

EXTRAFISCALITY AND GOVERNMENT AUDIT

Perspective on the TCU's references and case of the TCE/CE

Rebeca Moreira de Queiroz



Independent author, Fortaleza (CE), Brazil.

ABSTRACT

This study aimed to investigate the relationship between extrafiscality, as a strategy in the implementation of public policies, and external control mechanisms, with an emphasis on the role of the Brazilian Federal Court of Accounts (TCU) in this context. Secondly, it aimed to contribute to the debate on improving control instruments and promoting accountability in public administration. The research, of a basic nature and qualitative approach, used a deductive method and bibliographic survey in the analysis of the TCU's references on the subject and an illustrative case of an audit carried out by the Court of Accounts of the State of Ceará (TCE/CE), in which an inductive method was also employed. The results demonstrated the TCU's contribution to monitoring and guiding the control of extrafiscal policies, with objective criteria and good audit practices. It was identified that, in a 2019-2020 audit, upon finding nine instances of non-compliance in revenue waivers, the TCE/CE requested determinations and recommendations, the fulfillment of which is being carried out and monitored. It was concluded that the effective control of extrafiscal policies, focusing on tax exemptions, requires the participation of the three branches of government, federative entities, and civil society, for a fairer and more transparent management of public resources. It was also evident that the implementation and consolidation of these controls are processes that occur in the medium and long term. Therefore, this study contributes both to updating and expanding knowledge on the subject and to stimulating further research on it.

Keywords: extrafiscality; public policies; government audit; courts of accounts; TCU references; tax exemptions.

1 INTRODUCTION

Extrafiscality is a legal instrument through which the State uses taxation to induce behavior, encouraging or discouraging specific economic and social activities. To achieve this purpose, it grants tax benefits, exemptions, and incentives guided by constitutional objectives that extend beyond the mere collection of revenue to finance public expenditures. Because it involves strategic choices of public policies and revenue waivers, it requires robust oversight and transparency mechanisms.

Auditing practices in government management emerge as essential for assessing the effectiveness, legality, and economy of such extrafiscal measures. Although significant advances have been made in the regulation and oversight of such policies, substantial challenges remain regarding their correct implementation, especially in relation to monitoring fiscal impacts, ensuring compliance with constitutional objectives, and preventing deviations or misuses.

In this context, the work of audit institutions – in coordination with the Judiciary and civil society – is essential to guide, monitor, and supervise these activities, ensuring that extrafiscal instruments are implemented in a transparent, efficient, and public-interest-oriented manner.

In addition to issues related to control and oversight, considering technological innovations and rapid changes, the organization and availability of data and useful information to citizens by public entities are also challenges. Accounting and legal reports frequently employ technical language, making them incomprehensible and inaccessible to most Brazilians. This lack of transparency hinders the full exercise of citizenship, contrary to basic constitutional principles governing public administration.

In view of this background, the following research questions arise: How has extrafiscality been understood and employed by the Brazilian government as a tool for promoting public policies? What are the existing accountability arrangements for these extrafiscal instruments? And how have the Courts of Accounts contributed to the implementation and improvement of these government policies?

The primary objective is to analyze extrafiscality as an instrument and strategy for implementing public policies and, secondarily, to contribute to the debate on improving oversight mechanisms and promoting accountability in public administration.

The justification for conducting this research lies in the importance of extrafiscal policies and the need to ensure their effectiveness, transparency, and compliance with constitutional principles. Oversight of these mechanisms is crucial both for the responsible use of public resources and for the promotion of a governance capable of responding to the social and economic demands of the country.

2 LITERATURE REVIEW

This section presents a literature review aimed at deepening the understanding of extrafiscality within the Brazilian context, establishing its intrinsic connection with public policies. It also addresses the need for oversight of extrafiscality and the contribution of the courts of accounts for the improvement of extrafiscal policies.

2.1 Extrafiscality and public policies in Brazil

Human understanding regarding extrafiscality has been a construction conceptually developed by several societies throughout different historical periods (Leão, 2015b). This evolutionary process resulted in the contemporary concept that certain state actions linked to taxation, when motivated by the intention of achieving social, economic, and political goals, in favor of collective welfare, possess an extrafiscal nature, in the broadest sense of the term (Fortaleza, 2021).

When taxes are employed as instruments to achieve these purposes and not only as a means for raising financial resources to support the maintenance of the State's activities, strict extrafiscality is established (Fortaleza, 2021); this perspective that will guide the present analysis.

At the outset, the teachings of Grau (2012) regarding the use of classifications to help understand the object under investigation are considered relevant. Such classifications do not intend to exhaust the debate, but rather to offer a critical and legal perspective, among the multiple possible interdisciplinary prisms of investigation on the subject.

In this regard, it is important to clarify that extrafiscality maintains a legal relationship of symbiotic nature with the action and/or intervention of the State. According to the aforementioned author, intervention may occur through three possible modalities, namely: *i)* through absorption or participation; *ii)* through direction; and *iii)* through inducement (Grau, 2012).

In summary, the first, in the form of absorption, occurs when the government intervenes as an economic agent, that is, it “absorbs” and assumes full control of the means of production of a particular economic sector, similarly to a monopoly regime. Through participation, it intervenes by controlling only part of the means of production and allows private companies to compete in the same economic niche (Grau, 2012).

In the modalities of intervention through direction and inducement, the State entity does not act as an economic agent or subject, but rather as a regulator of the economy and, consequently, of private companies' activities. The difference is that, in intervention through direction, the State entity establishes mechanisms and regulations of mandatory compliance. On the other hand, in intervention through inducement, *jus dispositivum* norms of prescriptive (deontic) nature, whereby adherence by the private sector may produce positive responses – associated with the right to rewards – or negative responses – when the adoption of a certain conduct becomes more burdensome or even “economically prohibitive.” Such effects vary depending on the sociopolitical and economic purpose of the State (Grau, 2012).

Therefore, it is inferred that it is in State actions of intervention by inducement that extrafiscality gains prominence, especially in the field of taxation. Nevertheless, on this aspect, Schoueri (2005, p. 34) states that he prefers not to use the expression “extrafiscality.” According to the author, the term can “be used interchangeably to designate both the type and the class”, which may lead to a mistaken perception that “certain norms fall outside the scope of taxation, thus becoming detached from the principles governing the tax system.”

Furthermore, the aforementioned jurist proposes the expression “inductive tax norms” to designate any normative instrument created and employed by the State for the simultaneous purposes of intervening through inducement in the economy and encouraging or discouraging tax-related behavior. Schoueri (2005) emphasizes that such norms remain subject to the principles and rules governing the tax framework.

Unlike Schoueri (2005), most scholars continue to use the terms “extrafiscality” and/or “extrafiscal taxes” in their research, covering topics ranging from the etymology of the word (Bomfim, 2014) to the analysis of the controversy regarding the identification of extrafiscal tax rules (Leão, 2015a).

