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RESEARCH ARTICLE

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FISCAL INCENTIVE OF THE WORKERS FOOD PROGRAM TO COLLECT THE INCOME TAX FROM LEGAL ENTITIES OPTING FOR REAL PROFIT

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ABSTRACT

The objective of this paper is to discuss how employee benefits management instruments serve not only to the point that benefits are an indispensable means of supply and support that aim to promote attraction, retention and satisfaction of the staff, increasing productivity, but also contribute positively for the tax collection of organizations. To do this, we will diagnose how the tax aspect of the tax incentive benefits in the payment of income tax is weighted and controlled, based on the calculation of the benefit of the Worker's Food Program (PAT) and its income tax deduction of legal persons. In this way, it is intended to explain the way in which the calculation of the income tax of a commercial company opting for the real profit and the consequent deduction of the fiscal incentive of the PAT, demonstrating how much this one must be carried out for the fiscal, as there is control over the incentive surplus that should be used in the next period of the organization.

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INTRODUCTION

This paper aims to discuss the management of benefits from the perspective of the positive contribution that the Worker's Food Program (PAT) brings in terms of tax collection for organizations. Social benefits are understood as the facilities, opportunities, benefits and social services that an organization offers to its staff. As such, the benefits are a supplement to the salary paid to employees of all hierarchical levels used in the management and operation of the company. These remuneration supplements can be guaranteed either by labor laws, such as social charges, but also be of exclusive use and at the discretion of particular strategies used by an organization in the management of people who are part of its staff (CASTALDELLI JUNIOR, 2016). As Gaulke and Nicoleti (2007) rightly observe, this practice of organizations generates not only better performance of workers in the production

process of the company where they provide services, but also increases motivation in the performance of functions. As a result, in addition to improving product quality indices, a good employee benefit program favors the mental and physical health of the organization's members. In order to be able to operate in an increasingly competitive market, organizations need to achieve the best possible performance in their services, these being the results of the company's operational and administrative processes. In this sense, the way in which the staff works has an influence on the result and quality of the company's activities (MORAIS, 2015). Currently, one of the main tools for achieving this condition on the part of organizations is the Worker Food Program. The program was created by Law n°. 6,321 of April 14, 1976 (BRASIL, 1976) and regulated by Decree No. 5 of January 14, 1991 (BRAZIL, 1991), with execution supported by the Ordinance of the

Secretariat of Labor Inspection / Department of Health and Safety at Work No. 1 of January 17, 2002 (BRASIL, 2002). In Brazil, it is pre-established among the contractual labor relations that they have as their object the free stipulation of the interested parties in everything that does not contravene the labor protection provisions. Article 444 of the CLT (BRASIL, 1943) establishes that in contractual labor relations and collective agreements these provisions are applicable, as well as the decisions of the competent authorities. The provision of food in collective agreements or conventions or within the Worker's Food Program regardless of how this occurs, whether in cash or in tickets, will always be considered as indirect wages and, therefore, will integrate the remuneration for all purposes. With these perceptions in mind, the main problem of this work is to identify how the fiscal aspect of the benefits of the tax incentive in the payment of income tax is being treated and controlled. The study aims to demonstrate the calculation of the Worker's Food Program benefit and its deduction from corporate income tax, since they can deduct a limit of 4% from the tax due. More specifically, it demonstrates the way of calculating the income tax of a commercial company opting for real profit and the respective deduction of the program's tax incentive, as well as it must be recorded for the tax authorities, and how the control over the excess of the incentive that will be used in the next period.

