

ANTI-LITIGATION INSTITUTIONS, MECHANISMS AND ADMINISTRATIVE TAX COURT IN THE SÃO PAULO STATE TAX SYSTEM

An Overview with Comparative Figures

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ABSTRACT

The Brazilian tax system is characterized by high normative complexity, which usually can give rise to doubts and difficulties for taxpayers, whether they are individuals or corporations. This scenario has led to conflicts between the government and taxpayers, which resulted in developing anti-litigation institutions and mechanisms that are specific to the tax system. These measures aim to establish a collaborative relationship between the government and taxpayers, intending to dispel doubts and minimize difficulties, thus preventing litigation. When prevention is not successful, specialized administrative procedures are available to deal with these conflicts before addressing them to Court. This represents the last resort to prevent the undesirable judicial litigation on the issue, which would result in expensive costs and suffer from lack of expertise from ordinary Justice, as well as frequent unreasonable procedure length. One of the best ways to understand a certain reality is to compare it with another, observing

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differences and similarities. This work first provides a general overview about Brazil and Japan, especially regarding the State of São Paulo. Then, the study offers some important insights into the Administrative Tax Procedure in São Paulo, referring to proceedings since its beginning, with the notice of infraction and the corresponding defense, up until the Administrative Tax Court decision, in cases in which an appeal has been filed. Additionally, this paper describes and examines the main anti-litigation mechanisms employed by the State of São Paulo, including "contact us" channel, taxpayer-specific rulings, and other preventive measures. Finally, the work provides information on a comparative perspective regarding the number of legal actions, advance tax rulings, Administrative Tax Procedures, the financial amount in litigation, as well as time length and taxpayer success rate.

Keywords: Brazil. São Paulo State. Japan. Tax Law. Comparative Study.

1. Introduction

The recent decades are characterized by big changes in the whole world, especially because of the high pace of technological innovation, maybe unprecedented in the history of humankind. Consequently, the dynamics of commercial activities have been impacted, giving rise to big challenges also in the tax system.

In particular, in the realm of Brazilian tax control, the enforcement of traditional supervision rules has become more difficult in certain situations, especially because of its high normative complexity. This context resulted in the development of anti-litigation institutions and mechanisms specific to the tax system, which aim to establish a collaborative relationship between the government and taxpayers, intending to dispel doubts and minimize

difficulties, effectively preventing litigation, regardless of the specialized administrative procedures available, which precede the undesirable judicial litigation on these demands.

This work analyses the Brazilian scenario, especially in the State of São Paulo, on a comparative perspective with Japan, examining the subject on a broader view, identifying common points and differences between both countries.

2. General Information: Japan, Brazil and State of São Paulo

According to the World Bank³, in 2016 Brazil had an estimated population of 207 million people and a nominal GDP of USD 1.796 trillion, from which USD 517 billion (nominal) refer to taxes, which corresponded to 28.8% of the GDP. The country divides in 27 federative units, composed of 26 states and a federal district. Japan, in turn, had a population of 127 million inhabitants and a nominal GDP of USD 4.940 trillion, out of which USD 622 billion (nominal) consisted of taxes, corresponding to 12.6% of its GDP. It organizes in 47 divisions, denominated "Prefectures".

³ "World Development Indicators Database", World Bank, accessed April 29, 2018, available from < <http://databank.worldbank.org/data/home.aspx> >.

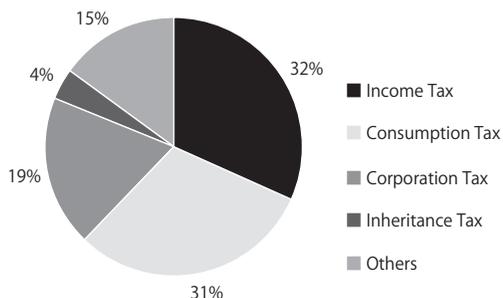
The main taxes in Japan can be categorized according to table 1.