Classic scholars such as Baleeiro (2012), Becker (2010), Carrazza (2019), Carvalho (2019), Nabais (2015), Machado (2015), and Machado Segundo (2018) are unanimous in their understanding that taxes, like a coin, possess two inseparable sides. In other words, taxes perform two functions, to a greater or lesser extent: *i)* fiscal function - aimed at raising resources to finance the state apparatus and public policies; and *ii)* extrafiscal function - which, although it also results in monetary inflow into the treasury, has the primary purpose of encouraging or discouraging behavior, particularly in the economic sphere, for the benefit of collective welfare and interest.

When one function predominates over the other, its allocation is established. However, Leão (2015a, p. 307) advances the discussion further by arguing that “extrafiscal tax norms are those whose extrafiscal effect is not accidental, but deliberate, linked to the purpose that justifies the existence of the tax itself.”

Accordingly, it is evident that there are multiple and dynamic legal approaches to extrafiscality. The subject has been extensively examined by Brazilian and international scholars alike. As demonstrated by Elali (2010), the use of tax exemptions aimed at economic growth, environmental preservation, reduction of social inequalities, and other public policies is found on all continents and in countries with different levels of development, such as the United Kingdom, France, Germany, Portugal, Japan, China, Saudi Arabia, Egypt, Jordan, Kuwait, Israel.

With specific regard to public policies, Tomé (2014, pp. 11-12) defines them as “programs, actions, and activities developed by the State, with the objective of ensuring citizens’ rights in the social, cultural, economic, and other spheres. They are political decisions that determine specific state action.” According to Bucci (2013, p. 32), they constitute a government action program that “results from a process or a set of legally regulated processes” and seeks to coordinate public resources and private activities toward socially relevant and politically determined objectives.

It is worth noting that there are jurists who consider extrafiscality as a public policy with characteristics of affirmative actions. Mendonça and Saraiva (2016) argue that, in the field of tax law and in accordance with constitutional principles, extrafiscal benefits acquire the nature of affirmative action when there is “the use of taxes as instruments to promote social inclusion, by encouraging specific behaviors of society and private initiative.” “State intervention takes place with the objective not only to intervene in the market, but to promote equality” (Mendonça; Saraiva, 2016, p. 94).

Also according to the aforementioned authors, with the adoption of such public policies, it is expected that there will be a redistribution of wealth, that is, the promotion of fiscal justice and social inclusion, considering that “the tax ceases to be an instrument of exclusion to fulfill its social function, since it becomes an instrument for the eradication of discrimination and social change, both of which reflect the pursuit for the end of inequalities” (Mendonça; Saraiva, 2016, p. 94). They conclude with the idea that extrafiscality is a public policy for the realization of fundamental rights and guarantees that enhance the funding of other public policies (Mendonça; Saraiva, 2016).

Lolli (2022), while agreeing with the theoretical perspective that defends extrafiscality as an important public policy instrument, points out that, in cases involving revenue waivers, these measures must comply with the procedures established by the prevailing legal framework, especially with regard to the provisions of Supplementary Law 101, of May 4, 2000, the Fiscal Responsibility Law (LRF) (Brazil, 2000).

Consequently, regardless of whether extrafiscality is viewed as a public policy or as a mechanism for promoting public policies, it is subject to “legal-formal and result-oriented oversight, even though the challenge of implementing these controls in practical terms remains immense” (Lolli, 2022, p. 55) – a topic of paramount importance, discussed in depth below.

2.2 The need for oversight of extrafiscality

Extrafiscality, whether regarded as a public policy or as an instrument for implementing public policies, tends to constitute a necessary path to be adopted by the Brazilian government in guiding socioeconomic behavior. Its use seeks to promote sustainable development, fiscal justice, and social equity.

Such demands must comply with constitutional principles and the specific applicable legislation, as well as being subject to continuous monitoring and evaluation, to ensure the effective and appropriate achievement of their intended objectives.

With this in mind, the role of the law is not only to define how these policies will be implemented, but also to provide the oversight mechanisms that are indispensable to the proper exercise of government actions involving extrafiscal practices. Through legal norms, it is established how these rights will be materialized and what instruments are necessary for their effectiveness (Tomé, 2014).

The increasing “juridification” of power, whereby the concept of government is progressively disciplined and legitimized by law, makes legal intervention fundamental. This process, which dates to at least the seventeenth century, is continuous and seeks

to respond to the challenges of democracy and social inclusion by transforming politics into something that is, at the same time, also law (Bucci, 2013).

Regarding taxation, Grupenmacher (2012, p. 44) explains that “the duty to pay taxes, as well as the right to collect them, must observe the morality and ethics on both sides, that is, from the State toward the taxpayer and vice versa.”

Accordingly, it is essential that constitutional criteria and principles be observed, especially those related to taxpayers’ ability to pay and tax equality, among others that govern the tax system. These principles must be respected, both in the obligation to pay taxes and in the granting of tax exemptions, benefits, and incentives, thereby ensuring fairness in the exercise of taxing powers (Grupenmacher, 2012).

As a result, a mechanism of oversight consists of verifying the existence or not of constitutional legality of extrafiscal measures implemented by the entities of the Executive Branch. To this end, the Legislative and Judicial Branches, in cooperation with one another and in response to citizens’ demands, must act proactively and effectively in monitoring these measures.

Regarding the role of the Judiciary, Bomfim (2014) specifies that the parameters of oversight are defined, with some mitigations, by the tax legal system itself, since tax rules are subject to several layers of scrutiny, established by the constitutional economic order, constitutional limitations on the power to tax, the constitutional definition of taxation, and the inherent limitations applicable to each category of taxes.

Bucci (2013, p. 121) emphasizes that the very phenomenon of “judicialization of politics” demonstrates the “procedural nature” of public policies, insofar as a growing number of social conflicts are submitted to the procedural logic of the Judiciary. This approach, which intensified from the 1990s onwards, seeks substantive justice rather than merely formal compliance (Bucci, 2013).

In this debate, Bomfim (2014) emphasizes that all these issues may be examined by the Judiciary without implying the adoption of any discretionary acts by the Executive or Legislative Branches. However, if the aforementioned limits are analyzed and

considered compatible, the Judiciary may not intervene in the country's economic decisions, since this function has not been constitutionally attributed to it.

Therefore, effective monitoring of extrafiscal mechanisms within the field of tax law is imperative, since the strict oversight of these norms is not intended to discourage the use of extrafiscality. However, public authorities cannot be granted a “blank check” in conducting such policies. Despite the difficulty of establishing these limits, legislation and audit institutions must develop criteria capable of achieving constitutional objectives without disproportionately restricting taxpayers’ fundamental rights and guarantees (Leão, 2015b).

In this scenario, the criterion of proportionality stands out, which “functions as a genuine roadmap for the interpreter who, whenever principles collide, must follow three compatibility filters [...]: the measure will have to be adequate, necessary, and proportionate in the strict sense” (Bomfim, 2014, p. 270).

Bomfim relates this criterion to the theory of principles (Alexy, 2017, p. 116), whose author states: “there is a connection between the theory of principles and the precept of proportionality. This connection could not be closer: the nature of principles implies the precept of proportionality, and the latter implies the former.”

