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**Can the American alternative dispute resolution of tax
disputes be useful for the Brazilian bill about tax
transaction?**

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“Economics is a theoretical science and as such abstains from any judgement of value. It is not its task to tell people what ends they should aim at. It is a science of the means to be applied for attainment of ends chosen, not, to be sure, a science of the choosing of ends. Ultimate decisions, the valuations and the choosing of ends, are beyond the scope of any science. Science never tells a man how he should act; it merely shows how a man must act if he wants to attain definite ends”.

(Ludwig Von Mises)

OBJECTIVE

Time can become a source of anguish and frustration for those who need to have one case decided quickly and justly, especially in the area of tax procedural law.

The length of a tax trial, at the administrative level, generates a feeling of helplessness by the holder of reason and is often celebrated triumphantly by those who, imbued with laziness and obscure interests, try in every way to cheat the State.

The fundamental right to a reasonable duration of the administrative and judicial proceedings was inserted into the Brazilian Federal Constitution by Constitutional Amendment 45/04, which included the item LXXVIII Article 5 of the Constitution. This right has, in good time, tried to minimize the delay of trial proceedings, both administrative and judicial.

The outcome of tax delay is harmful for taxpayers and also for the Secretariat of the Federal Revenue of Brazil (Secretaria da Receita Federal do Brasil - SRFB), because the procedural delay implies costs involving the prosecution of cases by Fiscal Administrative Procedure (Processo Administrativo Fiscal - PAF).

The complexity and regulations associated with PAF cause an increase of the cost of materials, shipping and storage of physical processes in addition to the public servants involved in the trial and the time spent on the process.

The SRFB should note the importance of considering the economic results inherent in the PAF, especially for the cost-benefit analysis involving money spent on maintenance and preparation for trial, compared with the decrease in tax liability of the institution which regards the amount of the tax collected by the taxpayers as a result of decisions in administrative litigation.

The objective of this report is an analysis of American alternative dispute resolution techniques to promote agreement between the Internal Revenue Service - IRS and taxpayers in an administrative field. I selected the IRS because it implemented alternative methods for tax receipt in which a broad set of comparative economic and tax data were available.

Scope and methodology: For better understanding of this issue, I presented tax litigation legislation in both countries and I collected and analyzed official data for the year 2008 from the IRS and SRFB as publicly reported by these agencies.

I believe that the evidence obtained based on my audit and economic objectives provides a reasonable basis for my findings and conclusions.

1. INTRODUCTION

The preamble of bill 5,082/2009¹, signed by the Minister of Finance, Mr. Guido Mantega, and the former Attorney General, Mr. José Antonio Dias Toffoli (current Minister of the Federal Supreme Court), to the bill transaction tax states that

(...)

today it is estimated, under the Attorney General of the Treasury, that the administrative tax process has on average a duration of 4 years to complete and court proceedings, up to 12 years.

This fact, coupled with the ineffectiveness of implementing of tax credits, explains to a large extent, that less than 1% of the amount of outstanding debt of the R\$ 400 billion joins the public coffers each year for this route, and the percentage of the ticket does not exceed 2,5 percent of the tax inventory (R\$ 9.6 billion in actual revenues in 2006), even with the measures adopted by the special installment agreement (REFIS, PAEX and PAES) and the incorporation of escrow.

The debt inventory of the Union, including Social Security, has already reached the figure of R\$ 600 billion and once incorporated into what is still in administrative proceedings, you will reach the impressive figure of R\$ 900 billion. This number represents 1.5 times the revenue of the 2006 and only in the context of federal revenue, about half the country's Gross Domestic Product - GDP.

(...)

The data presented show that it is urgently necessary to create alternatives to the receipt of tax credits of taxpayers.

2. Appeal in Brazilian Federal Tax Litigation

2.1. Request for Rectification Release

¹Source: <http://www.camara.gov.br/sileg/integras/648733.pdf>

The Request for Rectification Release (Solicitação de Retificação de Lançamento - SRL) is a quick and cursory review administrative made in the annual income tax return-individuals for the correction of errors which undoubtedly shows the mistakes made by Federal Auditor, which offers by the Secretariat of the Federal Revenue of Brazil to individual taxpayers before the tax litigation.

However, the SRL is available only to taxpayers who received tax bill for payment on which appears the message that a review is possible and a request for review must be made within 30 days from the date of the science of tax bill.

Unfortunately, companies and some individual taxpayers are not allowed the review of the SRL.

2.2. Judgment Offices

Brazil is a democratic country that guarantees the constitutional principles of Due Process of Law (Principle of Legal Defense and Contradiction) in the administrative and judicial sectors.

In the field of tax litigation², the Tax Administration offers to Brazilian taxpayers the option to challenge the tax release cleared by the tax authority.

The Judgment Offices of the Federal Revenue of Brazil (Delegacias da Receita Federal de Julgamento - DRJ) are administrative courts that are responsible for the first level of decisions on administrative contentious tax matters. DRJ is a collegiate body organized among federal auditors which its is formed between 4 and 7 federal auditors called appeals officer.

During 2008, the number of cases in inventory was too high for the Judgment Offices. The chart below shows the average time of the existence of cases awaiting trial at DRJ - Year: 2008

²See Appendix I

| | Year 2008 | | |
|-----------------------------|-------------------------------------------|------------------------------------------|----------------------------------------------------------------------|
| Administrative units | Number of cases: inventory in 2008 | Number of federal auditors at DRJ | Average length of stay-processing of the entry at DRJ in days |
| Total | 160.823 | 635 | 432 |
| DRJ – I (*) | 4.863 | 23 | 270 |
| DRJ – II | 9.460 | 51 | 366 |
| DRJ – III | 7.352 | 33 | 222 |
| DRJ – IV | 8.959 | 30 | 310 |
| DRJ – V | 4.216 | 17 | 370 |
| DRJ – VI | 11.902 | 27 | 391 |
| DRJ – VII | 9.311 | 28 | 518 |
| DRJ – VIII | 9.379 | 30 | 414 |
| DRJ – IX | 7.779 | 33 | 388 |
| DRJ – X | 10.299 | 34 | 528 |
| DRJ – XI | 8.360 | 34 | 430 |
| DRJ – XII | 9.741 | 35 | 358 |
| DRJ – XIII | 3.110 | 25 | 306 |
| DRJ – XIV | 17.043 | 70 | 386 |
| DRJ – XV | 4.973 | 34 | 325 |
| DRJ – XVI | 3.093 | 15 | 355 |
| DRJ – XVII | 10.139 | 60 | 441 |
| DRJ – XVIII | 20.844 | 56 | 634 |

Source: Intranet of Secretariat of the Federal Revenue of Brazil

(*)NOTE: It replaced the name of the DRJ by numbers to preserve the name of the police and tax secrecy.

2.3. Administrative Council of Tax Appeals

If the taxpayer does not agree with the decision of the DRJ, there is an opportunity to appeal which is the second stage of administrative decision on tax cases by the Administrative Council of Tax Appeals (Conselho Administrativo de Recursos Fiscais - CARF), directly linked to the Ministry of Finance and has jurisdiction to decide over administrative appeals related to the applicability of the legislation in connection with taxes administered by the Secretariat of the Federal Revenue of Brazil.

As management reports³, available at the Administrative Council of Tax Appeals, the three Councils of Contributors (1st, 2nd and 3rd Councils formed by 136 counselors) analyzed processes of 14,899 during 2008, leaving 27,431 cases in

³Source: <https://carf.fazenda.gov.br/sincon/public/pages/relatorioGestao/consultaRelatorioGestao.jsf>

inventory to be judged, and that the financial resources needed to run the maintenance of CARF during the year was R\$ 3,312,008.30.

| Councils of Contributors | Number of cases heard in 2008 | Inventories of cases in 2008 | Number of Administrative Counselors⁴ | Financial resources spent in 2008 R\$ |
|---------------------------------|--------------------------------------|-------------------------------------|--------------------------------------------------------|----------------------------------------------|
| 1º | 5, 188 | 14, 006 | 64 | 2, 460, 399.54 |
| 2º | 6, 563 | 9, 036 | 48 | 520, 211.50 |
| 3º | 3, 148 | 4, 389 | 24 | 331, 397.38 |
| Total | 14, 899 | 27, 431 | 136 | 3, 312, 008.42 |

2.4. National Treasury General Attorney's Office

The National Treasury General Attorney's Office (Procuradoria Geral da Fazenda Nacional - PGFN) aims to improve liquidity and certainty of the outstanding debt of the Union, tax or any other kind, inscribing it for collection, settlement or court. It represents the Union privately in the implementation of its debts owed by the tax character.

The National Treasury General Attorney's Office is an agency administratively subordinate to the Minister of Finance and higher management of the Solicitor-General of the Union (Advocacia-Geral da União - AGU).

In the course of the year 2008, the PGFN examined 7,667,844 lawsuits, and divided it into:

Quantity of lawsuits in 2008⁵

| Cases in the Attorney | Quantity | Amount – R\$ |
|------------------------------|-----------------|---------------------|
| Lawsuits filed | 4,466, 717 | 520,044,864,384.20 |
| Lawsuits not filed | 3, 201, 127 | 29,518,053,156.02 |
| Total | 7, 667, 844 | 549,562,917,540.22 |

⁴Source: Bylaws of Administrative Council of Tax Appeals.

