 49% for IRS.

Introducing the informal or parallel economy into their model, it was observed that an increase in the tax rate has a negative effect on state revenues, leading to a decrease in formal economic activity, an increase of the parallel economy and, consequently, a reduction in taxes collected.

Having carried out a similar study for Romania, Ioan (2012), with a model that provides information on the variation in tax revenues when a variation in the rate occurs, concluded that with an increase in tax rates tax revenues decrease, and therefore on the other hand, tax evasion will also decrease if taxes decrease.

When debating the issue of taxes in Portugal, Azevedo (2014) tells us that the Laffer curves are below the maximum, so cuts in tax rates would lead to gains in the economy's efficiency, however, they wouldn't offset the effect on the tax collection. Neves (2018) adds

that the problem is not actually of excess taxes, but rather of public expenditure, leading to the need for more resources to deal with it.

3 BUSINESS INCOME TAXATION

Companies in Portugal are subject to a panoply of taxes and fees that, on the one hand, aim to tax primarily their income, but also their assets, use of certain semi-public goods and services, in addition to the labor factor and compliance with its expenditures pursuant to Decree-Law No. 158/2009, that result from the course of the entity's ordinary activities.

With the tax reform of the 60s of the last century, in regard to income taxation and according to Casalta Nabais (2005), this was dualistic, consisting of partial or schedular taxes, integrated by each portion of income and another overlapping – supplementary tax – which once again taxed those portions of income using personalization criteria, causing what could be classified as something close to double taxation, similar to what in 2006 led the European Union Court of Justice (CJEU) to condemn Portugal in the taxation process regarding VAT, process C-98/05, dealing with the basis to compute this tax being the value of the acquired asset plus Vehicle Tax (ISV).

3.1 INCOME TAX

In the 1980s, a new tax reform occurred, in which Casalta Nabais (2005) indicates that income taxation began to take place via two income taxes: for individuals and companies.

In the case of the second, the Portuguese Republic Constitution provides in paragraph 2 of its article 104, that taxation of companies focuses fundamentally on their real income, that is, via Corporate Income Tax (IRC), approved by Decree-Law No. 442-B/88, being subject to several changes, the last of which occurred through Law No. 75-B/2020. However, business income wasn't always taxed via IRC, as they currently are.

As mentioned by Carlos, Abreu, Durão and Pimenta (1998), it was from January 1989 onwards, with the abolition of industrial taxation, property tax, agricultural tax, capital gains tax, capital tax, supplementary and stamp tax that the taxation of corporate income became a unitary taxation, merging into a single taxation base, on which the IRC began to be levied.

The preamble of the IRC Code (CIRC) tells us that it is levied on the taxable profit of legal entities governed by public or private law with headquarters or effective management in

Portuguese territory, as well as on those that, although with the latter, even if they don't have legal personality, but they have here income that isn't subject to taxation through the natural or legal persons that comprise them.

Entities that, although without headquarters or effective management in Portuguese territory, obtain income here, are also subject to IRC, if they are not subject to IRS. It also refers to the concept of taxable profit adopted in the IRS Code (CIRS), referring to the difference between the net assets existing at the end and at the beginning of the tax period. Furthermore, and in accordance with article 18 of the same code, taxable profit must be subject to periodization, with income and expenses, as well as other components attributable to the period to which they relate, in accordance with the economic periodization regime. (Costa & Alves, 2014)

It is then important to discuss the distribution of corporate taxation between the IRS and the IRC, which Casalta Nabais (2005) tells us is, in its own way, quite artificial, for several reasons, such as the calculation of taxable profit in individual companies being determined by the CIRC (article 32 of the CIRS), however, fiscal transparency will mean that instead of the taxation of its members occurring in IRC, it is instead in IRS (articles 6 and 12 of the CIRC) and also the separation between business assets and personnel ones for the holder of an Individual Limited Responsibility Establishment (EIRL), for the purposes of their tax liability (art. 25. General Tax Law (LGT)) as well as for those who have business income and professionals for the purposes of allocating income and costs (art. 29 CIRS).

Machado and Costa (2016) advocate that the income taxation is levied on net asset increases obtained in each period, which may or may not result from the exercise of a certain productive economic activity.

Costa and Alves (2014) then agree when they say that according to national and international accounting standards, the income tax that is expected to be paid with reference to the tax base for the period in question is considered current.

It should be noted that this tax, from a perspective of justice and balance between the realization of tax gains and losses, also allows the deduction of losses, as stipulated in number 1 of article 52 of the CIRC.