Another author of reference supporting what Leão (2015b) refers to as the postulate of proportionality is Ávila, whose lesson establishes the following:

The postulate of proportionality is not to be confused with the idea of proportion in its most varied manifestations. It applies only to situations in which a causal relationship exists between two empirically identifiable elements, namely a means and an end, in such a way that three fundamental examinations can be carried out: that of adequacy (does the means promote the end?); that of necessity (among the available and equally adequate means to promote the end, is there no other means less restrictive of the fundamental right(s) affected?); and that of proportionality in the strict sense (do the advantages brought by the promotion of the end correspond to the disadvantages caused by the adoption of the means?) (Ávila, 2018, p. 206).

Based on this theoretical and doctrinal framework, Folloni, Floriani Neto and Maiolli (2018) conclude that this postulate also needs to be used as a form of control of the

constitutionality of extrafiscal rules and, consequently, of the Public Power, through the three examinations related to adequacy, necessity, and proportionality in the strict sense.

In the view of Fortaleza (2021, p. 40), the proportionality criterion is also a principle. According to the author, “the extrafiscal tax is an instrument for non-revenue-raising purposes; therefore, there must be an 'evaluation of the correlation' between the instrument and the chosen purpose. In this sense, the principle of proportionality is a benchmark for extrafiscality.”

Silva (2007, p. 109) adds that “the ‘preponderance’ of the extrafiscal dimension over certain constitutional tax principles is supported by an implicit constitutional principle, namely, which is the principle of proportionality.”

Hence, the legal rationale developed thus far indicates that, whether conceived as a precept, a principle or a postulate, the proportionality criterion has exceptional relevance for the Judiciary in the analysis of the constitutionality of extrafiscal tax legislation and the governmental actions associated with it. Its application aims to prevent violation of fundamental principles, such as equality, isonomy, and taxpayers’ ability to pay, whether such individuals are directly or indirectly affected by these rules and by the public policies derived from them.

Another oversight mechanism available to the population, pertinent to the appropriate, necessary, and proportional scope of extrafiscal purposes, arises from advances resulting from the guarantee of the fundamental right of access to information. This right requires that public data be provided in a useful, understandable, and transparent manner, in accordance with the provisions of Article 37, *caput*, of the Federal Constitution of 1988 (Brazil, 1988), and Law 12,527, of November 18, 2011, the Access to Information Law (LAI) (Brazil, 2011).

Transparency of information is an essential element for oversight. Accountability is strengthened when public data is presented in an organized and comprehensible manner, enabling citizens to properly monitor public administration (Bucci, 2013).

Regarding the transparency of information concerning tax incentives, significant barriers imposed by tax authorities persist, as evidenced by the difficulty in providing this data and accessing it. This occurs firstly because such information has only recently begun to be systematically organized and disclosed. Additionally, the main obstacles stem from the absence of a uniform methodology for calculating revenue waivers among Brazilian federative units, as well as from the restrictive interpretation adopted by tax administrations regarding tax secrecy (Lolli, 2022).

This reality has been slowly changing, as Lolli (2022) observes, particularly in the legislative sphere. In this process, relevant developments include Decree 10,209, of January 22, 2020 (Brazil, 2020); Article 4, paragraph 4, items I, II and III, of Constitutional Amendment 109, of March 15, 2021 (Brazil, 2021a); Supplementary Law 178, of January 13, 2021 (Brazil, 2021b); and article 45 of Supplementary Law 187, of December 16, 2021 (Brazil, 2021c), which amended the wording of Article 198 of the National Tax Code (CTN) (Brazil, 1966).

Furthermore, concerning the need to preserve the soundness of public finances, the Public Administration is required to provide transparent and real-time disclosure of detailed information concerning budgetary and financial execution, by electronic means of public access, as provided for in Article 48, § 1, item II, of the LRF (Brazil, 2000).

It should be noted that both Article 1, paragraph 1, of the LRF (Brazil, 2000) and Article 3, item IV, of Law 14,129, of March 29, 2021 (Brazil, 2021d), in accordance with article 23 of Law 13,709, of August 14, 2018 (Brazil, 2018), General Data Protection Law (LGPD), rely on the principle of transparency of public management acts as an instrument for enhancing administrative efficiency, whether in fiscal or non-fiscal matters.

According to Lolli (2022, p. 56), “the right of access to information of private interest or of collective or general interest acquires an even higher status within the legal system, that of a fundamental constitutional guarantee (Article 5, XXXIII, and Article 60, § 4, IV, of the Federal Constitution).” The exercise of this right is regulated by the Brazilian legal system at the different levels of the federative units.

In view of the legislative framework presented, purpose-oriented oversight of tax incentives has gained strength, mainly through the work of audit institutions, such as internal affairs offices and courts of accounts. This movement allowed for increased transparency in tax matters, enabling access to protected data and information, even by tax secrecy rules, provided that the legal requirements and procedures necessary to preserve confidentiality in the process of transferring information between agencies in the exercise of their audits and responsibilities are observed (Lolli, 2022, p. 58).

Given the constitutional and social relevance of these agencies within extrafiscal public policies, their audits and other oversight and monitoring activities aim to verify compliance with the purposes for which the incentives were granted, whether economic, social, environmental or of any other nature. It is expected, with this, to determine whether the resulting revenue waivers have generated greater benefits to society than ordinary tax collection.

It is worth taking into consideration that the referred evaluations, conducted by audit institutions, must comply with the constitutional criteria discussed above. Hence, the following subsection examines the oversight frameworks for public policies and tax benefits developed by the Brazilian Federal Court of Accounts (TCU), as well as the relatively recent case of an audit conducted by the Court of Accounts of the State of Ceará (TCE/CE).

2.3 Contribution of the courts of accounts to the improvement of extrafiscal policies

As a result of technological transformations, socioeconomic relations have become faster, more dynamic and complex, requiring government agencies to adapt the way in which they provide accurate, clear, up-to-date and easily accessible information. This need is even more relevant in a society that has constitutionally adopted the model of the Democratic Rule of Law.

In Brazil, this social demand is no different. It is becoming increasingly urgent for public agents at all levels of government, to produce organized data that are meaningful to citizens. This need is even more relevant when this information supports decisions that have daily repercussions on the lives of the population.

In the field of taxation, this issue becomes even more sensitive because it directly or indirectly affects taxpayers' property and income. The institutionalization of public policies, through institutional arrangements, is crucial for government actions to acquire permanence and objectivity, defining responsibilities and stabilizing rights and obligations. Bucci (2013) describes institutionalization as "objectification" and "organization" through the legal order, which is essential for the integration of elements and the functionality of the institutional arrangement.

In the previous topics, different forms of oversight were discussed. However, there are bodies that can act administratively, in a preventive manner, guiding and improving the performance of public entities before their actions are submitted to judicial review. Both the Legislative and Executive Branches may be scrutinized by these institutions, including by the Courts of Accounts, whose constitutional responsibilities are established in Articles 70 to 75 of the Federal Constitution of 1988. Therefore, not only the Brazilian Federal Court of Accounts (TCU), but also the state Courts of Accounts, the Court of Accounts of the Federal District, and municipal courts and councils of accounts play a fundamental role in examining and auditing public accounts. When dealing with extrafiscal public policies, which consequently involve revenue waivers, these institutions are entrusted with the mission of carrying out government audit. The TCU, in particular, may act independently and autonomously through surveys, audits, inspections, monitoring, and follow-up.

