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TAX FEASIBILITY OF SETTING UP COMPANIES IN THE MANAUS FREE TRADE ZONE

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ABSTRACT

This research aims to demonstrate the tax advantages for the installation of companies in the industrial sector in the Manaus Free Trade Zone (MFTZ). Many entrepreneurs are uncertain when approaching the subject, given that it is a sudden change in the company's business plan. Thus, the article aims to explain, through the inductive method, the main issues that influence the business activity, presenting the tax aspects involved, as well as, briefly, the practical criteria of feasibility. The paper is structured in two sections. The first intends to examine the economic costs, the maintenance of long-term incentives and location, and the second, the tax incentives and the change in the tax burden after moving to the MFTZ. Finally, through the final considerations, we present the results demonstrating cases in which the relocation to the MFTZ in a planned manner can substantially increase the results of certain businesses.

Keywords: Industries; Manaus Free Trade Zone; Displacement Cost; Tax Incentives; Tax Planning.

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1. INTRODUCTION

The Manaus Free Trade Zone (MFTZ) was initially structured as a Free Port, in 1957. A decade later, with Decree-Law 228/67, tax incentives were reformulated and implemented for the insertion of an industrial, commercial, and agricultural hub, which allowed for the development of the Amazon¹.

Companies based in the MFTZ enjoy several incentives that aim to stimulate the development of the region, in addition to reducing the locational disadvantages. These incentives include reduction or exemption from federal, state, and municipal² taxes.

The incentives were initially scheduled to end in 1997, however, incentives continue to be maintained until today. It should be noted that the latest extension was established by Constitutional Amendment 83/2014, which extends the tax incentives of the MFTZ until the year 2073³.

Currently, the technological hub has about 500 industries and produces about R\$ 80 billion per year in revenue, besides being responsible for generating almost 500,000 direct and indirect jobs. These data have placed Amazonas among the states with the highest industrial revenue, and during the fiscal year 2019 the rise in the Amazon economy (4.61%) was five times higher than the national average (0.89%) (HOLLAND et al., 2019).

Thus, the objective of this paper is to analyze the viability of the Manaus Free Trade Zone for the installation of companies in its region. This paper is divided into two sections, besides the Introduction and the Final Considerations.

Section I seeks to examine the MFTZ on the following criteria: economic costs, maintenance of long-term incentives, and geographic location. It is found that it is inevitable that there is a preponderant economic cost for this sudden change in the company's activity, and that the weighting with the incentives will have robust results in the long term, often shortening the term according to the financial size of the company.

Section II compares the incidence of taxation of a company located in a place adverse to the incidence of tax incentives, and the change in the tax burden after moving to the MFTZ. It can be seen how, after the displacement costs, there is a constant increase in the financial revenue of the company due to tax incentives. In the final considerations, the main conclusions with the results of the work are presented.

Thus, to adequately respond to this demand, the deductive method will be used, by means of bibliographical research, to collect the most varied interpretations of normative texts and comments from Brazilian doctrine on the subject. In relation to legislation, the search was made for legal norms in effect at the federal, state and municipal levels, also producing a comparative analysis with other states in the federation. The research also resorted to books published by authors of national renown, such as Lúdio Camargo Fabretti and Mauricio Brilhante de Mendonça. From this point on, each

1 Art. 1, Decree-Law 228, of February 28, 1967.

2 The reduction/exemption reaches the following taxes: IPI, IRPJ, PIS/PASEP and COFINS, ICMS, IPTU, and fees for garbage collection, public cleaning, road and street maintenance, and license fees.

3 EC 42/2003, art. 92. Art. 1 The Transitory Constitutional Dispositions Act shall come into force with the addition of the following art. 92-A: "Art. 92-A. Fifty (50) years are added to the term established by art. 92 of this Act of Transitional Constitutional Provisions."

aspect concerning the advantages of installing companies from the industrial sector in the Manaus Free Trade Zone is analyzed, such as geographical location, maintenance of long-term incentives, relationship with associative entities, criteria and tax planning, and finally, the differentiation of taxation of companies in the Manaus Free Trade Zone, when compared to the rest of Brazil.

