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The Scope and Hierarchy of the Principle of Legality in Tax Law: An Analysis from the Perspective of Brazilian System

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Abstract

The article discusses the principle of tax legality in the Brazilian tax system. The distinction between views is on the conception of the principle of tax legality. The Brazilian tax system is made up of a legal relationship, through the occurrence of a fact and a prior legal command. In other words, the emergence of the intersubjective tax relationship, which connects the active subject, represented by the State, the tax authorities, to the passive subject, the taxpayers, who are liable for taxes, through a fact whose legal rule will previously regulate this relationship. This covers the principle of tax legality and its repercussions in the Brazilian constitutional tax legal system, focusing on the relationship between tax legality, the law itself, and other legislative sources.

Keywords

Principle of Legality in the Brazilian System, Taxation, Legislation, Tax Law, Strict Legality

1. Introduction

Etymologically, in Brazil, the term "principle" comes from the Latin principium, and thus describes the idea of base, origin, beginning (Geraige Neto, 2003). This term was introduced into philosophy by Anaximander, and the word was used by the philosopher Plato when he wanted to verbalize it in the sense of the foundation of reasoning, as well as by Aristotle as a major premise.

In this respect Julcira Maria de Mello Vianna Lisboa says, "The principles are the regulatory system guided with great value, true instructions that indicate the direction to be followed by citizens." (Lisboa, 2016)

When we idealize a system, we need to build it from a starting point, making this system harmonious and coherent, obtaining support from its foundations, in which they give reason and are explained by the former. Prof. Paulo de Barros Carvalho says: "There are doubts as to the significant amplitude of the term system, since there is no shortage of those who deny the possibility of positive law presenting itself as a system, configuring that chaos of sensations to be ordered by the categories of thought, alluded to by Kant." (Carvalho, 2004)

In order to control relations in society, state intervention has emerged, through norms, in which the power of the state cannot be gained in an unlimited way, because when it uses its sovereignty and its power of command, it aims to promote the common good, so it must legitimize its actions, especially those of a collection nature, with the consent of those who will actually bear this burden. This law will serve both as a limitation on state intervention and also on the freedom of individual property.

The tax system is made up of a legal relationship, through the occurrence of a fact and a prior legal command. In other words, the emergence of the intersubjective tax relationship, which connects the active subject, represented by the state, the tax authorities, to the passive subject, the taxpayers, who are liable for taxes, through a fact whose legal rule, will previously regulate this relationship.

With the intention of regulating, imposing a limit on the state's powers and actions, the principle of tax legality emerges, in the form that whenever the state intervenes in the private sphere through taxation, it does so on the basis of a formal law drawn up by the legislative power.

In order to regulate the functioning of society, legislative vehicles have been used, which include texts that regulate intersubjective relations, as can be seen in the Brazilian Federal Constitution in Article 5, II, Constitution of the Federative Republic of Brazil of 1988: "No one shall be obliged to do or refrain from doing anything except by virtue of law". Such normativity is of paramount importance in the tax sphere, as it is the foundation of all taxation, without which we cannot speak of tax law.

Among all the principles that guide tax law, the principle of legality can be considered one of its foundations. In this vein, Hugo de Brito alludes that this principle is the "most important legal principle when it comes to taxation" (Machado, 2015). As such, the State performs the important function of promoting social justice by intervening in the market and the economy, so that there is organized income distribution

With these activities aimed at the economy in which the state operates, consisting of tax collection and its management, with a view to promoting the common good, the principle of legality is placed as a constitutional limit, since it will discern the extent to which the state can exercise its power, bringing legal certainty to taxpayers.

Therefore, modern states submit the activities of their bodies to laws, thus observing the implication of restricting the power of their citizens, aiming for the right to equality and proportionality about what is the duty and obligation of

each subject of this relationship.

We can see that tax legality has come to guarantee the rights of each individual against abusive and arbitrary taxation and this principle does not act alone, it has been incorporated into other principles over time to add effectiveness to the legal certainty expected by taxpayers.

