Tax Whistleblowing: International Practices and Legal Regime in Brazil

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Abstract

Objective: This article aims to discuss tax whistleblowing. First, its fundamentals and legal nature are discussed. Then, compared international practices in tax whistleblower programs are stated and analyzed. Method: the objective and formal aspects of tax whistleblowing and the subjective legal elements - whistleblower, accused, and Administration - are reviewed. In the sequence, the procedure of tax whistleblowing in the Brazilian Federal Tax Administration is critically exposed. Finally, given the growing international use of rewards in tax whistleblowing, a brief reflection is promoted on the advantages and disadvantages of offering monetary incentives to tax whistleblowers. Results: Provides some recommendations for strengthening a tax whistleblower program. From the analysis from in the Brazilian Federal Tax Administration, it can be observed: i) a lack of clarity of the rules and procedures of a tax complaint procedure; ii) lack of massive dissemination of the mechanism to promote tax complaints; iii) practical difficulty to make a tax complaint, currently promoted a centralized site, outside the Tax Administration, without specific information to the tax complainant and not very friendly, which makes it unlikely to offer practical information that may be feasible to start a tax procedure and; iv) perception of low adequate protection of the tax complainant, who is not supported with a statute or defined rules for their protection. In this context, it is not surprising that the effect of tax complaints is minimal in Brazil, if not negligible, in the comprehensive collection and inspection actions of the Federal Revenue Service and without any behavioral impact on the degree of compliance of taxpayers. Final considerations: Encouraging tax whistleblowers by ensuring protection and, perhaps, rewards are a cost-effective and efficient alternative to obtain information on tax irregularities and tax wrongdoings that are difficult to detect by traditional tax screening and auditing methods.

Keywords: Tax whistleblowing, Rewarded tax whistleblowing, Whistleblower, Tax Administration, Taxation.

1 INTRODUCTION AND PROBLEM

Denunciation comes from the Latin word *nuntiare*, which means to warn, notify, or inform. Therefore, denunciation is defined as the action and effect of denouncing and as a document in which news is given to the competent Authority of the occurrence of a crime or offense. The term denounces interpreted, among the various meanings it provides, as alerting or notifying something and giving the judicial or administrative authority part or notification of an illegal action, or an irregular event (Aparicio Pérez, 2002, p. 13–14). Thus, it can be summarized that for the linguistic codification of Portuguese, denounce should be understood as any action of warning to give the authority part or notice of an unlawful act or an unauthorized event.

Reporting tax irregularities, if properly structured, is a vital tool to promote transparency, fairness, and democracy. It can prevent tax misconduct that undermines the state budget, such as tax evasion and money laundering, whether linked to international criminal organizations. In the contemporary context of free movement of capital and global tax competition, tax whistleblowing is also relevant as a tool for information exchange (Dourado, 2018, p. 422–423).

It is recognized that the tax report is a controversial institution, given the historical and cultural repudiation to this means of obtaining information on facts with tax transcendence, often coming from people very close to the accused. However, the instrument's effectiveness is undeniable, either by identifying infractions unknown to the tax authority or by the economic costs to society since inspection expenses consume natural resources and prolonged investigation. At the same time, the rewarding of whistleblowers represents mere wealth transfers, with a potential behavioral and dissuasive aspect that discourages new illicit and irregular practices in tax matters (Davis-Nozemack & Webber, 2015, p. 322–325). Despite these benefits, tax whistleblowing does not seem to have aroused the deserved interest of the Brazilian Federal Tax Administration. In the opposite direction, international tax agencies of democratic states have already identified their importance, so much that they value whistleblower information as a valuable resource to increase tax *compliance* and the effectiveness of their tax actions.

As a general premise, it is argued that the information from tax complaints is crucial for the Administration, so it would be up to the Administration to create conditions to optimize the use of this instrument. In order to facilitate decision making by the potential whistleblower, the Tax Administration should develop incentives for making tax reports, reducing costs for the whistleblower, by encouraging and disseminating the importance of tax reports, as well as making whistleblowers aware and protected of their risks, ensuring confidentiality, or even compensating their losses. In terms of benefits, it can also reward and create positive incentives for tax reporting in certain situations, whether monetary or non-monetary.

This article will discuss the fundamentals and legal nature of tax whistleblowing. In a subsequent part, international practices of the best Tax Administrations in using this

instrument to obtain information regarding tax violations will be presented. Then, the tax complaint's subjective, objective, and formal legal elements will be given. Next, from a legal perspective, a reflection will be made on the processing of tax complaints in the context of the Federal Tax Administration. Finally, the potential use of premature tax reporting will be discussed, following the example of foreign models, discussing advantages and disadvantages. Finally, some recommendations will be presented for more rational and practical use of tax whistleblowing by the Brazilian Tax Administration.

2 FOUNDATIONS AND LEGAL NATURE

Tax whistleblowing may have several grounds that justify it from the conception as an act of defense of the public interest or its view as an act of collaboration with the Tax Administration. Some arguments conceive tax whistleblowing as a right of taxpayer participation in the tax management process or a citizen's civic duty to alert the non-compliance with a rule of a tax nature. From the Administration's perspective, the goal of any tax whistleblower program should be to improve the application and collection of taxes through more efficient tax audits, ensuring greater compliance and observance of regulations.