Table 1 – Major taxes in Japan⁴

	National taxes	Local Taxes	
		Prefectural Taxes	Municipal Taxes
Taxes on Income	Income Tax	Prefectural Inhabitant Tax	Municipal Inhabitant Tax
	Corporation Tax	Enterprise Tax	
Taxes on Gifts and Inheritances	Gift Tax		
	Inheritance Tax		
Taxes on Property	Automobile Weight Tax	Automobile Tax	Property Tax
			Special land-ownership Tax
			City Planning Tax
			Light Motor Vehicle Tax
			Business Facilities Tax
Taxes on Consumption	Consumption Tax	Local Consumption Tax	Municipal Tobacco Tax
	Tobacco tax	Prefectural Tobacco Tax	
	Liquor Tax	Golf Course Usage Tax	
Taxes on Transactions	Stamp Tax	Real Estate Acquisition Tax	
	Registration and License Tax	Automobile Acquisition Tax	

The analysis of the Japanese tax profile, in Japanese fiscal year 2016, reveals the prevalence of taxes on income and consumption with similar numbers, distributed as in figure 1.

Figure 1 – Main tax items in Japan (Japanese FY 2016)⁵



In turn, main Brazilian taxes⁶ divide according to the categories displayed on table 2.

Table 2 – Major taxes in Brazil⁷

	Federal	State	Municipal
Tax on Income	Income Tax		
	Net Profit Social Contribution		
Tax on Consumption	Industrialized Products Tax	Goods and Services Circulation Tax	Services Tax
	Social Integration Program		
	Contribution to Social Security Financing		
	Import Tax		
Tax on Transactions	Financial Transaction Tax		Real Estate Transmission Tax
Tax on Property	Rural Territorial Tax	Automotive Vehicle Property Tax	Urban Territory and Building Tax
Tax on Gifts and Inheritances		Donation and "Causa Mortis" Transmission Tax	

⁴ "Guide to Japanese Taxes and System of Certified Public Tax Accountants", Tokyo Certified Public Tax Accountant's Association, accessed April 29, 2018, available from < http://www.tokyozeirishikai.or.jp/common/pdf/f_eng.pdf >.

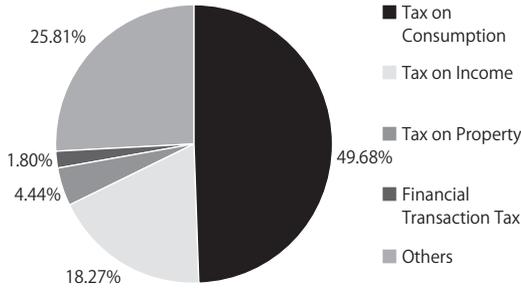
⁵ "FY2016 Survey of the Settled Amount of Tax and Stamp Revenues", Ministry of Finance (Japan), accessed April 29, 2018, available from < http://www.mof.go.jp/english/tax_policy/account/h2016e.pdf >.

⁶ For an introductory overview of the Brazilian Tax System, we suggest the work by Professor Jose Marcos Domingues, "An introduction to The Brazilian Tax System", *Kobe University Law Review*, no. 44 (2010): 19-33, accessed April 29, 2018, available from < <http://www.lib.kobe-u.ac.jp/repository/81004335.pdf> >.

⁷ Table elaborated by the authors of this work.

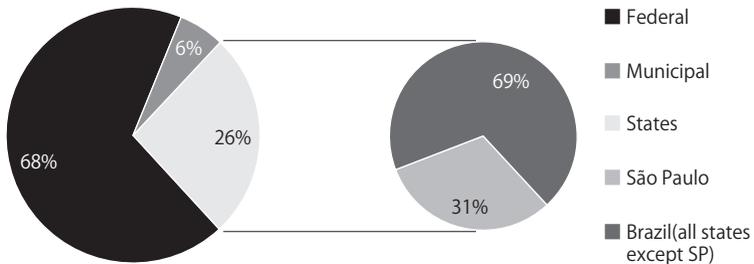
The Brazilian tax profile, for Brazilian fiscal year 2015, shows a significant predominance of taxes on consumption, allocated as in figure 2.

Figure 2 – Main tax categories (Brazilian FY 2015)⁸



The State of São Paulo, particularly, composes of 645 municipalities, with estimated 45 million inhabitants (21% of Brazilian population) and nominal GDP of USD 614 billion (34% of Brazilian GDP), of which USD 47 billion (nominal) refer to State taxes only, corresponding to 7,6% of State GDP, still without regarding federal and municipal taxes⁹.