Based on the teachings of Dino Jarach, he argues that the historical-constitutional basis of the principle of legality is the idea that taxes are invasions by the Public Power into private wealth which, in a State governed by the rule of law, can only be carried out by law. Since the principle of legality, in the Rule of Law, is a negative form of limitation of Public Power, in the sense that this Power can only be exercised by means of a formal law, an act of the Legislative Power (Jarach, 1969).

As Alberto Xavier mentions, the principle of legality in the Rule of Law goes beyond the idea of "consent by those who will be taxed, assuming the form of the only valid instrument for revealing and guaranteeing tax justice (Xavier, 1978). Let's see that we are entering through taxation into the individual purchasing power of each taxpayer, so it is of the utmost importance that it be an appropriate monetary intervention, so that it does not go beyond the limits that could financially harm each one.

The existence of this legal basis is interpreted in different ways, in general it is seen as a protection of the citizen, but by others it can be seen as just a rule, to make this weighting we will discuss in the course of this article what would be an objective limit or essential value, formal or material.

In Brazilian tax law, especially in relation to the Brazilian Federal Constitution of 1988 (CF) and the National Tax Code (CTN), we can extract the nature of the reservation of the law in which, when observing art. 5˚, II, CF/88, in its announcement of its generic legality, in which it states that "No one shall be obliged to do or refrain from doing anything except by virtue of law." We thus extract that taxation is an obligation to do *ex lege*, since the State can only exercise the action of taxing the taxpayer if there is an original formal law in which it justifies and formalizes the intervention in the private property and freedom of each citizen. According to Ruy Barbosa Nogueira, "the law is the true and only original formal source of a tax obligation" (Nogueira, 1987).

This formal law under discussion is the one from which the tax obligation originates, and is therefore endowed with the power to impose, since it originates from the competent legislative power, and in the form of the competent legislative process determined by the 1988 Constitution. In this view, it derives from the constitutional commandment itself, thus leading to its formal aspect, as well as respecting the other provisions that regulate the functions of the state and the means by which they will be elaborated by the legislative power.

It is clear that the Brazilian Constitution grants the Legislative Power the power to institute taxes by law. However, as Geraldo Ataliba teaches, such a command does not mean the power to institute any tax, by means of any discipline, since the Brazilian system has kept the tax power in the hands of the origi-

nal constituent, Legislativranting the e Power only specific competences that are delimited in a precise and rigid manner (Ataliba, 1984).

2. General Characteristics of the Constitutional Tax System in Brazil

A system is a complete set of elements coordinated around collective principles and objectives. "When we talk about a system, we are talking precisely about the reciprocal way of being between the parts or elements that make up the whole" (Camargo, 2019). A legal system is made up of legal rules and principles that are established and adopted to regulate the country's entire body of laws. The expression Brazilian tax system "designates the complex of legal precepts necessary to regulate the power to tax" (Silva, 2009).

In order to understand Brazilian Tax Law, it is necessary to highlight the supremacy of the Brazilian Federal Constitution within the legal system, since the Constitution is the permanent reference for all legislative production.

Given the preponderant reference in the Constitution, a whole primordial system was formed to be followed through the constitutional texts, having said this, specific precepts and determinations were stipulated to situate the legislator when composing the legal norms. In other words, the express provisions limited the work of the infra-constitutional legislator.

In view of the federal model adopted in Brazil, which has been divided into four federative entities, each of which is a legal entity governed by public law, namely the Union, the States, the Federal District and the Municipalities, each entity has its own sphere of action, which is called its competence. Given the magnitude of this issue, the competence of each federal entity is dealt with by the Brazilian Federal Constitution itself.

It is therefore clear that in any demonstration of tax law in Brazil, it is essential to present the constitutional tax system, which governs all legal relations in this area.

The tax system is set out in the Brazilian constitution of 1988, in Title VI (Taxation and the Budget), Chapter I (The National Tax System), divided into six sections (General Principles, Limitations on the Power to Tax, Union Taxes, State and Federal District Taxes, Municipal Taxes, Distribution of Tax Revenues), so this chapter of Title VI offers the constitutional classification of taxes.