The TCU is an essential institution for the exercise of fiscal citizenship. However, as observed by Conselvan and Buffon (2022, p. 2), despite the advances achieved in both the technological and law, "the increased availability of information has not confirmed human development." The State has provided an endless volume of information that, contrary to expectations, produces misinformation and misunderstanding, insofar as "the quantity of information has not been translated into quality" (Conselvan; Buffon, 2022, p. 2), especially in tax matters.

Although numerous reports are made publicly available, most of them employ technical language that is not accessible to the population – since information is not to be confused with knowledge. This reality hinders the development of a more comprehensive debate on fiscal policies, as ordinary citizens are unable to understand the real purpose of the data provided or evaluate them, due to the lack of transparency resulting from the technical language adopted (Conselvan; Buffon, 2022).

The same authors emphasize that the mere disclosure of public acts is insufficient to ensure understanding of the information made available through official government channels. Tax and democratic legitimacy are not based on “naïve stakes on transparency driven by technological facilitators” (Conselvan; Buffon, 2022, p. 13), but rather on the “understanding, on the part of state agents, that, in order to provide citizens with access to public debate, it is necessary to provide quality information. In other words: tax transparency must be understood as public policy” (Conselvan; Buffon, 2022, p. 13).

From this perspective, both the study of the oversight frameworks – related to public policies and tax benefits –, developed by the Federal Court of Accounts, and the analysis of a relatively recent audit case carried out by the TCE/CE are representative and relevant.

In the introduction to the TCU’s *Public Policy Audit Framework*, one of the reasons presented for its development is the concern with analyzing and evaluating public policies, whose financing requires a substantial share of society’s income. However, public perception generally suggests that the outcomes of these policies do not have quality proportional to the volume of resources collected through taxation (Brazil, 2020b).

Therefore, guided by its constitutional responsibilities and given the urgency of improving its performance, the TCU developed the framework with the purpose of systematizing and guiding the evaluation of public policies. The document establishes objective parameters for audit findings, structured around a common core of

assessment questions, aimed at consolidating results, through summary frameworks based on the most recent budget guidelines legislation (Brazil, 2020b).

According to the TCU, there are some conditioning aspects of the desired performance in public interventions, such as: *i)* proper diagnosis of the problem; *ii)* transparent agenda-setting process; *iii)* appropriate policy design, based on evidence and preceded by analysis of alternatives; *iv)* open decision-making process (transparent, participatory and accountable) for the allocation of public resources; *v)* adequate structuring of governance and management processes; *vi)* efficient, effective, effectual, economical implementation, in accordance with legal precepts; and *vii)* continuous evaluation of public policies performance, results, and impacts (Brazil, 2020b).

With the application of the framework, the planning of public policy oversight actions tends to become more efficient, as the document facilitates the data collection process and contributes to improving the quality of the assessment of public policy maturity. As a consequence, Brazilian society benefits from improvements in government performance outcomes (Brazil, 2020b).

Planning effectiveness constitutes an “indispensable prerequisite” (Bucci, 1997, p. 94) for political, economic, and social action. Likewise, the 1988 Constitution, by defining planning as “mandatory for the public sector and indicative for the private sector” (Article 174), sought to strengthen this dimension of governance (Bucci, 2013, p. 117).

Through this framework, auditors and public managers are provided with guidance on best practices for designing and overseeing public policies. Such policies are understood as “the set of interventions and guidelines issued by governmental actors, which aim to address, or not, public problems and that require, use or affect public resources” (Brazil, 2020b, p. 14).

The TCU publication identifies four forms of oversight that should be considered: management audit, internal oversight, government audit, and social accountability. In summary, each form plays a crucial role in ensuring efficiency, effectiveness, and transparency in public administration. Management audit ensures the proper use of resources and the achievement of its objectives. Internal oversight assesses the

effectiveness of its processes. Government audit provides an independent evaluation of the information provided. Social accountability guarantees citizens' participation in the monitoring of Government (Brazil, 2020b).

In this scenario, the Court's technical framework specifically seeks to “establish a structure of common criteria capable of composing a model to assess the maturity level of public policies” (Brazil, 2020b, p. 18). Furthermore, it aims to guide and systematize oversight activities, contributing to the improvement of governmental performance and the results achieved, through enhanced stages of formulation, implementation, and evaluation of government actions (Brazil, 2020b).

Bucci (2013) already argued that the institutionalization of a public policy should include objectification, making it independent from the public manager who initiated it; the establishment of an organizational standard; the juridification of this standard; and the existence of a “guiding idea”, capable of orienting governmental action. The methodological oversight instrument proposed by the TCU, through the establishment of common criteria and a structured framework for assessing policy maturity, is consistent with these requirements.

It can be observed that the evaluation process encompasses all stages of the public policy cycle, even after its eventual termination. Continuous evaluation contributes to risk mitigation, with the purpose of “avoiding problems in the subsequent stages, in which the volume of resources spent is usually greater” (Brazil, 2020b, p. 27). Ultimately, it is verified whether the intended constitutional and social objectives have been effectively achieved.

Within this context, the *Tax Benefits Audit Framework* was developed in 2022, as a complement to the 2020 technical standard for evaluating public policies, employing the same assessment logic as the oversight blocks described above. According to the TCU, “tax benefits are instruments for achieving public policy objectives, that is, like direct expenditure, they finance interventions intended to solve society's problems” (Brazil, 2022, p. 45).

In the presentation of the document, it is mentioned that indirect expenditures – understood as tax benefits and/or incentives, among other government subsidies – have historically not received the same attention and or the same level of monitoring – by the Executive Branch, audit institutions, Parliament, and society as a whole – as direct expenditures allocated through the budgetary process (Brazil, 2022).

Recognizing this problem, the TCU, through the *Tax Benefits Audit Framework*, emphasizes that tax benefits – understood as indirect expenditures – demand to an even greater degree than direct expenses – of budgetary nature – adequate management and governance structures, as well as *accountability*, transparency, evaluation, and monitoring mechanisms. In this sense, the technical instrument is intended to “guide and systematize the evaluation of public policies implemented through tax benefits” (Brazil, 2022, p. 10).

The relevance of these documents stems from the recognition of a recent reality, marked by the absence of uniformity, standardization, publicity, and transparency in available public reports and datasets. This situation has aroused greater concern on the part of public management and civil society, particularly in fiscal matters.

Correspondingly, the TCU made the guidance contained in both frameworks publicly available, enabling not only its auditors but also officials from the Executive and Legislative Branches to make use of them, aiming to contribute to the adoption of objective criteria and best practices in the formulation and execution of “more effective public actions, with tax benefits properly designed, implemented, and evaluated” (Brazil, 2022, p. 11).

The general objectives of the *Tax Benefits Audit Framework* resemble those established by the *Public Policy Audit Framework*, as both seek to systematize the evaluation of tax benefits through oversight blocks interconnected to the stages of the public policy cycle. This model is specifically focused on guiding oversight and monitoring, when such benefits are intended to achieve public purposes, implemented through policies with extrafiscal characteristics.