MATERIALS AND METHODS

In a methodological way, the nature of this research was through the method of qualitative and quantitative application. To this end, using a research with an exploratory-descriptive objective having, for its variables, the use of both applications and, regarding the scope of the work, using a case study in the qualitative aspect. In this sense, a case study was carried out with five organizations that operate in Belém, State of Pará, using a non-probabilistic sample. Thus, the choice of participating companies was made in a non-random manner, being selected for convenience, considering their particular characteristics of having or not having income tax deduction from the Worker Food Program, as well as the knowledge that researchers have that condition. The case study allowed the demonstration of the income tax calculation of a company opting for real profit and enrolled in the Worker's Food Program. Consequently, the tax advantages available to them in the deduction of income tax, combined with the statement of control over the excess incentive that should be used in their next period. As noted by Santos Júnior et al. (2013) the fulfillment of market demands makes organizations need to understand the needs of not only qualified employees but also with motivation and commitment to the interests of the organization where they provide services. Competitiveness in the labor market makes people search for more and more qualification and their quality requirements follow the assessment they make of the condition offered by companies. Consequently, organizations need to use incentives with sufficient benefits to attract these professionals, as well as align their interests with those of the organization. However, having a situation in which these benefits also contribute with tax deductions for the company and still provide good working conditions for the employee is an interesting condition for both sides.

Worker Food Program (PAT) - Fiscal Benefits: Legal entities taxed from taxable income have the possibility of deducting

income tax due, as a tax incentive, in the amount resulting from the application of the tax rate on the amount of costs incurred in the period in Food Programs of the Worker.

Ways of implementing PAT: For the application of the Worker Food Program, the favored legal entity must:

- i) guarantee its own meal service;
- ii) distribute food, including unprepared food (basic food baskets) and
- iii) establish agreements with institutions that provide or provide collective food services. To this end, these institutions need to be accredited by the Program and are willing to comply with the provisions of the Workers' Food Program legislation and the Ordinance of the Labor Inspection Secretariat / Department of Safety and Health at Work n°. 3 of March 1 2002 (BRASIL, 2002). Situation that must be specified in the documents that formalize the agreement between the interested parties.

Supply of Basic Basket: As established in the sole paragraph of article 27 of the Federal Revenue Normative Instruction n°. 11 of February 21, 1996 (BRASIL, 1996), even if enrolled and complying with the provisions of the Worker's Food Program, the expenses with obtaining basic food baskets they must be deducted from the net profit in the establishment of the real profit and the basis of calculation of the social contribution on the profit of the institutions of the legal type. It is worth mentioning that the basic basket must be distributed without distinction to the institution's staff.

No impact on worker's remuneration: According to article 6 of Decree No. 05 of January 14, 1991 (BRASIL, 1991) and previously approved by the Ministry of Labor, in the Workers' Food Program, the portion paid in natura by the institution has no salary nature. Consequently, it is not included in the remuneration for any purpose, it does not constitute a basis for incurring social security contributions or the Severance Pay Fund (FGTS), much less constitutes taxable income for the worker.

Tax Benefits – Pat

How to use the incentive: Based on normative criteria, the legal entity has the possibility to deduct from the income tax due based on the real profit the amount equivalent to the application of the applicable income tax rate on the sum of the cost expenses effected in compliance with the Worker Food, reduced the participation of employees in the cost of meals.

Therefore, the deduction occurs twice:

- i) in the first, through accounting, on the net value of expenses as an expense with the Workers' Food Program, it is highlighted that such deduction has no limits;
- ii) the second, through direct tax deduction, respecting the normative limits.

Costing in common with another company: As established in Article 5 of Decree No. 05 of May 1, 1991 (BRASIL, 1991), legal entities that defray expenses between themselves for the execution of the Worker's Food Program may benefit from the tax incentive. However, in this case, the amount of the incentive by the apportionment criterion will be calculated.

Costing expenses admitted to the incentive calculation base:

Expenditure expenses accepted on the basis of calculation of the incentive are those that will constitute the direct and exclusive costing of the food service, in addition to the raw material, labor, charges resulting from salaries, cleanliness and expenses of energy directly related to the preparation and distribution of meals.

Accounting treatment of program expenses: The Article 7 of Decree 05 of May 1, 1991 (BRASIL, 1991) determines that the legal entity must highlight the expenses included in the Workers' Food Program, with subtitles by nature of expenses.