Consequently, the Brazilian tax system was inaugurated by Article 145 of the 1988 Federal Constitution, giving the federal entities power to impose taxes. Art. 146 gives an important order to the infra-constitutional legislator to issue a complementary law laying down the institutes of Brazilian tax law.

The powers of the federative entities are limited in Art. 150, which sets out the guarantees for taxpayers, including limitations on the power to tax, such as legality, equality, non-retroactivity, anteriority, non-confiscation, freedom of traffic and immunity. These limitations aim to preserve fundamental values for the taxpaying citizen. The role of these guarantees granted to the taxpayer and of the tax immunities provided for, relates to the ideal of preserving legal certainty as

certainty of law with regard to the institution and increase of taxes, allowing the normative content of each guarantee to be adapted.

Further on, in articles 151 and 152, there are other constitutional limitations, which aim to deepen the principle of federation in tax matters. Section III, dedicated to Union taxes, is made up of art. 153, in which the constitution specifies the taxes authorized to be instituted by the Federal Legislative Power and lays down specific rules for them. Article 154 grants the Union residual competence in tax matters and extraordinary competence in cases of external war or imminent war.

Section IV, consisting of a single article, art. 155, lists the taxes that fall within the competence of the States and the Federal District, as well as several paragraphs, which delimit the field of competence. Section V, also consisting of a single article, art. 156, sets out the tax powers of the municipalities. Section VI is dedicated to the distribution of tax revenues.

As such, there are elements within the Brazilian legal system which validate the supremacy of the Brazilian Federal Constitution. In the words of Renato Lopes Becho, "It is not a mere rhetorical exercise, which seeks to co-opt communicational approval by the force of words alone" (Becho, 2011). Thus, in the Brazilian legal system, constitutional supremacy is proven in various ways when we analyze the Brazilian legal system.

3. Brazilian Tax Law from the Perspective of Purpose

When analyzing the purpose of tax law, it is possible to observe that there is no consensus, as there is more than one understanding of what law is, as Tercio Sampaio Ferraz Júnior teaches: "Law, on the one hand, protects us from arbitrary power, exercised outside all regulation […] it gives everyone equal opportunities and, at the same time, protects the disadvantaged. On the other hand, it is also a manipulable instrument that frustrates the aspirations of the less privileged and allows the use of techniques of control and domination that, due to their complexity, are accessible only to a few specialists." (Ferraz Junior, 1991)

Faced with various ways of understanding the law, seeing tax law and its purpose becomes a challenge. But here we will demonstrate two lines of thought that are well-established in Brazilian tax law, and they are manifested as the purpose in the State's need for money, thus demonstrating an interpretation geared towards economic ideologies, because the main reason is to collect money. However, there is another line of thought, whose purpose of tax law permeates considerations regarding the limitation of the state's power to tax, demonstrating a restrictive functionality in the state's collection efforts and approaching a purpose aimed at protecting taxpayers. As such, tax law can be seen as a means of protecting taxpayers from the state (Greco, 2000).

Having said that, we also note that the purpose of applying tax law can be from an economic system perspective, as taxation can also portray the economic organization of the specific historical moment experienced by society. This raises one of the great challenges regarding the applicability of tax law and the exercise

of tax policy, when they seek to maintain, increase or minimize the tax burden applied.

Faced with these circumstances, we often seek to observe the European reality with regard to the applicability of taxation, with the aim of getting to know other laws, and the search for a unification of the law, given the ideal of world welfare, however for the Brazilian reality such a circumstance is still a long way off. The search for knowledge in the European legal system, with the aim of improving legal knowledge, "allows the jurist to better understand national law, whose particular characteristics are much more evident through a comparison with foreign law" (Ancel, 1980).

However, when comparing the Brazilian constitution and the constitutions of the countries located in the European Union, it should be noted that the Brazilian constitution is very particular in tax matters, with a remarkably rigid and detailed character, unique in the world.