Figure 3 – Tax revenue by federative level¹⁰ & Goods and services circulation tax (expanded view): São Paulo vs. other States (Brazilian FY 2015)¹¹



The amount of State taxes collected by the State of São Paulo, during

⁸ "Carga Tributária no Brasil 2015: Análise por Tributos e Base de Incidência", Ministério da Fazenda (Brazil), accessed April 29, 2018. available from < <http://idg.receita.fazenda.gov.br/dados/receitadata/estudos-e-tributarios-e-aduaneiros/estudos-e-estatisticas/carga-tributaria-no-brasil/ctb-2015.pdf> >.

Brazilian fiscal year 2015, corresponded to approximately 8% of total tax revenue from all federative levels. In addition, the amount of goods and services circulation tax ("ICMS") collected by the mentioned State represented 84% of its total tax revenue, demonstrating the relevance of this tax.

3. Anti-litigation Mechanisms adopted by the State of São Paulo

This section highlights three of the main anti-litigation mechanisms adopted by the State of São Paulo: taxpayer-specific rulings ("regimes especiais tributários"), "contact us" channel ("fale conosco") and advance tax rulings ("consultas tributárias").

a. Taxpayer-specific Rulings ("Regimes Especiais Tributários")

In recent decades, the dynamics of commercial activities have changed and it became difficult to apply some of the ordinary rules for tax supervision and control in certain situations. In this scenario, in order to secure that these rules and the law are correctly and efficiently applied, the Brazilian Tax Authorities of all federative levels started to use the so-called "taxpayer-specific rulings" ("regimes especiais tributários"), which consist of instruments that establish specific taxation criteria, individualized for taxpayers who require differentiated treatment¹².

⁹ "Relatórios da Receita Tributária", Secretaria da Fazenda do Estado de São Paulo, accessed April 29, 2018, available from < <https://portal.fazenda.sp.gov.br/acessoinformacao/Paginas/Relatórios-da-Receita-Tributária.aspx> >.

¹⁰ "Carga Tributária no Brasil 2015: Análise por Tributos e Base de Incidência", Ministério da Fazenda (Brazil).

¹¹ "Relatórios da Receita Tributária", Secretaria da Fazenda do Estado de São Paulo.

¹² Ricardo Ferreira Bolan, *Regimes Especiais - IPI e ICMS*, São Paulo: Quartier Latin, 2004.

Originally, these instruments aimed at simplifying the instrumental obligations of the taxation process. In more recent years, however, this scope has broadened and some taxpayer-specific rulings also contemplate the tax amounts themselves, not just instrumental obligations.

They can be divided into two categories according to the initiative of its proposal: (i) taxpayer initiative and (ii) Tax Authority initiative. Regarding the first type, basically any taxpayer, mostly legal persons, can propose to the Tax Authority a taxpayer-specific ruling that applies to his own operation, which will be submitted to a team of specialists from the São Paulo State Revenue Services ("Secretaria da Fazenda do Estado de São Paulo" – SEFAZ-SP) dedicated exclusively to analyzing these demands. Concerning the second category, it consists on the enactment of a piece of legislation, such as a State Decree, issued with the content of a taxpayer-specific ruling regarding a particular economic sector, allowing any company that meets the specific requirements to formally adhere to it.

A useful example is the taxation systematic offered by the São Paulo State Decree 51.597/2007 to businesses that provide meals *in loco*, such as restaurants, coffee shops, dining bars and others¹³. Once the firm adheres to this taxpayer-specific ruling, it is entitled to utilize a simplified rule for calculating the applicable goods and services circulation tax ("ICMS") as well as facilitated instrumental obligations related to the tax assessment procedures. Regarding tax amount, instead of applying standard norms for calculation, these taxpayers pay 3,2% of their monthly gross revenue, which may represent financial resources optimization for many of them.