Audit institutions must identify “whether the tax benefit is systematically evaluated, through periodic assessments, according to criteria defined during the policy formulation stage” (Brazil, 2022, p. 190), as well as “whether transparency is given to the results of the evaluation; and whether the evaluation provided useful information for decision-making regarding the continuity of the policy” (Brazil, 2022, p. 190).

Concern with the monitoring and improvement of extrafiscal policies is not recent. However, the structuring of specific agencies and mechanisms for the implementation of these measures is still in the process of consolidation, since the methodological framework for the evaluation of public policies was only developed in 2020, and the technical instrument aimed at the oversight of tax benefits, in 2022. In this context, it is possible to infer that the implementation of these control frameworks tends to produce more consistent results in the long term.

It is worth noting that government adaptation by tax authorities and other public agents involved in such activities must occur at all levels of government and across all federative entities. Although the documents were developed at the federal level, states and municipalities also need to adapt to the guidelines contained therein.

For this reason, the present study examines a practical case, experienced by the Court of Accounts of the State of Ceará (TCE/CE), which conducted an audit on revenue waivers to fiscal years 2019 and 2020. The initiative sought to improve fiscal management efficiency and increase transparency in the public accounts of the state of Ceará.

3 METHODOLOGY

This study is classified as basic research with a qualitative approach, adopting the deductive method. Initially, general theoretical frameworks on extrafiscality and government audit are analyzed. Then, specific frameworks developed through the activities of the Federal Court of Accounts (TCU) are analyzed examined, together with

a case study involving an audit conducted by the Court of Accounts of the State of Ceará (TCE/CE) in the scope of monitoring and oversight of extrafiscal mechanisms.

Data collection was carried out primarily through bibliographic research and consultation of doctrines, legislation, decisions, and reports from the audit institutions. The analysis of the data obtained was based on the identification of patterns, trends, and causal relationships between theoretical concepts and established guidelines, with the objective of answering the research questions proposed in this study.

The selection of the TCE/CE case is justified by the relevance of the audit performed on revenue waivers, which provides a concrete example illustrating not only the challenges and opportunities associated with extrafiscality oversight, but also the work of a Court of Accounts in this context.

The study acknowledges the methodological limitation arising from the analysis of a specific case involving the TCE/CE. Although the absence of cases from other Brazilian Courts of Accounts prevents the generalization of certain conclusions, this limitation does not undermine the validity of the research, which contributes both to expanding knowledge on the subject and to encouraging further investigations.

Finally, it should be noted that the research was conducted with ethical rigor, fidelity to the sources consulted and impartiality, as much as possible, in the analysis of the data.

4 RESULTS AND DISCUSSION

The following subsections present and discuss both the results of the analysis of extrafiscality as an instrument of public policy and the need for its oversight, as well as the results of the audit carried out by the TCE/CE.

4.1 Extrafiscality and public policies

The analysis of extrafiscality as an instrument of public policy and the need for its oversight, as addressed in the literature and in the TCU frameworks, together with the illustrative case of the TCE/CE, reveal a strong connection with the theoretical foundations proposed by Bucci (2013). The author's perspective on the evolution of the State, the juridification of politics, and the importance of institutionalizing government actions offers a robust framework for interpreting the findings and discussing the challenges identified.

Extrafiscality, understood as an instrument that transcends mere revenue collection to achieve social and economic objectives, is directly aligned with the conception of public policies as “government action programs” (Bucci, 2013), which ensure citizens' rights. The present research reinforces that, within the “social state”, government action becomes essentially service-oriented and managerial, and extrafiscal taxation represents a prominent tool for this purpose (Bucci, 1997).

The need to oversee extrafiscality emerges as a central issue. Bucci (2013) argues that the “juridification” of power implies government action that is increasingly regulated and legitimized by law. In this sense, the requirement that extrafiscal policies observe constitutional and legal provisions, subject to monitoring and evaluation of results, is not just a formality, but a direct consequence of this juridification.

The principle of proportionality, highlighted as a fundamental criterion for the Judiciary, in verifying the constitutionality of extrafiscal tax rules, assumes particular importance as a benchmark for governmental action, ensuring that interventions are adequate, necessary, and proportional (Leão, 2015b; Ávila, 2018).

The contribution of courts of accounts, such as the TCU and the TCE/CE, to the improvement of extrafiscal policies is particularly relevant to this study. The TCU frameworks discussed herein constitute clear examples of “institutional arrangements” that aim at the “objectification” and “organization” of public policies (Bucci, 2013).

By systematizing the evaluation of tax policies and benefits in oversight blocks linked to the stages of the public policy cycle, the TCU seeks to give these government actions a permanent and depersonalized character, essential for stability and predictability. The guiding principle behind these frameworks is the pursuit of more effective public actions, through tax benefits that are designed, implemented, and evaluated according to objective criteria and best practices (Brazil, 2022).

4.2 Audit Conducted by the TCE/CE

In the State of Ceará, an audit was conducted through case file 19.081/2020-3, at the State Department of Finance (Sefaz), the State Department of Economic Development and Labor (Sedet), and at the Economic Development Agency of the State of Ceará (Adece).

According to the reporting counsellor responsible for the process, the following audit questions were formulated: *i)* are the legal formalities and administrative procedures for granting or expanding the revenue waiver observed, and are they adequate?; *ii)* is the methodology used to estimate the value of revenue waivers adequate?; *iii)* are accounting records concerning revenue waivers maintained and do they comply with the accounting standards?; *iv)* is permanent monitoring of revenue waivers adequate and effective?; *v)* is there disclosure of the amounts of the benefits granted, the methods used in their estimate, and the socioeconomic results achieved through such waivers? (Ceará, 2021b).

Following the completion of the audit, nine findings were identified, for which corrective actions were requested in accordance with the recommendations issued by the TCE/CE.

- Absence of comprehensive monitoring of benefits arising from tax waivers.
- Deficiencies in monitoring benefits associated with the Industrial Development Fund (FDI), an extrafiscal public policy instrument, used mainly by Brazilian states,

especially the state of Ceará, to stimulate economic and industrial development through the granting of tax incentives.

- Absence of opinions issued by the FDI Technical Committee, an advisory body to the State Industrial Development Council (Cedin) – a collegiate body of state public administration, existing in states such as Ceará, responsible for deliberating on policies to encourage industrial development, especially those linked to tax benefits granted under the FDI, in administrative processes for granting benefits resulting from revenue waivers.
- Lack of budgetary and financial impact assessments prior to the granting of tax benefits.
- Inconsistencies between estimated and actual revenue waiver amounts.
- Inadequate accounting registration revenue waiver amounts across the three types of information – budgetary, financial, and patrimonial.
- Absence of participation by the central internal control body in the monitoring process of revenue waivers.
- Need for improvements in transparency process regarding revenue waivers.
- Absence of a Tax Reference System (Ceará, 2021b).

In the conclusion of her report, the rapporteur issued several determinations and recommendations to address the deficiencies identified by the audit carried out by the TCE/CE, which generated a new case file 28.364/2022-8, for monitoring purposes. In her report 15/2023, it was detected that, only one of the seven determinations was met, one had not been complied with, and the others were still in the process of implementation. With respect to the eleven recommendations, two had been implemented; three had not been carried out; and the remainder are still being

implemented, and in the end, some proposals were made for referral and an action plan was prepared, to resolve the pending deliberations (Ceará, 2022).