<https://carf.fazenda.gov.br/sincon/public/pages/RegimentoInterno/consultarRegimentoInterno.jsf>

⁵Source: <http://www3.pgfn.gov.br/publicacoes/estatisticas-da-divida-ativa-da-uniao>

3. Federal Law 11,941/09

In order to eliminate bad debts the Federal Law 11,941/09 brought the cancellation of debts of small value, eliminating inventory debts as of December 31, 2007 that were overdue for five years or more and whose value was consolidated to less than R\$ 10,000.00.

Moreover, the Federal law 11,941/09 offered a high reduction⁶ in interest payments and in fines (administrative and late payment penalty) including refinancing of the unpaid debts of previous installments.

4. Brazilian bill about tax transaction

The fundamental law concerning tax is the *Brazilian National Tax Code (Código Tributário Nacional)*, approved by Law 5,172/66.

The National Tax Code calls for the abolition of tax credits through the transaction (Article 156, III), however it is necessary to have the approval of a specific federal law to regulate all procedure involving tax transaction.

For this reason, the Minister of Finance has submitted a bill⁷ to the Brazilian National Congress which, if adopted, would allow the Secretariat of the Federal Revenue of Brazil and the National Treasury General Attorney's Office to negotiate with taxpayers to reach administrative settlements of disputed tax liabilities.

This change is important because such tax disputes cannot be settled by negotiation (arbitration, mediation, conciliation and Federal Special Court), but must instead be litigated⁸ in administrative field or judicial field.

The new system, which shifts part of the dispute resolution process from the judicial sphere to administrative fields, is based on the administrative settlement procedures currently being employed in others countries such as the United States.

⁶See Appendix III

⁷Source: <http://www.camara.gov.br/sileg/integras/648733.pdf>

⁸See Appendix I

If approved, the bill will authorize the Federal Revenue Bureau of Brazil and the National Treasury General Attorney's Office to negotiate penalties on a case-by-case basis.

Furthermore, a specific entity will be created to discipline, in advance, the form and parameters of tax transactions. It will be called the National Treasury's General Chamber for Transactions and Conciliation (Câmara-Geral de Transação e Conciliação - CGTC), which will designate National Treasury attorneys as competent to formalize transactions that are in line with the established parameters.

Cases involving less than R\$ 1,000,000 may be negotiated and settled by the CGTC on its own while cases involving between R\$ 1,000,000 and R\$ 10,000,000 will require the approval of the National Treasury General Attorney's Office. Finally, cases involving more than R\$ 10,000,000 will require the approval of the Minister of Finance.

There are four types of tax transactions:

- I - transaction in judicial proceedings;
- II - transaction in civil insolvency, judicial recovery and bankruptcy;
- III - transaction through tax recovery;
- IV - administrative transaction for adhesion⁹.

Whether to engage in a transaction will be exclusively the decision of the PGFN. In order to do that, the decision will take into account the convenience and the opportunity of the procedure. In other words: transactions will be accepted only when the government sees them as convenient and opportune. Therefore, there is no entitlement to the transaction itself, but rather to the proposing of one.

According to the Brazilian tax law, tax cannot be negotiated, only tax penalties. Interest and/or legal fee allowances, among other pecuniary charges, will be the targets of such transactions and not the main value of the tax due.

⁹Transação administrativa por adesão.

The reduction of financial penalties, default interest and other extra penalties will be accepted only on the specific modalities of the transaction by civil insolvency, bankruptcy, judicial recovery or tax recovery, respecting the following limits:

I - up to one hundred percent of its value in the case of demands for fines resulting solely from a breach of accessory obligations;

II - up to fifty percent of the fines for late payment and administrative fines;

III - up to sixty percent of arrears incidents after the establishment of the tax credit;

IV - up to one hundred percent of the cost of collapsing and other charges of a financial nature.

On the other hand, the amount of reductions referred to in items II and III are limited to fifty percent of the amount of the tax consolidated.

In terms of transaction in judicial proceedings or administrative processes for adhesion, penalties can be forgiven for the legal charge and the sums of defeat.

4.1. Transaction in judicial proceedings

The transaction in further action shall be to dispute between the parties, as defined in the original application. The solution to the matter of fact or law can be achieved by including the consideration of matters not included in the judicial process.

The transaction in further action will only be permitted when:

I - tax credits are properly constituted for approval for release or for an administration;

II - at any stage of proceedings before the publication date of the order, positive or negative, the admissibility of special or extraordinary action was brought by the National Treasury or the taxpayer, or

III - there is enforcement in progress:

- a) Until the trial at first instance of their embargoes;
- b) Not being opposed embargo until the publication of the decision to designate the date of the auction.

4.2. Transaction in civil insolvency, judicial recovery and bankruptcy

The PGFN may propose to the competent court the transaction tax for cases where the taxpayer declares civil bankruptcy or bankruptcy by an entrepreneur or business for the purpose of extinguishing the tax credit permanently.

4.3. Transaction through tax recovery

The tax recovery aims to facilitate the overcoming of the transitional situation of economic and financial crisis.

This can be accomplished by allowing the maintenance of power production, employment of workers and the public interest on the perception of taxes, thereby promoting the preservation the company, its social function and the stimulation of economic activity.

4.4. Administrative transaction for adhesion

The legal dispute regarding tax issues, including the impact of general issue, may be subject to transaction by accession by:

I - authorization of the Minister of Finance and the Attorney General's Office, based on settled case law of the Supreme Court or the superior courts, or

II- forecast in a specific law.

5. Additional tax penalties

Additions and legal penalties are due when the tax obligation is not met within the period specified by law. For those who do not pay within period specified the amounts due shall bear interest, in addition to being required to pay fines in order to discourage this practice.

The legal additions will only be charged after the expiration of the obligation or the tax credit.

5.1. Late payment penalty

Its main objective is to reduce the performance of the late payment. Late payment penalties are due when taxpayers voluntarily pay an overdue debt.

The initial term of incidence of late-payment penalty for late payment of debts to the exchequer is always the day immediately after the maturity.

The final term incidence of fines is the day of payment. The Law 9,430/96 was established to calculate the fine for late payment; the percentage of 0.33% per day, limited to 20% of tax due for payment as of 1/1/97.

5.2. Punitive Fines (administrative fines)

The punitive fines are intended to punish the taxpayer when he has failed to pay the tax liability, whether principal or accessory.

These fines are only applied to official procedure, so-called administrative fines. In the case of an administrative fine, they shall apply the following penalties, calculated on all or any difference in tax or contribution:

a) 75%, in cases of non-payment or underpayment, lack of reporting and in cases of inaccurate statement.

b) 150% in cases of obvious intention of fraud, as defined in arts. 71, 72 and 73 of Law 4,502/64, irrespective of other administrative penalties or criminal sanctions.

c) Fines for items “a” and “b” above may be increased by 50% when the taxpayer does not answer the subpoena to provide information or fails to submit documents required by law within the time specified.

Reduction of fines office: If the fine is paid or released split within the time limits for appeal or recourse basis, the taxpayer will be granted the following reductions:

Up to 30 days from receiving the tax bill
50% - for one lump-sum payment
40% - for installment agreement

To 30 days after being informed of the appeal decision
30% - for one lump-sum payment
20% - for installment agreement

5.3. Arrears interest

Arrears interest is the income for the return on capital for the delay in the fulfillment of the tax principal.

As of 1/1/95, the rate of interest is the Selic monthly from the month following the expiration of the date of payment to the month preceding the payment, plus 1% for the month in which payment is being made.

6. American alternative dispute resolution of tax disputes

According Shannon Thomas¹⁰, the American Congress found that administrative proceedings were increasingly costly, formal, and lengthy, and that alternative dispute resolution had worked in the private sector for many years, yielding faster, cheaper, and less contentious results.

Believing that alternative forms of dispute resolution would lead to more creative, efficient, and sensible outcomes, the U.S. Congress sought to implement a number of alternative dispute resolution processes in federal agencies in 1996.

The alternative dispute resolution methods implement alternative forms of dispute resolution in federal agencies.

¹⁰Journal of consumer and commercial law

At the forefront of settling tax disputes is the IRS Office of Appeals, an internal office that is independent from other IRS departments, such as the agency's examination function.

The IRS offers six dispute resolution options to resolve tax controversies, without litigation. In looking at their resolution options, taxpayers should carefully consider which alternatives are available for their cases.

Appeals may defer action on or refuse to settle issues including those where: (1) the Internal Revenue Service National Office has issued internal management documents directing the suspension of action issues with widespread impact, which require control at the National Office level due to widespread impact; or (2) settlement or other action on the issues or cases could effect taxpayers' voluntary compliance with the tax laws.

Mutual-concession settlements are case dispositions involving concessions by both the government and the taxpayer, where there is substantial uncertainty in the event litigation takes place regarding: (1) how the courts would interpret and apply the law; or (2) what facts the courts would find.¹¹

The appeals officer is also empowered with authority to consider "split issue settlements".¹² According to Susan Berson¹³, this type of settlement is based on a percentage or stipulated amount of the tax in controversy.

This is the least desirable settlement from the Internal Revenue Service perspective, and is typically only used by the appeals officer when no other method of settlement is appropriate.

¹¹I.R.M, Handbook, Ch. 8 § 8.6.1.3.1, Appeals (Feb. 18, 1999).

¹²I.R.M. Policy Statement P-8-48, IRM, Handbook Part I (1999).

¹³Susan A. Berson, Federal tax litigation, page I-82.48 [ii] – Split issue settlement

A split-issue settlement occurs when the practitioner shows that if the issue(s) were litigated, the result would be a decision for either the government or the taxpayer.