Currently, in the State of São Paulo, taxpayer-specific rulings proposed by

¹³ São Paulo. "Decreto nº 51.597, de 23 de fevereiro de 2007". Institui regime especial de tributação pelo ICMS para contribuintes que tenham como atividade o fornecimento de alimentação. São Paulo, 2007.

the taxpayer are demanded online. This provides an easier access, as well as agility in the proceedings and communication between the interested parties. This service is free and it is a very relevant anti-litigation mechanism which aims to establish a collaborative relationship between Tax Authorities and taxpayers.

b. "Contact Us" Channel ("Fale Conosco")

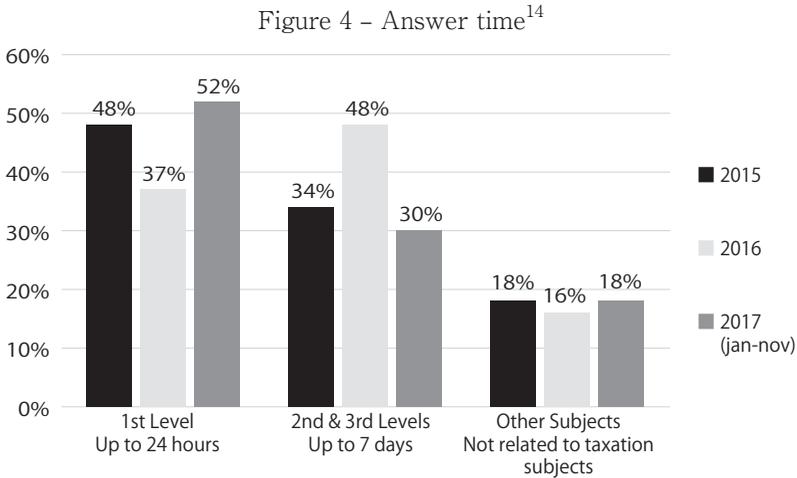
This instrument characterizes mainly by its informality and short answer time. The main goal is to provide general information and answers to broader queries with lower complexity in comparison to the other resources available. The orientations are merely informative, they do not oblige the taxpayer to follow the procedures described in the answer.

It is a free service that can be accessed by the São Paulo State Revenue Services website. Once received, the taxpayers' queries go through two preliminary screenings: (i) by subject, and (ii) by complexity level. The ones that do not refer to subjects managed by the Tax Administration ("Administração Tributária") are forwarded to the appropriate Coordination. Next, the demands that remain with the Tax Administration divide into three complexity levels.

The first level consists of low complexity queries. An outsourced service provider delivers their answers within 24 hours. Second and third levels correspond to questions of medium complexity, being the third level more complex than the second. Answers are provided by the São Paulo State Revenue Services employees, specifically by general public service divisions – second level – and specialized divisions – third level. In both these levels, answers are provided up to seven days from request.

In Japan, National Tax Agency (NTA) provides a similar instrument referred to as "Consultations".

Figure 4 shows the distribution of questions after screening. Note that in 2016, during a 2-month period, the answering service of first level queries was not provided due to contract transition from the previous outsourced service provider to the current one, hence the difference of the 2016 numbers in comparison to 2015 and 2017.



c. Advance Tax Rulings ("Consultas Tributárias")

Due to tax system complexity, technological and commercial development, among other reasons, not all of the taxpayers' questions can be answered by the "Contact Us" channel. For these more complex inquiries, the taxpayer can demand the São Paulo State Advance Tax Rulings Directorate ("Consultoria Tributária da SEFAZ-SP").

These advance tax rulings aim to respond specific factual questions related to concrete transactions. It interprets the legislation according to each case in particular. It does not provide general abstract or theoretical

¹⁴ "Relatórios Internos da Consultoria Tributária", Secretaria da Fazenda do Estado de São Paulo, São Paulo, 2017.

interpretations.

The taxpayer can formulate advance tax rulings only in its own interest. It cannot demand the Directorate on behalf of third parties. Syndicates and Associations can also demand in the interest of their members. The orientation provided obliges the demanding taxpayer to follow the procedures described in the answer, hence it is not merely informative.

The orientations provided are public and divulged on the São Paulo State Revenue Services website. Therefore, they can be used as guidelines for other taxpayers and for the Tax Authorities themselves. In some cases, they serve as an instrument for filling interpretative gaps of the legislation.

The advance tax ruling is a formal procedure that has specific requirements: (i) legitimacy of the taxpayer (demand on his own behalf); (ii) the requester must describe the facts consulted providing complete and exact information; (iii) the matter consulted must refer to legal questions concerning the São Paulo State Tax System; (iv) there should not be pending any tax procedures, notices of infraction nor administrative or judicial procedures concerning the subject consulted.