With the results of the TCE/CE audit, the state of Ceará will be able to achieve the improvements listed below in the scope of tax waivers.

- Greater reliability of the data contained in the fiscal statements on revenues and expenditures arising from exemptions, amnesty, remissions, subsidies, and financial, tax, and credit-related benefits, reported in the Annual Budget Law (LOA) and the Budget Guidelines Law (LDO).
- Improved provision of accurate information for proper accounting registration of revenue waivers.
- Monitoring of revenue waivers not associated with programs, granted and not accounted for.
- Correct measurement of the benefits generated through revenue waivers.
- Improved monitoring of processes to promote economic activities through the granting and expansion of tax benefits.
- Enhanced economy, efficiency, effectiveness of the FDI (Ceará, 2021a).

These results suggest that recognition of relevance of oversight of revenue waivers is relatively recent and is still in the process of consolidation, although some institutions already exhibit a higher level of maturity in this area. Even so, the urgency of its implementation is evident, since the adoption of planned, transparent, and citizen-accessible actions to citizens enables the effective observance and guarantee of constitutional, legal, and democratic precepts, supported by the current Brazilian legal system.

The findings of the audit carried out by the TCE/CE illustrate the challenges associated with the institutionalization and effectiveness of oversight. The nine findings of non-compliance demonstrate the persistence of the “legal ineffectiveness” mentioned by Bucci (2013, p. 170), characterized by the inability of public authorities to ensure compliance with legal provisions or the widespread occurrence of non-compliance. Such a scenario reflects the so-called “disconfirmation” of authority, understood as the weakening of its legitimacy as a normative instance (Bucci, 2013).

The slow progress in implementing the determinations and recommendations issued by the TCE/CE, as documented in the 2023 monitoring report, reinforces the argument that the consolidation of these oversight mechanisms is a medium and long-term process. Additionally, overcoming this “state of tolerance” toward regulatory non-compliance requires a combination of legal and political-institutional initiatives, as noted by Bucci (2013, p. 172).

The issue of transparency and the technical language of reports highlighted by Conselvan and Buffon (2022), echoes Bucci's (2013) discussion regarding the importance of organized information for accountability. The simple disclosure of information is not enough to promote citizen understanding or engagement when the data made available is not presented in a useful and accessible manner.

The “proceduralization” of oversight, advocated by Bucci, seeks precisely to improve the mechanisms of participation and social monitoring, making governmental decisions more transparent and subject to scrutiny. Accountability is strengthened when information, organized and understandable, enables citizens to supervise public management, which is an important factor of administrative rationalization and democratic maturity (Bucci, 2013).

In summary, the findings of the TCE/CE audit are not mere operational shortcomings; they reflect the complexity involved in building and maintaining effective “institutional arrangements” in a dynamic political and administrative environment. By identifying these non-conformities and proposing corrective measures, the TCE/CE audit is acting as a crucial mechanism for restoring institutional authority and ensuring a “regime of effects” for extrafiscal policies.

Continuous monitoring of the recommendations is essential for tax waivers to effectively become instruments of sustainable development, tax justice and social equity, consistent with the objectives of the Democratic Rule of Law, rather than merely constituting privileges or resulting in the inefficient use of public resources.

5 FINAL CONSIDERATIONS

Classical doctrine understands tax as a legal institute endowed with two inseparable functions: fiscal and extrafiscal, whose purpose is determined by the predominance of one of these dimensions over the other. This theoretical conception makes it possible to understand the tax not only as a mechanism for raising public revenue, but also as an instrument for guiding conduct.

In this context, extrafiscality, in its strict sense, is an old and recurrent practice, closely related to state intervention by inducement, through which the State seeks to encourage or discourage behaviors through tax rules. Consistent with this traditional perspective, extrafiscality not only enables the implementation of public policies, but may also be regarded as a public policy, as it assumes the nature of affirmative action and uses taxation as an instrument to promote socioeconomic and regional inclusion.

It is a well-established fact that many governmental programs rely on tax benefits and incentives for purposes other than collection, thereby generating indirect expenditures, classified in finance law as revenue waivers. Therefore, these measures must comply with a constitutional, administrative, financial, and tax legal system.

To this end, it is essential to establish legal-formal and purpose-oriented oversight mechanisms, guided by the postulate of proportionality, understood from its three sub-principles – adequacy, necessity, and proportionality in the strict sense; as well as by the constitutional principles of ability to pay and tax equality, applied to their maximum extent. These parameters are intended to ensure the effective achievement of the objectives related to sustainable development, tax justice, and social equity.

This monitoring may and should be exercised by the three branches – Executive, Legislative, and Judiciary; as well as by the different entities of the Brazilian Federation – the Union, the States, and the Municipalities, under the supervision of the respective oversight bodies.

Additionally, it is up to Brazilian citizens to participate in this process, since, supported by the 1988 Constitution and by specific legislation – including the National Tax Code (CTN), the Access to Information Law (LAI), the Fiscal Responsibility Law (LRF), and the General Data Protection Law (LGPD) - they may demand that the State act in a more equitable, responsible, and transparent manner in the management of resources and revenue waivers, particularly regarding the formulation, implementation, and evaluation of extrafiscal public policies.

It is in this scenario that the Courts of Accounts, such as the TCU, have played an important role in guiding, monitoring, and auditing public administration, thereby promoting institutional improvement through the adoption of objective criteria and sound audit practices. These guidelines are systematized in the *Public Policy Oversight Framework* (Brazil, 2020b) and in the *Tax Benefits Oversight Framework* (Brazil, 2022).

Despite the significant advances observed in legislation, public planning, access to information, and the activities of audit institutions, the practical effects of these initiatives tend to materialize only in the medium and long term. This finding can be observed in the case of the state of Ceará, in an audit conducted by the TCE/CE, which identified nine findings of non-compliance with current legislation, referring state-level revenue waivers.

As a result, several determinations and recommendations were issued and are being implemented by the responsible entities. It was found that the TCE/CE has systematically followed these measures, considering that the final audit report, contained in the monitoring process, is relatively recent. This circumstance reveals that the theme addressed is current and relevant and cannot be considered exhausted within the limits of the present research.

Accordingly, it may be concluded that extrafiscality is widely employed by the Brazilian State as an instrument of public policy in various fields of action, especially those involving significant economic and social implications. In practice, this strategy is largely implemented through the granting of tax benefits aimed at promoting regional development, encouraging technological innovation, and protecting the environment.

Future research should continue to monitor the implementation of recommendations issued by Courts of Accounts and should also undertake comparative analyses of audits conducted by other state and municipal audit institutions. Such an approach may contribute to the consolidation of best practices and to the identification of new challenges in the oversight of extrafiscality.

REFERENCES

ALEXY, Robert. **Teoria dos direitos fundamentais**. Tradução de Virgílio Afonso da Silva. 2 ed. São Paulo: Malheiros, 2017.

ÁVILA, Humberto. **Teoria dos princípios**: da definição à aplicação dos princípios jurídicos. 18 ed. São Paulo: Malheiros, 2018.