When comparing the articles of the Italian Constitution that deal with taxation, we can highlight two articles that deal most with tax matters, namely art. 119 and 120, noting that the text of these provisions makes up a "relative autonomy attributed to the regions and the Italian administrative decentralization allows some to understand that Italy is organized in a kind of federative regime"[1]. (as is the case in Brazil) "This is why we find references in Italy, including in commentaries on the Italian Constitution, to a "fiscal federalism", even though Italy is not formally a federative Republic, as Brazil is" (Marcelli, 2001), often serving as a guide and mirror for tax scholars in Brazil, always in search of an ideal for the formation of a first-world society like Europe.

4. Typicity of Taxation in Brazil

The principle of tax typicality is considered by some authors to be an autonomous principle, independent of the principle of legality. In Alberto Xavier's view, however, typicality is the principle of legality itself, "it is the very expression of this principle when it manifests itself in the form of an absolute reserve of law, that is, whenever it is constructed by strict considerations of legal certainty." (Xavier, 1972)

During the period of the military dictatorship, tax law made progress in its development. At that time, we had Alberto Xavier, who made an important contribution to visualizing typicality in tax law. Quoting Larenz, he argued that the typicality of tax law is a closed typicality and that the law must "contain within itself all the elements for evaluating the facts and producing the effects, without resorting to any elements foreign to it and without tolerating any evaluation that replaces or adds to that contained in the legal type." (Xavier, 1972)

Since then, it has also been seen that tax law could at that time be governed by closed typicity or also known as strict legality, according to which all the ele-

[1]*Fundazione Ugo Spirito. Osservatorio sul federalismo nazionale*. Available at http://www.fondazionespirito.it/convegni/, access on 07/12/2023.

ments of the hypothesis of incidence and the resulting law had to be meticulously provided for in the law, leaving the administration with no choice. There was little room for the state to regulate, and it had to limit itself to measuring the implementation of legal provisions, and at that time it was not possible to use imprecise legal concepts and general clauses in tax law. As such, this concept is of great importance to taxpayers.

As Xavier points out, we see tax law and its implementation as a straight line, through the reservation of absolute law, because it shows that the principle of typicality as an object of continence to the norm, to effect and show a possible legal security to taxpayers, in which all modulations to create a tax, and to stick to a tax duty by taxpayers should be strictly derived from law.

With this view of typicity in tax, some authors began to re-evaluate the doctrine of closed typicality in tax law, even consulting Germanic sources. These authors, who were able to enter into this view, observed that the word "type" could have been used wrongly in Portuguese doctrine and this mistake was transferred to Brazil. Type was translated with a modified interpretation of the German word *tatbestand*, which actually has the meaning of generating event. This misconception was even consolidated in the criminal sphere.

It can be seen that typicity has been replaced with the meaning of classification, with the type being a closed, determined and classificatory concept. This improper view of the type has led to the formation of the principle of closed typicality, which requires the law to describe all the elements of the tax rule univocally. In fact, this term has confused the principle of typicality with the principle of closed conceptual determination.

Ricardo Lobo Torres provides an elucidation of the concept of type: "Type is the ordering of concrete data existing in reality according to criteria of similarity. In it there is abstraction and concreteness, because it is found both in social life and in the legal norm. Here are some examples of types: company, entrepreneur, worker, industry, polluter. What characterizes the 'company' type is that it contains all the possibilities for describing its characteristics, regardless of time, place or type of company. The type represents the average or normality of a given concrete situation, with its meaningful connections. It follows that the notion of type admits dissimilarities and specificities, as long as they don't turn into inequality or abnormality. But the type, although obtained by induction from social reality, also has evaluative aspects. The type, due to its very complexity, is open-ended and cannot be defined, but only described. The use of type contributes to the simplification of tax law. The notion of type is also widely used in the social sciences: Marx Weber used the concept of ideal types; Jung circulated the idea of psychological types." (Torres, 2004)

Thus, the type represents the average or regularity of a particular circumstance in concrete and is not guided by the translation of classification defended by Alberto Xavier. The type is a mold, it is the typical. For this reason, elucidating typicality as absolute compliance with the law is a misinterpretation.

5. The Principle of Tax Legality in Brazil

The current Brazilian Constitution has as one of its main concerns the principle of legality in tax matters, since, in addition to the generic legality plastered on art. 5, II, it also provides in art. 150, I, of the CTN, in which the institution and increase of taxes can only be carried out by means of a prior law, thus verifying a vision of relative reserve of law, however this vision seems to be insufficient, but necessary, therefore, an absolute reserve of law in tax matters.