Tax reporting is a voluntary act; it does not imply a legal duty. It is warned that tax reporting, an act of the whistleblower's exclusive initiative, does not generally give rise to a legal relationship between the whistleblower and the Administration unless the right to a premium is foreseen. The whistleblower may not demand a specific action from the Administration related to the subject of the complaint (Zabala Rodríguez-Fornos, 2008, p. 3–4).

In whistleblowing, the function attributed to the act is to inform specific facts to the Administration, thus excluding the legal interest the use of the action for a different purpose, which may be what moves the whistleblower to make the complaint. The private interests that guide the whistleblower are personal, maintain their autonomy, and will only be relevant as long as they conflict with the function assigned to them by the legal system. The interest that the act of tax whistleblowing aims to accomplish is the Administration's interest in being informed of facts with tax transcendence, which it might have difficulty knowing through its means. The Administration's interest in being satisfied is not the private interest in obtaining income or helping the whistleblower's desires, but the objective, as the person responsible for the observance of tax rules, of ensuring that the law is followed and, therefore, that the principles of tax justice are observed. In short, the interest to be weighed in the tax complaint is the public and general interest (Cuadrado Rodriguez, 1994, p. 9–12).

It is warned that the Federal Tax Administration must be cautious with anonymous reports[i], mainly to avoid false statements against which the accused would have no way to react. But in addition, anonymous reports can hide the obtaining of information through the violation of fundamental rights or the practice of a crime or illegality by the whistleblower. However, suppose clear and reliable evidence is provided and sufficient indications of truthfulness in the reported facts. In that case, the tax authority should order the actions it deems appropriate. Still, these should not be caused by the anonymous tip but by the tax authority's decision,

based on its obligation to comply with and enforce the law. In a certain sense, with other "nuances," this manifestation is treated as an anonymous communication to the Administration of tax incidents that should be accepted, giving them the course that is deemed appropriate, expression of a reality that the Authority can know and act accordingly.

Undoubtedly anonymous communications have contemporarily acquired singular importance in a society framed in a context marked by physical insecurity, a debate about the ineffectiveness of criminal policy, and the feeling of weakness of the State to solve social conflicts. However, the lack of identification of the whistleblower can cause defenselessness in the accused, and even by the Administration, particularly concerning the possibility that the complaint involves the illegal obtaining of evidence because it was received in violation of fundamental rights or through the commission of a crime[ii]. Below are the international best practices of the Tax Administration in structuring its program to encourage tax whistleblowing.

3 INTERNATIONAL COMPARATIVE PRACTICES IN TAX WHISTLEBLOWING

In principle, it should be noted that, at the basis of each tax whistleblower model in the systems taken as reference, the essence of the institute always starts from the need to strengthen the protection of the public interest in the discovery and repression of tax offenses and infractions to the detriment of the safety of the private interest in privacy, which represents a tangible sign of the goal of improving the degree of civilization of collective life and the consequent regression of individualism (Marino, 2020, p. 701). In the fight against any chance of tax evasion, each system shows a different approach to tax whistleblowing. Most of them provide only mechanisms to protect whistleblowers, influenced by the country's political, social, historical, and historical-cultural factors.

In the United States, the *Internal Revenue Service* (IRS) maintains a *website* dedicated to providing information regarding reports of suspected tax fraud activities[iii]. Whistleblowers are encouraged to report, among others: i) false exemptions or deductions; ii) the use of a false or altered document; iii) non-payment of taxes; iv) unreported income; v) lack of withholding; vi) any lack of compliance with tax laws. It is suggested that you send a letter or use a specific form, providing detailed information on the tax irregularity. The IRS also provides the possibility of paying rewards to people who provide specific and credible information that collects a tax credit[iv]. The tip to the whistleblower is conditioned on providing solid hints, not on an "educated guess" or unsupported speculation. If the disputed tax credit exceeds $2 million, the IRS may pay 15 to 30 percent of the amount collected. If the whistleblower disagrees with the outcome of the complaint, they may appeal to the Tax Court. The IRS also has an award program for other whistleblowers - usually, those who do not meet the $2 million thresholds in disputes or cases involving individual taxpayers with gross incomes of less than $200,000. In these cases, the awards are discretionary, and the whistleblower cannot challenge the outcome of the claim in Tax Court[v].

In the United Kingdom (UK), *HM Revenue and Customs* (HMRC) also has a *website* dedicated to providing information and an interface for making tax complaints[vi]. It indicates that confidentiality of reporting will be maintained and recommends that a report be made when it concerns: i) omission of income (e.g., on company profits); ii) keeping business "off the books"; iii) always dealing in cash, and not providing receipts; iv) hiding money; v) title or other assets in an offshore bank account; vii) company or its employer paying workers with "cash in hand" without paying Income Tax or National Insurance. HMRC does not publicly disclose the additional taxes collected from whistleblowers' information, and provision is made to pay awards to whistleblowers, but the criteria are not very transparent. In its reports, HMRC states that several factors determine the exact amount of the awards, such as the tax recovered, the estimated amount of revenue loss avoided, and other benefits, such as the time saved from enforcement on cases.