2. ECONOMIC CRITERIA

2.1 Geographic Location

According to Oliveira (2011), the industrial park of Manaus has an industrial area of 3.9 thousand hectares, and the companies currently installed occupy less than 1.7 hectares, being available to receive new ventures more than 2.2 hectares. The entrepreneur has the possibility of acquiring land in the Industrial District of the Superintendence of the Manaus Free Trade Zone (SUFRAMA) for a symbolic price, provided that the counterparts required in the legislation are met (BOTELHO, 2010). These lands are provided with infrastructure for water collection and treatment, water supply network, telecommunications network, sanitary sewage network, storm drainage and road system (BRASIL, 2015).

SUFRAMA and other government agencies make high investments in infrastructure, so that the investor has met all the conditions to install his business in the Industrial Pole of Manaus (BRIGLIA, 2009). As for the economic infrastructure, Manaus has port terminals, one public and two private ones; an international airport (second in Brazil in cargo handling); municipal, state and federal highways; supply of natural gas; an Inland Customs Station - EADI, installed inside the industrial park, responsible for decongesting the primary zones (ports and airport) and perspective in the federal government's project of transmission of energy line Tucuruí-Macapá-Manaus.

Oliveira (2009, p. 22) regarding the relevance of the Port of Manaus, states the following:

Of great importance for the northern region of the country, the Port of Manaus is the largest floating port in the world, whose movement is geared to supplying the only Free Zone in Brazil and the largest in all South America. The terminal covers almost the entire territory of the States of Amazonas, Roraima and Rondônia. A great variety of accesses, which include road, sea and river modals, allows the importation of inputs that feed the Manaus Industrial Pole.

Therefore, one can see the strong influence that the Manaus region has in the geographic referential, being a region contemplated with favorable logistics criteria, as well as assisted with several investments for its progressive improvement.

2.2 Maintaining Long-Term Incentives

The first extension of the Manaus Free Trade Zone occurred in 1986, through article 1 of Decree 92.560⁴, which was extended for 10 years until 1997. With the promulgation of the 1988 Federal

⁴ Decree No. 9757/2019, art. 1. The term of validity of the tax exemptions granted to the Manaus Free Trade Zone, pursuant to Decree-law no. 288, of February 28, 1967, is extended for another ten years, subject to the exceptions provided for in Decree-law no. 340, of December 22, 1967.

Constitution, the ZFM had its term modified again, this time by article 40 of the Transitional Constitutional Provisions Act⁵, which had established the term of benefits for another 25 years, which would end in 2013.

The third extension of incentives occurred in 2003, with the edition of Constitutional Amendment No. 42⁶, which modified Article 40 of the Transitional Constitutional Provisions Act and extended the tax incentives of the MFTZ for another 10 years, ending in 2023. On 08/05/2014 the fourth and longest extension ever made in the history of the Manaus Free Trade Zone was made, where the promulgation of Constitutional Amendment 83/2014 was held in the Solemn Session of the National Congress, in Brasília/DF.

The Constitutional Amendment created article 92-A⁷, in the part that deals with the Transitory Constitutional Provisions Act, of the FC, increasing for another 50 years the term set in the device, according to which the validity of the benefits would end in 2023. The Government of the State of Amazonas considered this maintenance of benefits essential for the Manaus Industrial Hub, which is home to several companies and generates several jobs for the Amazonian population.

2.3 Associative Entities

The Federation of Industries of the State of Amazonas (FIEAM) is one of the associative entities present in the Amazonas Industrial Hub. It was founded on 08/03/1960, and is active in strategic discussions for the strengthening of the industry and in decisions in defense of social and economic development, such as the Manaus Free Trade Zone (FIEAM System, 2021).

FIEAM is composed of 27 employer's unions that represent the industrial segment of Amazonas in shipbuilding, printing, sawmills, carpentries and cooperages, spinning and weaving, metallurgical, mechanical and electric material, pottery, food, chemical and pharmaceutical, electric, gas, hydraulic and sanitary installations, plywood and laminated wood, carpentry, rubber artifacts and retreading, pasta and cookies, beverages in general, engraving and bookbinding, bakery and confectionery, electrical appliances, electronics and similar, civil construction, footwear, rubber extraction, locksmith, small metallurgical, mechanical and similar, toys, plastic materials, newspaper companies, magnetic media, watchmaking and goldsmith, clothing and hat making, safety and protection material, (FIEAM System, 2021).