Tax deduction limits: As of January 1, 1998, the direct tax deduction related to the incentive to the Worker's Food Program was marked at 4% (four percent) of the income tax, with no additional inclusions.

Deduction of tax due by estimate or based on definitive taxable income: The amount of the incentive to the Workers' Food Program can be deducted from the tax amount:

- i) due monthly by estimate, even if calculated based on balance sheets / balance sheets for suspension or reduction of the monthly tax;
- ii) calculated based on annual or quarterly real profit.

Portion that exceeds the limit – utilization: As previously mentioned, the deduction of the incentive to the Workers' Food Program is based on 4% (four percent) of the tax due. However, the eventual excess can be used for deduction in the following two calendar years, taking into account the accepted limits. For the purpose of monthly payment of the estimated tax, the excess portion of the incentive in each month can be used in the following months of the same calendar year, taking into account the program's regulatory limits.

Worker participation in the direct cost of the meal: Paragraph 2 of article 585 of the Income Tax Regulation of 1999 (BRASIL, 1999) and article 4° of the Ordinance of the Secretariat of Labor Inspection / Department of Safety and Health at Work n° 3 of March 1, 2002 (BRASIL, 2002) regulate that the worker's participation in the PAT is restricted to 20% (twenty percent) of the direct cost of the meal.

Income tax deductible meal cost limit: Normative Instruction of the Federal Revenue n° 16 of February 20, 1992 (BRASIL, 1992) regulated that the use of the tax incentive resulting from the Worker's Food Program by the employer is conditioned to the fixing of the maximum cost per meal offered to the worker in the amount of R \$ 3.00 (three reais) from the Income Tax Reference Fiscal Unit (UFIR). Likewise, it regulated that the amount of the tax incentive per meal deductible from income tax needs to be calculated based on the application of the tax rate of R \$ 2.40 (two reais and forty cents) from UFIR. According to article 30 of Law 9,249 of December 26, 1995 (BRASIL, 1995), the amounts contained in the tax legislation, expressed in the amount of the Tax Reference Unit of the Income Tax, were converted into reais at the value of the Tax Reference Unit Income Tax on January 1, 1996. Consequently, the following limits are in reais:

- The maximum cost per meal: R \$ 2.49 (two reais and forty-nine cents);
- Incentive basis: R \$ 1.99 (One real and ninety-nine cents) per meal.

However, the Attorney General's Office of the National Treasury Declaration Act n°. 13 of December 1, 2008 (BRASIL, 2008), and the Opinion of the Attorney General's Office of the National Treasury / General Coordination of Judicial Representation No. 2,623 of November 13, 2008 (BRASIL, 2008), approved by Order of the Ministry of Finance published in the Official Gazette of December 8, 2008, considered irregular the devices that set the maximum values for meals in the context of the Worker's Food Program, with regard to tax benefit.

Calculation of incentive: Corresponding to the application of the rate of 15% (fifteen percent) on the sum of the costing expenses incurred with the Worker Food Program, the incentive that will be deducted directly from the income tax of the institutions enrolled in the program.

Self-management: According to Interministerial Ordinance No. 66 of August 25, 2006 (BRASIL, 2006), the normative act gives the company that adheres to the Worker Food Program the option to opt for the self-management system. From it, the favored institution admits all responsibility for the preparation of meals, which includes everything from hiring staff to distribution to users.

Tax incentive: When calculating the quarterly or annual tax, as well as calculating the monthly tax in the form of an estimate, the legal person taxed by the real profit, enrolled in the Worker's Food Program, may deduct from the tax the amount equivalent to the application of the tax (15%) on the sum of operating expenses incurred in the calculation period.

Cost of living expenses: On the basis of calculating the incentive offered to those enrolled in the Worker's Food Program, the costing expenses that may constitute the direct and exclusive cost of the food service are accepted, which includes the weighting of the following items:

- i) Raw material;
- ii) Labor;
- iii) Charges derived from salaries;
- iv) Cleanliness expenses;
- v) Energy expenditure directly related to the preparation and distribution of meals;
- vi) Expenses with disposable objects, such as cardboard or plastic plates and cups.