This deduction may occur, in general, in the 5 economic years following the one in which the loss is obtained (which may reach up to 12 years if the company is classified under Decree-Law No. 372/2007) and may not exceed 70% of the respective profit to be taxed.

According to the PWC Tax Guide (2018), tax profit is quantified based on the Net Result determined in accounting, added to positive equity variations, and deducted from negative ones, not reflected in that result, with adjustments provided for the CIRC being added or deducted, obtaining the taxable amount, which is subject to the following rates:

Table 1

Summary Current wording CIRC's Article 87

Legal base	Rule	Rate
No. 1 and 5	Entities with headquarters, effective management or permanent establishment in Portuguese territory, with main activity of an agricultural, commercial or industrial nature.	21%
No. 2	Entity with main economic activity of an agricultural, commercial or industrial nature, qualified as a small or medium-sized company, according to Decree-Law No. 372/2007	For the first 25,000€ of taxable income it is 17%
No. 3	Entities without headquarters, effective management or permanent establishment in Portuguese territory	25%
No. 4	Capital income paid or made available to accounts of unidentified third parties or non-residents in Portuguese territory, domiciled in a country, territory or region subject to a clearly more favorable tax regime.	35%

Source: Own elaboration

As reflected in the IRC taxation variants present in Table 1, Governments must seek to act in accordance with tax policies that they consider more favorable, and in the opinion of Santos (2016), regarding IRC, the State must avoid tax damaging competition (fiscal dumping), considering that it only serves to reduce revenue without real counterparts.

The author also considers that the reduction in the rates observed in the CIRC updates didn't bring back the companies that had left the Portuguese Stock Index (PSI20), and that the active competition measures go against the Erosion and Profit Shifting Base Plan (BEPS) of the Organization for Economic Cooperation and Development (OECD), as well as the political guidelines of the European Union (EU), resulting from the anti-avoidance directive, the proposal for the consolidated common tax base directive, the application of the State or the reorientation of the Code of Conduct on corporate taxation.

In the opinion of Santos (2016), these policies, as in the Netherlands, Luxembourg or Austria, cause harm to Portugal, and are difficult to understand in the Euro Zone, considering that an effort towards greater harmonization would be important.

3.2 MUNICIPAL SURCHARGE

According to Machado and Costa (2016), the history of the Municipal Surcharge in the Portuguese Law is long. It consisted of extraordinary taxes due to finance municipal expenses, for which the respective income was insufficient, currently based on Article 14 of the Local Finance Law.

It currently consists of an accessory tax, and according to Machado and Costa (2016), Freitas Pereira defined it as those that are calculated on the collection of the main tax – and we have what is called additional, or on the taxable material, and we are facing additions.

The Municipal Surcharge is, therefore, one of the municipality's own sources of revenue and, as such, according to the financial regime of local authorities and inter-municipal entities, paragraph 1 of Article 18 of the Local Finance Law its rate can go from 0% (no tax at all) and reach up to 1.5% of the IRC taxable revenue.

In addition to this, there is another tax, also in addition to the IRC, the State Surcharge, as referred to in article 87° A of the CIRC, due exclusively by entities whose taxable profit exceeds 1.5 million euros, with its rate varying between 3 and 9% of the IRC taxable revenue, in the case of the latter for entities that exceed 35 million euros, with the IRC payment rules referred to in paragraph 3 of Article 104A being applicable.

It should be noted that, contrary to what occurs in IRC taxation, in any of the existing Surcharges, tax losses that may be carried forward from previous tax periods are not deductible to their computed value.

We can therefore conclude that in a general and abstract way, any entity with headquarters in the Portuguese territory that carries out as main economic activity one of agricultural, commercial or industrial nature will bear global taxation of its taxable income at a minimum of 17% (for SMEs with taxable income up to 25 thousand euros and in a municipality without a Municipal Surcharge) and a maximum of 31.5% (for entities with a taxable profit of 35 million euros based in a municipality with a maximum surcharge).

These rates may also be aggravated by the presence of Autonomous Taxations, that are, additional taxes to be paid regardless of the existence or not of taxable income, with the triggering event being determined by the entity's behavior, understood by the State as deviant; will be presented later in the topic about fight against tax evasion.

3.3 TAX SETTLEMENT

The IRC's settlement in normal and initial circumstances would be carried out via withholding taxes and "Pagamentos por Conta", which in their genesis are nothing more than IRC paid in advance by the companies to be settled at the end of the respective tax period with the closing of accounts and processing of the Model 22 (IRC declaration).