The *Canada Revenue Agency* (CRA) has a user-friendly digital portal for tax complaints. It provides a wealth of information to potential whistleblowers, answers questions, suggests facts to report, evidence to attach, and guarantees absolute confidentiality for the whistleblower[vii]. The CRA also offers a rewards program for tax whistleblowers, but exclusively for matters relating to sizeable international tax evasions or aggressive tax planning leading to the collection of taxes owed under the *Offshore Tax Informant Program* (OTIP)[viii]. Reward amounts under the OTIP range from 5% to 15% of the additional federal tax collected, excluding interest and penalties. The CRA determines the final reward percentage based on the quality and relevance of the information provided, its value to the CRA, and the level of cooperation.

For its part, the *Australian Taxation Office* (ATO) has a *Whistleblowers* program that provides various protections to *whistleblowers*, although it does not reward them[ix]. The protections offered by the ATO program are, among others: i) identity protection; ii) protection against any loss from administrative, civil, and criminal actions arising from the whistleblower; iii) compensation for losses. In addition, when the whistleblower is found to have suffered loss, damage, or injury due to the whistleblowing, the person who caused the damage is ordered to compensate the whistleblower. Examples of available remedies include payment of damages, reinstatement to employment, an injunction to stop harmful conduct[x].

In European Union (EU) countries, it is common to see *websites* dedicated to tax complaints or reference the e-mail address to which tax complaints can be forwarded. For example, the Spanish Tax Administration Agency (AEAT) website can find an exclusive and dedicated portal with detailed information on complaints, from legislation to tax management procedures[xi]. Furthermore, in the European Platform for Good Tax Governance, the European Commission held a public consultation among its members to gather views on the protection of whistleblowers concerning tax issues[xii]. Given the Commission's Public Consultation summary results, it is stated that the tax whistleblower should be protected, i.e., through specific rules, because the object of protection, the strategies, and use and disclosure of data may require detailed responses. Therefore, a Commission Recommendation has adopted a de minimis rule at the current stage (Nyreröd & Spagnolo, 2018, p. 2–4). In addition, the

commission has expressed its opposition to malicious, frivolous, or abusive whistleblowing; denying any protection to anyone who provides information that is already entirely in the public domain or comes from hearsay; announces that those who, at the time of whistleblowing, deliberately and knowingly report incorrect or misleading information will not enjoy protection. The commission has also stated that the whistleblower's motives in making the complaint are irrelevant in determining whether that person should receive protection (Garrido Juncal, 2019, p. 137–138). The following section discusses the legal elements of a tax complaint.

4 LEGAL ELEMENTS OF THE TAX COMPLAINT

This part will discuss the legal elements of a tax complaint. For this purpose, we classify them into subjective, objective, and formal elements. First, the complainant's role, the accused, and the Tax Administration will be subjective. Next, we will analyze which substantial parts justify a tax claim in the objective elements. Finally, in the formal aspects, we will present the means and procedures by which a tax claim is processed in the Brazilian Federal Tax Administration context.

4.1 Subjective elements: whistleblower, accused, and Tax Administration.

A tax whistleblower is any public person who voluntarily reports any illegal or irregular act of a tax nature. Identified whistleblowers, unlike anonymous communications, have the most significant potential as a source of intelligence since their information tends to be more truthful, detailed, and specific. Although they are identified, it is natural that they expect their cooperation to be confidential (Araujo, 2013, p. 372).

Whistleblowers are often former or even current employees of an organization, relatives, or people close to the whistleblower who report an offense or a threat against the common tax interest that has been committed or is about to occur. In addition, whistleblowers report violations or illegalities and actions considered immoral or against the public good or welfare.

As a rule, the whistleblower has no right to be informed of the outcome of the tax procedure, nor does he have the right to be heard during the tax procedure. During procedural phases, he does not need to be made aware of or make allegations or obtain a copy of the documents included in the administrative process. Likewise, the right to file appeals is not provided (Aparicio Pérez, 2002, p. 67–73). However, this general principle may yield in cases where the whistleblower has a genuine legitimate interest in the success of the complaint; think, for example, of the case in which the whistleblower is a company that files a complaint against another company in the same sector and location, with which it cannot compete because the latter avoids paying taxes by some illegitimate procedure. In this case, the whistleblower is a real interested party to whom the general rules of the administrative process should be applied (Burlada Echeveste & Burlada Esteve, 2010, p. 15–16).

It is emphasized that whistleblowers should be protected. They act in the public interest by revealing practices harmful to the State, mainly when they generate massive tax revenue

losses. It is understood that whistleblowers are not required to accurately classify, in a legal sense, the elements they choose to reveal. In other words, they must provide facts, not legal reasoning. In this sense, whistleblowers deserve protection even if they cannot certify that the facts reported are inconsistent with the tax law [xiii].