The distinguishing feature of a split-issue settlement is that the agreed result would not be reached if tried. In determining whether a split-issue settlement has merit, the appeals officer must consider the effect, if any, it may have upon later years. Susan Berson gave us a good example: if a carryover or carryback situation exists, the appeal officer might suggest that the split-issue settlement be expressed in terms of adjustment of taxable income, rather than in a percentage or an amount of tax.

Finally, it should be noted that nuisance value arguments are unpersuasive to an appeals officer. Settlements should never be based on nuisance value from the Internal Revenue Service perspective¹⁴.

Basically, the foundation of achieving settlement¹⁵ with an appeals officer is to provide enough evidence to show that an issue should not go to trial because the government would lose.

6.1. Fast Track Mediation

Fast Track Mediation is designed to help small business/self employed taxpayers resolve many disputes resulting from examinations (audits), offers in compromise, trust fund recovery penalties, and other collection actions.

Most cases not docketed in any court qualify for fast track mediation. Some of the excluded cases are:

¹⁴IRM, Handbook, Appeals Ch. 8, § 8.6.1.3.3 (Feb. 18, 1999).

¹⁵IRM, Handbook, Appeals, Ch. 8, § 8.6.1.3.6 (Feb. 18, 1999); IRM, Handbook 5.8, Offer in Compromise, Ch. 4, Evaluation of Offers (May 26, 1999).

- Issues with no legal precedent;
- Issues where the courts' decisions differ between jurisdictions;
- Campus and Automated Collection System cases;
- Collection Appeals Program cases; and
- Those with only frivolous arguments.

Mediation is a means to avoid a dispute that requires resolution. It means that there is no mutually obvious agreement between the parties, and in order to avoid the time, cost, and trouble of formally resolving the dispute, the parties, through the mediator, attempt to find common ground.

The process involves an Appeal Officer who has been trained in mediation.

6.2. Mediation

Mediation is an extension of the appeals process. The mediator's role is to help resolve your dispute only after good faith negotiations in appeals have been unsuccessful. Mediators can come from Appeals, or you can use non-IRS co-mediators, but at your own expense.

Excluded cases / issues mediation: Certain cases are excluded from fast track mediation. They include:

- Issues for which there is no legal precedent;
- Issues where the courts have rendered opposing or differing decisions in different jurisdictions;
- Industry specialization program issues;
- An issue for which the taxpayer has filed a request for competent authority assistance;
- Service center penalty appeals cases;
- Service center offer in compromise cases;
- Collection appeals program cases;
- Automated collection system cases;
- Constitutional issues.

6.3. Fast Track Settlement

Fast Track Settlement is designed to help other IRS Operating Division taxpayers expeditiously resolve disputes during an examination while their case is still in examination or collection. Fast track settlement brings Appeals resources to the audit site to resolve the dispute before the 30-day letter is issued. A specially trained Appeals employee facilitates the discussion between taxpayer and the team manager or group manager to reach and execute a settlement with which both parties agree.

Generally, fast track settlement is available for cases involving: income tax, exclusion of income from interest paid on municipal obligations, employment tax, estate and gift tax, excise tax, and exemption, foundation or qualification issues or other such TE/GE functional issues as appropriate when:

- Issues are fully developed;
- The taxpayer has stated a position in writing; and
- There are a limited number of unagreed issues.

Fast track settlement will not be available for:

- Issues that can be resolved through other established settlement initiatives, such as, but not limited to, the Self Correction Program “SCP”, the Audit Closing Agreement Program “Audit CAP”, or other programs described in Rev. Proc. 2006-27, 2006-1 C.B. 945;
- Correspondence examination cases;
- Cases in which the taxpayer has failed to respond to IRS communications and no documentation has been previously submitted for consideration by TE/GE;
- Cases in which Appeals does not have jurisdiction (including determination of penalties under § 6700 of the Code);
- Listed Abusive Tax Avoidance Transactions (ATAT);
- Cases involving potential for civil or criminal fraud;
- Rebate claim cases;
- Selected initiatives as determined on an annual basis by the TE/GE Commissioner or his delegate;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2008-2, 2008-1 I.R.B. 90, or any successor guidance;

- “Whipsaw” issues, *i.e.*, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of the participation of another party; or
- Issues that have been identified in a Chief Counsel Notice, or equivalent publication, as excluded from the FTS process.

6.4. Early Referral

Taxpayers whose returns are under the jurisdiction of examination or collection may request the transfer of a developed but unagreed issue to Appeals, while the other issues in the case continue to be developed in examination or collection.

The early resolution of a key issue may encourage taxpayers and the IRS to agree on other issues in the case. Early referral can also be requested with respect to issues regarding an involuntary change in method of accounting, employment tax, employee plans and exempt organizations. Regular Appeals procedures apply, including taxpayer conferences

6.5. Arbitration

Taxpayers may request arbitration for qualifying, factual issues already in the Appeals administrative process after settlement negotiations are unsuccessful. Arbitration is also available after unsuccessful attempts to enter into a closing agreement under Internal Revenue Code section 7,121.

Some of the cases excluded from Appeals arbitration are:

- Compliance and Appeals Coordinated Issues;
- Legal issues;
- Certain Collection issues;
- Those not consistent with sound tax administration;
- Frivolous arguments; and
- Those where you did not act in good faith during settlement negotiations.

If settlement negotiations are unsuccessful, the taxpayer or Appeals may request binding arbitration after consulting with the other party. A model agreement to arbitrate allows the parties certain flexibility in designing the arbitration process.

7. Can the American alternative dispute resolution of tax disputes be useful for the Brazilian bill about tax transaction?

First, it is necessary to define the term “transaction.” The legal definition for transaction is an agreement in which two or more people set certain terms and conditions by mutual concessions, to avoid litigation or put an end to ongoing litigation.

Critics of the bill say it is not authentic transaction in which the parties can freely dispose of their wills and the object of dispute, because the tax liability is provided by law. In this case, the intention of the parties can not change legal matter, on the principle of legality, because it is a mechanism for replacement of the administrative act unilaterally released by the Administration for any administrative act done with the participation of the taxpayer.

My argument is that it is really transaction tax, as the parties make reciprocal concessions in order for the termination of tax credit. The PGFN may only transact what the law permits, *i.e.*, the partial reduction of statutory tax increases. This reduces the amount of debt as the taxpayer in turn will waive the right underlying the action or remedy, administrative or judicial, with respect to the merits of the issues deducted as an object of the terms of the transaction.

In addition, the transaction tax is an option of the taxpayer. If the proposed transaction is not attractive or advantageous for some reason, the taxpayer retains all appeal rights. Do not forget that negotiation is an option for the taxpayer and also for the Appeals Officer.

When analyzing the methodologies adopted by the IRS to resolve tax disputes through Alternative Dispute Resolution, notice that the SRFB and PGFN have used similar ideas to extinction of tax disputes with the consequent increase in collection.

Special installment agreements¹⁶ were granted to taxpayers (individuals and corporations) offering a reduction in interest payments and in fines (administrative and late payment penalty). These agreements extend the deadline for payment and change the index interest rate applied to fix the debt (from Selic to TJLP). However, these installment agreements are granted at intervals for a period determined for accession while ADR are offered permanently¹⁷ to American taxpayers with clear and definite purpose.

Now the bill about tax transaction is a great opportunity for the SRFB and PGFN to offer a new paradigm through which to approach the challenges of resolving taxpayer disputes in an efficient and equitable manner and to avoid costly litigation.

The Federal Law 11,941/09 is a proof of this affirmation. If the taxpayer does not have money to pay the tax bill during the administrative proceeding of tax litigation, he/she will not pay the debt during or after the judicial proceeding and the final cost for collecting the tax debt may be larger than the amount of debt and there will be no guarantee that the debt will be paid by the attachment of property.

Resolving tax disputes does not mean that is necessary to fix blame or establish a winner and loser. I believe that alternative dispute resolution attempts to find common ground. This is the key to success for alternative dispute resolution. Taxpayers have several options to resolve their pending tax with the tax authorities before submitting administrative or judicial challenge so alternative dispute resolution prevents the hazards of litigation.

Another strong argument against the bill is that the transaction tax would encourage tax evasion for large firms because they would no longer have to pay the taxes due within legal payment. As companies wait for federal auditors to determine the tax credit, companies would apply the funds in investments with attractive yields. Let's not be naive: it is clear that the transaction in the bill could be a tributary door open for tax evasion, and this case could also apply to alternative dispute resolution.

¹⁶Special installment agreement: Refis(2000), PAES(2003), PAEX(2006) and Law 11,491/09.

¹⁷Administrative Dispute Resolution Act of 1990, 5 U.S.C. §§ 556-593 (2004), amended by Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584 (2004).

U.S. law has surrounded itself with mechanisms to avoid such tax evasion. The IRS offers six different methods for alternative dispute resolution for the taxpayer, but each mode requires a series of procedures which prevent irregularities, such as tax evasion.

As the tax evasion planners are always changing their strategies, if the tax authority notices that a proposal includes tax planning focus on evasion, this does not require tax authorities to carry out the alternative dispute resolution with the taxpayer. This gives the option for alternative dispute resolution to taxpayers who have challenged the IRS Office or Tax Court.

A way to prevent tax planning would be to establish a clause prohibiting the taxpayer from transacting the debt with the SRFB and PGFN for a period of five years after completing its first transaction tax. This would stimulate the taxpayer to resolve their pending tax immediately.