In this view, it was understood that the country's constitution merely proclaims the lack of a formal law and that this would not fulfill its main purpose, which is to prevent arbitrariness in the application of this formal law.

Therefore, only an absolute reserve of formal law, which encompassed the criteria for deciding on the specific case, would serve the purpose of achieving material justice, which could be interpreted as the purpose of an authentic rule of law.

In short, arbitrariness and abusive discretion would be ruled out, since the applicator of the law would only have the task of subsuming the fact described in the rule, without his subjective valuation causing distortions, this was the objective stipulated for the rule, but let's see in a vision of reality it is not used that way.

So, in tax law, the objective is a certain legal security in relations between the state and the tax authorities in subsuming the citizen, who is the taxpayer. Furthermore, the legislator has restricted the principle of legality, so that it comes from a written law, which means that there must be a strict law, as Alberto Xavier taught, the law will consist of elements of the material decision of the specific case.

Only the Legislative Branch, represented by the National Congress, Legislative Assemblies, Legislative Chambers and City Councils, within their state, federal, district and municipal competence, can institute or increase taxes, and the means for creating or increasing them is ordinary law, with the exception of compulsory loans and taxes that fall within the Union's residual competence, which will be instituted or increased by means of a complementary law, precisely because such a law is a rigid and complex act, since the Legislative and Executive powers are involved in its drafting and, in this way, it has its own defined force that reforms the pre-existing legal order, when it complies with the procedures laid down in our Constitution.

Ordinary law, as an act of the Legislative Branch, when ratified by the Executive Branch, becomes part of the infra-constitutional legislative order, without removing the rules of secondary hierarchies, allowing them to affect it, in the way that legal certainty and the certainty of the necessary law, especially when we are dealing with tax matters, will be guaranteed by the institution or increase of a tax via ordinary law.

There are exceptions to this rule, namely the compulsory loan, listed in art. 148 of the Brazilian Federal Constitution and the taxes of residual competence of

the Union, in the form of art. 154.I of the Brazilian Federal Constitution of 1988 in Brazil, these must be created or increased by means of a complementary law, which cannot be seen as a detailing of the constitutional rigors of the way in which the principle of tax legality is applied; on the contrary, these types of taxes will be subjected to a more rigorous legislative process than a tax that is in force by means of an ordinary law, since complementary laws are only approved with a privileged quorum, which is an absolute majority, in accordance with the provisions of art. 69 of the Federal Brazilian Constitution, thus also demonstrating the principle of tax legality in relation to these exceptions.

Ordinary law will have a drafting process outlined in the Brazilian Federal Constitution so that it can effectively create taxes, or those that already exist can be increased. This legislative process requires the participation of the Legislative and Executive Branches and can generally be described as a three-phase model with an introductory, constitutive and integrative phase of effectiveness. The introductory phase involves the initiative or draft initiative by the head of the executive branch, as well as members of the legislature, the higher courts and citizens.

The initial phase is governed by art. 61 and art. 67 of the 1988 Brazilian Federal Constitution, in which ordinary bills are presented to the federal, state and municipal legislative powers, and thus evolves into the second phase.

The constitutive phase consists of a full evaluation of the bill so that, after this evaluation, a deliberation or vote can take place, in accordance with art. 64 of the Brazilian Federal Constitution, proceeding to its rejection and filing, or to its approval and then forwarding it to the Chief Executive. Furthermore, in the constitutive phase, the law approved by the Legislature will be examined by the Chief Executive, who will decide whether to veto it or accept it.

The veto, based on merit or form, can be total or partial, subject to the provisions of art. 66, §2 of the Brazilian Federal Constitution. The vetoed law or part of the law will be returned to the legislature together with the reasons for the veto, and the veto will be examined, and may be accepted or rejected. If the veto is rejected by an absolute majority of the legislature, as listed in art. 66, §4 of the Brazilian Federal Constitution, the law will proceed to the last stage as if it had been approved.

