Corporate and Tax Governance: A Study on Challenges and New Technologies in Structuring the Company OAS S/A

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ABSTRACT

The present work proposes to identify the challenges promoted by the technological evolution and demands of the development of Tax Governance, here understood as a vertical of Corporate Governance, so that it is dedicated to transposing and adapting teachings and practices of Corporate Governance to the area of Administration and Tax Management. For that, the methodological tool of the case study was used, adopting as a specific object of examination an important brazilian economic agent in the civil construction segment. The research carried out had a qualitative bias, using bibliographic research and documentary research. The results achieved allowed us to verify: negative influence between management structure and parameters of corporate and tax governance, even in privately-held companies; good business management and operation practices coincide with the administration and operation of taxes, which makes it impossible to dissociate corporate and fiscal governance; tax governance was analyzed from a multidisciplinary perspective, observing changes in the process and focusing on results, supported by the pillars of compliance, equity, transparency and accountability; and the special Brazilian scenario, which combines a high tax burden, multiple taxes and difficulties in fulfilling ancillary obligations, requires efforts to structure a business, train people and invest in technological infrastructure so that the company reaches satisfactory levels of work in the Tax Governance area.

Keywords: Corporate Governance, Management of Tax Enforcement, Tax Administration, Tax Governance, Technological Challenges

I. INTRODUCTION

The current scenario shows that companies have more tax debts when compared to suppliers, customers and other commercial actors. This research highlights three factors in favor of compliance costs, confirming a scenario of changes in the origins of resources from external agents: (i) current tax burden, equivalent to developed countries, in this case, not resulting in the quality of services provided; (ii) multiplicity of taxes existing in Brazil, presenting different facts, types, developments and calculation bases; and (iii) numerous periodic requirements for information of an accounting or tax nature.

Added to this are the numerous technological advances introduced by the different tax bodies with a view to expanding the degree of control of the numerous accounting and tax operations carried out in all economic segments. Notably, the Federal Government has a fundamental role and a promoter of these innovations, followed by the States and the Federal District, which come in consequence to deal with issues within their tax jurisdiction. Finally, the Municipalities that, due to the lack of unification of their procedures and the lack of their own technological equipment, do not appear as prominent actors in this area.

The report Doing Business 2015: Going Beyond Efficiency published by World Bank (2014) describes that companies operating in Brazil spend, on average, 2,600 (two thousand and six hundred) hours per year to comply with the numerous tax obligations. The numbers presented by the World Bank (2014) highlight Brazil as the leader in the international ranking of the degree of cost and time of the taxpayer to comply with tax obligations.

It is known that the apex of this trend of modernization of taxing entities is materialized in the increasing use of information technology as a way of increasing the control of private entities, from numerous projects introduced by the Public Digital Bookkeeping System, which aims to unify the receipt of obligations, analysis, storage and certification of books and other documents that make up the company's accounting and tax bookkeeping.
In parallel with the concern with the tax enforcement activity in view of the Brazilian peculiarities described above, there is a profusion of international principles, practices or guidelines in the sense of adopting good governance practices, ensuring greater assertiveness of the information transmitted to stakeholders, through assumptions of transparency, equity, accountability and compliance with legal dictates. And, precisely, given the representativeness and complexity of this area, a specific dimension called Tax Governance emerges.

Likewise, the three factors that decisively impact the inspection activity in Brazil and, therefore, influence the implementation and development of Tax Governance, were described, in this research reported as a dimension of Corporate Governance, whose object is limited to inspection activity. The real intention of this work arises, which is: through the case study method, directed to a large Brazilian company, active in the civil construction segment, to evaluate processes and technological challenges for the development of tax governance.

II. METHODOLOGY

This research is qualitative and descriptive, it uses an inductive research method based on the methodological tools of the case study, intertwining conceptual aspects of corporate governance and tax governance, also discussing them with the new technologies applied. The structuring of the tax execution of OAS S/A was examined (phenomenon or object of study), limiting this analysis to a certain period of time.