The Brazilian bill is clear in establishing that the PGFN may, if it is convenient and given the opportunity to conclude the transaction where there is an understanding that serves the public interest, negotiate with the taxpayer.

This article is a double-edged sword, because while preventing the conclusion of the transaction through tributary law of tax planning and other intentions, the interpretation is subjective to the meaning of service to the public interest.

In this sense, it would be better to give the act itself, a series of requirements and situations when authorized enter into agreements and establish certain parameters of the agreements, leaving the public administration with the power to regulate its implementation.

The IRS has adopted a criterion for the division of contributors by methods that might interest the ADR in the CGTC.

To adhere to ADR, the criteria are generally:

- Liability must be for personal income tax, penalty assessment, or employment tax owed by out-of-business sole proprietorship (s);
- Aggregate liability must be \$ 25,000 or less (including accrued penalty and interest);

- Taxpayer must be wage earner or self-employed with no employees; and
- Real property owned must be limited to a personal residence only.

Those responsible for receiving and deciding on the agreements of the ADR procedures are the servers that work with challenges.

In the SRFB, the installment payments of the special tax reduction with the bill of legal additions were always allocated to the administrative charging sector of the Delegacia da Receita Federal - DRF along with the local PGFN.

I am convinced that the CGTC will be composed of the servers of those areas. The servers who work at administrative charging sector already possess the necessary experience for the operational handling of the debt, but it would be a good idea if Appeals Officers who work at DRJ were responsible for analyzing the cases for transaction tax.

The Appeals Officers would analyze the case with an impartial view of the tax collection and administrative charging, basing their decisions on the legality of transaction tax and establishing the parameters of the agreement.

Civil tax penalties should be, above all else, fair. Penalty provisions should be carefully crafted by Congress and sensibly administered by the executive branch. This ensures that penalties deter bad conduct without deterring good conduct or punishing the innocent.

Targeted, proportionate penalties that clearly articulate standards of behavior and that are administered in an even-handed and reasonable manner encourage voluntary compliance with the tax laws.

On the other hand, "fine" is vaguely defined and leads to disproportionate penalties, particularly those administered as part of a system that automatically imposes penalties or that otherwise fails to provide basic due process safeguards, create an atmosphere of arbitrariness and unfairness that is likely to discourage voluntary compliance.

I conducted a simulation¹⁸ that updated tax debts (with the late payment and administrative fine), starting in January 2005 for payment on February 2, 2010 and compared it with the proposal to tax the transaction and concluded that:

a) The proposed transaction tax is a special permanent installment reduction of legal additions to taxpayers who need encouragement to overcome a situation of economic and financial crises or to specific cases that the SRFB and PGFN have questions about receiving financial debts tax.

b) The Brazilian government grants special installment debt to taxpayers, on average, every three years, including refinancing of the unpaid debts of previous installments offering reduced penalty rates and changes in the calculation of interest. The bill is no incentive to discharge earlier installments, as the case may be referred to federal court and the taxpayer can pay the debt with a reduction in penalty and interest using the method of transaction in the judicial process;

c) The reduction of fifty percent for administrative fine, fine for late payment and arrears interest are not attractive to the taxpayer debtor, given that the law 11,491/2009¹⁹ has granted larger reductions in taxpayer debt, including special unpaid installments.

d) The reduction of fifty percent of the administrative fine (from 75% for 37.5%) will be an incentive for tax evasion because the penalty will not be summoned in cases of non-payment or underpayment of tax.

8. Concluding remarks

The U.S. and Brazil tax laws are quite different in the ways of revenue procedures, inspection and tax collection, however, it does not mean the SRFB and PGFN are unable to use effective American techniques of conflict resolution.

Of course there are flaws in the American ADR which are still in the process of improvement, but the success of ADR is recognized by the IRS and taxpayers themselves.

¹⁸See Appendix VII

¹⁹See Appendix III

You hardly find citizens who are content to pay taxes, but all agree to pay a fair tax. Unfortunately, there is no consensus regarding a definition of fair is when it comes to tax.

The figures presented in the preamble of Bill 5,082/2009 do not lie! It is necessary to change the tax law introducing effective mechanisms for resolving tax disputes.

The bill about tax transaction establishes specific objectives, among others, to provide more efficient protection of the tax credit, in order to expand the capacity of tax collection, giving priority to ensure safety and good faith in complying with tax laws, gradually reducing the formation of judicial and administrative procedures, through the use of agile instruments for the prevention and settlement of disputes, guaranteeing the tax credit even in the situation of economic and financial crisis of the debtor; curbing tax evasion in all its arrangements and, finally, encouraging peace tax at all levels.

However, the bill should be more daring in order to extinguish the tax debt without starting administrative or judicial litigation!

I know the bill involves different interests. The union of federal tax auditors does not approve of the bill because it will change the behavior between the taxpayer and SRFB. The union is concerned that the bill will provide an incentive for non-payment of installments agreements. Furthermore, the “good taxpayer” who pays his tax on time will be indignant because he/she will not be granted with economic advantage. However, there remains an opportunity to fix the flaws in this project.

The bill refers to the CGTC`s task of determining the requirements, forms and parameters for the procedure transaction. This is the chance for CGTC to adopt criteria that makes the taxpayer believe that tax justice is really being achieved.

These criteria should focus on broadening the cases provided for SRL, clarifying rules for approval of the transaction tax without legal subjectivity, deferring

of tax enforcement and transaction summary for debts of small value to the limit of R\$ 15,000.00.

Among the constitutional principles relating to taxation, the principle of legality is considered the most important. The principle of legality means that the government may only carry out their acts under the law, yet the tax law, in some cases, is subjective and has two very different interpretations

A great idea used in the ADR could be applied in the transaction tax in Brazil : The General Coordination of Administrative and Legal Disputes (Coordenação-Geral do Contencioso Administrativo e Judicial - COCAJ) monitors the control tax judicial credit, follows the decisions of the judiciary, conducts studies to identify the theories and practices of elision taxpayers.

The COCAJ informs the legal arguments used in more lawsuits by taxpayers, as well as the positioning of the federal courts on the issue. Based upon this information, the CGTC has subsidies to transact the tax debt with the taxpayer, giving percentages of reduction fines and interest according to the probability of success of the taxpayer and the estimated cost of procedure for trial of the case.

To make this clear, I present an example. The federal tax auditor determines tax credit on the basis of the calculation of PIS / COFINS with the inclusion of ICMS, but the company does not agree with the inclusion of the ICMS calculation. COCAJ studies show that the probability of the company filing a lawsuit after the decisions of all administrative levels is high (above 50%); however, administrative costs of the SRFB will be spent during the analysis process: working hours judging cases in first and second instances; registration, monitoring and process control and other costs immeasurable and the position of federal courts is uncertainty by favoring the SRFB.

In addition to the IRS, taxpayers will bear the costs, for example, of court costs, attorney fees, delay in providing proof of no debt, and especially delays in the court decision (which can be up to 12 years!).

CGTC offers the opportunity for rebates in accrued legal (and may be up to 100% for payment up-front or 85% for installment agreement) to the taxpayer prior to the submission of the appeal at the administrative stage.

The taxpayer will design all the expenditure that must be paid in the tax dispute; compare with the values of reduction granted by the CGTC and may reach the conclusion that it is advantageous to choose the transaction tax.

The parties must agree upon a plan to complete the tax transaction within 120-days.

This transaction will be good both for the taxpayer to extinguish his tax liability and because the SRFB will save administrative costs and increase federal revenues.

By allowing taxpayers to settle disputes short of litigation, the bill aims to increase the speed and efficiency of the Brazilian tax collection and enforcement.

Let us be clear: in the face of conflict it is necessary to establish preventive measures. Justice in the tax system depends not only on laws that include tax complying with the requirements of economic capacity. It depends on the fair application of taxes and that the adjudication is agile and immediate.