In the tangent of the situation, after the Legislative approval and the Executive's sanction or rejected veto, it enters the integrative phase of effectiveness, thus verifying the existence of the ordinary law, leaving only its solemn proclamation, in which it will declare the approval of the law, thus innovating the legal system. The ordinary law is then promulgated, giving it the power to be enforced and in a position to have all its effects.

After enactment, the ordinary law is published in the Official Gazette, making it enforceable, as well as imposing an obligation on those subject to the relationship. Once it has been made public and known to all, it cannot be excused from compliance. And with this innovation in our legal system, this law will adapt

new rules in the tax sphere, which must follow all the procedures of our Brazilian Federal Constitution so that the principle of legality is achieved.

6. Interpretations of the Legality Principle in Brazilian Law

The principle of legality is seen through different interpretations, about its function and formality by the authors, beforehand its main stipulated objective is the protection of the citizen or it can also be considered just a rule.

Alberto Xavier treats the principle of legality as an instrument to limit the power to tax, since it has political and legal implications. In the same vein, Aliomar took the view that the principle of legality should only be seen as an objective limitation on the state. Derzi is also favorable when in his work he highlights the principle of legality through historical influences, the character of the limitation on the power to tax as the centrality of this principle in a formal way when it is applied and interpreted, and materially as self-consent or self-taxation in defense of the private economy (Derzi, 1997).

There are authors who see legality as a strictly logical rule, and not as a principle that contains values, as Professor Paulo de Barros Carvalho demonstrates when he asserts that it underpins all the provinces of Brazilian positive law, and that it is not possible to think of the emergence of subjective rights and related duties without the law stipulating them, thus verifying that the author sees legality as nothing more than an objective limitation of the law.

Through the teachings of Professor Becho, he forcefully introduces that if we only focus on the objective limit of interpretation, it would be "to highlight the procedural aspect of the principle of legality, the form, without focusing on the content of parliamentary decisions. We can say that, in this way, the evaluative control of laws will be carried out using other principles, such as equality, contributory capacity, non-confiscation, etc. There is not necessarily an axiological, evaluative negation, as happened in the past, in another social reality like Nazist Law." (Becho, 2014)

It is important to point out that if we view the principle of tax legality as a mere rule, we would be abstracting all of its values, leading to negative experiences, such as occurred in the past during Nazism, a historical event encompassed by positivism and strict compliance with the norm, Thus, we find that a field of valuation is really necessary so that these intelligences are not used to cross the respect for the taxpayer, for that passive subject of the action, thus not allowing a distortion to occur in its application for political and economic advantages, disrespecting even human rights.

We can therefore point out that legality has its formal and material aspects. The formal aspect introduces the standard only through the objective limit of the standard, while the material aspect is primarily aimed at safeguarding social rights by weighing up values. Thus, in these two areas, we will be delimiting the actions of the state, bringing to the system an embodiment of legal certainty, thus providing an interpretation that goes hand in hand with the development of a society.

As Professor Becho points out in his book, "in these terms we are firmly convinced that legality is more than just an objective limit. It is a principle that does not presuppose formal or procedural limits. The principle of legality is a constitutional value, above the availability of the legislator, who controls legislative production in its substance, in its materiality, imposing that laws also bind normative commands that meet the desires of social peace, protecting the various groups" (Becho, 2014).

7. Brazilian Legislative Sources

With regard to the provisional measure provided for in Article 62 of the Brazilian Federal Constitution, there is a contradiction with regard to tax matters, through the new wording established by Constitutional Amendment No. 32 of September 11, 2001. This contradiction can be seen in the caption of the article, which allows the Chief Executive to adopt provisional measures, with the force of law, in cases of relevance and urgency. However, in §2 of the article, the principle of anteriority is applied to tax matters, in the sense that the provisional measure which implies the occurrence of a tax increase will only take effect in the financial year following that in which it is converted into law. Therefore, the ideas of urgency and anteriority seem irreconcilable.