3.3.1 "Pagamentos por conta"

Since many entities don't have any withholding of taxes due to the types of income they have, as described, "Pagamentos por Conta" aims to anticipate the income by the State, of the tax to be paid by the company at the end of the economic year.

In accordance with Article 105 of the CIRC, the computation of the "Pagamentos por Conta" to be settled in a given year is carried out using the IRC paid in the year prior, net of any withheld taxes, and is depending on the entity's turnover being above or below 500 thousand euros, it will correspond to a part (80 or 95%) of its collection from the previous year, deducted from the withheld taxes to which it was subject, meaning that if the company has had a tax loss in the previous year, there will be no "Pagamentos por Conta", as there was no IRC tax collection.

3.3.2 Additional "pagamentos por conta"

In addition to "Pagamentos por Conta" we also had the Additional "Pagamentos por Conta", set out in Article 105 A of the CIRC, to which entities that have been obliged to carry out the first and in the previous tax period, according to Article 87 A, are subject to CIRC, have been subject to payment of the State Surcharge, presented in the prior topic.

Corresponding its value to around 85% of what is expected to be the State Surcharge, in a simplistic way, we can say that Additional "Pagamentos por Conta" are for this what "Pagamentos por Conta" are for the IRC.

4 PARALLEL ECONOMY AND TAX EVASION

There are few studies on the parallel, also called unregistered or informal, underground or shadow economy, and according to Gomes (2015), the most comprehensive definition of parallel economy, involves considering that it encompasses all economic transactions that contribute to the Gross Domestic Product (GDP), but, for various reasons, aren't considered.

Added to this problem is the leakage of tax revenue from the formal economy through criminal means, where, paraphrasing Maia, Sousa and Pimenta (2017), in terms of corruption, Portugal, in the various international rankings, occupies modest positions. According Pimenta (2009), the rate of tax evasion positively influences the probability of committing all types of fraud. Although recent studies carried out by the EU point to a slight decrease in tax evasion rate (at least regarding VAT), it can still be considered that in Portugal still exists is a high level of tax evasion.

4.1 PARALLEL ECONOMY

Maia et. al. (2017) and Pimenta (2009), state that the larger the unregistered economy of a country is, the greater is also the potential for fraud, as this type of economy presupposes the existence of criminal organizations that encourage it. According to Gomes (2015), this has repercussions on various aspects of a country's economy and social life; at the labor and goods market's level, generating distortions of competitiveness between countries, and considering the authors also that the parallel economy favors corruption, crime, among other illegal activities, causing a lack of trust in public institutions.

On the other hand, still in Gomes (2015) opinion, the parallel economy doesn't only have negative effects, but it also creates value that can be reintroduced into the official economy. Schneider and Enste (2000), consider that the parallel economy can capture employment and increase the workers' income, as well as improving the distribution of income in the society.

No less important is understanding the reason for the parallel economy, in order to know what tools can be used, what resources to allocate to fight it, and Gomes (2015) refers to the opinion of several authors, that countries with a greater burden of business regulation tends to have a greater participation in the informal economy, showing that Governments should place a greater emphasis on improving the application of laws, rather than increasing their number.

Gomes (2015) also considers that one of the strong precursors of the parallel economy is, effectively, the tax burden, that is, taxes affect the time that individuals in an economy are willing to work and thus stimulate the supply of work in the parallel economy. Thus, the greater the difference between the total cost of work in the official economy after (work) taxes, the greater the incentive to reduce the tax burden and work in the Underground or Parallel Economy.

In Portugal, when considering the aspects of Ethics and Social Responsibility (ERS), related to the fight against corruption and deviant fiscal behavior, the image we have of the business reality is a little gloomy, as Maia et al. (2017) says, the promiscuity between the political world and the business world appears to be problematic and Portuguese companies have not yet included among their priorities, in terms of ERS policies, the fight against corruption and even less fiscal responsibility.

There are behaviors that taxpayers use to minimize the tax burdens to which they are subject, since according to Gomes (2015), in the official market, the costs that individuals and companies must bear are inflated by the tax burden, as by labor regulation and control. It also states that in Portugal, like in other OECD countries, these costs are greater than the wages earned, thus providing a strong incentive to illicit work or to do so in the parallel economy.

Revenue leakage leads to the deterioration of public accounts, were an efficient application of regulations by Governments can play a fundamental role in the decision to work in an undeclared way, that is, countries with better rule of law have smaller parallel economies.