As far as it is concerned, the accused is any person susceptible to tax obligations and duties. Except in situations in which the delay of the beginning of the tax procedure puts at risk the interests of the National Treasury or in which the audit is based on data available in the bases of the Tax Administration, hypotheses in which the issue is delayed, or the term of distribution of the tax procedure is not even issued, the accused, as an interested party, is notified of the beginning of the tax procedure and informed to provide clarifications or present documents. It should be noted that the systems for selecting the taxpayers to be submitted to inspection procedures are confidential and are not subject to publicity, communication, or disclosure to the taxpayers. Therefore, the Administration has no obligation to inform the taxpayer about the actions related to the receipt and preliminary analysis of the complaint. Likewise, there is no legal obligation to notify the complainant, at the time of initiating the inspection procedure or during its development, of the reasons why it was decided to start the process. The rules contemplate the taxpayers' right to be informed of the initiation of the procedure, about its nature and scope, without the need to refer to the reason.

The question arises whether or not the accused has the right to know the whistleblower's name. As in the vast majority of international experiences, the Brazilian legislation in force requires the federal executive branch to protect the identity and the elements that allow the identification of the whistleblower.

Therefore, in Brazil, the accused is not even given the right to know that he has been denounced, much less to know the denouncer. However, it can be argued that this anonymity, or silence, at least from the point of view of the accused, clashes with the idea of impartiality and transparency in the actions of the Administration and, in some cases, it would be difficult to determine when the lack of knowledge of the whistleblower would make the accused defenseless. Additionally, there is a current that holds that since the whistleblower is obliged to endure the Administration's actions aimed at verifying and investigating the facts of the whistleblower and their consequences, then the whistleblower could be entitled to take action against the whistleblower in civil or criminal proceedings if he has evidence that a slanderous report has occurred.

Filing a complaint immediately gives rise to a whole series of obligations and rights for and against the Administration. First, an adequately filed tax complaint obliges the Administration to initiate a procedure. The problem now shifts to whether it is necessary and the scope of an inspection against the complainant. In addition, the Administration must conclude the procedure initiated as a result of the complaint and must do so without undue delay. Finally, the Administration that has received a tax complaint must analyze it to assess whether or not it contains sufficient evidence to initiate a more in-depth inspection procedure.

The relationship between the accused party and the Administration is similar to that of any other taxpayer. So that the accused party must have access to the evidence of the facts or illegal acts that are alleged against him as a result of the complaint, whether it accompanies the complaint itself or was obtained during the investigation, so that he can claim whatever is in his interest and according to his rights.

4.2 Objective elements: Irregularities with fiscal transcendence

The complaint must deal with facts or situations that may constitute tax violations or be essential for applying taxes. In principle, the confirmation of the facts or conditions reported will determine the opening of the inspection procedure, since it is expected that they have involved concealment of income or a violation of tax duties. This information can help the Administration perform its responsibilities under the law. If the whistleblower has reasonable grounds to suspect that the news indicates misconduct, or inappropriate circumstances, about the tax affairs of a legal entity or individual, objectively, the tax complaint would be justified.

The content of a complaint can be both material and formal non-compliance with tax obligations. The complaint will refer to facts or situations that the complainants know of and are constitutive of tax violations or are otherwise critical to the knowledge of the Tax Administration. This meaning allows the complaint to refer both to those facts or actions that constitute an infraction and those that, even if they do not, have tax implications.

4.3 Formal elements: Channel for complaints

In the Federal Tax Administration context, the tax complaints are received by the Ombudsman's Office of the Ministry of Economic, primarily through the *internet*, using Fala.BR, of the Office of the Comptroller General, concentrates on the manifestations of the users of public services, including complaints, suggestions, compliments, and denunciations. Among the complaints reported, we have tax complaints.[xiv]

The rules that regulate complaints, in general, require that they be submitted in writing and digitally, preferably with the identification of the complainant. However, nothing prevents a complaint from being made orally before the competent body, although the complainant should be advised of the need for a digital record to convert the oral report into a term. In the current model, complaints and anonymous reports of tax irregularities are submitted to the Ombudsman's Office of the Ministry of Economy, concentrated in the single-channel for receiving and processing complaints. Suppose the complaint is received by physical means, e-mail, telephone, in person, or other attendance means. In that case, it must be immediately inserted into the computerized system of the Federal Executive Branch. It should be noted that any complaint received by any unit of the Ministry must be forwarded to the Ombudsman's Office for inclusion in the system within fifteen days.

