TAX COLLECTION AND SOCIAL JUSTICE: THE INEFFICIENCY OF TAX DEBIT INSTALLMENT FOR SMALL COMPANIES

ARRECADAÇÃO TRIBUTÁRIA E JUSTIÇA SOCIAL: A INEFICIÊNCIA DO PARCELAMENTO DE DÉBITOS TRIBUTÁRIOS PARA AS PEQUENAS EMPRESAS

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ABSTRACT

Considering the large number of installment programs implemented in recent years, this research has the following problem: the installment of debts granted to Simples Nacional companies by Complementary Law No. 155/2016 is an efficient tool to deal with small companies default and expand public revenue? The main objective of this research is to analyze the data related to the installment provided for in Complementary Law No. 155/2016 to identify whether the taxpayer has complied with the legal provisions, expanding tax collection and as specific objectives, to identify the legal treatment of the tax installment and the its impacts; examine the tax system of Simples Nacional and its installments contained in Complementary Law No. 155/2016; and, finally, to analyze the effectiveness of the subdivision of Simples Nacional in public collection. Using the deductive method and secondary documentary data, a descriptive research and a quantitative approach, it was found that the expressive majority of the installments was excluded from the program, with the minority being paid in installments or still maintaining their regular status, a result that runs counter to the main objectives of installment payments, settling arrears and regularizing taxpayers. Thus, it is concluded that the studied parceling did not reach the objectives for which it was created, pointing to its inefficiency as a Public Administration initiative.

Keywords: Tax installment payments. Simples Nacional. Tax collection. Complementary Law n ° 155/2016. Realization of social rights.

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RESUMO

Considerando o grande número de programas de parcelamentos instituídos nos últimos anos, esta pesquisa tem o seguinte problema: o parcelamento de débitos concedido às empresas do Simples Nacional pela Lei Complementar n° 155/2016 é uma ferramenta eficiente para lidar com a inadimplência das empresas de pequeno porte e ampliar a receita pública? O objetivo principal desta pesquisa é analisar os dados referentes ao parcelamento previsto na Lei Complementar nº 155/2016 para identificar se o contribuinte tem cumprido com as prestações legais, ampliando a arrecadação tributária e como objetivos específicos, identificar o tratamento jurídico do parcelamento tributário e os seus reflexos; examinar o sistema tributário do Simples Nacional e o seu parcelamento contido na Lei Complementar nº 155/2016; e, por fim, analisar a efetividade do parcelamento do Simples Nacional na arrecadação pública. Utilizando do método dedutivo e de dados documentais secundários, de uma pesquisa descritiva e uma abordagem quantitativa, constatou-se que a maioria expressiva dos parcelamentos foi excluída do programa, sendo minoria os parcelamentos integralmente pagos ou que ainda mantêm sua situação regular, resultado este que contraria os objetivos principais do parcelamento, de quitação das dívidas atrasadas e de regularização dos contribuintes. Desta forma, conclui-se que o parcelamento estudado não atingiu os objetivos para os quais foi criado, apontando para sua ineficiência como iniciativa da Administração Pública.

Palavras chave: *Parcelamento tributário. Simples Nacional. Arrecadação tributária. Lei Complementar n° 155/2016. Concretização dos direitos sociais.*

INTRODUCTION

The Federal Constitution provides for the possibility of differentiated treatment for micro and small enterprises. Following this permission, the Complementary Law n° 123/2006 that instituted the National Statute of Microenterprise and Small Business was published. Recently, this status of small enterprises was amended by Complementary Law n° 155/2016, which included a special program of installments of tax debts due until May 2016 for companies under the scheme, to be paid in up to 120 monthly installments.

The use of installments as a tool for the tax regularization of companies has been constant by the State. In addition to the so-called "common installments", provided for in Law 10.522/2002, which is always available to companies, the special installments have been repeatedly employed. According to a study conducted by the IRS in 2017, approximately 40 special installment programs have been opened since the beginning of this millennium. This high number of programmes demonstrates the relevance of tax instalments in the national scenario, but is constantly criticised and is often treated as a contradiction, considering that special instalments, at least in theory, they should deal with exceptional situations.

In the exclusive scope of Simples Nacional, because it is a relatively new tax system, few installment programs were granted, if compared to the general history of the country. However, it is known that micro and small enterprises, despite the simplifications brought by the regime, also have problems to remain regular. Even so, in recent years, the legislation concerning the Simple has used the installments as a way to deal with the issue of default.

The installment of tax debts aims to increase tax collection, with the increase of public coffers, contributing to the expansion of state investments in reducing social inequalities. Therefore, this study seeks to answer the following problem: the installment of debts granted

to Simples Nacional companies by Complementary Law n\176; 155/2016 is an efficient tool to deal with the delinquency of small businesses and increase public revenue?