Another problem with the parallel economy is that it leads to an increase in tax rates in the official economy due to the State's need to meet collective demands. As Gomes (2015) states, non-compliance with tax collection erodes the rule of law and the integrity of public institutions, which can limit the ability to meet those collective needs.

4.2 TAX EVASION

Data from 2014 for the EU indicates that around 1 billion euros are lost annually due to tax evasion and optimization, representing a threat to fair competition and loss of tax revenue. (Technical Fact Sheets on the European Union). Having said that, the Commission adopted an action plan (COM(2012)722) and two recommendations, one on aggressive tax planning (C(2012)8806) and one on good governance in tax matters (C(2012)8805).

It is important to note that the distinction between legitimate and abusive tax planning is very tenuous, often depending on the interpretation given by the Tax Administration regarding the solutions that taxpayers may adopt.

Tax evasion is undesirable from the State's point of view, which needs the tax revenue to carry out the activities that are constitutionally entrusted to it, and according to Machado and Costa (2016), the fight against tax fraud and evasion constitutes one of the axes of good fiscal governance, with focus on increasing tax revenue, promoting tax efficiency, and protecting principles such as universality, equality, and fiscal and social justice.

On the other hand, according to Gomes (2015), Dell' Anno, Roberto (2007) argues that hidden activities favor corruption and links between criminal and illicit activities; the Parallel Economy makes policy-making difficult, as it calls into question the reliability of national accounts and increases the lack of trust in institutions.

There is an increasing need to combat tax escape and evasion. As Casalta Nabais (2005) points out, today the existence of a true fiscal apartheid is visible. This is because we have two types of taxpayers: dependent workers who pay taxes and independent workers and companies that, through favorable tax systems or the lack of effective supervision, end up paying less taxes. Referring to that fiscal apartheid, Casalta Nabais (2005) also concludes that a situation that ends up drastically burdening other taxpayers, because it imposes on them, in addition to paying the taxes they are entitled to, a greater tax burden resulting from the amount of taxes that tax "favorites" don't bear and the taxes that those who evade – tax "fugitives" – do not satisfy.

4.3 PREVENTION AND COMBAT

It is in all our hands the combat to the tax evasion, which is why it is increasingly important to raise awareness to the need to pay taxes, and educating children, so that they can become responsible adults in the future. In relation to this matter, "Joaninha" has played her role. Regarding this issue, Celorico Palma (2015) indicates that there are people and companies that, although they are obliged to pay taxes, don't do so... These are the cases of tax evasion that "Joana" had already heard about on television and that her grandfather "Domingos" talked about a lot... it's not right... and it means that if some don't pay and should do and if the State needs the money, it will have to ask for it from those who pay... that will be the case?

In the opinion of Gomes (2015), since tax evasion is illegal, it must be eliminated, so policies to combat it must consider the costs and benefits of reducing it.

4.3.1 Autonomous taxation

Based on the need to penalize deviant behaviors, prevent and avoid the camouflaged distribution of profits, as well as to combat fraud and tax evasion, some expenses may also be subject to Autonomous Taxation (AT), under CIRC's Article 88, such as confidential and undocumented expenses, vehicle charges depending on their characteristics and acquisition value, representation expenses, subsistence allowances, as well as some distributed profits, also depending on the criteria specified in the aforementioned article.

This falls on some charges that are not related to the income directly linked to the entity's operational activity. The rates applied vary depending on the tax deductibility and on the nature of the charge, with CIRC's Article 23A stating that the charges that are not deductible for tax purposes can, however, be accounted for as tax expenses for the period.

Furthermore, the entity will see the AT's rates increase if it generates negative results, since the general understanding of their application consists, as described, in the penalty for deviant consumption of goods and services, since the entity not having positive results will lead also to no IRC collection.

There are opinions that highlight AT as more harmful to investment than the IRC rate itself, and it is important to minimize or even eliminate it. Raimundo (2017) highlights that it is difficult to explain to a potential foreign investor that, despite not making a profit in the year, he will pay a IRC type tax because he has some expenses that are subject to special taxation, however he emphasizes that he understands that it is intended to tax deviations and abuses, but it would be simpler to disqualify the costs.