To corroborate the factual description, it is recommended to provide evidence, which should be at least in a minimum amount that makes it possible to believe in the integrity of the facts reported and, at the same time, should have an appearance of good law in the sense that, in

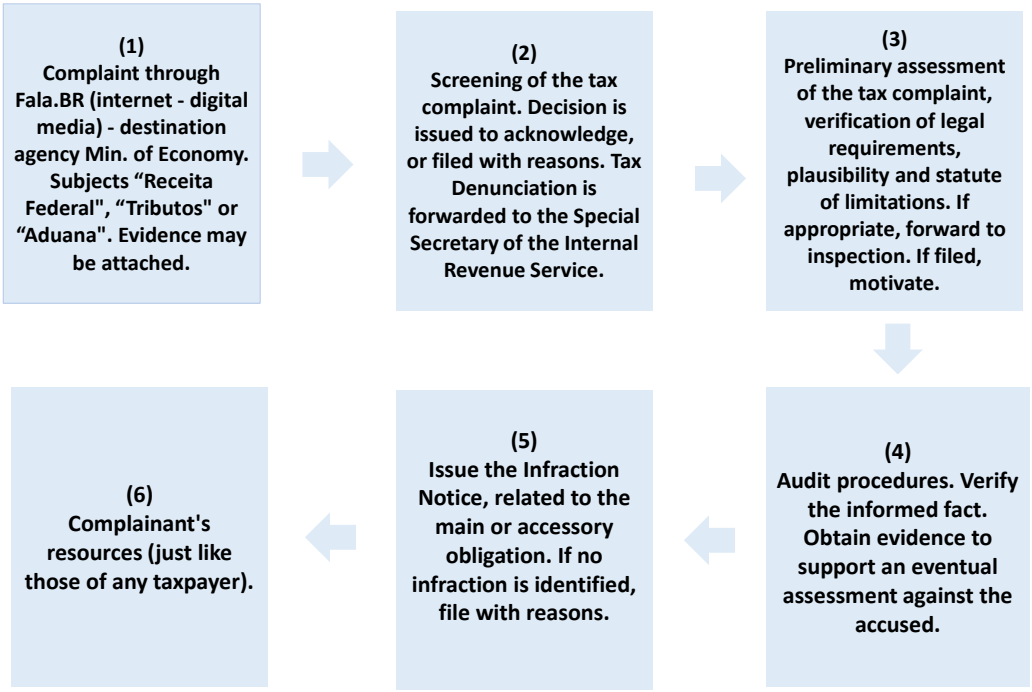
principle, it should be appreciated that it was obtained legally, according to the rules established for the collection of evidence[xv]. Examples of evidence would be e-mails with details that help identify the suspected tax irregularities, invoices, receipts, financial statements of checks, contracts, lease terms, bank account numbers.

A distinction must be made between the data provided by the complaint and those resulting from the Administration's verification since the former may be merely informative or circumstantial, without constituting elements of proof. It is important to note that, *a priori*, the evidence does not come with the complaint but from the preliminary assessment or the subsequent administrative inspection by the tax authority. Further, it is important to differentiate, in the reported facts, between those known and those unknown to the Administration: i) if the Administration already knows the facts, totally or partially, the activity is exclusively administrative, so that it absorbs or disengages the complaint, with the initiation or continuation of the procedure by the Administration, and, in such a case, it is not appropriate to incorporate elements of the complaint to the procedure nor, most of the time, is the complainant interested; ii) if the facts are unknown, the Tax Administration may initiate the appropriate procedures if there are sufficient indications of the veracity of the facts reported; it being understood that these procedures also do not originate in the complaint, but in the administrative powers of investigation and, therefore, the incorporation of the complaint into the procedure may not be necessary nor will the complainant be treated as an interested party.

In short, as a rule, the tax complaint should not be part of the administrative tax procedure that is initiated. However, this does not imply that the evidence provided by the whistleblower should permanently be excluded, keeping only the data in possession or obtained by the Administration. In the case of evidence in the technical legal sense, i.e., means or elements that are intended to convey the conviction of the competent body, the non-incorporation of the complaint in the inspection procedure does not prevent, in our opinion, the possible inclusion of the evidence that was submitted with it, provided that the complainant can offer the corresponding counterevidence, even without necessarily revealing the identity of the complainant.

5. PROCESSING OF TAX COMPLAINTS IN THE BRAZILIAN FEDERAL GOVERNMENT

As already mentioned, in the context of the Federal Government in Brazil, the citizen can submit his tax complaint through the Ombudsman's Office of the Ministry of Economics. Under the prescribed terms, he does not need certainty, only a suspicion of illegal activity[xvi]. Nevertheless, the complaint should preferably be accompanied by identification and the minimum elements to characterize the infraction. The following diagram shows in sequence the usual steps, in theory, in processing a tax complaint at the federal level.



Graph 1. Current processing of tax whistleblowing in the Federal Government

Once the complaint is received, if known, it will be sent to the competent body to carry out the appropriate actions and may be filed when it is considered unfounded or when the facts or persons reported are not sufficiently specified or identified[xvii]. The Administration's position may be compromised when, after a complaint is filed against a taxpayer and, supposedly, after multiple investigations, it is concluded that the facts reported lack consistency or, even worse, that being true, they are out of date for any inspection action. That is why this preliminary analysis is crucial for evaluating the accusation.

In the preliminary analysis, the Administration verifies the content of the complaint, evaluates the evidence provided, and confronts it with the information at its disposal to judge its importance to the public interest concerning facts or situations allegedly constitutive of a tax violation or transcendence for tax management. This activity does not derive from the complaint but from the law, which grants the Administration, in general, an investigative action.