The main objective of this research is to analyze the data regarding the installment provided in Complementary Law 155/2016 to identify if the taxpayer has met the legal benefits, expanding the tax collection. It has as specific objectives, to identify the legal treatment of the tax installment and its reflexes; to examine the tax system of the Simple National and its installments contained in Complementary Law 155/2016; and, finally, analyze the effectiveness of the installment of the National Simple in the public collection.

This research was based on the official publications carried out regarding the special installment of the National Simple, mainly the "panel of installments", tool provided by the Attorney General's Office of the National Treasury and that provides information regarding all tax installments granted. The data collected refer to the months of December 2016 to March 2017, which corresponds to the period of accession to the special installment of Simples. All Brazilian states were considered and the analysis was carried out on the current situation of the plots granted in the form of LC n° 155/2016 presented in the panel.

In this case, the greater the number of active installments, with their regular situation, or of fully paid debts in installments, the greater will be the approximation of the program to its objective of tax regularization. Differently, the greater the number of debts excluded from the installment, the less efficient it will be from the point of view of the State, and the greater the distance from its objective of discharge of debts due and of consequent tax regularization.

In order to demonstrate the hypothesis that the installment of debts of companies framed in Simple National has little efficiency for public collection purposes and, consequently, do not contribute to the promotion of social justice, this research usedthe deductive method, with bibliographic research and statistical data collection and analysis.

1. THE LEGAL TREATMENT OF THE TAX INSTALMENT

The tax installments have increasingly acquired relevance, both for the public sector, which uses them in order to increase its collection and regularize defaulting taxpayers, as for companies, that find in these programs an important alternative to deal with their tax liabilities (PAES, 2014), since the installment is provided in the legislation as one of the causes of suspension of the chargeability of the tax credit, according to art. 151, VI of the National Tax Code.

The types of suspension of the tax liability act as "inhibiting agents" of the process of positivation of the legal norms that establish it (VERGUEIRO, 2009). As shown by Harada (2017), in the cases of art. 151 of the CTN there is no extinction of the claim, it continues existing, there is only the effect of preventing its collection by the Tax Administration. Amaro (2006) treats such hypotheses as a form of temporary protection of the taxable person, since, while the credit is suspended, he will not suffer from the collection acts that would normally be adopted by the IRS.

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Originally, the tax installment was not present in the National Tax Code in its promulgation in 1966, being included as one of the hypotheses of suspension of the tax credit by the Complementary Law n° 104/2001. In this way, the instalment has as its initial effect the interruption of the recovery acts by the tax authority of the claim that has been instald.

In addition to having a suspensive character of the chargeability of the tax obligation, the installment allows the division of the tax debt for later payment, which will be made by means of instalments. However, this installment "payment" must be made with the incidence of interest and fines, in order to avoid "[...] putting the taxable person in a more favorable position than others who met legal deadlines" (SCHOUERI, 2013, p. 608).

Still in the concept, it is common to find authors who treat the installment as a moratorium modality, also provided for in CTN as one of the hypotheses of suspension of the chargeability of the tax credit (art. 151, I). This is what Machado (2018) says in clarifying that in the moratorium the debtor manages to extend the deadline for debt discharge, and in some cases this payment can be made in installments, as it occurs in installments programs. Thus, he concludes that the inclusion of the installment as a suspension hypothesis by LC n° 104/2001 was not necessary.

Likewise, Amaro (2006) states that the installment already had the effect of suspending the chargeability of the tax credit even before its inclusion in the National Tax Code, both for its intrinsic characteristics, but also because it is just another form of moratorium. Sabbag (2016), on the other hand, states that, despite the similarities, with the inclusion of the installments to the CTN, he enjoyed total independence, no longer confused with the moratorium.

For the concession of the installment, in general, some conditions are imposed on the taxable person, such as the payment of the first installment and the confession of the debt. With this, when adhering to a installment, the taxpayer, could no longer discuss the debt judicially, since, when splitting his debt he would be confessing his existence. There are constant criticisms and studies about this obligation. In this sense, Dexheimer (2015) believes that the greatest restriction consists in the prohibition of the individual invoking the Judiciary in the future, with the renunciation of the claim, because it prevents the taxpayer to contest the tax obligation in the judicial sphere. In turn, Padilha and Alvaraz (2017) demonstrated that the courts have admitted the judicial discussion of debt installments even the law emphasizing that such confession would be irrevocable and irrevocable.

Another point to highlight, from the perspective of companies, is that, in addition to the benefit of being able to split the tax debt, after adhering to a installment program it is possible to apply for a Positive Certificate with Negative Effect, that allows the company to participate in bidding processes and conclude contracts with public agencies, which in many cases is an important source of revenue for companies (MACHADO, 2018).

In the case of installments granted in the country over time, as shown by Dexheimer (2015), they are usually separated between ordinary (or common) installments and special installments. The ordinary installment was established by Law n° 10.522/2002 and is disciplined from Article 10 to 14-F. Such installments are always available to the taxpayer, who can split his debts in up to 60 (sixty) installments. This is what establishes the norm: "the debts of any nature to the National Treasury may be divided into up to sixty monthly install-

ments, at the sole discretion of the State authority, in the form and conditions provided for in this Law".