During the period of analysis, the Tax Authority suspends the collection of the tax being consulted. Once there is a decision, the due value can be adjusted in accordance to the decision. After the decision has been divulged, the taxpayer has a 15-day default time limit for the necessary adjustments, unless the decision itself defines another period. From the advance tax ruling's decision, there are no possible requests for review.

Currently, in the State of São Paulo, advance tax rulings are submitted online, providing an easier access, as well as agility in the proceedings and communication between the interested parties. This service is provided for free.

In Japan, NTA offers an equivalent service named "Advance Inquiries".

Selected answers are available on their website's Q&A section as reference for other taxpayers.

4. Administrative Tax Procedure ("Processo Administrativo Tributário")

The Administrative Tax Procedure starts with the defense allegations presented against the notice of infraction ("Auto de Infração e Imposição de Multa" – AIIM), which, in the first instance, is conducted by a single tax agent member of the Tax Judgement Office ("Delegacia Tributária de Julgamento" – DTJ). In cases that involve smaller tax debts (less than BRL 514.000,00¹⁵ – updated to 2018), the Tax Judgement Office is responsible for receiving and judging appeals.

Trials at second instance are held by the Judgement or Superior Chambers of the Tax Court ("Tribunal de Impostos e Taxas" – TIT), which is composed by an equal number of members by both Tax Authority and taxpayers and issues collegiate decisions. It is responsible for judging appeals that refer to greater tax debts (exceeding BRL 514.000,00 as of 2018).

The Tax Court is composed by (i) Chairman and Vice-Chairman Offices, exercised by a Tax Authority representative, and by a taxpayer representative, respectively; (ii) Secretariat ("Secretaria"), responsible for assisting the Chairman mostly in administrative issues; (iii) Judgement Chambers, integrated by 64 members, divided in 16 chambers, each with 4 components, including a Chairman and a Vice-Chairman. Half of the chambers' Chairmen are taxpayer representatives and half are appointed by the Tax Authority; (iv) Superior Chamber, 16 members. Chairman is appointed by the Tax

¹⁵ Approximately USD 148.229,32 as of April 29, 2018.

Authority and Vice-Chairman is a taxpayer representative. Both Judgement and Superior Chambers are located in São Paulo city only (capital).

Tax Judgement Offices are also linked to the Tax Court aiming to promote jurisprudence and procedure adherence. They are established in approximately 16 offices in various cities throughout the State of São Paulo.

All members are Tax Law Specialists. Their decisions must be based on technical knowledge, highlighting their expertise regarding taxation matters in comparison to ordinary Justice, which usually lacks specialism on this subject.

Another aspect that differentiates Administrative Tax Procedure from judicial litigation is easy access. This can be inferred from the fact that all the documentation is based on digital media available online. There are still some remaining old procedures on paper which are being gradually eliminated. Additionally, this service is provided for free and it is not necessary to hire a lawyer.

When the decision favors the taxpayer, the case is closed, consisting in one of the hypotheses of tax debt extinction defined by the Brazilian Tax Code¹⁶. When the decision favors the Tax Authority, the same matter can be taken to the Judicial System by the taxpayer.

5. Comparative Data

This section compares data related to advance tax rulings, Administrative Tax Procedures and Tax Law legal actions in Japan and Brazil, particularly in the State of São Paulo.

¹⁶ 16 Article 156, IX, of the Brazilian National Tax Code. Brazil, "Lei nº 5.172, de 25 de Outubro de 1966". Código Tributário Nacional, accessed April 29, 2018, available from <http://www.planalto.gov.br/ccivil_03/Leis/L5172.htm >.

a. Advance Tax Rulings ("Consultas") x Advance Inquiries

In Japan, taxpayers that have doubts concerning a certain tax treatment can formulate advance inquiries addressed to the NTA Tax Offices. Tables 3 and 4 compare the amount of advance tax rulings received by São Paulo State Revenue Services, during Japanese 2016 fiscal year and part of 2017 (April-November), with the number of advance inquiries received by NTA, as well as the amount of answers divulged in both institutions' websites.