Two questions may be raised regarding filing the complaint: 1st) Can the Administration close a complaint without any motivation? The most reasonable solution is to consider that the dismissal of the complaint must always be justified to avoid arbitrary acts in administrative procedures. It is the Administration's duty, in the exercise of a public function, to act with impartiality, transparency, and objectivity, which requires that, if it concludes by closing the case, such administrative act must be motivated and the result of the analysis of the admissibility of the complaint must be communicated to the complainant; 2nd) Can an

appeal be filed against the decision to dismiss the complaint? We believe that the inadmissibility of a complaint can be appealed by the complainant, as his or her lack of standing to complain or appeal refers to the "results" of the administrative activity after the beginning of the tax procedure, and not to the inadmissibility of the complaint by the Ombudsman's Office of the Ministry of Economy.

The complaint, ideally, should be supported by a principle of proof that believes the authenticity of the facts contained in it. However, in practice, especially concerning documentary evidence, it is difficult to provide it if there is no relationship of trust between the complainant and the accused. Thus, if it resorts to evidence submitted by the complainant, the Administration must verify that it was obtained following the law. If it was received in violation of the law or fundamental rights, it could not be used in possible actions against the accused. Therefore, after verifying the taxable event and, when appropriate, performing the corresponding investigation actions, the Administration will proceed with the assessment.

An important issue is determining the possible claims and appeals arising from the tax complaint. In the inadmissibility or filing of the complaint, the whistleblower is not even aware of what happened. Once inspected, the accused may appeal the Administration's fines. As he is not made aware of the accusation, in practice, he can't act against the accuser in cases of slanderous accusations. There is, however, controversy regarding the possible remedies for the whistleblower. It seems reasonable to assume that the whistleblower would only have the standing to file appeals concerning possible participation in an award on the outcome of the complaint. The following discusses one whistleblower incentive option that has been highly valued, especially in countries of Anglo-Saxon origin, award-winning tax whistleblowers.

6. REWARDED TAX WHISTLEBLOWING

Rewards, also known as rewards, are amounts paid to a whistleblower for information, always based on the Administration's satisfaction with the results achieved. Therefore, it is essential to make the rules and values of the rewards clear from the beginning of the recruitment of the whistleblower, being careful about promises that cannot be fulfilled (Araujo, 2013, p. 374).

Whistleblower reward schemes have gained public and academic attention for some time. Fueling calls for installing a reward approach in numerous regulatory areas, from workplace safety, environmental protection, and civil rights to political corruption, immigration, and "antitrust" (Engstrom, 2014, p. 605). However, despite the enthusiasm, reward regimes have remained confined to the context of tax fraud in some countries of Anglo-Saxon origin - the US, UK, and Canada. This proposal has been systematically disregarded in continental Europe - if not intentionally neglected (T. Nyreröd & Spagnolo, 2021, p. 92). Indeed, until quite recently, the protection of tax whistleblowers itself was ignored by European countries.

In the forties of the last century, there was already legal provision for paying a premium for the whistleblower in Brazil. A system was implemented known as the quota-part of the fines, attributed to the whistleblower up to 20% of the penalty levied against the accused. In this system, if it was necessary to determine whether the complaint was justified, 50% of this

share went to the public servant or servants responsible. The experience of using rewards in Brazil was temporary and ceased to exist even before the anti-democratic military period[xviii].

To enforce the rules, the Administration must know, at least in some cases, when the tax rule is violated. A central assumption about public enforcement is that information about rule violations is usually obtained by investing real resources in employment enforcement activity. However, tax rule violations are almost always known by non-violators, such as employees, neighbors, or family members of the violator. Therefore, an alternative way to obtain information about such violations is to reward these people for sharing this information (Givati, 2016, p. 43–44).

For some, whistleblowing is a form of social ethics, proof that people should protect the public interest from fraud committed by individuals or organizations. On the other hand, some people see whistleblowing as a form of unethical behavior because whistleblowing violates privacy fundamentals, especially for companies and family circles. The whistleblower often faces a dilemma: he has to choose between loyalty to his social circle where the fraudulent activity occurs or prevailing the norm of justice (T. Nyreröd & Spagnolo, 2021, p. 85–86). In this context, in addition to legal protection legislation for whistleblowers, alternatives should be sought to create positive incentives for making tax complaints. Potential tax whistleblowers often hesitate to report to the Tax Administration. This is because tax whistleblowing has some properties of a public good. While the whistleblower often gains little more than the satisfaction of "doing the right thing," he anticipates potentially staggering costs. In addition to employer-imposed direct retaliatory sanctions that can culminate in job loss, whistleblowers reportedly face denylists from other potential employers in the industry, ostracism from colleagues, and the psychological and physical costs caused by stress, public exposure, and the like (Schmolke & Utikal, 2018, p. 2–3). In summary, the tax whistleblower is highly under-compensated for their socially beneficial efforts.