As described in art. 155-A, § 1° of the CTN, the installments do not rule out the incidence of interest and fine. This is seen in the common installment, where they remain added to the principal amount of the debt. Meanwhile, Paulsen (2017) notes that it is common practice for Brazilian legislation to grant installments that not only have much longer deadlines than that provided for in the ordinary installment, but also offer substantial reductions in interest and fines, occurring, in some cases, its total exclusion.

These are the special installments, which are constantly employed at both federal and state and municipal levels. As already commented, there were almost 40 programs established since the beginning of the millennium, but in the federal sphere four stand out: (i) Program of Tax Recovery or Refis, established by Law n° 9.964/2000 and covered debts due until 29 February 2000, allowing installments without a ceiling of benefits; (ii) Special Instalment or Paes, established by Law n° 10.684/2003 and enabled installments up to 180 (one hundred and eighty) monthly instalments of debts due until 28 February 2003; (iii) Parcelamento Exceptional or Paex, came into force as amended by the Provisional Measure n° 303/2006 and offered three installment options, with emphasis on the modality that allowed the division of debt in up to 130 (one hundred and thirty) installments; (iv) Installments of the Crisis, created by Law n° 11.941/2009 and opened a series of options of installments and repayments of debts, highlighting the possibility of, again, divide the debt in up to 180 (one hundred and eighty) installments; the program also had four reopenings, one in 2013 and three in 2014.

In addition to the high number of installments, all these programs had significant reductions in interest rates, fines, or both. As an example, one can cite the Installment of the Crisis, which in art. 1°, § 3°, II offers an installment in thirty installments with a 90% reduction of the fine for late payment and 45% of the interest. In addition to these, it is worth mentioning two more recent installments, the Tax Regularization Program (PRT) and the Special Tax Regularization Program (PERT). Imposed by Provisional Measures n° 766/2017 and n° 783/2017 respectively, they also offered special installment conditions and, together, had almost 850,000 members, according to federal revenue data.

Finally, it is also important to mention that, in general, the law leaves open the possibility of performing reparcelling, as described in art. 14-A of Law n° 10.522/2002. This is even more evident in the special instalment programmes. Taking for example the Paex, the MP 303/2006 in its article 4° explains the possibility of the reparcelling of debts that were included both in the common installment and in the Refis and Paes. Such a possibility has made common the transfer of debt tranches in one programme to another with more favourable conditions.

2. THE TAX SYSTEM OF THE SIMPLE NATIONAL TAX AND THE INSTALLMENTS PROVIDED FOR IN COMPLEMENTARY LAW 155/2016

This item aims to present some considerations about the tax legal treatment given to small businesses and analyze the possibility of splitting their tax debts according to Complementary Law 155 of 2016.

2.1 THE TAX TREATMENT OF MICROS AND SMALL ENTERPRISES

Micros and small businesses need, by the way of art. 179 of the CF, differentiated legal treatment that encourages them with the simplification of their administrative obligations, tax, social security and credit. In this sense, the Constitution presents rules of jurisdiction that allow the infraconstitutional legislator to create a differentiated treatment for small businesses (CUNHA, 2011).

The tax system cannot be viewed in a simplistic way, having as its sole objective the collection of taxes for the public coffers, but rather as a mechanism for the realization of social justice (COSTA; DIEHL, 2017). The differential treatment ensured by the Constitution should be interpreted in this context as a form of social justice, collaborating with the implementation of fundamental rights.

Since its creation, the Simple National has undergone several changes and attempts to improve. Initially created by Law n° 9,317/96, the scheme allowed the unified collection of federal taxes, and was therefore the name "Simple". In 2006 came into force the Complementary Law n° 123/2006, which repealed the Law n° 9,317/96 and increased the list of taxes encompassed by the Simple, including state and municipal taxes. Subsequently, this law came to suffer numerous changes, mainly with the Complementary Laws n° 147/2014 and n° 155/2016 that practically restructured the legislation concerning the National Simple.

With this, the Simple National allows the companies opting, framed in the condition of Micro or Small Business, collect, in a unified way, eight taxes, including the ICMS, of state competence, and the ISS, of municipal competence. It is also admitted to join the Simple, according to the legislation, the entrepreneur who meets the conditions to be considered Individual Microentrepreneur.

Machado (2018) points out that the Federal Constitution already mentioned the possibility and the need to offer a differentiated treatment to micro-enterprises and small businesses. The definition of the size of the company is based on its annual gross revenue. Today, already considering the changes brought by the Complementary Law n° 155/2016, the legal entity that receives in the calendar year a gross revenue of up to R$ 360,000.00 (three hundred and sixty thousand reais) is classified as a microenterprise and small company the company that obtains revenue above R$ 360,000.00 (three hundred sixty thousand reais) and below R$ 4,800,000.00 (four million eight hundred thousand reais).