The entity acts in defense of the industry interests, through 11 operational coordinators in foreign trade, environment and natural resources, legislative and tax issues, economic policy and industrial development, science, technology and innovation, labor relations and jobs, transportation and logistics, social responsibility, energy and telecommunications, Amazonian concentrates and Ja-

5 Transitional Constitutional Provisions Act, art. 40 The Manaus Free Trade Zone is maintained, with its characteristics of a free trade, export and import area, and tax incentives, for a period of twenty-five years, as of the promulgation of the Constitution.

6 EC 42/2003, art. 92: ten years are added to the term established in art. 40 of this Act of Transitory Constitutional Provisions.

7 EC 83/2014, art. 92-A. Fifty (50) years are added to the term set by art. 92 of this Act of Transitional Constitutional Provisions.

panese-Amazonian⁸ issues. Another entity present in Amazonas is the Centro da Indústria do Estado do Amazonas - CIEAM (Industry Center of the State of Amazonas), constituted 40 years ago, it is a business entity with legal personality aimed at the industrial sector, with the objective of acting in a technical and political way in defense of its members and of the principles of economy based on free initiative.⁹

CIEAM has committees that are divided into departments that help improve the relationship of the entity with its members. Through committees, such as the Center for Industrial Training-CE-TRIN, this entity aims to promote the development of employees of the companies associated with CIEAM and implement the learning and development process that aims to promote the growth of industry competitiveness (SOUZA, 2011).

Furthermore, ICES has a commission for the foreign trade sector that deals with customs matters. It is worth noting Ianni's (2000) understanding on the subject:

The Brazilian economy is transformed into a mere province of world capitalism. All major decisions adopted at the governmental level, with serious implications on the daily life of individuals and collectivities, are dictated mainly by the demands of trans-nationalization. (IANNI, 2000)

With its activities in foreign trade, this entity seeks opportunities to improve the processes for industries in the foreign branch and aims to present to government agencies and its members alternatives and solutions to possible difficulties to be faced.

Finally, there is the Association of Industries and Service Companies of the Amazonas Industrial Hub - AFICAM, founded in 1986, which brings together small and large companies that operate in various areas within the Amazonas Industrial Hub, and aims to strengthen government ties between members (SOUZA, 2011).

3. TAX CRITERIA

3.1 Tax Planning

One of the main aspects of tax planning is the reduction of the economic obligation of taxes, so that taxpayers are not excessively subjected to taxes and can conduct their business, always meeting the criteria determined in the legislation (BERMUDO, 2015). In this aspect, Pegas (2017, p. 47) mentions that the relationship between cost and benefit must be well evaluated, and there is no magic in tax planning, only alternatives. The cost-benefit ratio varies according to the amount, time and location involved.

The need to opt for an increasingly less onerous tax burden makes tax planning become essential for the survival of companies. Greco (2019, p. 9) adduces that in the competitive market of modern commercial relations, the whole planning process has become a necessity. With this, tax planning is

⁸ Federation of Industries of the State of Amazonas - FIEAM. Available at: <http://www.fieam.org.br/fieam/historia-2/>. Accessed on: 21 Jul. 2021.

⁹ CIEAM. Message from the President. Available at: <https://cieam.com.br/mensagem-do-presidente>. Accessed on: 20 sep.2021.

perceived as a solution to analyze and demonstrate the best ways to reduce the payment of taxes, according to the current legal bases in force.

In this path, it should be noted that tax planning should be carried out in a preventive way, so that it results in the so-called tax avoidance. According to Pegas (2017, p. 23) the preventive tax planning results in tax avoidance, so there is a reduction in the tax burden within legal criteria. To perform the tax planning, the tax manager needs to put into practice all the most extensive knowledge about the tax legislation, opting for hypotheses in which the taxes have reduced loads, so that, from the best alternatives the company can perform its business operations (BERMUDO, 2015).

3.2 Taxation of Companies in the Manaus Free Trade Zone

The main attraction of the Manaus Free Trade zone is undoubtedly the reduction in the tax burden due to tax incentives (SILVA, 2020). In the region, there is a competitive advantage provided by all federal entities (union, state and municipality), as will be presented more specifically in this article.