Table 3 – São Paulo (inquiries/posted)¹⁷ Table 4 – Japan (inquiries/Q&A posted)¹⁸

State of São Paulo (Japanese FY)	2016	2017 (apr-nov)	Japan (Japanese FY)	2015	2016
Advance Tax Rulings Received	1976	1295	Advance Inquiries Received	126	132
Advance Tax Rulings Posted (total)	3915	5432	Q&A posted (total)	1811	1821

One can note that the volume of advance tax rulings is much bigger in the State of São Paulo, although it is just one of Brazil's States than in all of Japan. Moreover, the number of answers published has been increasing at a higher pace than the input of advance tax rulings in São Paulo, due to the fact that they only started being posted in 2014. Previous years' answers are being gradually divulged since they require additional data treatment such as classified information protection related to taxpayer identity.

b. Administrative Tax Procedure ("Processo Administrativo Tributário") x Request for Review by Administrative Body

This section compares the Administrative Tax Procedure in São Paulo

¹⁷ "Relatórios Internos da Consultoria Tributária", Secretaria da Fazenda do Estado de São Paulo, São Paulo, 2017.

¹⁸ "National Tax Agency Report", National Tax Agency (Japan), accessed April 29, 2018, available from < https://www.nta.go.jp/english/publication/agency_report/index.htm >.

State and requests for review by administrative bodies, which integrate the Japanese NTA, that consist of two possibilities: Re-examination (also referred as Reinvestigation) and Reconsideration Procedures. The compared institutes are similar in terms of objectives and relevant agents involved, besides initiating with taxpayer disagreement with an Administrative Tax Authority's act, usually some kind of non-compliance that motivated the issue of a notice of infraction. Furthermore, their conclusion is suchlike: in case of taxpayer success, conflict is over, and in case of a Tax Authority favorable outcome, it can be addressed to judicial litigation.

Re-examination is a taxpayer rights remedy utilized to review a disposition executed by the District Director of the Tax Office or Regional Commissioner by the same authority that issued it. This request may or may not precede reconsideration.

Reconsideration is also a taxpayer rights remedy addressed to the Director-General of the National Tax Tribunal (NTT) to request the review of a decision made by the District Director of the Tax Office or Regional Commissioner. The Director-General of the NTT and the Directors of Tokyo and Osaka Regional Tax Tribunals are chosen from two specific careers: judges or public prosecutors. Appeal judges positions are composed by specialists from the private sector such as Certified Public Tax Accountants and lawyers employed with fixed terms. The Director-General of the NTT must act as a fair third party and his decisions cannot be more disadvantageous to taxpayers than the contested decision. In Japan, reconsideration request must precede judicial litigation¹⁹.

Tables 5 and 6 show recent statistics regarding these institutes.

¹⁹ National Tax Tribunal (Japan), "Overview of National Tax Tribunal", presentation provided during institutional visit to the NTT, in Tokyo, Japan, as part of the "Brazil-Japan Litigation and Society Seminar", January 11, 2018.

Table 5 – Japan²⁰

	Japan (Japanese FY)	2015	2016
Processed	Re-examination	3200	1805
	Reconsideration	2311	1959
	Total	5511	3764
Taxpayer success rate	Re-examination	8,4%	6,8%
	Reconsideration	8,0%	12,3%
Time length (months)	Re-examination	99,3% 3 months	95,6% 3 months
	Reconsideration	92,4% 12 months	98,3% 12 months

Table 6 – São Paulo²¹

	State of São Paulo (Brazilian FY)	2015	2016
Processed	Processed	5646	4660
Taxpayer success rate	Taxpayer success rate	22%	25%
Time length (months)	Time length (months)	19,5	22,9

The tables reveal a similar magnitude between São Paulo State and Japan, with higher numbers from the first one regarding the amount of requests for review and taxpayer success rate. Concerning time length, NTA defines 3-month and 12-month periods for concluding re-examination and reconsideration requests, respectively. This goal was achieved by 99,3% (2015 JP FY) and 95,6% (2016 JP FY) of re-examination requests and by 92,4% (2015 JP FY) and 98,3% (2016 JP FY) of reconsideration requests. In São Paulo, on the other hand, the average length of Administrative Tax Procedure was 19,5 months (2015 BR FY) and 22,9 months (2016 BR FY). Although statistics are measured differently, numbers indicate significant faster review time in Japan.

c. Judicial Litigation

The comparison between Judicial Tax litigation in Brazil and in Japan

²⁰ "National Tax Agency Report", National Tax Agency (Japan).