The importance of differentiated treatment of small businesses is demonstrated by Machado (2018), due to the obstacles they face in what concerns, mainly, the issues that

involve their taxation. These difficulties also cover ancillary obligations, which become too complex for such undertakings, which in general do not have an exclusive department available to deal with ancillary tax obligations. In this way, simplification measures emerge as a way of protecting free enterprise and promoting fairer competition.

In addition to ICMS and ISS, Simples Nacional also includes the following tributes: IRPJ, IPI, CSLL, Cofins, Pis/Pasep and CPP. The calculation of the tax in Simples is made based on the gross revenue of the last 12 months. As Cleônimo dos Santos (2018) explains, each company will use the tables contained in the law, specific to its field of activity, for the calculation of the single tax. Subsequently, there is the distribution of the collected value among all taxes that were included, and such percentages vary according to the company's range and its industry.

Regarding specifically the amendments promoted by the Complementary Law n° 155/2016, in addition to the institution of the special installment (art.9°), it is worth mentioning the change in the revenue limit for the framework of organizations as a small company, up from R $ 3.600.000,00 (three and six hundred thousand reais) to R$ 4,800,000.00 (four million and eight hundred thousand reais) and for the setting of entrepreneurs in individual microentrepreneurs, rising from R$ 60,000.00 (sixty thousand reais) to R$ 81,000.00 (eighty-one thousand reais). Another important point was the opening of the possibility of the figure known as "angel investor" to make capital contributions to the companies under the scheme, but without being part of the entity's share capital. There was also a decrease in the number of tables and billing ranges for the calculation of the tax and the inclusion of new activities among those that can opt for the regime.

2.2 PAYMENT OF DEBTS IN THE SIMPLE NATIONAL

As mentioned at the beginning of the work, there were not many programs of installments granted by the legislation concerning the Simple, mainly due to be a relatively new regime.

The first possibility of splitting the debts for micro and small enterprises was established in 2008 as an alternative for companies to join the Simple National regime. This is thanks to the existing sealing in art. 17, V of Complementary Law 123/2016 that prevents legal entities that have debts due with the INSS and with the Public Farms adhere to the Simple National. In this way, the Complementary Law n° 128/2018 allowed companies to share their debts in up to 100 (one hundred) monthly and successive installments, being R$ 100.00 (one hundred reais) the minimum value of each installment. Thus, micro and small enterprises could opt for this installment and, suspending the chargeability of their debts, opt for the National Simple as a taxation system.

As Paulsen (2017) clarifies, the second possibility of installments created in the sphere of Simple National was given by the Complementary Law n° 139/2011, which included the §§ 15 to 24 in Article 21 of Complementary Law 123/2006. This installment resembles the one disciplined by Law 10,522/2002 and is always available to companies of the Simple National. It is accepted the installment of the debts due of the National Simple in up to 60 (sixty) months. Regarding the value of the plots, the Normative Instruction n° 1,508/2014 determined that

they could not be less than R$ 300.00 (three hundred reais) for ME and EPP or R$ 50.00 (fifty reais) for Individual Microentrepreneurs.

There is also, in this mode, the possibility of reparcelling. Resolution CGSN n° 140/2018 provides on this option, but for this to be possible it is necessary to pay the first installment, which will correspond to 10% of the consolidated value of the debts, or 20% if there is debt that has already been subject to previous reparcelling.

Subsequently, with the entry into force of Complementary Law n° 155/2016, a new form of installment of tax debts was instituted. Its article 9° stated that debts due in the scheme until May 2016 could be divided into up to 120 (one hundred and twenty) monthly installments.

The Normative Instruction n° 1.677/2016 defined that to join the program, the request for installments should be made between 12 December 2016 and 10 March 2017. Of course, the main advantage of this programme, from the point of view of companies, is the maximum number of plots, in which case it is double the previous installments. The possibility of extending this installment to up to one hundred and twenty months makes it resemble the special installment programs mentioned above, although there is here a substantial decrease in interest and fines, as occurred in the most famous programs instituted by the federal government. There is, when joining the programme, a reduction in the administrative fines, as follows:

> I - 40% (forty per cent) if the taxable person applies for the instalment within 30 (thirty) days from the date on which he was notified of the instalment; or
>
> II - 20% (twenty percent), if the subject requests the installment within 30 (thirty) days, from the date on which he was notified of the administrative decision of 1st (first) instance (Normative Instruction n° 1,677/2016, art. 4°, Sole Paragraph, I and II). (BRAZIL, 2016)

Nor have the rules on the value of the plots changed. Both the Complementary Law 155/2016 that instituted the program and the Normative Instruction n° 1.677/2016 that later regulated it clarified that the value of the installments will be calculated by dividing the consolidated value of the debt by the number of installments, with a minimum value of R$ 300.00 (three hundred reais) for ME and EPP and R$ 50.00 (fifty reais) in case of MEI.