4.3.2 Special “pagamento por conta”

In addition to the “Pagamento por Conta” already mentioned, companies, in accordance with CIRC's article 106, must, after their second economic year or tax period, also make a Special “Pagamento por Conta” (PEC), in which its amount corresponds to 1% of the turnover relating to the previous tax period, with a minimum limit of 850 euros, and, when higher, is equal to this limit plus 20% of the excess part, with a maximum limit of 70 000 euros, however, “Pagamento por Conta” made in the previous period will be deducted from the computed amount.

According to CIRC's article 106 no. 11, taxpayers are exempt from carrying out PEC:

1. completely exempt from IRC, even if the exemption does not include income that is subject to definitive withholding tax, as well as taxpayers who only earn non-subject or exempt income;
2. who are involved in processes within the scope of CIRE, from the date of initiation of that process;
3. who have ceased their activity for VAT purposes;
4. to which the tax base simplification regime is applied.

With OE/2019, the PEC becomes optional, and without the obligation to apply, if the company has fulfilled its tax obligations in the previous two years.

With the crisis caused by the pandemic situation we are experiencing, and to mitigate its effects, the Government adopted some exceptional measures, namely in extending deadlines for compliance with tax obligations for the various taxes, and PEC were no exception. In accordance with Law No. 29/2020 of July 31, the temporary suspension of PEC is established, for entities classified as micro, small or medium-sized companies, and cooperatives. The possibility of refunding part of the PEC that was not deducted is also established, also for micro, small or medium-sized companies, and cooperatives. There is also a maximum deadline for refunding VAT, IRS and IRC when the result of “Pagamento por Conta” or settlements is greater than the tax due.

The “Pagamento por Conta” requirement existed since 1991 and was revoked by the Article 326 of the Law 12/2022, removing that obligation, starting on 01 January 2022.

4.3.3 Other measures

In Portugal, efforts were developed by the Tax Authority to combat fraud and tax and customs evasion. This fight has increasingly been a priority for successive Governments, due to the importance of the stability and solidity of tax revenue, for the recovery of the economy, as well as for the possibility of improving public services and social benefits.

One of the situations foreseen for combat is the treatment of transfer prices, provided for in CIRC’s article 63, among other legislation, adding the LGT by enshrining the so-called “general anti-abuse clause”, which specifically on this topic aims to avoid tax avoidance, achieved through the practice of too high or low prices between entities with special relationships, as described in CIRC’s article 63 no. 4.

Furthermore, the measures in the strategic plan to combat fraud and tax and customs evasion are:

- admission of over 1,300 tax inspectors;
- creation of a regime to regulate the issuance and electronic transmission of invoices;
- mandatory use of certified invoicing programs;
- billing reform based on three fundamental pillars:
 1. mandatory invoice on all transactions;
 2. monthly electronic communication of relevant data for all invoices issued;
 3. tax incentive for taxpayers who request invoices, especially in four sectors considered to be at greatest risk of evasion (catering, accommodation, maintenance and repair of vehicles and hairdressers and similar);
- operationalization of the obligation of credit institutions and financial companies to provide Tax Authority with the value of payment flows with debit and credit cards, to IRS and IRC taxpayers;
- reduction of the maximum cash payment limit from 9,700 to 1,000 euros;
- although it was a demanding reform, it far exceeded initial expectations:
 - a) around 200,000 companies were detected in an irregular situation, with more than 70,000 undergoing the corresponding voluntary regularization;
 - b) 36% increase in invoices with NIF from end consumers, compared to 2013;
 - c) around 1.1 million entities issuing and communicating invoices, which represents an increase of 106,000 new companies issuing and communicating invoices compared to 2013;
 - d) thirty million euros in tax credit, from the IRS, in relation to invoices issued with NIF in the four sectors considered to be at highest risk.

For the 2015-2017 three-year period, the indicated strategic plan was based on five pillars:

4.3.3.1 Legislative measures

Changes in legislation regarding the certification of invoicing programs that reveal fraudulent potential, as well as the dematerialization of invoices, accounting, and supporting files. Continuation of the process of dematerializing the inspection procedure, clarifying rules of territorial jurisdiction to resolve conflicts of jurisdiction that still exist within the scope of the Tax Authority.

4.3.3.2 Criminal measures

Strengthening cooperation between Tax Authority and the Public Ministry.

It involves increasing the qualification of human resources in matters of investigation, intensifying the use of forensic audit techniques, to increase the investigation capacity of tax inspection regarding the use of electronic media.

4.3.3.3 Operational scope measures

Control companies that do not properly communicate invoices and implement stock control systems, using data crossing, in addition to reducing procedural impediments and encouraging coercive collection, to speed up the tax execution process and ensure timely collection of the tax.