With regard to federal taxes, there is a reduction that reaches the level of up to 88% of the Import Tax, exemption from Excise Tax, 75% reduction in Corporate Income Tax, and exemption from PIS/PASEP and COFINS contributions in internal operations in the MFTZ (RIKER, et. al, 2016).

In relation to state taxes, there is a refund of 55% to 100% of the ICMS. In the municipal sphere, there is an exemption from IPTU (property tax) and fees for garbage collection, public cleaning, road and street maintenance, and license fees for companies that generate a minimum of 500 direct jobs.

The following table presents the estimates of the Brazilian IRS for the reduction in the federal tax burden in the MFTZ by the year 2021.

Table 1 – Estimates of Tax Burden Reduction

Federal Tax	Value
Import Tax (II)	R\$ 3.341.613.425,00
Tax on Industrialized Products - Domestic Operations - IPI-Internal	R\$ 25.280.034.351,00
Tax on Industrialized Products - Import-Linked - IPI-Linked	R\$ 3.956.339.775,00
Social Contribution to PIS-PASEP	R\$ 1.583.906.520,00
Contribution for Social Security Financing - COFINS	R\$ 8.077.715.276,00

Source: Federal Revenue Service of Brazil (2020)

In Table 1, the majority (59.66%) of the tax benefits are based on the IPI, mainly the one linked to internal operations. However, the amounts related to the IPI linked to imports are also significant. The import tax exemption represents 7.88% of the tax cost, which also contributes to the cheapening of imports.

It should also be taken into account that 58% of the import tax collection belongs to the states,

municipalities and Constitutional Financing Funds. Thus, this title will conceptualize the main types of tax benefits present in the taxation of companies based in the Manaus Free Trade Zone.

3.2.1 Tax Incentives

3.2.1.1 Income Tax (I.R.P.J)

According to Provisory Measure 2,199-14/2001, updated by art. 32 of Law 11,196/2005 and the Regulation of Tax Incentives, companies whose main objective is to develop the regions in which the Superintendence for the Development of the Northeast (Sudene) and the Superintendence for the Development of the Amazon (Sudam) operate, will have the right to a 75%¹⁰ reduction in income tax and additional taxes.

3.2.1.2 Import Tax (I.I.)

The import tax is intended to protect domestic products, the exchange rate and the balance of payment. It is levied on foreign goods the moment they enter the national territory. The physical entry of the goods into Brazil for use, industrialization or domestic consumption is essential, it is not enough for them to be in transit.

The Manaus Free Trade Zone acts as follows with regard to this tax: with exemption on the entry of goods, including capital goods of foreign origin, in the Manaus Free Trade Zone, if destined for internal consumption. There is also exemption for goods of foreign origin listed in the Interministerial Ordinance 300, of December 20, 1996, destined for the Western Amazon.

There is an 88% reduction for raw materials, intermediate products, secondary and packaging materials from foreign sources used in the manufacture of products manufactured in the MFTZ, when they leave the MFTZ for any point in the national territory, provided the manufacturer has a project approved by the Board of Directors of SUFRAMA and meets the Basic Productive Process - BPPB (minimum set of steps that characterize industrialization defined by Interministerial Ordinance).

Finally, reduction is possible in the manufacture of computer goods conditioned to the application of a reduction coefficient proportional to the participation of national labor and inputs, and in the manufacture of automotive vehicles, added 5% to the reduction coefficient referred to in the previous item.

3.2.1.3 Taxes on Industrialized Products (I.P.I.)

The tax is levied on industrialized products, whether they come from domestic manufacturing establishments or have entered the country through traders, importers, or even as travelers' goods, subject to legal exceptions or exemptions. As it is levied on the product, without regard to its probable destination or the economic process according to which the goods came from, three characteristic moments of the entry of the goods in the economic circuit of its use are listed in article 46 of the National Tax Code.