Very similar are also the causes of termination of installments, although not reproduce literally what is explicit in Art. 21, § 24, I and II of LC 123/2006, Normative Instruction n° 1.677/2016 establishes as causes of termination the non-payment of three installments, not necessarily consecutive, or the complete non-payment of the debt after maturity of the last installment. It should be noted that the legislation made possible the transfer to the program of debt installments in the form of the ordinary installment, causing, consequently, the withdrawal of this.

Finally, the last installment program created in the scheme happened with the promulgation of Complementary Law n° 162/2016. This standard established the National Simple Companies Special Tax Regularization Program (Pert-SN), which offered special conditions of installments and was an adaptation to the regime of the Special Tax Regularization Program created by the federal government in Provisional Measure n° 783/2017.

As demonstrated by Paulo Lenir dos Santos (2018), the values of the minimum installments remained the same as those of the previous programs. Meanwhile, Complementary Law 162/2018 offered three different ways of splitting debts, with reductions in fines and interest proportional to the number of benefits chosen. As a condition for adhering to this installment, the legislation defined the obligation to pay at least 5% of the consolidated debt. Subsequently, after payment, the taxable person could opt for the following forms of debit discharge, provided for in art. 1 of Complementary Law 162/2018:

> a) settled in full, in a single tranche, with a 90% (ninety per cent) reduction in interest on late payment, 70% (seventy per cent) of fines for late payment, for business or in isolation, and 100% (one hundred per cent) of legal charges, including legal fees;
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> b) installments in up to one hundred and forty-five monthly and successive installments, with 80% reduction (eighty percent) of the interest on late payment, 50% (fifty percent) of the fines for late payment, of office or in isolation and 100% (one hundred percent) of the legal charges, including attorneys' fees; or
>
> c) installments in up to one hundred and seventy-five monthly and successive installments, with reduction of 50% (fifty percent) of the interest on late payment, 25% (twenty-five percent) of the fines for late payment, business or isolated, and 100% (one hundred percent) of the legal fees, including attorney fees. (BRAZIL, 2018)

This program covered debts due until November 2017 and for their adhesion companies should submit the application between June 4 and July 9, 2018, according to Normative Instruction n° 1,808/2018. They could also transfer to Pert-SN, the instalment debits according to the installment foreseen in the other two programs already mentioned here.

3. THE EFFECTS OF TAX INSTALMENTS ON TAX COLLECTION

Having acquired significant importance as a tool of fiscal recovery from the beginning of the millennium, the installments also became an object of study of the most relevant. Tax accountants, accountants and economists have often been concerned with highlighting their effects and implications, extending also to public agencies, with the publication of an important analysis regarding the reflections of special installments by the IRS.

Padilha and Alvaraz (2017) conducted a study based on the aforementioned clauses in the installments, which make mandatory, when joining any program, the withdrawal of any lawsuit involving debt installments. The authors conclude that this obligation hurts the rights of taxpayers, first because the Constitution guarantees the right to the judiciary, but also because such clauses give the installments the idea that there is an agreement of wills between the public body and the taxpayer in relation to tax obligation, which does not translate the reality, since the tax arises from legal provision and is independent of the will of the parties. The study also dealt with presenting the position of the courts on the issue and it was found that the judicial discussion of debt installments has been admitted, provided that

it is found the existence of some kind of defect in his confession, maculating its effect as a means of proof.

Dexheimer (2015), in the same sense, points to the unconstitutionality of the clauses in question. It shows that membership of a tranche cannot be made conditional on the renunciation of a constitutional right, and that this imposition can have serious consequences, such as the validation of the collection of illegal taxes, once adhering to the installment the taxpayer could no longer discuss the legitimacy of the debt in the judicial sphere.

Muzzi Filho, Gonçalves and Quadros (2018) examine the reflections of the special installments based on the principle of efficiency, in which the actions of the State must be guided. In view of the understanding that the special installments would be aimed at meeting exceptional situations, the authors understand that the repeated opening of these programs has the effect of misrepresenting reality, creating the idea of an endless economic crisis.

In addition to this distortion of reality and legislation, the constant implementation of instalment programmes has the opposite effect to that expected, to encourage tax regularisation of taxpayers, often acting in a way that encourages defaults, whereas companies can simply opt for the non-payment of their taxes considering the possibility of opening a new programme in a short period of time, allowing debt to be divided for a prolonged period and under extremely favourable conditions, considering the reductions in interest and fines.

Given this scenario, Muzzi Filho, Gonçalves and Quadros (2018)conclude that the installment programs have not presented efficiency in their purpose, acting negatively, inclusive, in the companies' competition, since organizations that pay their taxes on time end up contracting a competitive disadvantage, by not enjoying the benefits provided by installment programs.