4.3.3.4 Institutional measures

For this purpose, establish protocols with other entities, public or private, to obtain relevant information for controlling economic operators. Design and implement projects to actively promote the voluntary payment of tax and customs obligations. Realizing the importance of involving citizens in combating fraud and tax evasion, another measure to be implemented, in partnership with the Ministry of Education, is the reference for tax education and tax citizenship.

4.3.3.5 Scope of relationship with the taxpayer

In this sense, facilitate electronic interaction between the taxpayer and the Finance Portal, to support and promote voluntary compliance with obligations.

Part of the objectives is to deepen the simplification process within the scope of tax reform, aiming to reduce context costs for taxpayers, promoting fiscal citizenship, as well as publicizing its importance, and implementing education projects in collaboration with bodies competent authorities of the State.

The Strategic Plan to Combat Fraud and Tax and Customs Evasion 2018-2020 proves what has been a priority for tax administrations and Governments, as this is the only way to achieve greater fiscal equity in the distribution of the collective effort for budgetary consolidation.

The Strategic Plan for the 2018-2020 triennium is based on three priority intervention vectors:

- strengthen the fight against fraud and tax and customs evasion and the shadow economy;
- intensify national and international cooperation and ensure the protection and security of the external border;
- simplify and promote voluntary compliance with tax and customs obligations.

Through this plan, and in the context of these three vectors, the Government proposes the implementation of a set of measures in the legislative, criminal, operational, institutional relationship with other public entities, and relationship with the taxpayer. Regarding the latter, the Government will invest in measures that promote voluntary compliance by taxpayers, particularly in terms of simplifying the language of communication and improving the quality and availability of service through multiplatform channels. The strategy involves informing, or even relieving them of the need for knowledge, reducing obligations or replacing the taxpayer himself in fulfilling them (for example, automatic IRS).

For those who intentionally seek the path of fraud and evasion, Tax Authority must act to detect, detain and sanction this type of behavior in an increasingly rapid and assertive manner.

Portugal has become one of the most advanced tax administrations, being known internationally for its innovative projects that have followed technological evolution, having been an accelerator of this same digital transformation in organizations. In 2008, Portugal was the first country in the world to follow the OECD recommendation that led to the adoption of the SAFT-T file.

At the level of taxpayers and economic operators, this Strategic Plan aims to:

- promote the efficiency of tax control functions, ensuring that tax payments are made in accordance with the contributory capacity and ensuring tax equity;
- ensure the regulation of economic activity and combat distortion of competition;
- promote an increase in the international competitiveness of Portuguese companies.

5 CONCLUSION

With the objective of increasing tax revenues without strangling the business fabric, but seeking to tax the economy as a whole, the legislator has sought to find increasingly articulated and differentiated ways to pursue these ends.

Seeking, about business taxation, a pedagogical perspective, correcting, through the implementation of taxes, deviant behavior and attempts to manipulate results, tax revenue related to these incomes is built based on three main taxes: IRC, Autonomous Taxation and Surcharges.

There will certainly still be a way to go in the search for a more concerted solution that allows the wealth created to be effectively taxed, instead of what is currently happening. Now, the calculation of these taxes, or their possibility of increase, is based on what is described as a fiscal result, or in other words, an accounting result after corrections, in relation to what is or is not fiscally accepted, as well as the increases that some expenses may come to have.

Although from a general point of view this tax base is relatively simplistic to determine, the fact is that there will be many cases where the company suffers from the obligation to pay a tax that may or may not correspond to what actually was the value it created, and this may effort, in crisis situations like the ones we are currently experiencing, could compromise the entity's financial health.

The central point in the current determination of the tax base is the assumption that the creation of value is, therefore, corresponding to the accounting result after adjustments. However, this does not consider the company's financial effort, in particular the use of non-remunerated sources of funds, to generate this result, or in other words, the cost of effectively generating this result.

It is therefore important to discuss more than new adjustments that may be necessary or changes to the usage of rates with differential installments, an effective change in the tax base, with a view to replacing its current computation, by determination via added value with recourse concepts such as residual results or created economic value.

Regardless of the maintenance of penalties for less correct behavior, fraud and tax evasion, the usage of the tax computation on the value created would encourage an equitable taxation, making the creation of value effectively subject to tax and not a result simply difference between income and corrected expenses, bringing into the determination of the tax base the cost of generating the result obtained and, thus, considering the company as a whole.

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