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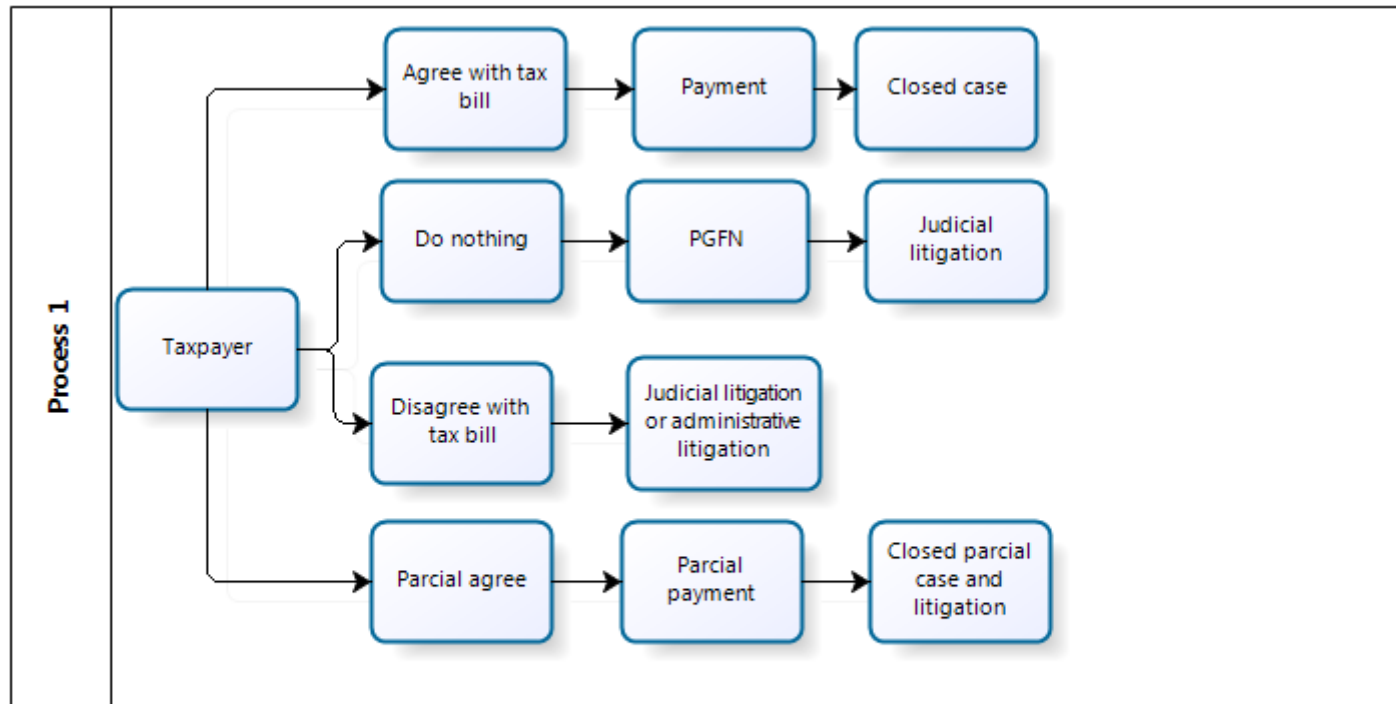
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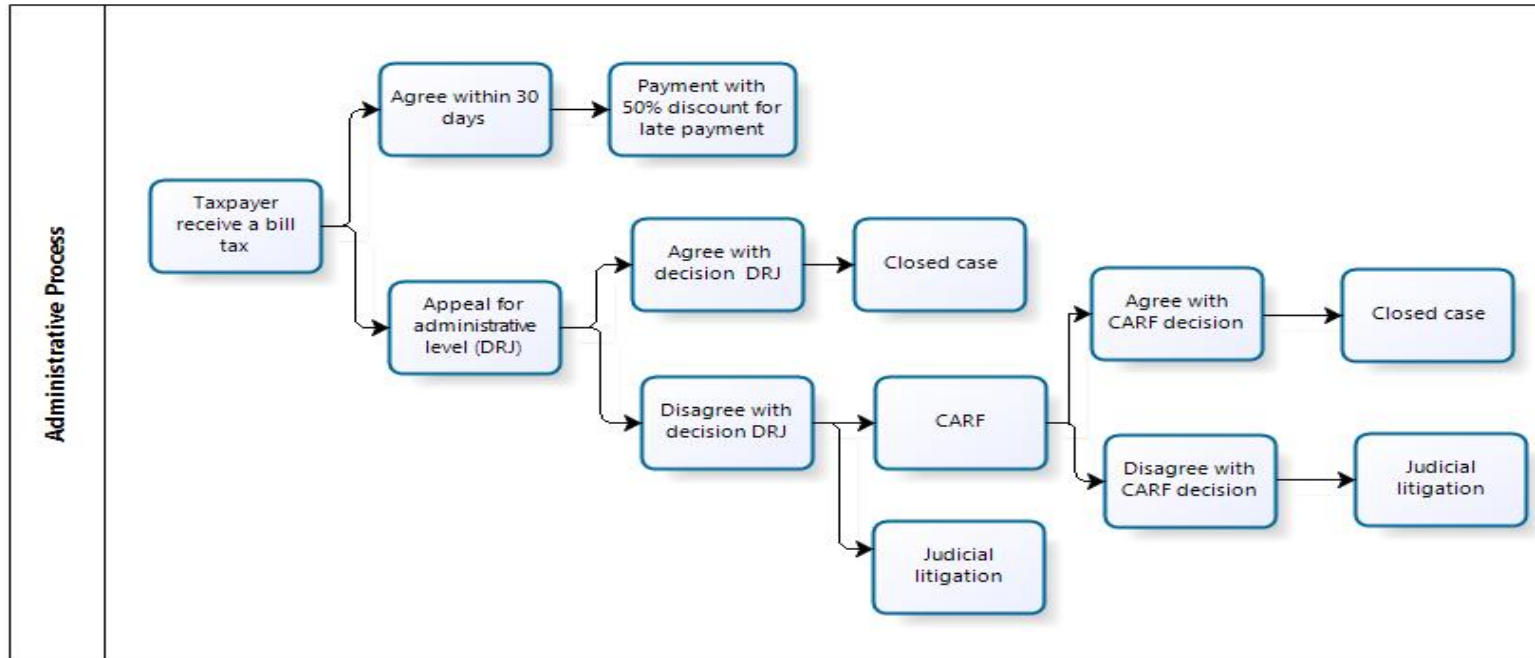
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Appendix I – Brazilian model for Federal tax litigation



Appendix II – Administrative litigation



Appendix III – Law 11,491/2009

According to the Law 11,491/09, payments or installment agreements should follow the rules below:

- Lump-sum payment:
100% reduction in fines for late payment and administrative fines;
40% reduction in fines isolated;
45% reduction of arrears interest;
100% reduction in the value of the legal charge.

- Installments of up to 30 monthly payments:
90% reduction in fines for late payment and administrative fines;
35% reduction in fines isolated;
40% reduction of arrears interest;
100% reduction in the value of the legal charge.

- Installment of up to 60 monthly payments:
80% reduction in fines for late payment and administrative fines;
30% reduction in fines isolated;
35% reduction of arrears interest;
100% reduction in the value of the legal charge.

- Installment of up to 120 monthly payments:
70% reduction in fine for late payment and administrative fines;
25% reduction in fines isolated;
30% reduction of arrears interest;
100% reduction in the value of the legal charge.

- Installment of up to 180 monthly payments:
60% reduction in fine for late payment and administrative fines;
20% reduction in fines isolated;
25% reduction of arrears interest;
100% reduction in the value of the legal charge.

Appendix IV - Interest rate target (cumulative)²⁰

On federal taxes and contributions relating to events occurring on or after 01/01/95, the interest should be collected in the month of **February/2010**, the percentage indicated below, depending on the month prior to the legal deadline for payment:

| Month/Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| January | 64,54% | 46,93% | 33,15% | 22,05% | 10,11% | 1,00% |
| February | 63,32% | 45,78% | 32,28% | 21,25% | 9,25% | |
| March | 61,79% | 44,36% | 31,23% | 20,41% | 8,28% | |
| April | 60,38% | 43,28% | 30,29% | 19,51% | 7,44% | |
| May | 58,88% | 42,00% | 29,26% | 18,63% | 6,67% | |
| June | 57,29% | 40,82% | 28,35% | 17,67% | 5,91% | |
| July | 55,78% | 39,65% | 27,38% | 16,60% | 5,12% | |
| August | 54,12% | 38,39% | 26,39% | 15,58% | 4,43% | |
| September | 52,62% | 37,33% | 25,59% | 14,48% | 3,74% | |
| October | 51,21% | 36,24% | 24,66% | 13,30% | 3,05% | |
| November | 49,83% | 35,22% | 23,82% | 12,28% | 2,39% | |
| December | 48,36% | 34,23% | 22,98% | 11,16% | 1,66% | |

²⁰ Source: Secretaria da Receita Federal. <https://www.receita.fazenda.gov.br/pagamentos/jrselic.htm>