And from the point of view of documentary research, primary sources such as messages, reports and releases related to the tax enforcement area were analyzed, then conveyed by the company, especially those intended for stakeholders by its Investor Relations (IR) department. Through the methodological tool of bibliographic research, it was analyzed the theoretical framework related to the themes of Corporate and Tax Governance, through books, specialized magazines, theses and dissertations, in national and foreign repositories. Journalistic information and institutional videos were also examined.

Complementary information was also collected through the interview technique, in its semi-structured model, with application to the members of the Board of Directors and Executive Board, as well as other key people responsible for the company's tax execution.

III. CORPORATE GOVERNANCE

The genesis of Corporate Governance occurred from the very increase in the level of complexity of companies, mainly due to the structure of capital dispersion and control mechanisms of these organizations. The 19th century scenario portrayed organizations backed by the ownership of restricted individuals or groups. Executive actions were carried out by owners or direct agents (Serafim et al., 2010).

From an economic and business perspective, in the 20th century, marked by the industrial revolution, management models underwent important changes, reported by Berle and Means (1932), highlighting issues involving professionalization of management and control of corporations. These transformations have impacted the power of top executives, often to the detriment of other stakeholders, even workers or owners.

In this sense, the shareholder who invests in a modern company hand over his assets to other managers (executives) and his condition of owner changes to a simple recipient of dividends. Both phenomena (increased level of complexity and dispersion of the controlling capital of organizations) allowed isolated measures carried out within companies to have the potential to generate relevant impacts for society, whether positive or negative. It is noticed that governance as a phenomenon and object of study emerged from the need to balance internal and external forces in organizations, focused on the business world, connections and relationships with the societies that operate, including discussions that are anchored in sustainability aspects, and corporate responsibility. The historical context of segregation of the legal personality of companies (entity principle), separation of ideas of ownership and management structure and the very diffusion of corporate formatting in the form of joint-stock company, contributes to the emergence and advances of Corporate Governance.

Possible management abuses triggered reactions in a dispersed equity structure, not only in individual terms but also in geographic terms, and, with that, affecting people and institutions inside and outside the country where that company is headquartered. Excesses, then, start to promote or intensify conflict situations in the corporate environment between shareholders, administrators and other interested parties, now globally. In order to regulate such conflicts, based on the dissemination and standardization of manuals of good Corporate Governance practices, important events took place, such as the guidelines issued by the LENS Investment Management Fund, by the Cadbury report, by the Organization for Economic Cooperation and Development (OECD) and the Sarbanes-Oxley Act itself.
The internationalization of economies and technological evolution, especially with regard to inspection systems, facilitated the development of a new dimension, Tax Governance, that arises to account for the correct fulfillment of tax obligations from the perspective of global principles and pillars of corporate governance. In addition, it is understood that the adoption of good management and operation practices of a given organization are usually followed by good practices also in the context of tax enforcement. That is, the corporate management model replicates itself in relation to the tax governance model. It even points out that Moge et al. (2011) that “The harmony of management practices and business operation with the management and operation of taxes must form a single integrated and harmonious set”. New reality of tax administration of large economic agents.

IV. TAX GOVERNANCE

Transposing the teachings and guidelines of Corporate Governance to a given object of study, still within the scope of the company, however with a more specific field of action, reveals the challenge to be faced in this topic. This time, we seek to observe the adherence of the Corporate Governance teachings on a specific bias of the company (tax enforcement). In addition to global principles, it is worth rescuing pillars of Corporate Governance: transparency (disclosure), equity (fairness), accountability and compliance; governed now in relation to the regulation of management acts related to the tax area. From this perspective and as a consequence of Corporate Governance, already in the first decade of the 21st century, initiatives expressed through the report of the Organization for Economic Cooperation and Development (OECD) “Forum on Tax Administration Information Note General Administrative Principles: Corporate governance and tax risk management” have already signaled the importance of the tax issue for society and the need to apply governance parameters with a specific focus on the topic.