In the hiring of institutions that provide collective food supply services by organizations enrolled in the Worker Food Program, their costing expenses will obey the amount paid to the companies that manage the coupons, tickets, electronic or magnetic cards or to the food suppliers.

In short:

Maximum value per meal: R \$ 2.49 (two reais and forty-nine cents) per meal

Maximum incentive per meal: R \$ 1.99 (one real and ninety-nine cents) per meal

Maximum amount paid by the worker: R \$ 0.50 (fifty cents) per meal. As established by Article 369 of the 1999 Income Tax Regulation (BRASIL, 1999), the amount of the incentive must be calculated at the lowest value of the following options:

- 15% (fifteen percent) of the total amount of expenses with food expenses, which already includes employee discounts;
- The result of multiplying R \$ 0.2985 (twenty-nine cents) by the number of meals provided in the period.

Like this:

- 1.99 (one real and ninety-nine cents) per meal x 15% (fifteen percent) = R \$ 0.2985 (twenty-nine cents).

Case Study

To illustrate how legal entities taxed based on taxable income can deduct from income tax due, as a tax incentive, among others, the amount corresponding to the application of the tax rate on the sum of the cost expenses incurred in the period in Programs of Worker's Food (PAT), a case study was carried out with five organizations operating in Belém, State of Pará. Consultation with these organizations was anchored in the discussion of the following issues:

- Accountant's data consulted;
- Data of the consulted company;
- Do you provide meals at the workplace or do you receive transported meals? What types used?
- If you do not provide a meal, do you offer meal vouchers (tickets) or food vouchers (basic basket)?
- Do you provide breakfast?
- Do you provide a snack (in addition to breakfast and / or meal)?
- What is the average number of meals served in the longest shift?
- What is the average number of meals served daily (including lunch, dinner and supper, if any)?
- Is there a discount on the employee's payroll for meal supplies? If so, what is the discount amount or percentage?
- Do you know PAT - Workers' Food Program of the Ministry of Labor?
- Are you registered with PAT - Workers' Food Program of the Ministry of Labor?
- Does it have the necessary information for the implementation and maintenance of PAT?
- Do you have information about the benefits of implementing PAT for both employer and employee?
- Do you have a nutritionist to follow the PAT if registered?
- Would you like to receive information about the correct implementation of the PAT and the benefits that the program offers?

At the request of the case study participants, the anonymity of the organizations, as well as the accounting professionals who were consulted for the following statements, was maintained. Of the companies that participated in the case study, three work as the Worker Food Program, making a total of 60% (sixty percent) of the general set of participants, who have the deduction of the tax incentive from the program.

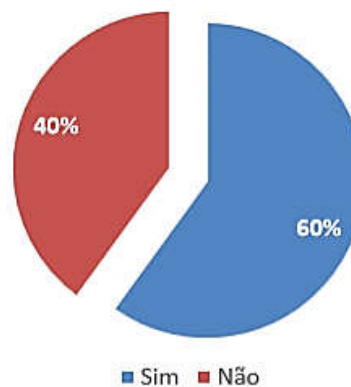
Demonstration

A certain legal entity taxed by the quarterly real profit, enrolled in the Worker Food Program, provided 2,500 (two thousand and five hundred) meals in the 1st quarter of 2017, at

an average cost of R \$ 5.50 (five reais and fifty cents). Noting that:

- The income tax due in the quarter was R \$ 10,000.00 (ten thousand reais).
- The legal entity is not entitled to another tax incentive to deduct income tax, in addition to the Worker Food Program.

Thus, we have the following situations:



RESPOSTA	Nº DE EMPRESAS	%
Sim	3	60%
Não	2	40%
TOTAL	5	100%

Source of authors (2017).