A benchmark in the use of rewards to *whistleblowers* is the IRS *Whistleblowers*, which in 2006 made fundamental changes to its rewards program for tax whistleblowers. Under the new law, the payment of rewards to whistleblowers was no longer discretionary, and the rewards were increased. In a similar vein, in 2010, the *Dodd-Frank Act* directed the Securities and Exchange Commission (SEC) to individuals who provide original information leading to successful enforcement actions resulting in monetary penalties. These experiments have shown encouraging results. For example, the IRS has observed that audits resulting from the information provided by the whistleblower are more efficient than traditional examinations. In addition, it has been identified that audits originating from whistleblowers are highly cost-effective, with the agency incurring only four cents in costs per dollar collected. This contrasts the ten cents of costs incurred per dollar collected in examinations selected by traditional methods. (Ventry, 2014, p. 419–420). In addition, the rate of improper entries was significantly lower for audits involving information provided by whistleblowers than for standard examinations. In sum, IRS data indicate that audits initiated based on tax whistleblowers were more efficient and effective than procedures using traditional methods of selecting taxpayers for review[xix].

Among the opposing arguments, it is highlighted that the use of awards as incentives to public denunciation is considered by many as morally unacceptable because, among other aspects, they imply the rewarding by the Public Administration of behaviors derived, generally, from envy, revenge, and other execrable conducts, also rejected for their obscurantism and lack of transparency. On many occasions, such behaviors can lead to complicated situations of indefensibility in the accused party. In this line of attack, it is argued that the Administration must act democratically, but always starting from the idea of noble and loyal collaboration.

A lively and democratic debate is necessary and welcome on the possible implementation of any new policy regarding tax whistleblowers at a premium. Whistleblowers are a cost-effective tool to counter the inherent information asymmetry that the Tax Administration faces and increase the taxpayer's perceived risk of being audited (Davis-Nozemack & Webber, 2015, p. 321). However, direct applicability is limited because it involves the need to design a robust tax whistleblower program, with rewards available, protection for whistleblowers, public awareness of its importance, and, of course, the commitment of the Tax Administration to this purpose.

7. CONCLUSION AND RECOMMENDATIONS

Pragmatically, tax whistleblowing can be seen as an effort to "share" with society the inspection of taxes in the exercise of citizenship. Encouraging whistleblowers through protection and rewards is a cost-effective and efficient tool to obtain information on tax irregularities and tax evasions that are difficult to detect by traditional tax screening and auditing methods. Tax whistleblowers have been an essential part of tax enforcement in most democratic states for some time and are increasingly part of tax compliance.

From the analysis of tax complaints in the Federal Tax Administration, it can be observed: i) a lack of clarity of the rules and procedures of a tax complaint procedure; ii) lack of massive dissemination of the mechanism to promote tax complaints; iii) practical difficulty to make a tax complaint, currently promoted a centralized site, outside the Tax Administration, without specific information to the tax complainant and in fact not very friendly, which makes it unlikely to offer practical information that may be feasible to start a tax procedure and; iv) perception of low adequate protection of the tax complainant, who is not supported with a statute or defined rules for their protection. In this context, it is not surprising that the effect of tax complaints is minimal in Brazil, if not negligible, in the comprehensive collection and inspection actions of the Federal Revenue Service and without any behavioral impact on the degree of *compliance of* taxpayers.

It is wise to adopt international best practices regarding tax whistleblowing. Potential whistleblowers must know and understand how the tax whistleblower rules work. Whistleblowers will not be motivated if they perceive that the Administration is unlikely to act on their information. As such, a positive public perception of the Administration's willingness to serve and effectiveness is critical to a functional tax whistleblower program. There should be a channel specifically dedicated to tax complaints and managed exclusively

by tax authorities. The processing of tax complaints within the Federal Tax Administration needs to be standardized and formulate a specific statute for the tax whistleblower. The debate on using rewards to encourage tax complaints should be encouraged in society in light of scientific and technical evidence on the subject. We end with the thought of St. Thomas Aquinas: "It is not always through the perfect goodness of virtue that one obeys the law, but sometimes it is through fear of punishment.

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[i] A tax "denunciation" without identification cannot be considered "public" nor can it be understood as having been made by anyone. An anonymous denunciation, if both words do not constitute a "*contradictio in terminis*", cannot be accepted or used as a reason to proceed, under penalty of nullity. However, it should be noted that in Brazil, within the scope of the Ministry of Economy, the "anonymous communication" is foreseen, according to art. 2. II, ME Ordinance No. 2070. 21527/2020, which refers to information, from any source, about the alleged practice of irregularity or illegal act, for which it is not possible to identify the author. Also, in line with Article 10 of Law Nº 13,460 /2017, which provides for the possibility of manifestation without identification.

[ii] Evidence obtained in violation of fundamental rights projects its illegality onto the other evidential elements that maintain a reasonable and logical causal relationship with it. Based on the doctrine of "fruits of the poisoned tree", the defect of an evidence is transferred to those that are a consequence or are in connection with it, by the agreement of an external element - a factual relation - without a reasonable break in the causality chain. Therefore, when investigating the facts reported, precautions must be taken to ensure the legality of the evidence of the illicit facts found, ruling out any connection with the elements of evidence that make up the report whose origin is unknown or whose accuracy cannot be measured, for example by obtaining evidence through other legal means of investigation or under voluntary confession of the reality of the facts by the offender (Aparicio Pérez 2002:75-77).