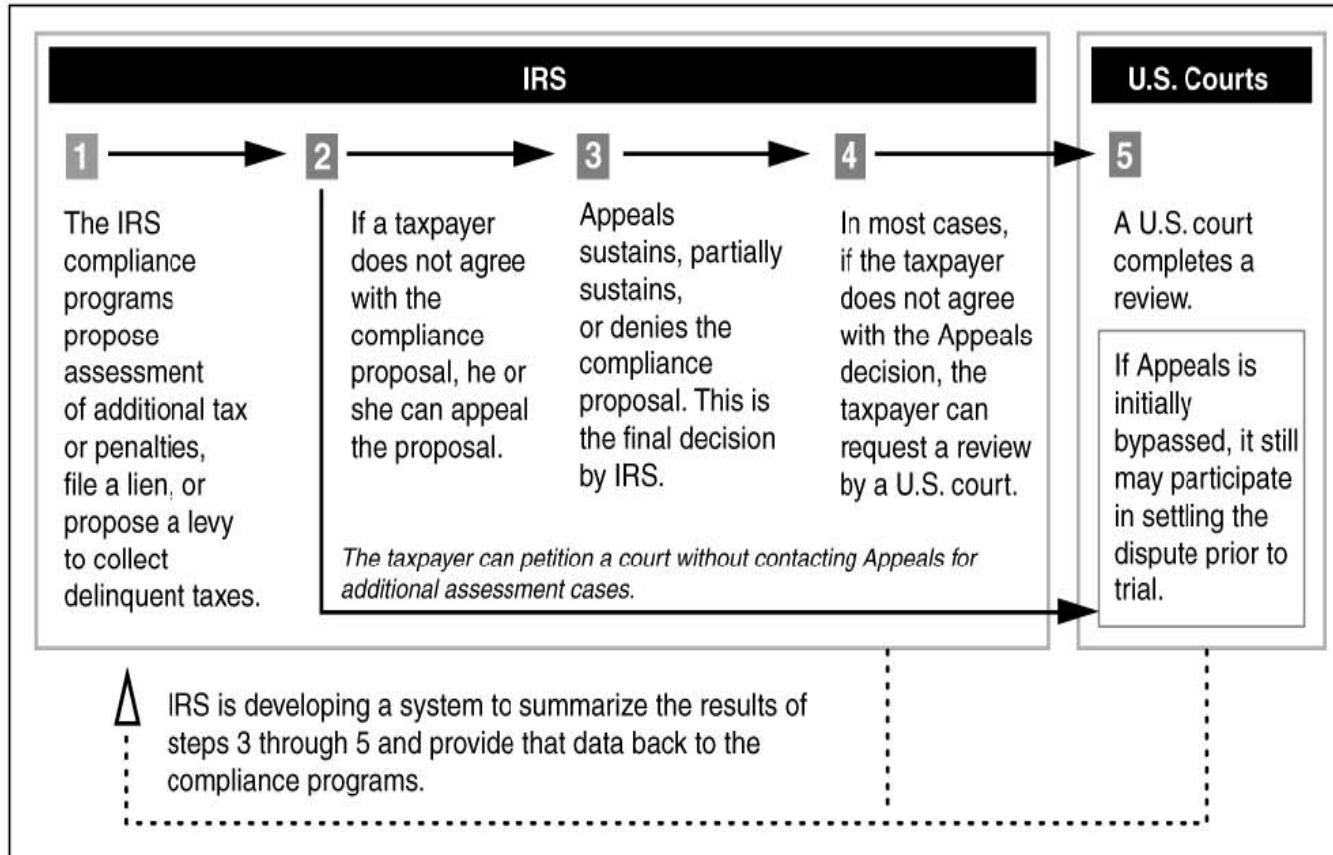
Appendix V - Selic Interest Rate²¹

The interest rate for the month of January 2010, applicable in the recovery, restitution or compensation for federal taxes and contributions, as of **February/2010** is 0.66%.

| Month/Year | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| January | 1,38% | 1,43% | 1,08% | 0,93% | 1,05% | 0,66% |
| February | 1,22% | 1,15% | 0,87% | 0,80% | 0,86% | |
| March | 1,53% | 1,42% | 1,05% | 0,84% | 0,97% | |
| April | 1,41% | 1,08% | 0,94% | 0,90% | 0,84% | |
| May | 1,50% | 1,28% | 1,03% | 0,88% | 0,77% | |
| June | 1,59% | 1,18% | 0,91% | 0,96% | 0,76% | |
| July | 1,51% | 1,17% | 0,97% | 1,07% | 0,79% | |
| August | 1,66% | 1,26% | 0,99% | 1,02% | 0,69% | |
| September | 1,50% | 1,06% | 0,80% | 1,10% | 0,69% | |
| October | 1,41% | 1,09% | 0,93% | 1,18% | 0,69% | |
| November | 1,38% | 1,02% | 0,84% | 1,02% | 0,66% | |
| December | 1,47% | 0,99% | 0,84% | 1,12% | 0,73% | |

²¹Source: Secretaria da Receita Federal. <https://www.receita.fazenda.gov.br/pagamentos/jrselic.htm>

Appendix VI – American tax litigation



Source: GAO.

Appendix VII – Simulation tax debt

| Case 1: Tax debts with late payment penalty (20%) plus arrears interest | | | | | | | | | | |
|-------------------------------------------------------------------------|--------------------------------|----------------|-------------------|----------------------|---------|-----------------------------|----------------|-------------------|------------------------|---------|
| | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| Month | Value | Late payment | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Late payment | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/05 | \$5.000,00 | \$1.000,00 | \$3.133,00 | \$9.133,00 | 82,66 | \$5.000,00 | \$500,00 | \$1.566,50 | \$7.066,50 | 41,33 |
| jan/05 | \$10.000,00 | \$2.000,00 | \$6.266,00 | \$18.266,00 | 82,66 | \$10.000,00 | \$1.000,00 | \$3.133,00 | \$14.133,00 | 41,33 |
| jan/05 | \$50.000,00 | \$10.000,00 | \$31.330,00 | \$91.330,00 | 82,66 | \$50.000,00 | \$5.000,00 | \$15.665,00 | \$70.665,00 | 41,33 |
| jan/05 | \$100.000,00 | \$20.000,00 | \$62.660,00 | \$182.660,00 | 82,66 | \$100.000,00 | \$10.000,00 | \$31.330,00 | \$141.330,00 | 41,33 |
| jan/05 | \$500.000,00 | \$100.000,00 | \$313.300,00 | \$913.300,00 | 82,66 | \$500.000,00 | \$50.000,00 | \$156.650,00 | \$706.650,00 | 41,33 |
| jan/05 | \$1.000.000,00 | \$200.000,00 | \$626.600,00 | \$1.826.600,00 | 82,66 | \$1.000.000,00 | \$100.000,00 | \$313.300,00 | \$1.413.300,00 | 41,33 |
| jan/05 | \$5.000.000,00 | \$1.000.000,00 | \$3.133.000,00 | \$9.133.000,00 | 82,66 | \$5.000.000,00 | \$500.000,00 | \$1.566.500,00 | \$7.066.500,00 | 41,33 |
| jan/05 | \$10.000.000,00 | \$2.000.000,00 | \$6.266.000,00 | \$18.266.000,00 | 82,66 | \$10.000.000,00 | \$1.000.000,00 | \$3.133.000,00 | \$14.133.000,00 | 41,33 |
| jan/05 | \$20.000.000,00 | \$4.000.000,00 | \$12.532.000,00 | \$36.532.000,00 | 82,66 | \$20.000.000,00 | \$2.000.000,00 | \$6.266.000,00 | \$28.266.000,00 | 41,33 |

| Case 1: Tax debts with administrative fines (75%) plus arrears interest | | | | | | | | | | |
|-------------------------------------------------------------------------|--------------------------------|----------------------|-------------------|----------------------|---------|-----------------------------|----------------------|-------------------|------------------------|---------|
| | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| Month | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/05 | \$5.000,00 | \$3.750,00 | \$3.133,00 | \$11.883,00 | 137,66 | \$5.000,00 | \$1.875,00 | \$1.566,50 | \$8.441,50 | 68,83 |
| jan/05 | \$10.000,00 | \$7.500,00 | \$6.266,00 | \$23.766,00 | 137,66 | \$10.000,00 | \$3.750,00 | \$3.133,00 | \$16.883,00 | 68,83 |
| jan/05 | \$50.000,00 | \$37.500,00 | \$31.330,00 | \$118.830,00 | 137,66 | \$50.000,00 | \$18.750,00 | \$15.665,00 | \$84.415,00 | 68,83 |
| jan/05 | \$100.000,00 | \$75.000,00 | \$62.660,00 | \$237.660,00 | 137,66 | \$100.000,00 | \$37.500,00 | \$31.330,00 | \$168.830,00 | 68,83 |
| jan/05 | \$500.000,00 | \$375.000,00 | \$313.300,00 | \$1.188.300,00 | 137,66 | \$500.000,00 | \$187.500,00 | \$156.650,00 | \$844.150,00 | 68,83 |
| jan/05 | \$1.000.000,00 | \$750.000,00 | \$626.600,00 | \$2.376.600,00 | 137,66 | \$1.000.000,00 | \$375.000,00 | \$313.300,00 | \$1.688.300,00 | 68,83 |
| jan/05 | \$5.000.000,00 | \$3.750.000,00 | \$3.133.000,00 | \$11.883.000,00 | 137,66 | \$5.000.000,00 | \$1.875.000,00 | \$1.566.500,00 | \$8.441.500,00 | 68,83 |
| jan/05 | \$10.000.000,00 | \$7.500.000,00 | \$6.266.000,00 | \$23.766.000,00 | 137,66 | \$10.000.000,00 | \$3.750.000,00 | \$3.133.000,00 | \$16.883.000,00 | 68,83 |
| jan/05 | \$20.000.000,00 | \$15.000.000,00 | \$12.532.000,00 | \$47.532.000,00 | 137,66 | \$20.000.000,00 | \$7.500.000,00 | \$6.266.000,00 | \$33.766.000,00 | 68,83 |

| Case 2: Tax debts with late payment penalty (20%) plus arrears interest | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------|-------------------|----------------------|---------|-----------------------------|----------------|-------------------|------------------------|---------|
| Month | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| | Value | Late payment | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Late payment | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/06 | \$5.000,00 | \$1.000,00 | \$2.256,00 | \$8.256,00 | 65,12 | \$5.000,00 | \$500,00 | \$1.128,00 | \$6.628,00 | 32,56 |
| jan/06 | \$10.000,00 | \$2.000,00 | \$4.512,00 | \$16.512,00 | 65,12 | \$10.000,00 | \$1.000,00 | \$2.256,00 | \$13.256,00 | 32,56 |
| jan/06 | \$50.000,00 | \$10.000,00 | \$22.560,00 | \$82.560,00 | 65,12 | \$50.000,00 | \$5.000,00 | \$11.280,00 | \$66.280,00 | 32,56 |
| jan/06 | \$100.000,00 | \$20.000,00 | \$45.120,00 | \$165.120,00 | 65,12 | \$100.000,00 | \$10.000,00 | \$22.560,00 | \$132.560,00 | 32,56 |
| jan/06 | \$500.000,00 | \$100.000,00 | \$225.600,00 | \$825.600,00 | 65,12 | \$500.000,00 | \$50.000,00 | \$112.800,00 | \$662.800,00 | 32,56 |
| jan/06 | \$1.000.000,00 | \$200.000,00 | \$451.200,00 | \$1.651.200,00 | 65,12 | \$1.000.000,00 | \$100.000,00 | \$225.600,00 | \$1.325.600,00 | 32,56 |
| jan/06 | \$5.000.000,00 | \$1.000.000,00 | \$2.256.000,00 | \$8.256.000,00 | 65,12 | \$5.000.000,00 | \$500.000,00 | \$1.128.000,00 | \$6.628.000,00 | 32,56 |
| jan/06 | \$10.000.000,00 | \$2.000.000,00 | \$4.512.000,00 | \$16.512.000,00 | 65,12 | \$10.000.000,00 | \$1.000.000,00 | \$2.256.000,00 | \$13.256.000,00 | 32,56 |
| jan/06 | \$20.000.000,00 | \$4.000.000,00 | \$9.024.000,00 | \$33.024.000,00 | 65,12 | \$20.000.000,00 | \$2.000.000,00 | \$4.512.000,00 | \$26.512.000,00 | 32,56 |