Strengthening this idea, Paes (2012) uses an econometric model to assess the effects of installments on taxpayers' behavior. The author finds what he calls a "great collection point", at which point the largest number of contributors would spontaneously pay their taxes. According to the author (PAES, 2012), in the country, this percentage would be 66%, which means that, in Brazil, at best, 66% of taxpayers pay their tax debts spontaneously. Paes (2012) shows, however, that with the effects of the frequent opening of installment programs this percentage falls to approximately 62%. After the completion of the model, it is observed that the expectation for a new installment with favorable conditions decreases the tendency of taxpayers to collect their taxes spontaneously, again bringing the idea of an incentive to default.

Faber e Silva (2016) also sought, with an economic analysis, to study the consequences of installments in the behavior of taxpayers. The analyzed sample was constituted by the companies that underwent a differentiated follow-up by the IRS and adhered to the Installment of the Crisis or some of its reopenings. The authors came to the conclusion that the expectation for installments, in the two years prior to its opening, is able to reduce by up to 5.8% the induced collection of companies that opt for installments in relation to non-accessive, and in the two years after its opening, in what they call a "side effect", the reduction can reach 1.5%. Thus, considering the amount collected over the years by the companies analyzed, they estimate that the losses in the collection, due to the "expectation effect" and the "collateral effect", correspond to approximately R$ 18.6 billion per year.

Another important result to be highlighted was the participation of the companies analyzed in relation to the total collected spontaneously. To this end, Faber e Silva (2016) divided the companies between opting and not opting for the special installments and analyzed their behaviors taking into account the programs opened from the year 2000. It is concluded that, by 2007, the opting companies had a considerably larger share than the non-accessive ones, rotating around 60% of the total. However, from that year on the difference began to decrease and reversed in 2014, corresponding to about 49% of the total collected spontaneously. On this result the authors (FABER; SILVA, 2016, p. 165) understand that "[...] it seems to be symptomatic the existence of moral risk and that companies that have already opted for installments have acquired a different behavior towards the tax: to reduce spontaneous payments".

Another important source of information on the subject is the study conducted by the Federal Revenue Service in 2016 and updated in 2017, which dealt with the effects of the special installments established from the year 2000 (BRAZIL, 2017). This study provides information that is extremely relevant to the analysis of the subject, such as the amount of tax write-off that those programmes represented, the discharge percentage of the four main special instalment programmes, the number of contributors who have joined three or more programmes, among others.

The study (BRASIL, 2017) concludes that the installments have not been successful in their purpose of recovering tax debts. Contributes to this conclusion the high tax waiver that these programs represented to the public coffers, given that only the Installment of the Crisis implied a renunciation of more than sixty billion reais. It also reinforces this idea the fact that, between the years 2013 and 2016, in which several programs of special installments were created, the tax liability of the Union rose from a trillion and one hundred billion reais to a trillion and six hundred billion reais, corroborating the idea that the special installments have contributed to the increase of default.

Another relevant data provided by the study (BRASIL, 2017), as cited, is the percentage of discharge of the four main special installments established at federal level. This percentage showed to be very low, being minority taxpayers who joined a program and settled the entire debt by installment. More common has been the exclusion of the program, both due to default and the option of a new installment. Clear example is Refis, established in 2000, in which only 6.81% of its debts were fully settled in the program, according to the table below:

Special Installment	Quantities						
	Adhesions	Active	%	Exclusions	%	Settlements	%
Refis	129.181	2.853	2,21%	117.446	90,92%	8.791	6,81%
PAES	374.719	4.311	1,15%	248.504	66,32%	121.849	32.52%
PAEX	244.722	3.517	1,44%	146.792	59,98%	94.021	38,42%
Refis da Crise	536.697	105.581	19,67%	177.515	33,08%	253.604	47,25%

Source: Federal Revenue of Brazil (2017)

Table 1 - Current situation of the main federal installments

Finally, another important finding concerns the discrepancy between the terms of the installments granted in Brazil and those granted in most other countries. To this end, a study conducted by the OECD was published in 2014. It shows that, while only in the Brazilian conventional installment, the debts can be divided into up to 60 installments, in other countries

the maximum term, in general, is 12 or 24 months, and when a longer term guarantees are required. This disparity is, of course, even more evident compared to the deadlines for special instalments.

3.1 ANALYSIS OF THE EFFECTIVENESS OF THE SIMPLE INSTALLMENT IN PUBLIC COLLECTION

As pointed out, this article aims to analyze the special installment of the Simple National implemented by Complementary Law n° 155/2016, emphasizing its effectiveness in maximizing public collection. After dealing with the legal aspects of the tax installment, especially that destined to the debts of the Simple National, it is dedicated to examine if the installment reaches its purposes.

The tool "panel of installments" provided by the Attorney General's Office of the National Treasury is based on Law n° 10.522/2002. In this rule it is stated that "monthly, the Federal Revenue Department of Brazil and the Attorney General's Office of the National Treasury will publish, on their websites, demonstratives of the installments granted within the scope of their powers". This tool was the main basis for this study.