[iii] See: https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity

[iv] The "IRS Informants' Rewards Program" has been renamed the "IRS Whistleblowers Program", pursuant to 2006 Internal Revenue Code (I.R.C.) § 7623 amendments. See: https://www.irs.gov/compliance/whistleblower-informant-award

[v] The IRS announced in 2019 a tenfold increase in whistleblower awards over the previous year: $312 million - based on $1.4 billion collected thanks to whistleblower information (Zerbe, 2019).

[vi] See: https://www.gov.uk/report-an-unregistered-trader-or-business

[vii] See: https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/suspected-tax-cheating-in-canada-overview.html

[viii] See: https://www.canada.ca/en/revenue-agency/programs/about-canada-revenue-agency-cra/compliance/offshore-tax-informant-program.html

[ix] See: https://www.ato.gov.au/General/Gen/Whistleblowers/

[x] At ATO, the *Making a tip-off* program, which encourages citizens to provide tips on potential irregularities in tax matters, deserves to be highlighted. It even encourages alerts from tax professionals who are concerned about the inappropriate conduct of another tax professional. See: https://www.ato.gov.au/general/gen/making-a-tip-off/

[xi] See: https://www.agenciatributaria.gob.es/AEAT.sede/Inicio/Procedimientos_y_Servicios/Otros_servicios/Denuncia_tributaria/Denuncia_tributaria.shtml

[xii] European Commission, Platform for Tax Good Governance, The Commission's Initiative on Protecting Whistleblowers, DOC: Platform/28/2017/EN (15 June 2017), https://ec.europa.eu/taxation_customs/sites/taxation/files/platfrom_wistlebolowers.docx.pdf (accessed 10 jan. 2022).

[xiii] There is a strong tension between the desire to encourage tax whistleblowing and the need to control unwarranted leaks to the public or the tax authorities. The balance would not be respected, however, if whistleblowing meant that any behavior the whistleblower disapproved of on moral or ethical grounds could be reported outside the entity to which he or she belongs without the whistleblower running any personal risk. Therefore, it is necessary to require that only criminally punishable behaviors or proven irregularities revealed by the whistleblower are those that imply the need for their protection (Gutmann, 2018, p. 427).

[xiv] *See:* Decree No. 9,492, of 5/09/2018, which regulates Law No. 13,460, of 07/26/2017, which provides for participation, protection and defense of the rights of the user of public services of the federal public administration, institutes the Federal Executive Branch Ombudsman System, http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/Decreto/D9492.htm

[xv] The complaint procedure must be done at Fala.BR, the Integrated Platform for Ombudsman and Access to Information. In it, the complainant must identify himself/herself by name, tax identity number, email, address, and phone number, and indicate as recipient of the manifestation the ME body - Ministry of Economy. The subject field must be "Federal Revenue", "Taxes", or "Customs". There is a field for the complainant to describe his/her manifestation, and attachments can be provided to support the facts reported. The whistleblower can also indicate the place of occurrence of the reported facts and the name of the accused. If the manifestation is presented without identification, it will be received as an "anonymous communication", under the same processing of the identified denunciation, differentiated only by the fact that there is no *feedback on the* initial screening done by the Ombudsman.

[xvi] As transcribed: "*If you suspect any illicit activity, send your complaint to the ombudsman. The whole process is done via system and the protection of your personal data is guaranteed. You must present the facts clearly and objectively, containing minimum elements, such as the CPF or CNPJ of the accused, so that the complaint can be analyzed. " See:* https://www.gov.br/economia/pt-br/canais_atendimento/ouvidoria/sisouvidor

[xvii] According to the Management Report for the year 2020 of the Ministry of Economy's Ombudsman Office, 26,390 complaints were received out of a total of 546,540, manifestations. The report does not specify how many of these were tax complaints, how many tax complaints were known and forwarded to the Special Secretariat of the Federal Revenue and how many were filed. Likewise, the report is silent on the channels through which the complaints were received. See: https://www.gov.br/economia/pt-br/canais_atendimento/ouvidoria/relatorio-de-atividades/pdf/relatorio-de-gestao-2020

[xviii] According to art. 154, §1º. of Decree Law nr. 5.844 of 23/09/1943*: "§ 1º In the case of fines imposed due to representation or denunciation of any party, the quota-part will be divided in two equal parts, one of them belonging to the author or authors of the denunciation or representation, as long as they are made in a sufficiently clear manner, and the other to the civil servants that made the diligence or ascertained the precedence of the denunciation or representation, except when the denunciator accuses a firm of which he/she is or was an assistant or representative, in which case he/she will not have the right to any share in the fine, and the total quota will belong to the civil servant or civil servants. "*

[xix] A rewarded tax whistleblower program increases the probability of being detected by adding an element of ambiguity to the probability of being audited because the exact probability of being reported is not known. From this perspective, an increase in uncertainty about the probability of being audited increases tax compliance. Moreover, even though the audit rate may be low, what matters is not the audit rate, but the perceived probability of being audited (Masclet et al., 2019, p. 10).