²¹ "Relatórios de Gestão do Tribunal de Impostos e Taxas", Secretaria da Fazenda do Estado de São Paulo, accessed April 29, 2018, available from < <https://portal.fazenda.sp.gov.br/servicos/tit/Paginas/Relatórios-de-Gestão-do-Tribunal-de-Impostos-e-Taxas.aspx> >.

reveal significantly different scenarios as detailed in this section. The data available allows for only a few conclusions, since not all information presented by Brazilian sources have equivalent counterparts in Japan and vice-versa²².

Table 7 informs new Tax Law cases in the State of São Paulo and Brazil's Judicial System as a whole, for the period of 2014-2016 (BR FY).

Regarding Japan, Table 7 presents the amount of Tax Law cases initiated and concluded as well as taxpayer success rate for the period of 2014-2016 (JP FY).

Table 7 – Tax Law – new cases (Brazil)²³

2014 -2016 (Brazilian FY)	State of São Paulo Judicial System	Brazilian Judicial System (total)
Tax Law - <u>new cases</u>	2.320.822	11.073.487

Table 8 – Tax Law cases numbers (Japan)²⁴

Japan (Japanese FY)	2014	2015	2016
Total	536	487	(unav.)
Processed	280	262	245
Taxpayer success rate	6,80%	8,4%	4,5%

As the numbers indicate, the amount of Tax Lawsuits in the State of São Paulo alone already exceeds substantially the volume of the Japanese cases on the same subject, although São Paulo is just one of the 27 Brazilian Federative States. These numbers, indeed, are not even at the same order of

²² An institutional visit to the NTT, in Tokyo, Japan, was conducted in January 11th, 2018, as part of the "Brazil-Japan Litigation and Society Seminar", attended by the authors of this work. During the visit, one of the questions asked to the NTT representatives concerned the financial amounts involved in Tax Law cases in Japan. It was answered that this specific information was not available in their reports at that moment. This is mentioned as an example of an information found only in Brazilian publicized sources.

²³ "Painéis CNJ", Conselho Nacional de Justiça, accessed April 29, 2018, available from <<http://painéis.cnj.jus.br>>.

²⁴ "National Tax Agency Report", National Tax Agency (Japan).

magnitude, revealing how the two countries differ in relation to litigiousness concerning Tax Law issues.

In Japan, trial length at first instance for Tax Law cases (non-criminal) usually ranges from one to one and a half years²⁵. In the State of São Paulo, on the other hand, first instance Tax Law cases last much longer: six years and eleven months in 2016 (BR FY) and seven years and three months in 2015 (BR FY) on average. Additionally, the number of new lawsuits is superior to the quantity of cases judged every year in Brazil, which means that these judicial demands are continuously being accumulated concerning taxation matters.

In Brazil, the total amount in litigation as of November 2017 for Tax Law cases only was estimated to range between USD 613-766 billion, which corresponds to 33 to 42% of the GDP in the period²⁶. In Japan, the information available indicates a total amount of USD 141 million in litigation in 2013 (JP FY) for criminal tax law cases only²⁷. Although these two figures cannot be compared, the Brazilian numbers seem to indicate strong litigiousness, since the financial amount involved is significantly high. This does not seem to be the case in Japan.

6. Final Remarks

This study adds to our understanding of common points regarding

²⁵ Kenji Hashidate et al. "Tax litigation in Japan: overview", accessed April 29, 2018, available from < [https://uk.practicallaw.thomsonreuters.com/2-622-7831?transitionType=Default&contextData=\(sc.Default\)>](https://uk.practicallaw.thomsonreuters.com/2-622-7831?transitionType=Default&contextData=(sc.Default)>).

²⁶ Luciana Dyniewicz, "Babel tributária vai além de impostos", Estadão, November 20, 2017, accessed April 29, 2018, available from < <http://economia.estadao.com.br/noticias/geral,babel-tributaria-vai-alem-de-impostos,70002090344> >.