| Case 2: Tax debts with administrative fines (75%) plus arrears interest | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------------|-------------------|----------------------|---------|-----------------------------|----------------------|-------------------|------------------------|---------|
| Month | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/06 | \$5.000,00 | \$3.750,00 | \$2.256,00 | \$11.006,00 | 120,12 | \$5.000,00 | \$1.875,00 | \$1.128,00 | \$8.003,00 | 60,06 |
| jan/06 | \$10.000,00 | \$7.500,00 | \$4.512,00 | \$22.012,00 | 120,12 | \$10.000,00 | \$3.750,00 | \$2.256,00 | \$16.006,00 | 60,06 |
| jan/06 | \$50.000,00 | \$37.500,00 | \$22.560,00 | \$110.060,00 | 120,12 | \$50.000,00 | \$18.750,00 | \$11.280,00 | \$80.030,00 | 60,06 |
| jan/06 | \$100.000,00 | \$75.000,00 | \$45.120,00 | \$220.120,00 | 120,12 | \$100.000,00 | \$37.500,00 | \$22.560,00 | \$160.060,00 | 60,06 |
| jan/06 | \$500.000,00 | \$375.000,00 | \$225.600,00 | \$1.100.600,00 | 120,12 | \$500.000,00 | \$187.500,00 | \$112.800,00 | \$800.300,00 | 60,06 |
| jan/06 | \$1.000.000,00 | \$750.000,00 | \$451.200,00 | \$2.201.200,00 | 120,12 | \$1.000.000,00 | \$375.000,00 | \$225.600,00 | \$1.600.600,00 | 60,06 |
| jan/06 | \$5.000.000,00 | \$3.750.000,00 | \$2.256.000,00 | \$11.006.000,00 | 120,12 | \$5.000.000,00 | \$1.875.000,00 | \$1.128.000,00 | \$8.003.000,00 | 60,06 |
| jan/06 | \$10.000.000,00 | \$7.500.000,00 | \$4.512.000,00 | \$22.012.000,00 | 120,12 | \$10.000.000,00 | \$3.750.000,00 | \$2.256.000,00 | \$16.006.000,00 | 60,06 |
| jan/06 | \$20.000.000,00 | \$15.000.000,00 | \$9.024.000,00 | \$44.024.000,00 | 120,12 | \$20.000.000,00 | \$7.500.000,00 | \$4.512.000,00 | \$32.012.000,00 | 60,06 |

| Case 3: Tax debts with late payment penalty (20%) plus arrears interest | | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------|-------------------|----------------------|---------|-----------------|-----------------------------|-------------------|------------------------|---------|--|
| | Amount without tax transaction | | | | | | Amount with tax transaction | | | | |
| Month | Value | Late payment | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Late payment | Arrears interest* | Amount in 02/05/2010** | % Raise | |
| jan/07 | \$5.000,00 | \$1.000,00 | \$1.581,00 | \$7.581,00 | 51,62 | \$5.000,00 | \$500,00 | \$790,50 | \$6.290,50 | 25,81 | |
| jan/07 | \$10.000,00 | \$2.000,00 | \$3.162,00 | \$15.162,00 | 51,62 | \$10.000,00 | \$1.000,00 | \$1.581,00 | \$12.581,00 | 25,81 | |
| jan/07 | \$50.000,00 | \$10.000,00 | \$15.810,00 | \$75.810,00 | 51,62 | \$50.000,00 | \$5.000,00 | \$7.905,00 | \$62.905,00 | 25,81 | |
| jan/07 | \$100.000,00 | \$20.000,00 | \$31.620,00 | \$151.620,00 | 51,62 | \$100.000,00 | \$10.000,00 | \$15.810,00 | \$125.810,00 | 25,81 | |
| jan/07 | \$500.000,00 | \$100.000,00 | \$158.100,00 | \$758.100,00 | 51,62 | \$500.000,00 | \$50.000,00 | \$79.050,00 | \$629.050,00 | 25,81 | |
| jan/07 | \$1.000.000,00 | \$200.000,00 | \$316.200,00 | \$1.516.200,00 | 51,62 | \$1.000.000,00 | \$100.000,00 | \$158.100,00 | \$1.258.100,00 | 25,81 | |
| jan/07 | \$5.000.000,00 | \$1.000.000,00 | \$1.581.000,00 | \$7.581.000,00 | 51,62 | \$5.000.000,00 | \$500.000,00 | \$790.500,00 | \$6.290.500,00 | 25,81 | |
| jan/07 | \$10.000.000,00 | \$2.000.000,00 | \$3.162.000,00 | \$15.162.000,00 | 51,62 | \$10.000.000,00 | \$1.000.000,00 | \$1.581.000,00 | \$12.581.000,00 | 25,81 | |
| jan/07 | \$20.000.000,00 | \$4.000.000,00 | \$6.324.000,00 | \$30.324.000,00 | 51,62 | \$20.000.000,00 | \$2.000.000,00 | \$3.162.000,00 | \$25.162.000,00 | 25,81 | |

| Case 3: Tax debts with administrative fines (75%) plus arrears interest | | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------------|-------------------|----------------------|---------|-----------------|-----------------------------|-------------------|------------------------|---------|--|
| | Amount without tax transaction | | | | | | Amount with tax transaction | | | | |
| Month | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010** | % Raise | |
| jan/07 | \$5.000,00 | \$3.750,00 | \$1.581,00 | \$10.331,00 | 106,62 | \$5.000,00 | \$1.875,00 | \$790,50 | \$7.665,50 | 53,31 | |
| jan/07 | \$10.000,00 | \$7.500,00 | \$3.162,00 | \$20.662,00 | 106,62 | \$10.000,00 | \$3.750,00 | \$1.581,00 | \$15.331,00 | 53,31 | |
| jan/07 | \$50.000,00 | \$37.500,00 | \$15.810,00 | \$103.310,00 | 106,62 | \$50.000,00 | \$18.750,00 | \$7.905,00 | \$76.655,00 | 53,31 | |
| jan/07 | \$100.000,00 | \$75.000,00 | \$31.620,00 | \$206.620,00 | 106,62 | \$100.000,00 | \$37.500,00 | \$15.810,00 | \$153.310,00 | 53,31 | |
| jan/07 | \$500.000,00 | \$375.000,00 | \$158.100,00 | \$1.033.100,00 | 106,62 | \$500.000,00 | \$187.500,00 | \$79.050,00 | \$766.550,00 | 53,31 | |
| jan/07 | \$1.000.000,00 | \$750.000,00 | \$316.200,00 | \$2.066.200,00 | 106,62 | \$1.000.000,00 | \$375.000,00 | \$158.100,00 | \$1.533.100,00 | 53,31 | |
| jan/07 | \$5.000.000,00 | \$3.750.000,00 | \$1.581.000,00 | \$10.331.000,00 | 106,62 | \$5.000.000,00 | \$1.875.000,00 | \$790.500,00 | \$7.665.500,00 | 53,31 | |
| jan/07 | \$10.000.000,00 | \$7.500.000,00 | \$3.162.000,00 | \$20.662.000,00 | 106,62 | \$10.000.000,00 | \$3.750.000,00 | \$1.581.000,00 | \$15.331.000,00 | 53,31 | |
| jan/07 | \$20.000.000,00 | \$15.000.000,00 | \$6.324.000,00 | \$41.324.000,00 | 106,62 | \$20.000.000,00 | \$7.500.000,00 | \$3.162.000,00 | \$30.662.000,00 | 53,31 | |