¹⁰ Article 13 of Administrative Rule No. 283/2013 - MI; Article 23 of Decree-Law No. 756 of August 11, 1969; Decree-Law No. 1,564 of June 29, 1977; Article 3 of Law No. 9,532 of December 10, 1997; Article 1 of Provisional Measure No. 2,199-14 of August 24, 2001; Decree No. 4,212 of April 26, 2002, as amended by Decrees 6,539/2008 and 6,674/2008.

According to Baleeiro (2002, p. 345), the I.P.I. calculation basis is “the value for which the importer receives the goods, after they have been cleared through customs with the payments collected by customs and the exchange charges”. In relation to the goods of national production or partially modified and benefited in Brazil, the calculation basis will be the value of the operation through which the goods left the taxpayer’s establishment.

The IPI is levied on the Manaus Free Trade Zone with some advantages for specific situations. This is the case of Exemptions for products manufactured in the Manaus Industrial Complex, for goods, including capital goods, of foreign origin, consumed within the Manaus Free Trade Zone and of foreign origin consumed within the Western Amazon, if they are listed in the Interministerial Ordinance no. 300/96.

There is also exemption for goods of national origin entering the Manaus Free Trade Zone and other areas of Western Amazon and products made with raw materials from agricultural and vegetable extraction of regional production, in all locations in Western Amazon. The credit is calculated as if it were due, whenever the products referred to in the previous item are used as raw materials, intermediate products or packaging materials, in the industrialization, anywhere in the national territory, of products effectively subject to the tax.

3.2.1.4 Export Tax (I.E.)

When the IE was transferred to it, the Federal Government attributed to it a monetary and exchange character, with the power to discipline the monetary effects resulting from price variations abroad and to preserve export revenues (Art. 26, CTN).

Its taxable event is the exit of national or nationalized products to another country, whatever the purpose of the sender. It matters little whether it is a donation or goods from the sender. Therefore, the business of buying and selling cannot be considered as inseparable and efficient cause of almost all exports (PAULSEN, 2020, p.472).

All products manufactured in the Manaus Industrial Hub are exempt from Export Tax, according to art. 6 of Decree-Law 1.435, of December 16, 1975.

3.2.1.5 PIS/PASEP and COFINS

These are special contributions, PIS/PASEP intended to promote the social integration of the employee and COFINS is intended to finance social security. As exposed by Paulsen (2020, p. 494), the taxable event of both is the earning of revenues by legal entities.

The Manaus Free Trade Zone provides some advantages regarding these taxes, as is the case of zero aliquot on inputs and inter-industrial internal sales and 3.65% (with exceptions) on sales of finished products to the rest of the country.

The requirement of the Contribution for the PIS/PASEP-Import and of the COFINS-Import is also suspended for new goods destined to the incorporation to the fixed assets of the importing legal entity established in the Manaus Free Trade Zone, in the cases of import of machines, devices, instruments and equipment, new, classified in the codes of the IPI Incidence Table - TIPI, approved by Decree no. 4.542, of December 26, 2002, listed in the Annex to Decree no. 5.691/2006 and in the

use of the goods referred to in item I of the aforementioned Decree in the production of raw materials, intermediate products and packaging materials intended for use in the industrialization process by the legal entity that is established in the Manaus Free Trade Zone and that has a project approved by the Administrative Council of the Superintendence of the Manaus Free Trade Zone.

3.2.2 State Incentives

3.2.2.1 State tax on operations relating to the circulation of goods and interstate and intercity transport and communication services (ICMS)

The commercial transactions upon which the ICMS is levied will only exist if they lead to the circulation of goods to transfer ownership. Thus, the taxable event does not occur on the mere physical exit or circulation that does not configure a real change of ownership.

The rendering of transport services, inter-municipal and interstate, also configures the taxable event, as well as the rendering of telecommunications services. Its calculation basis is the same as the one adopted for the Tax on Industrialized Products. However, the actual or calculated value of the goods is reduced by the amount paid for them as IPI, when the operation gave rise to the taxable event of both taxes.

According to Decree 20.686 of 1999 (RICMS/AM), in effect in the Manaus Free Trade Zone, the ICMS is non-cumulative, offsetting whatever is due in each operation, pursuant to Section II, article 97 of RICMS/AM. Decree 20.686/99 states, in article 98, how the tax must be calculated, deducting the possibilities of using credits per period, monthly, observing the provisions of Chapter V. Art. 20.