According to Alink and Kommer (2016), “Taxation plays a fundamental role in the construction of institutions and markets”, which reinforces the understanding that good tax administration is fundamental for the effective and sustainable development of any society. To handle this task, Tax Governance comes up with procedures and tools, such as mechanisms created to implement principles, practices and models of Corporate Governance, in this study, applied by managers who work in the area of tax execution. In the search to synthesize issues related to the perspectives of process and development, anchored in the bases of Corporate Governance, as well as the interdisciplinarity aspects that touch them, the author brings the definition of Corporate Tax Governance, which in the present work we abbreviate to the expression Tax Governance. In this sense, Cunha (2012) prescribes that Tax Governance is limited to: “the practice of controlling all processes that affect operational, business and tax information intended for the management of taxes to which an organization is subject”.

According to Castro (2013), the development of tax governance requires intertwining the areas of Corporate Governance, Management and Processes and Tax Management, with significant investments in information technology, especially in digital platforms known as frameworks. It is understood that, in Brazil, large economic agents, holders of complex operations, maintain departments and partnerships with multinationals to build tax solutions applied to their controllership processes, which normally involves the Accounting, Tax, Tax and Financial.

V. NEW APPLIED TECHNOLOGIES

Technological changes have promoted, and will promote, important impacts for Tax Administrations and taxpayers, as already pointed out by Alink and Kommer (2016), considering that the increasing pace of technological changes will have a significant impact on Tax Administrations. Information technology, including telecommunications and computer systems, appears to be able to significantly increase productivity, saving time and money, while simultaneously enabling and/or offering better service to consumers. Technological developments allow for much faster and more assertive information processing. Transactional processes are being automated, data storage opportunities have expanded dramatically, reducing the costs of collecting and processing information also dramatically.

Increases in processing power allow for more complex data analysis. Wireless communications options strengthen the trend towards a highly mobile workforce, likely resulting in significant reductions in infrastructure and facilities costs. In this way, the so-called new technologies – such as artificial intelligence, cloud technologies, robotics, big data and blockchain – have been responsible for simplifying organizational structures and processes. Working with a significant volume of data, variables and information, with requirements for constant updating of parameters and objectives, promotes cost reduction and increased efficiency and productivity. And, once again, based on the premise that the entire tax enforcement process fulfills the above conditions, it is imperative to use tools for the purpose of optimizing results.
Cloud technology promotes cost reduction with storage and processing infrastructure, as actions that would require the purchase of hardware maintenance are now performed on shared servers and with the adoption of satisfactory levels of security. Artificial intelligence and machine learning lend themselves to understanding a system and promoting the tracking of changes arising from external events.

Blockchain, best known for being the technology that records bitcoin transactions, can also have applicability in tax enforcement, especially in relation to databases. Financial Institutions and Governments are currently evaluating the use of blockchain for recording and certifying tax payments. Data & Analytics refers to a roadmap applied to a mass of data for the specific purpose of extracting information.

The challenges posed by technological advances also refer to the need for companies to make investments. In other words, to comply with tax requirements, now viewed in real time, companies need to review their processes and tools, promoting investments in structure, software and people.

VI. ANALYSIS AND DISCUSSION

The present work aims to identify the challenges promoted by the technological evolution and demands of the development of Tax Governance, here understood as a vertical of Corporate Governance, so that it is dedicated to studying and adjusting teachings and practices of Corporate Governance for the areas of Administration and Tax Management.

In this context, OAS presents itself in the market as one of the largest construction companies in Brazil, which is its main activity. Established in 1976, with operations based on the engineering and infrastructure sector and restricted to the national market, throughout its history, new activities were added to the portfolio, and new subsidiaries were created, in addition to new markets.

It is a brazilian multinational economic group, with a private capital structure, covering companies or operations in the national territory and in several countries. Today, OAS Group is consolidated in complementary areas, carrying out heavy public and private civil construction works, such as: highways, airports, hydroelectric plants, dams, bridges and ports, also acting in investments in infrastructure, sanitation, multipurpose arenas, energy, concessions for mobility in cities, states and countries.

In terms of operations, up to 2013, events were identified that represent the Company's distance from the pillars of governance, a subsequent period marked by a concern for best practices, with an impact, for example, in the human aspect, the dismissal of 108,000 workers, of the existing 120 thousand. According to data from Deloitte (2015) and BDO (2019), in terms of calculating the company's consolidated results, it went from a net income level of BRL 17,190 million in 2013 to an accumulated loss of BRL 1,626,066 billion reais, according to data collected on December 31, 2018.