| Case 4: Tax debts with late payment penalty (20%) plus arrears interest | | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------|-------------------|----------------------|---------|-----------------|-----------------------------|-------------------|------------------------|---------|--|
| | Amount without tax transaction | | | | | | Amount with tax transaction | | | | |
| Month | Value | Late payment | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Late payment | Arrears interest* | Amount in 02/05/2010** | % Raise | |
| jan/08 | \$5.000,00 | \$1.000,00 | \$1.029,50 | \$7.029,50 | 40,59 | \$5.000,00 | \$500,00 | \$514,75 | \$6.014,75 | 20,30 | |
| jan/08 | \$10.000,00 | \$2.000,00 | \$2.059,00 | \$14.059,00 | 40,59 | \$10.000,00 | \$1.000,00 | \$1.029,50 | \$12.029,50 | 20,30 | |
| jan/08 | \$50.000,00 | \$10.000,00 | \$10.295,00 | \$70.295,00 | 40,59 | \$50.000,00 | \$5.000,00 | \$5.147,50 | \$60.147,50 | 20,30 | |
| jan/08 | \$100.000,00 | \$20.000,00 | \$20.590,00 | \$140.590,00 | 40,59 | \$100.000,00 | \$10.000,00 | \$10.295,00 | \$120.295,00 | 20,30 | |
| jan/08 | \$500.000,00 | \$100.000,00 | \$102.950,00 | \$702.950,00 | 40,59 | \$500.000,00 | \$50.000,00 | \$51.475,00 | \$601.475,00 | 20,30 | |
| jan/08 | \$1.000.000,00 | \$200.000,00 | \$205.900,00 | \$1.405.900,00 | 40,59 | \$1.000.000,00 | \$100.000,00 | \$102.950,00 | \$1.202.950,00 | 20,30 | |
| jan/08 | \$5.000.000,00 | \$1.000.000,00 | \$1.029.500,00 | \$7.029.500,00 | 40,59 | \$5.000.000,00 | \$500.000,00 | \$514.750,00 | \$6.014.750,00 | 20,30 | |
| jan/08 | \$10.000.000,00 | \$2.000.000,00 | \$2.059.000,00 | \$14.059.000,00 | 40,59 | \$10.000.000,00 | \$1.000.000,00 | \$1.029.500,00 | \$12.029.500,00 | 20,30 | |
| jan/08 | \$20.000.000,00 | \$4.000.000,00 | \$4.118.000,00 | \$28.118.000,00 | 40,59 | \$20.000.000,00 | \$2.000.000,00 | \$2.059.000,00 | \$24.059.000,00 | 20,30 | |

| Case 4: Tax debts with administrative fines (75%) plus arrears interest | | | | | | | | | | | |
|--------------------------------------------------------------------------------|--------------------------------|----------------------|-------------------|----------------------|---------|-----------------|-----------------------------|-------------------|------------------------|---------|--|
| | Amount without tax transaction | | | | | | Amount with tax transaction | | | | |
| Month | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010** | % Raise | |
| jan/08 | \$5.000,00 | \$3.750,00 | \$1.029,50 | \$9.779,50 | 95,59 | \$5.000,00 | \$1.875,00 | \$514,75 | \$7.389,75 | 47,80 | |
| jan/08 | \$10.000,00 | \$7.500,00 | \$2.059,00 | \$19.559,00 | 95,59 | \$10.000,00 | \$3.750,00 | \$1.029,50 | \$14.779,50 | 47,80 | |
| jan/08 | \$50.000,00 | \$37.500,00 | \$10.295,00 | \$97.795,00 | 95,59 | \$50.000,00 | \$18.750,00 | \$5.147,50 | \$73.897,50 | 47,80 | |
| jan/08 | \$100.000,00 | \$75.000,00 | \$20.590,00 | \$195.590,00 | 95,59 | \$100.000,00 | \$37.500,00 | \$10.295,00 | \$147.795,00 | 47,80 | |
| jan/08 | \$500.000,00 | \$375.000,00 | \$102.950,00 | \$977.950,00 | 95,59 | \$500.000,00 | \$187.500,00 | \$51.475,00 | \$738.975,00 | 47,80 | |
| jan/08 | \$1.000.000,00 | \$750.000,00 | \$205.900,00 | \$1.955.900,00 | 95,59 | \$1.000.000,00 | \$375.000,00 | \$102.950,00 | \$1.477.950,00 | 47,80 | |
| jan/08 | \$5.000.000,00 | \$3.750.000,00 | \$1.029.500,00 | \$9.779.500,00 | 95,59 | \$5.000.000,00 | \$1.875.000,00 | \$514.750,00 | \$7.389.750,00 | 47,80 | |
| jan/08 | \$10.000.000,00 | \$7.500.000,00 | \$2.059.000,00 | \$19.559.000,00 | 95,59 | \$10.000.000,00 | \$3.750.000,00 | \$1.029.500,00 | \$14.779.500,00 | 47,80 | |
| jan/08 | \$20.000.000,00 | \$15.000.000,00 | \$4.118.000,00 | \$39.118.000,00 | 95,59 | \$20.000.000,00 | \$7.500.000,00 | \$2.059.000,00 | \$29.559.000,00 | 47,80 | |

| Case 5: Tax debts with late payment penalty (20%) plus arrears interest | | | | | | | | | | |
|--------------------------------------------------------------------------------|---------------------------------------|---------------------|--------------------------|-----------------------------|----------------|------------------------------------|---------------------|--------------------------|-------------------------------|----------------|
| Month | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| | Value | Late payment | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Late payment | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/09 | \$5.000,00 | \$1.000,00 | \$429,50 | \$6.429,50 | 28,59 | \$5.000,00 | \$500,00 | \$214,75 | \$5.714,75 | 14,30 |
| jan/09 | \$10.000,00 | \$2.000,00 | \$859,00 | \$12.859,00 | 28,59 | \$10.000,00 | \$1.000,00 | \$429,50 | \$11.429,50 | 14,30 |
| jan/09 | \$50.000,00 | \$10.000,00 | \$4.295,00 | \$64.295,00 | 28,59 | \$50.000,00 | \$5.000,00 | \$2.147,50 | \$57.147,50 | 14,30 |
| jan/09 | \$100.000,00 | \$20.000,00 | \$8.590,00 | \$128.590,00 | 28,59 | \$100.000,00 | \$10.000,00 | \$4.295,00 | \$114.295,00 | 14,30 |
| jan/09 | \$500.000,00 | \$100.000,00 | \$42.950,00 | \$642.950,00 | 28,59 | \$500.000,00 | \$50.000,00 | \$21.475,00 | \$571.475,00 | 14,30 |
| jan/09 | \$1.000.000,00 | \$200.000,00 | \$85.900,00 | \$1.285.900,00 | 28,59 | \$1.000.000,00 | \$100.000,00 | \$42.950,00 | \$1.142.950,00 | 14,30 |
| jan/09 | \$5.000.000,00 | \$1.000.000,00 | \$429.500,00 | \$6.429.500,00 | 28,59 | \$5.000.000,00 | \$500.000,00 | \$214.750,00 | \$5.714.750,00 | 14,30 |
| jan/09 | \$10.000.000,00 | \$2.000.000,00 | \$859.000,00 | \$12.859.000,00 | 28,59 | \$10.000.000,00 | \$1.000.000,00 | \$429.500,00 | \$11.429.500,00 | 14,30 |
| jan/09 | \$20.000.000,00 | \$4.000.000,00 | \$1.718.000,00 | \$25.718.000,00 | 28,59 | \$20.000.000,00 | \$2.000.000,00 | \$859.000,00 | \$22.859.000,00 | 14,30 |

| Case 5: Tax debts with administrative fines (75%) plus arrears interest | | | | | | | | | | |
|--------------------------------------------------------------------------------|---------------------------------------|-----------------------------|--------------------------|-----------------------------|----------------|------------------------------------|-----------------------------|--------------------------|-------------------------------|----------------|
| Month | Amount without tax transaction | | | | | Amount with tax transaction | | | | |
| | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010 | % Raise | Value | Administrative fines | Arrears interest* | Amount in 02/05/2010** | % Raise |
| jan/09 | \$5.000,00 | \$3.750,00 | \$429,50 | \$9.179,50 | 83,59 | \$5.000,00 | \$1.875,00 | \$214,75 | \$7.089,75 | 41,80 |
| jan/09 | \$10.000,00 | \$7.500,00 | \$859,00 | \$18.359,00 | 83,59 | \$10.000,00 | \$3.750,00 | \$429,50 | \$14.179,50 | 41,80 |
| jan/09 | \$50.000,00 | \$37.500,00 | \$4.295,00 | \$91.795,00 | 83,59 | \$50.000,00 | \$18.750,00 | \$2.147,50 | \$70.897,50 | 41,80 |
| jan/09 | \$100.000,00 | \$75.000,00 | \$8.590,00 | \$183.590,00 | 83,59 | \$100.000,00 | \$37.500,00 | \$4.295,00 | \$141.795,00 | 41,80 |
| jan/09 | \$500.000,00 | \$375.000,00 | \$42.950,00 | \$917.950,00 | 83,59 | \$500.000,00 | \$187.500,00 | \$21.475,00 | \$708.975,00 | 41,80 |
| jan/09 | \$1.000.000,00 | \$750.000,00 | \$85.900,00 | \$1.835.900,00 | 83,59 | \$1.000.000,00 | \$375.000,00 | \$42.950,00 | \$1.417.950,00 | 41,80 |
| jan/09 | \$5.000.000,00 | \$3.750.000,00 | \$429.500,00 | \$9.179.500,00 | 83,59 | \$5.000.000,00 | \$1.875.000,00 | \$214.750,00 | \$7.089.750,00 | 41,80 |
| jan/09 | \$10.000.000,00 | \$7.500.000,00 | \$859.000,00 | \$18.359.000,00 | 83,59 | \$10.000.000,00 | \$3.750.000,00 | \$429.500,00 | \$14.179.500,00 | 41,80 |
| jan/09 | \$20.000.000,00 | \$15.000.000,00 | \$1.718.000,00 | \$36.718.000,00 | 83,59 | \$20.000.000,00 | \$7.500.000,00 | \$859.000,00 | \$28.359.000,00 | 41,80 |

PS: * I applied software Sicalc for calcute arrears interest. Available in <http://www.receita.fazenda.gov.br/pagamentos>

Arrears Selic: January, 2010 for payment in February, 5th, 2010.

** Amount with tax transaction - Abatement: 50% for administrative fine, late payment and arrears.