BALEEIRO, Aliomar. **Uma introdução à ciência das finanças**. 18 ed. Rio de Janeiro: Forense, 2012.

BECKER, Alfredo Augusto. **Teoria geral do direito tributário**. 5 ed. São Paulo: Noeses, 2010.

BOMFIM, Diego Marcel Costa. **Extrafiscalidade**: identificação, fundamentação, limitação e controle. 2014. Doctoral Dissertation (PhD in Economic, Financial and Tax Law) – Doctoral Program in Economic, Financial and Tax Law, University of São Paulo., São Paulo, SP, 2014. DOI: <https://doi.org/10.11606/T.2.2014.tde-09082017-160000>. Available at: <https://teses.usp.br/teses/disponiveis/2/2133/tde-09082017-160000/pt-br.html>. Accessed: March 20, 2023.

BRAZIL. [Constituição Federal (1988)]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidência da República, 1988. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed: May 13, 2023.

BRAZIL. Decreto n. 10.209, de 22 de janeiro de 2020. Dispõe sobre a requisição de informações e documentos e sobre o compartilhamento de informações protegidas pelo sigilo fiscal. Brasília, DF: Presidência da República, 2020a. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/d10209.htm. Accessed: May 13, 2023.

BRAZIL. Emenda Constitucional n. 109, de 15 de março de 2021. Altera os arts. 29-A, 37, 49, 84, 163, 165, 167, 168 e 169 da Constituição Federal e os arts. 101 e 109 do Ato das Disposições Constitucionais Transitórias; acrescenta à Constituição Federal os arts. 164-A, 167-A, 167-B, 167-C, 167-D, 167-E, 167-F e 167-G; [...]. Brasília, DF: Presidência da República, 2021a. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc109.htm. Accessed: May 13, 2023.

BRAZIL. Lei Complementar n. 101, de 4 de maio de 2000. Estabelece normas de finanças públicas voltadas para a responsabilidade na gestão fiscal e dá outras providências. Brasília, DF: Presidência da República, 2000. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.htm. Accessed: May 13, 2023.

BRAZIL. Lei Complementar n. 178, de 13 de janeiro de 2021. Estabelece o Programa de Acompanhamento e Transparência Fiscal e o Plano de Promoção do Equilíbrio Fiscal; altera a Lei Complementar nº 101, de 4 de maio de 2000, a Lei Complementar nº 156, de 28 de dezembro de 2016, a Lei Complementar nº 159, de 19 de maio de 2017, a Lei Complementar nº 173, de 27 de maio de 2020, a Lei nº 9.496, de 11 de setembro de 1997, a Lei nº 12.348, de 15 de dezembro de 2010, a Lei nº 12.649, de 17 de maio de 2012, e a Medida Provisória nº 2.185-35, de 24 de agosto de 2001; e dá outras providências. Brasília, DF: Presidência da República, 2021b. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp178.htm. Accessed: May 13, 2023.

BRAZIL. Lei Complementar n. 187, de 16 de dezembro de 2021. Dispõe sobre a certificação das entidades beneficentes e regula os procedimentos referentes à imunidade de contribuições à seguridade social de que trata o § 7º do art. 195 da Constituição Federal; altera as Leis nºs 5.172, de 25 de outubro de 1966 (Código Tributário Nacional), e 9.532, de 10 de dezembro de 1997; revoga a Lei nº 12.101, de 27 de novembro de 2009, e dispositivos das Leis nºs 11.096, de 13 de janeiro de 2005, e 12.249, de 11 de junho de 2010; e dá outras providências. Brasília, DF: Presidência da República, 2021c. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp187.htm. Accessed: May 13, 2023.

BRAZIL. Lei n. 5.172, de 25 de outubro de 1966. Dispõe sobre o Sistema Tributário Nacional e institui normas gerais de direito tributário aplicáveis à União, aos estados e aos municípios. Brasília, DF: Presidência da República, 1966.

BRAZIL. **Lei n. 12.527, de 18 de novembro de 2011**. Regula o acesso a informações previsto no inciso XXXIII do art. 5º, no inciso II do § 3º do art. 37 e no § 2º do art. 216 da Constituição Federal; altera a Lei nº 8.112, de 11 de dezembro de 1990; revoga a Lei nº 11.111, de 5 de maio de 2005, e dispositivos da Lei nº 8.159, de 8 de janeiro de 1991; e dá outras providências. Brasília, DF: Presidência da República, 2011. Available at: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12527.htm. Accessed: May 13, 2023.

BRAZIL. **Lei n. 13.709, de 14 de agosto de 2018**. Lei Geral de Proteção de Dados Pessoais (LGPD). Brasília, DF: Presidência da República, 2018. Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm. Accessed: May 13, 2023.

BRAZIL. **Lei n. 14.129, de 29 de março de 2021**. Dispõe sobre princípios, regras e instrumentos para o Governo Digital e para o aumento da eficiência pública e altera a Lei nº 7.116, de 29 de agosto de 1983, a Lei nº 12.527, de 18 de novembro de 2011 (Lei de Acesso à Informação), a Lei nº 12.682, de 9 de julho de 2012, e a Lei nº 13.460, de 26 de junho de 2017. Brasília, DF: Presidência da República, 2021d. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2021/lei/l14129.htm. Accessed: May 13, 2023.

BRAZIL. Tribunal de Contas da União. **Referencial de controle de benefícios tributários**. Brasília, DF: TCU, 2022. Available at: <https://portal.tcu.gov.br/publicacoes-institucionais/cartilha-manual-ou-tutorial/referencial-de-controle-de-beneficios-tributarios>. Accessed: May 13, 2023.

BRAZIL. Tribunal de Contas da União. **Referencial de controle de políticas públicas**. Brasília, DF: TCU, 2020b. Available at: <https://portal.tcu.gov.br/publicacoes-institucionais/cartilha-manual-ou-tutorial/referencial-de-controle-de-politicas-publicas>. Accessed: May 13, 2023.

BUCCI, Maria Paula Dallari. Fundamentos para uma teoria jurídica das políticas públicas. São Paulo: Saraiva, 2013.

BUCCI, Maria Paula Dallari. Políticas públicas e direito administrativo. **Revista de Informação Legislativa**, Brasília, v. 34, n. 133, p. 89-98, jan./mar. 1997. Available at: <https://www2.senado.leg.br/bdsf/handle/id/198>. Accessed: Nov 11, 2025.

CARRAZZA, Roque Antonio. **Curso de direito constitucional tributário**. 32 ed. São Paulo: Malheiros, 2019.

CARVALHO, Paulo de Barros. **Curso de direito tributário**. 30 ed. São Paulo: Saraiva Educação, 2019.

CEARÁ. Tribunal de Contas do Estado do Ceará. Auditoria do TCE Ceará sobre renúncia de receitas visa a contribuir para o aperfeiçoamento da gestão pública. **Portal TCE/CE**, Fortaleza, 8 de setembro de 2021a. Notícias. Available at: <https://www.tce.ce.gov.br/comunicacao/noticias/4688-auditoria-do-tce-ceara-sobre-renuncia-de-receitas-visa-contribuir-para-aperfeicoar-a-gestao-publica#:~:text=O%20Tribunal%20de%20Contas%20do%20Estado%20do%20Cear%C3%A1%2C%20no%20cumprimento,dentre%20outros%20instrumentos%20de%20fiscaliza%C3%A7%C3%A3o>. Accessed: May 13, 2023.