²⁷ "The 141th National Tax Agency Annual Statistics Report FY 2015", National Tax Agency (Japan), accessed April 29, 2018, available from < <https://www.nta.go.jp/publication/statistics/kokuzeicho/h27/h27.pdf> >.

institutional framework, instruments to dispel taxpayer doubts and conflict resolution in administrative body's context in Japan and Brazil, specifically in the State of São Paulo. Both countries have administrative Tax Courts and provide services dedicated to answering complex inquiries (advance tax rulings x advance inquiries) as well as simple consultations ("contact us" channel x consultations), besides promoting selected previous answers publication.

In contrast, the number of conflicts observed in the Asian country is significantly lower, on a different order of magnitude, even in direct comparison with just one of the 27 Brazilian States – São Paulo –, particularly, but not exclusively, concerning judicial litigation. This finding was somehow surprising considering the higher amount of financial resources that circulate in the Japanese economy²⁸.

In summary, there are three possible key reasons which cumulatively might contribute to explaining the difference between the scenarios studied.

The first one consists on the complexity of the Brazilian Tax System, characterized by an excessive amount of laws²⁹, which generates uncertainties regarding applicable rule identification and interpretation. Moreover, the language utilized for tax legislation in general oftentimes merges technical

²⁸ According to the World Bank, Brazilian GDP corresponded to 36% of the Japanese GDP in 2016. São Paulo State's GDP was equivalent to 14,6% of Japan's GDP in 2016, also according to the information provided by the World Bank and "Relatórios da Receita Tributária", Secretaria da Fazenda do Estado de São Paulo.

²⁹ In 2014, a book with most (but not all) Brazilian tax laws was edited: it had over 41.200 pages and weighed around 7,5 tons – the approximate weight of 2 hippos. It was even audited by The Guinness Book of Records to become a candidate for the title of the biggest book in the world. Source: "Livro com toda lei tributária do Brasil pesa 2 hipopótamos", Prates, M, *Revista Exame*, March 26, 2014, accessed April 29, 2018, available from < <https://exame.abril.com.br/brasil/livro-gigante-revela-peso-de-impostos-no-pais-2-hipopotamos> >.

terminology with inaccurate or non-technical meanings, which makes it hard to understand even for tax specialists.

Besides, the operational aspects themselves are complicated³⁰, presenting a complex rationale for determining elements of tax incidence which makes it difficult even for good faith taxpayers to follow the legal guidelines. All this composes a scenario of inefficiency that highlights the relevance of the anti-litigation mechanisms described since they play a role in avoiding undesirable judicial litigation, which would result in expensive costs and suffer from lack of expertise from ordinary Justice regarding taxation matters, as well as frequent unreasonable procedure length.

Another reason consists of Tax Amnesties. Very often, legislation is created to reduce pending interests and penalties due to the lack of payment, mostly for corporations, thus creating a constant expectation around these initiatives. In this context, all kinds of procedures that can suspend the collection of taxes over the longest period possible tend to be more utilized in hope for a new Tax Amnesty that can benefit defaulting taxpayers³¹.

Finally, a third cause refers to litigation incentives. In Brazil, since there are several judicial review opportunities, many taxpayers end up utilizing the judicial system deliberately as a strategy to continuously postpone payment of tax debts. This builds up a tradition of litigiousness that results in procedure length extension beyond reasonable and represents one of many

³⁰ Among other possible examples, we mention "substituição tributária" - "tax substitution" -, a complex system that implies transferring the responsibility for tax payment from one person to another in a determined transaction involving taxable events.

³¹ To illustrate this topic, we mention successively editions of "Refis", which consists on a Federal tax payment installment program that contemplates penalty and interest debt reduction. More details can be found on the work by Marta Watanabe, "Sucessivos Refis tornam elisão fiscal vantajosa", *Valor Econômico*, June 7, 2017, accessed April 29, 2018, available from < <http://www.valor.com.br/brasil/4995306/sucessivos-refis-tornam-eliminacao-fiscal-vantajosa> >.

causes for the singularly high amount of legal actions regarding tax disputes observed in Brazil.

All these elements, along with others, contribute to a notable difference on the amount of demands, either concerning the anti-litigation mechanisms described, either referring to the procedures directed to the appropriate administrative and judicial institutions of the countries and State analyzed.

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