For methodological purposes, it is necessary to inform that the analysis of the data contained in the "panel of installments" was carried out between the months of December 2016 and March 2017, referring to the period of adhesion to the parcel studied. All Brazilian states were considered and the current situation of the plots granted in the form of LC n° 155/2016 was examined, as presented in the panel. In this case, the greater the number of active installments, with their regular situation, or of fully paid debts in installments, the greater will be the approximation of the program to its objective of tax regularization. Differently, the greater the number of debts excluded from the installment, the less efficient it will be from the point of view of the State, and the greater will be the distance of its objective of discharge of debts due and of consequent tax regularization.

In order to be able to carry out the proposed analysis, it was filtered among all the installments granted in the period from December 2016 to March 2017, only those in the conditions of art. 9° of Complementary Law n° 155/2016. After the completion of this filter, using the Excel program, a total of 42,325 (forty-two thousand three hundred and twenty-five) installments along the lines of this law was reached. This was the total of plots used in the analysis. It should be noted that this is not the total of installments, in fact, granted, given that one portion was rejected electronically, and another was rejected otherwise, not specified in the portal.

Then the main point becomes the current situation of the installments, which, as made available by the Attorney General's Office of the National Treasury, are in one of the following situations: (a) Deferred and Consolidated: are the installments that are still in force, and are in their current situation; (b) Closed by Liquidation: it is the installments portion that was closed by the full payment of the taxpayer; (c) Closed by Termination: it is the installments that were closed by non-compliance of the rules by the taxpayer, such as the non-payment of three instalments or the complete non-payment of the instalment after the payment of the last instalment. Another possibility would be the transfer of this installment to another, which

would cause, as defined by the law, the withdrawal of the first; (d) Electronic Rejection: are the cases in which the application for installment was not accepted by the Attorney General's Office of the National Treasury. Being the refusal made electronically; (e) Refused: are also requests for installments refused by PGFN. However, the way in which this rejection occurred is not addressed. Only six of all plots analyzed fit this situation.

As the main objective of the installment is its discharge, in order to reach the conclusion that the installment has reached its ends, it is understood that the largest possible number of installments should be framed in the situation "Closed by Settlement", which would amount to saying that the installments have, in fact, been paid in full. However, because the maximum number of installments possible in this installment program is one hundred and twenty, or ten years, it was expected that most of the installments would still be active, classified in the "Deferidos e Consolidados" category.

On the other hand, it can be inferred that, for this installment program to be efficient, contributing to the expansion of the collection, the smallest possible number should be framed as "Terminated by Termination", that is, for some of the reasons already cited, the taxpayers did not pay, your debt in full. In turn, the installments that were rejected assume a different characteristic, not so relevant to the analysis, as they were not even accepted, and it is not possible to evaluate the behavior of these taxpayers in relation to the debt.

The table below shows the number of plots classified in each situation and their respective percentages in relation to the whole:

Installment Situation	Number of Installment covered	Percentage of each situation
Deferred and Consolidated	1.361	3,22%
Closed by Settlement	2.330	5,50%
Closed by Termination	29.708	70,19%
Dismissed	6	0,01%
Electronic Dismissal	8.920	21,08%
Total	42.325	100%

Source: Elaborated by the author

Table 2 - Current status of installments granted pursuant to LC No. 155/2016

Based on the ideal scenario, in which the installments should have been settled, that is, framed as "Closed by Settlement", or else be assets, being paid on time and classified, this way, as "Deferred and Consolidated"Table 2 shows the total inadequacy of the revenue effectiveness of the installment, since these two situations together reach only 8.72% of the analyzed installments. In contrast, the installments "Closed by Termination" reflect 70.19% of the total, proving that the vast majority of these debts will not be settled within the installment.

In line with what was presented, pertinent is also the analysis of these situations disregarding the rejected installments, because they are not relevant to the scope of this research, as shown in table 3 below.

Installment Situation	Number of Installment covered	Percentage of each situation
Deferred and Consolidated	1.361	4,07%
Closed by Settlement	2.330	6,98%
Closed by Termination	29.708	88,95%
Total	33.399	100%

Source: Elaborated by the author

Table 3 - Status of installments, disregarding those rejected

When the analysis ceases to take into account the rejected installments, this result is even more evident, as shown in Table 3. In this case, the installments "Deferred and Consolidated" and "Closed by Settlement", added, correspond to 11,05% of the total analyzed, while the installments that were terminated, for non-compliance with the standard by the taxpayer, or by option for other installments, represent 88,95%.