CEARÁ. Tribunal de Contas do Estado do Ceará. **Processo n. 19.081/2020-3**. Avaliar a adequação dos controles relacionados à renúncia de receita no âmbito do estado do Ceará. Relatora: Soraia Victor, julgado em 28 jun. 2021. Fortaleza, CE: TCE/CE, 2021b.

CEARÁ. Tribunal de Contas do Estado do Ceará. **Processo n. 28.364/2022-8**. Monitorar as recomendações e determinações elencadas no processo nº 19081/2020-3 que avaliaram a adequação dos controles relacionados à renúncia de receitas no âmbito do estado do Ceará. Relatora: Soraia Victor, julgado em 24 jun. 2024. Fortaleza, CE: TCE/CE, 2022.

CONSELVAN, Victor de Almeida; BUFFON, Marciano. Democracia, direito e transparência: uma nova forma de legitimação das políticas tributárias em face das transformações tecnológicas. **Pensar**, Fortaleza, v. 27, n. 3, p. 1-16, jul./set. 2022. DOI: <https://doi.org/10.5020/2317-2150.2022.11190>. Disponível em: <https://ojs.unifor.br/rpen/article/view/11190>. Accessed: May 20, 2023.

ELALI, André. **Incentivos fiscais internacionais**: concorrência fiscal, mobilidade financeira e crise do Estado. São Paulo: Quartier Latin, 2010.

FOLLONI, André; FLORIANI NETO, Antonio Bazilio; MAIOLLI, Michelle Nobre. Proporcionalidade e a igualdade como limitação à tributação extrafiscal. **Direito Público**, Porto Alegre, v. 14, n. 80, p. 39-61, mar./abr. 2018. Available at: <https://www.portaldeperiodicos.idp.edu.br/direitopublico/article/view/2686>. Accessed: March 20, 2023.

FORTALEZA, Felipe de Abreu. **Controle da finalidade dos tributos extrafiscais enquanto garantia fundamental do contribuinte**. 2021. Master's Thesis (Master's Degree in Constitutional Law) – Graduate Program in Law, Federal University of Ceará, Fortaleza, CE, 2021. Available at: <https://repositorio.ufc.br/handle/riufc/63223>. Accessed: March 20, 2023.

GRAU, Eros Roberto. **A ordem econômica na Constituição de 1988**. 15. ed. São Paulo: Malheiros, 2012.

GRUPENMACHER, Betina Treiger. Das exonerações tributárias, incentivos e benefícios fiscais. In: GRUPENMACHER, Betina Treiger; CAVALCANTE, Denise Lucena; RIBEIRO, Maria de Fátima; QUEIROZ, Mary Elbe. **Novos horizontes da tributação**: um diálogo luso-brasileiro. Coimbra: Edições Almedina, 2012. p. 9-82.

LEÃO, Martha Toribio. Contributo para o estudo da extrafiscalidade: a importância da finalidade na identificação das normas tributárias extrafiscais. **Direito Tributário Atual**, São Paulo, n. 34, p. 303-325, dez. 2015a. Available at: https://revista.ibdt.org.br/index.php/RDTA/article/download/155/1001&ved=2ahUKEwj9o5PfnK2XAxW8pZUCHTQRlIjQy_kOegoIAggACAACxAC&opi=89978449&cd&psi=g=AOvVaw3UQUqR6LU44tKYs6OOz8Pc&ust=1791645233984000. Accessed: March 20, 2023.

LEÃO, Martha Toribio. **Controle da extrafiscalidade**. Série Doutrina Tributária, v. XVI. São Paulo: Quartier Latin, 2015b.

LOLLI, Eduardo Henrique. Transparência e acesso à informação de dados relativos a incentivos fiscais: desafios históricos e avanços recentes. **Revista da CGU**, Brasília, v. 14, n. 25, p. 50-62, jan./jun. 2022. DOI: <https://doi.org/10.36428/revistadacgu.v14i25.498>. Available at: https://revista.cgu.gov.br/Revista_da_CGU/article/view/498. Accessed: March 20, 2023.

MACHADO, Hugo de Brito. **Curso de direito constitucional tributário**. 2. ed. São Paulo: Malheiros, 2015.

MACHADO SEGUNDO, Hugo de Brito. Ciência do direito tributário, economia comportamental e extrafiscalidade. **Revista Brasileira de Políticas Públicas**, Brasília, v. 8, n. 2, p. 640-659, ago. 2018. Available at: <https://www.publicacoes.uniceub.br/RBPP/article/view/5252>. Accessed: March 20, 2023.

MENDONÇA, Maria Lírida Calou de Araújo e; SARAIVA, Flávia Carvalho Mendes. A extrafiscalidade como política pública garantidora dos direitos fundamentais. **Conhecer**: debate entre o público e o privado. Fortaleza, v. 6, n. 16, p. 90-119, jan./ago. 2016. Available at: <https://revistas.uece.br/index.php/revistaconhecer/article/view/633>. Accessed: March 20, 2023.

NABAIS, José Casalta. **O dever fundamental de pagar impostos**: contributo para a compreensão constitucional do estado fiscal contemporâneo. 4. reimp. Coimbra: Almedina, 2015.

SCHOUERI, Luís Eduardo. **Normas tributárias indutoras e intervenção econômica**. Rio de Janeiro: Forense, 2005.

SILVA, Daniel Cavalcante. A finalidade extrafiscal do tributo e as políticas públicas no Brasil. **Prismas**: direito, políticas públicas e mundialização, Brasília, v. 4, n. 1, p. 98-122, jan./jul. 2007. DOI: <https://doi.org/10.5102/prismas.v4i1.218>. Available at: https://publicacoesacademicas.uniceub.br/prisma/pt_BR/article/view/218. Accessed: March 20, 2023.

TOMÉ, Fabiana Del Padre. Extrafiscalidade tributária: estrutura e função instrumentalizadora de políticas públicas. *In*: CARVALHO, Paulo de Barros; LINS, Robson Maia (coord.). **Ensaio sobre jurisdição federal**. 1. ed. São Paulo: Editora Noeses, 2014. p.777-806.

FUNDING

This research did not receive funding or specific support from a funding agency, public or private institution, company or non-profit organization.

CONFLICT OF INTEREST

The author declares that no conflict of interest related to the development, results or publication of this work.

DATA AVAILABILITY

Data sharing does not apply to this study, as no new data has been created or analyzed.

ETHICAL APPROVAL

This research does not involve any procedure, data or participant requiring ethical approval and, because of its nature, is not subject to approval by a competent ethical committee or body.

PREPRINT PUBLICATION

This work has not been previously made available on a preprint server or platform.

USE OF AI

No generative artificial intelligence tool was used in the development of this work.

WORK REVIEW HISTORY

Submission date: 15/7/2024

Publication date: 13/10/2026

Responsible editor: Alessandra Caballero Brügger Freitas (executive-editor)

[Link to the full evaluation history](#) (The provided evaluation history is available only in Portuguese.)