For the purposes of this research, it is only necessary to point out the relevance of the so-called Lava Jato Operation as one of the driving elements of the adoption of good governance practices in the company object of the present case study. However, it is not proposed here to deepen the information on the Transaction. It is worth mentioning that, in 2014, OAS Group, through the members of its board, became one of the centers of investigations.

The corporate restructuring or recovery strategy would need to penetrate the various levels of its structure, given a major change in the culture and way of doing business. It was not just a matter of financial planning, but of advancing or developing non-practical skills, in a more resilient way, exposed by the investigation of Operation “Lava Jato”, one of the largest operations to combat political and business corruption in the history.

There was a need to readjust the organization's practices, starting to relate to stakeholders, including Society itself, in a sustainable way. For this purpose, new policies and guidelines are implemented in the company, actions that start a new cycle, aimed at solving problems identified by governmental bodies and risk agencies, national and international.

To this end, the new executive board raised the level of concern with the regulations related to the Governance of the companies that make up the Group, rewrote the Code of Conduct, established the Compliance and Management Audit Committee, which is formed by members of its senior management, involved in different areas of activity of OAS, such as legal, administrative, financial and management.

Governance principle and pillars must be observed by employees, including those involved in tax execution, with results-oriented application, preservation of image, reputation and equity and the perpetuation of the company.

Tax adequacy efforts permeated the particularities of each of the divisions, maintaining execution concentrated in the Shared Services Center (SSC), for concentration of operations of OAS S/A. holding company, enabling the optimization of allocated human resources. Still reporting to a scarcity scenario (reduction in revenues and, consequently, in the number of employees and consultancies that provided assistance in tax matters), it invested in improving the tax enforcement process. An important initiative was the geographic concentration of all tax execution, including structures, processes, technologies and people.
Evolutionary note of good Tax Governance practices requires combined efforts from the Company in terms of structuring the business, training people and investing in technology infrastructure. This research pointed to a deficient picture of tax support systems, control and audit responsible for the treatment and compliance of tax information. Digital audit support tools are not being properly applied. Likewise, investments in information technology are insufficient or with few updates to tax systems, in the sense of compliance with the legislation. These are aspects of the new regulation.

In terms of business, efforts were made to optimize the company's resources, being allocated to activities described as profitable, in addition to segregating them into more divisions, allowing a clearer view of each of the companies.

VII. CONCLUSIONS

As evidenced throughout this research, evidence of the adoption of good corporate and tax governance practices is outlined when examining the organization object of the case study. Hence the constant dichotomy in the present work, which sought to analyze general information about the company, here under the governance approach, and more specific data on the execution practices, now under the gaze of tax governance, in the face of the challenges imposed by the technological area.

It was also possible to verify that the management and operation practices of the business coincide with the management and operation of taxes. Despite the company's operations in 19 other countries and the fact that the service-sharing team is entirely composed of Brazilians, the local tax scenario presents itself in a particularly challenging way. It was possible to confirm this initial perception provided in the theoretical framework from the interviews carried out with the operational team.

It also became possible to characterize the sector in which OAS operates as especially challenging, due to the high tax burden, multiplicity of taxes and difficulties in meeting ancillary obligations with different federative entities. Aware of the need for evolution in the parameters of Tax Governance, important measures were implemented by the organization. The technologies adopted by the different tax entities, such as cloud technologies, artificial intelligence and machine learning, blockchain and data & analytics, were accompanied to a limited extent by the company in its tax execution, evaluating the contracting of a new platform or framework, which would have the proposal to ensure an integrated and consolidated management of the tax life cycle, based on functionalities such as process management, audits, control over adjustments and credits, in addition to the generation and maintenance of ancillary obligations at the federal, state and municipal levels.

Considering the evolution of legislation and technologies, it is suggested that more research be carried out to better understand corporate and tax governance, including endogenous and exogenous aspects of current models, especially in large economic agents with global operations, certainly pioneers in the use of the next new Technologies.

CONFLICT OF INTEREST

This article is the product of a master's research at Salvador University. As authors, professors and researchers, we declare that we have no conflicts of interest.

REFERENCES