By assessing the data by State, Minas Gerais was the one with the highest percentage of debts closed by its total payment. However, this result was not very different from the total percentage, reaching 6.8%. Tocantins presented the worst result for this situation, with only 3.39% of the installments fully paid. In this state the percentage of installments that are still in force, classified as "Deferidos and Consolidated", It is also lower than the general average, and 1,98% the total. The state that had the highest percentage of installments "Closed by Termination" was Rio Grande do Norte, with 75,76%. The lowest percentage for this situation is in Roraima, with 63,49%. São Paulo, the state with the largest number of installments, showed a total of 3,79% of installments "Deferred and Consolidated", 6,40% of installments "Closed by Settlement" and 67,63% "Closed by Termination, in addition to the refused installments.

It is observed that the variation of the results between the States is low, and the overall result is not influenced by an exception, or by an abnormal behavior of one or a set of States. In this way, it is possible to infer that the behavior of the taxpayer in relation to this installment program was relatively similar throughout the country, with the clear tendency to its non-compliance until the end.

In addition to the default, which has always been present in the instalments granted, a factor that arises with one of the possible justifications for the high number of terminations before they are fully paid, consists in the creation of the Special Tax Regularization Program of Simples Nacional companies. Although there is, in the data analyzed, no information about the transfer of installments, the tendency of taxpayers to migrate their debts from one installment to another more beneficial, verified in the previous installments, provides subsidies to support this hypothesis. Still, if it is considered that in PERT-SN the maximum deadlines are even greater than that of the installment of LC n°155/2016 and that there are larger reductions in interest rates and fines, this thesis gains even more strength.

It raises here a new research suggestion, to evaluate the amount installments that were transferred from the Special Installment of the National Simple to the Special Tax Regulariza-

tion Program of the companies of the National Simple, and assess what has been the behaviour of the taxpayer in relation to the latter instalment.

Relevant can also be the comparison of the results of the Special Installment of the National Simple with that of the four main federal installments granted (Refis; PAES; PAEX and Refis of the Crisis). By evaluating the data in Table 1 and Table 3 (which disregards the rejected installments), it is possible to notice a greater similarity between the results of the Simple and Refis installments established in 2000. In Refis, of the 129,181 (one hundred and twenty-nine thousand one hundred and eighty-one) installments granted, 9.02% were either fully liquidated or were still active, while in the installment of the National Simple the active or fully liquidated installments amounted to 11.05%. However, there is a greater disparity when comparing with PAES, PAEX and Crisis Refis. In the PAES, the active or liquidated installments totaled 33.67% of the total, in the PAEX, the percentage was 39.86%, while in the Crisis Refis, it was 66.92%, and all had higher results than the analyzed installments.

CONCLUSION

Seeking to answer whether installment is the best tool to deal with the defaults of micro and small enterprises and increase public revenues, the present article had as main objective to evaluate the behavior of the taxpayer in relation to the installment of tax debts granted by the Complementary Law n° 155/2016 to the companies framed in the Simple National and thus to evaluate if the installment in question obtained success in its two main purposes: to regularize the regime's companies and to boost public revenue.

In addition to this central objective, the present study sought to demonstrate the main legal characteristics of the tax installments. It also analyzed the National Simple, focusing mainly on the plots granted in the scheme, one of them being the plots examined at work. Finally, as a last specific objective, it sought to evaluate how the installments granted by the Complementary Law n° 155/2016 impacted the public revenue.

In order to answer the research question, the data provided by the Attorney General's Office of the National Treasury were analyzed, with the aim of specifically studying this parcel granted to Simples's companies, objectively evaluating the results found and making a parallel with the conclusions presented in other studies. Through this investigation, it was possible to corroborate with the studies carried out, thanks to the extremely low number of installments that were fully paid or that are in their regular situation, having been excluded the vast majority of installment debits.

The thesis that taxpayers have acquired, with the constant installments, the habit of not paying off one installment by the expectation by another more beneficial, characterizing a debt roll, can not be ruled out here. This is because the Complementary Law n° 162/2018 made it possible for Simples companies to share their debts on more advantageous terms than those offered by the installment analyzed in this article, regarding the deadlines for discharge and reductions in interest and fines. Accordingly, the possibility of transfer from one tranche to another should be considered.

Thus, the study pointed to the inefficiency of this installment program as a form of tax regularization, considering that, of the 33,399 (thirty-three thousand three hundred and ninety-nine) companies that had their debts framed in the installments, 29,708 (twenty-nine thousand seven hundred and eight) were excluded. It appears that the reasons for the termination have not been made available, which makes further analysis difficult. However, the numbers are significant enough to challenge the effectiveness of this installment as a beneficial tool to the State, not contributing to the expansion of public investments in the promotion of social justice.

It is worth mentioning that the absence of studies related to the analyzed installment, as well as the difficulties encountered for data collection, made a more in-depth analysis difficult, especially in relation to the collected impacts of the installment. It is suggested, for future research, evaluate the amount of installments transferred from the Special Installment of the National Simple to the Special Program of Tax Regularization of the companies of the National Simple and examine what has been the behavior of the companies in relation to this new installment.

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