Graph 1. Number of companies that participated in the case study

1st Situation: The value of the incentive to those enrolled in the Worker Food Program is calculated, for a company classified as real profit and wants to collect its tax by estimate, that is, the annual real profit, given the data below:

- Income tax by estimate due in the month - R \$ 10,000.00 (ten thousand reais) + R \$ 4,666.67 (four thousand, six hundred and sixty-six reais and sixty-seven cents - additional due to amounts above R \$ 10,000): R \$ 14,666.67 (fourteen thousand, six hundred and sixty-six reais and sixty-seven cents);
- Expenses made in the month with the Worker Food Program: R \$ 5,000.00 (five thousand reais);
- Number of meals served in the month: 2,500 (two thousand and five hundred reais).

Calculation:

- R \$ 1.99 (one real and ninety-nine cents) per meal x 15% (fifteen percent) = R \$ 0.2985 (twenty-nine cents).

Per meal:

- R \$ 0.2985 (twenty-nine cents) x 2,500 (two thousand and five hundred) meals = R \$ 746.25 (seven hundred and forty-six reais and twenty-five cents).

Or:

- R \$ 1.99 (one real and ninety-nine cents) x 2,500 (two thousand and five hundred) meals = R \$ 4,975.00 (four thousand nine hundred and seventy-five reais).

Deductible portion under PAT:

- R \$ 4,975.00 (four thousand nine hundred and seventy-five reais) x 15% (fifteen percent) = R \$

746.25 (seven hundred and forty-six reais and twenty-five cents).

2nd situation

Expenses made during the month with PAT: R \$ 5,000.00 (five thousand reais) x 15% (fifteen percent) = R \$ 750.00 (seven hundred and fifty reais). The amount that can be deducted from the tax is that of the 1st situation because it is the lowest amount. Observe the limit allowed by the legislation, that is, 4% (four percent) on the profit without considering the surcharge.

Thus, we have:

The Limit of the PAT deduction in the month - R \$ 10,000.00 (ten thousand reais) x 4% (four percent) = R \$ 400.00 (four hundred reais).

- R \$ 746.25 (seven hundred and forty-six reais and twenty-five cents) = 1st situation;
- R \$ 400.00 (four hundred reais) = amount deducted in the month;
- R \$ 346.25 (three hundred and forty-six reais and twenty-five reais) = Excess to be used in subsequent months.

As it can be seen from the two examples exemplified, as a tax incentive, organizations taxed based on taxable income can deduct from the income tax the amount corresponding to the application of the tax rate on the sum of the cost expenses incurred in the period with the Worker Food Program. As exemplified, this situation can be guaranteed in two ways. In the first, the calculation of the amount to be taxed can be done by applying the rate of 15% (fifteen percent) on the value of the tax incentive base per meal [R \$ 1.99]. In the second, the calculation can be made by applying the rate of 15% (fifteen percent) on the amount of expenses incurred in the month with the Worker Food Program. Observing the application of the two situations, it is possible to perceive that the use of the first is more advantageous for the organization, since the amount to be taxed is the lowest. Thus, an organization that would have to pay R \$ 746.25 (seven hundred and forty-six and twenty-five cents) of income tax, when enrolled in the Worker Food Program, will pay only R \$ 400 (four hundred reais), still having a balance of R \$ 346.25 (three hundred and forty-six reais and twenty-five cents) to be deducted in the following month.

Final Considerations

The presented study debated the importance of the Worker's Food Program as an instrument for managing employee benefits in the context of organizations, not only for the question that benefits are indispensable means of supply and support that aim to promote attraction, retention and satisfaction of the worker. increasing productivity, as well as contributing to the best tax collection by companies. It is also interesting to note the benefits of the Worker Food Program for organizations.

Participation in this issue allows the organization to be granted exemptions from social charges when paying the amount of this benefit due to the use of this benefit by its employees. In particular, the case of the contribution to the Guarantee Fund on Time of Service (FGTS), social security contributions and reduction of part of the expenses with this aid if you choose taxation based on your profit.

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