According to the State legislation, the organization has been crediting itself for the ICMS (Value-Added Tax on Sales and Services) on the entry of goods that are essential for production (raw materials), electricity used in production, inter-municipal and inter-state transport and services, as well as the ICMS on the purchase of fixed assets (CIAP). The ICMS, in the Manaus Free Trade Zone, is applied the benefit to produce final goods (ICMS exemption on industrialized products coming from other states).

In the production of components there is an ICMS exemption on the purchase of industrialized products of national origin. On the other hand, at the exit of products, the stimulus-credit is used, which entails the percentage of ICMS that the company can stop collecting.

There is 100% stimulus for the following products: boats, portable cell phone terminals, video monitors for information; computer and automation goods, car radios, clothing and footwear, utility vehicles, toys, industrial sewing machines, split type air conditioners, stoves, washing machines and dryers for clothes and dishes, freezers and refrigerators, cathode ray tubes, balls, decorations and Christmas festoons, lights, luminaries for Christmas decorations and Christmas trees, flora and fauna products; medicines, cosmetic preparations and perfumery products that use raw materials produced within the state and/or originated from regional flora and fauna, industrialized fish, products from regionally based industries when manufactured within the state, digital Video Disc - DVD Player, outboard motor, circuit breaker, lining, profiles and PVC pipes; worldwide telephone, toilet paper, paper towel, napkin and paper bobbin, hospital equipment and pharmaceutical products, digital acoustic or visual signaling devices and batteries for portable cell phone terminals.

In other hypotheses, a 90.25% reduction is possible for products in the lines of: Intermediate goods, cleaning products, roasted and ground coffee, vinegar, cookies and crackers and pasta, virgin and recorded media. Also, 75% for: PCI assembled to produce audio and video equipment, capital goods, industrialized consumer goods intended for food, agro-industrial, forest and wildlife products, medicines, cosmetics, perfumes, industrialized fish, forest-based industry products, final goods when destined for civil construction companies and similar works, and 55% for: soft drinks, sawn, processed and/or profiled wood.

The stimulus credits of 55% and 100% are appropriated monthly and follow what Decree 20.686/99 regulates, according to art. 20, § 7, states: when the taxpayer is an industrial establishment with incentives with more than one ICMS refund level, it may appropriate the credits in the same proportion as the debits generated by each product or group of products benefited by the same incentive percentage, provided that the raw material and/or inputs are common to all the products or product groups.

3.2.3 Municipal Incentive

3.2.3.1 Property Tax (IPTU)

The taxable event is the existence of a built property, regardless of its economic use or legal title of the taxpayer. It is up to the municipal legislator to define, for tax purposes, the urban area, within which the properties will be subject to IPTU, excluding rural areas.

Companies based in the MFTZ have a ten (10) year exemption from IPTU, and the same period applies to fees for public cleaning and conservation services, and license to operate.

4. FINAL CONSIDERATIONS

Created as a strategic vector of regional development in Western Amazonia, the Manaus Free Trade Zone has undergone substantial changes in the execution of this project designed and implemented by the federal government since the mid-1950s. The model has always counted on strong government support to maintain tax advantages as the main attraction to companies that have set up and are setting up in the Amazon.

It is possible to consider that the use of state and federal tax incentives in a lawful manner brings companies great tax savings, leading to an increase in productivity. Thus, proving the importance of tax planning in the decision-making process for the implementation of companies in the Manaus Free Trade Zone. It is important to emphasize that this is not a simple matter, since the company must comply with various accessory obligations to take advantage of the tax benefits it uses.

It is concluded that, in view of the study carried out, in many cases a relevant competitive differential is created for the industry that manages to adapt to the relocation to the Manaus Free Trade Zone. The greatest attraction of the industrial center undoubtedly revolves around tax privileges. As shown in the development of this article, a company in the industrial sector has an advantage from the entry of the product in the national territory to all the processes of industrialization and marketing of these.

In view of the huge tax burden that currently exists in Brazil due to excessive taxation on consumption, in addition to the strong impact on the product's final price and profit margin, there is a need to work with tax reductions and exemptions. Thus, it is up to the industry to make the proper calculations based on the information presented and verify the payback period of the investment.

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