In addition, we can admit that the immediate effectiveness of a provisional measure, so that it would not be subject to the principle of anteriority, would still be questionable, since the principle of tax legality is outlined in art. 150, I of Cf/88, which refers to the law, which establishes the possible institution or increase, it is important to emphasize that the provisional measure is not a law, since it will only reappear as a law after its approval by the National Congress.

Thus, the provisional measure is not a law, and the author Roque Carrazza states that the provisional measure is an administrative act in the broad sense, only endowed with some attributes of the law, and only issued by the Chief Executive in cases of relevance and urgency (Carrazza, 1999).

When it comes to delegated laws, when it comes to the principle of tax legality, in which taxes can only be created or increased by ordinary law and, exceptionally, in the cases provided for in the Constitution, such as by complementary law, the first criterion is the intelligence of the institution or increase of taxes by delegated laws.

Furthermore, when dealing with the power to institute or increase taxes in a first parameter, we are left with the view that it could be non-delegable, since the Constitution does not expressly allow such delegation in any manifestation, including with the justification that if the Legislative were to transfer this attribution to the Executive, the meaning of art. 150,1 of the Federal Constitution would be circumvented.

The only innovation in the legal order, in tax matters, expressly granted to the Chief Executive by the Constitution, is that contained in art. 153, §1, relating to the taxes in items I, II, IV and V of the same article, authorizing the alteration of their rates under the conditions and limits established by law (Carrazza, 1999).

We treat regulations as a legislative source for the law, since the Constitution in its article 84, IV, certifies that they are merely executors of the law. Thus, when dealing with general and abstract rules issued by the Chief Executive, they are subject to the principle of legality, since they presuppose the existence of a law and not which one they have the duty to carry out without infringing or extrapolating it. According to Roque Carrazza, the regulation is below the law in the legal pyramid, and cannot abrogate or modify its content, but is subject to its provisions (Carrazza, 1999).

In such a way that, by executing the law, giving it conditions for effectiveness, regulations are restricted to the administrative sphere and are not binding on the Judiciary, but only on the Administration.

8. Legal Certainty through Legality

With the consolidation of our constitutional tax system, both taxpayers and the state had to submit to legality, since the validation of the principle of legality-imposed equality through the legitimization of action between the personalities in this legal relationship.

The law is thus an expression of justice for the population, since the state cannot act of its own volition; it must have a whole legal framework in place for the desired action to take place. The law must be respected by both the active subject of the legal relationship and the passive subject, and these limitations on the state's power to tax give rise to citizens' fundamental rights.

Brazil, as a State governed by the rule of law, inspired by the English Bill of Rights and the French Declaration of Rights, also retained in the Constitution the idea of guaranteeing the fundamental rights of citizens, even dedicating Title II, especially Chapter I, to their protection.

Due to the institution of fundamental guarantees in the country's Magna Carta, they include subjective rights that can be opposed even by the state, binding the Legislative, Executive and Judicial Powers.

The weighting of the principle of legality manifests itself mainly when it is pointed out that, although fundamental rights are innate to citizens, they only become enforceable subjective rights when they are part of and firmly integrated into the legal system. Thus, this enforceability and the limitation on state action in the face of individual rights stipulated by law derive from the law.

The way in which the state exercises its power to tax must always adhere to the limits imposed by the law, since by doing so it will be observing, in addition to its obligation, the individual subjective rights of the taxpayers who are part of it.

When dealing with fundamental rights regarding taxation, they have come to be referred in the doctrine as the taxpayer's statute, which is the set of provisions listed in the constitution, in tax matters, which determines the taxpayer's rights and duties in the face of the state's claims and, according to the teachings of Paulo de Barros Carvalho, these rights and duties, when found at infra-constitutional levels, will have to be guided by those contained in the Con-

stitution in order to be considered legally endowed (Carvalho, 1979).

In the words of José Souto Maior Borges, in order for these legal rules to be able to give effect to the guarantees erected by the Constitution, they must make the lives of people and institutions secure (Borges, 1932).

The law will then be adapted to guarantee that arbitrariness will be extirpated from relations between the state and private individuals, or as Alfredo Becker taught, positive law will provide certainty to the uncertainty of social relations (Becker, 1972).

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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