



Notes on the binding of the tax administration to the judgment of Theme no. 1.113 by the Superior Court of Justice

Notas sobre a vinculação da administração tributária ao julgamento do Tema n.º 1.113 pelo Superior Tribunal de Justiça

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1 INTRODUCTION

The National Tax System has its fundamental core disciplined in the Federal Constitution. The Magna Carta establishes the maximum guidelines that must be observed by the Tax Administration, from the fundamental guarantees of taxpayers to the limits for the exercise of tax activity.

The constituent power established the tax competence of the Municipalities for the institution and collection of the Tax on the Transfer of Real Estate Property - ITBI, *ex vi* article 156, II, of the Federal Constitution.

The tax activity involving this tax has long generated disagreement among the legal community, especially when discussing the concepts for identifying the elements of its tax incidence matrix rule of the operations that are subject to taxation.

In a recent judgment, the First Section of the Superior Court of Justice judged under the system of the Incident of Resolution of Repetitive Appeals (arts. 1,036 et seq. of the Code of Civil Procedure) Theme No. 1,113, which had the following controversy to be settled:

a) whether the ITBI tax base is linked to the IPTU tax base; b) whether it is legitimate to adopt a reference sale value previously set by the municipal tax authorities as a parameter for setting the ITBI tax base.¹

In the judgment delivered by the Citizens' Court, the following theses were established:

¹ Information taken from the official *website* of the Superior Court of Justice, cf.: https://processo.stj.jus.br/repetitivos/temas_repetitivos/pesquisa.jsp?novaConsulta=true&tipo_pesquisa=T&cod_tema_inicial=1113&cod_tema_final=1113.



- 1) The ITBI calculation basis is the value of the property transferred under normal market conditions and is not linked to the IPTU calculation basis, which cannot even be used as a tax floor;
- 2) The value of the transaction declared by the taxpayer enjoys the presumption that it is consistent with the market value, which can only be removed by the tax authorities through the regular initiation of proper administrative proceedings (Article 148 of the National Tax Code - CTN);
- 3) The municipality cannot arbitrate in advance the ITBI calculation basis based on a reference value established by it unilaterally.²

The definition of the controversy involving the calculation basis of ITBI, however, still awaits the last decision to be rendered by the Federal Supreme Court, since the appellant Treasury has filed an Extraordinary Appeal addressed to the Constitutional Court.

Thus, it is important for this study to understand the elements of the tax levy matrix rule related to ITBI, as well as, assuming the ratification of the understanding consolidated by the Superior Court of Justice, to make practical considerations regarding the system to be observed by the tax administration in the face of a - still possible - binding precedent.

2 CONTEXTUALIZATION ABOUT THE JUDGMENT OF THEME NO. 1.113 BY THE SUPERIOR COURT OF JUSTICE

Before promoting a more in-depth analysis of the legal issues related to the tax, as well as the effects of the possible confirmation of the binding precedent for the tax administration, it is necessary to contextualize the factual and legal elements surrounding the judgment rendered in the Incident of Resolution of Repetitive Appeals by the Superior Court of Justice.

The current Code of Civil Procedure has established a system of precedents, which aims to present "parameters for the application of the Law"³, revealing itself as a source of "integration between the functions exercised by the Legislative Power and the Judiciary Power"⁴.

² BRAZIL. Superior Court of Justice. Resp 1937821/SP. Rel. Minister Gurgel de Faria, First Section, Dj.: 24 fev 2022, Dje.: 03 mar 2022. Available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202000120791&dt_publicacao=03/03/2022. Accessed on: 12 Nov 2022.

³ MADUREIRA, Claudio. *Fundamentals of the new Brazilian civil process: the civil process of formalism-valorative*. Belo Horizonte, Forum. Year: 2017. p. 154.

⁴ *Supra*.



This movement, as taught by Hermes Zaneti Junior⁵, was intended to give greater rationality, equality and predictability to legal relations, as well as, good or bad, reduce the space for discretion of the judge.

Well. Within this context of uniformity of jurisprudence for the application of the Law, the Superior Court of Justice affected Special Appeal No. 1,937,821 / SP for judgment under the system of the Incident of Resolution of Repetitive Resources, in order to the legitimacy of the attribution of the venal value previously fixed by the Tax Authorities as the basis for calculating ITBI and whether such value could be the same as that attributed to the calculation basis of the Urban Property Tax - IPTU, through the Generic Value Plan updated by the Municipality itself.

Originally, Special Appeal No. 1,937,821/SP was filed by the Municipality of São Paulo, challenging the judgment rendered by the São Paulo Court of Justice, on the grounds that the ITBI tax base was not linked to the IPTU tax base and that the tax administration could, from the outset, disregard the value of the transaction in order to assign the "trustworthy" value.

In other words, the aforementioned judgment dealt with the precise delimitation of the concept of venal value for the purpose of determining the matrix rule of tax incidence related to ITBI, *ex vi* article 38 of the National Tax Code. Thus, we proceed to identify the elements that make up the matrix rule of incidence of said tax.

3 ELEMENTS OF THE MATRIX RULE OF INCIDENCE OF REAL PROPERTY TRANSFER TAX

Law aims to regulate situations that are consolidated in the world of facts and, from the legal norm applicable to the case, will radiate effects captured by legal science.

Tax law is no different. The legislator established general and abstract rules that must be met for the purpose of characterizing the legal-tax relationship. This is the matrix rule of tax incidence, "open structure waiting for the fulfillment of certain variables"⁶ for the constitution of the tax obligation.

⁵ ZANETI JUNIOR, Hermes. *The binding value of precedents: theory of normative precedents formally binding*. 2nd ed. rev. and current. Salvador, JusPodivm. Year: 2016. p. 370.

⁶ CARVALHO, Paulo de Barros. *Legal foundations of tax incidence*. 10th ed. rev. and current. São Paulo, Saraiva. Year: 2015. p. 185.



The taxable legal event, commonly referred to as the taxable event⁷ or, eventually, the taxable event⁸, must be captured by the administrative authority, so that the abstract general legal rule can be extracted from the individual and concrete legal rule, which will produce the effects directly in the taxpayer's legal sphere.

In a nutshell, the criteria/elements of the tax levy matrix rule consist of the material criterion, which mentions a concrete activity that, if performed, will lead to the subsumption of the fact to the tax rule; in the special criterion, which is nothing more than the delimitation of the physical space where the situation listed as a taxable event may occur and this will give rise to the constitution of the tax obligation; in the temporal criterion, which assigns the moment when the taxable event will be considered to have occurred for the purpose of constituting the tax obligation; in the personal criterion, identifying who is subject to the payment of the tax obligation and, consequently, the effects of non-compliance; and, finally, in the quantitative criterion, which comprises the total amount due in cash to the tax administration.⁹

ITBI is a tax whose competence was attributed to the Municipalities by the constituent power (art. 156, II, of the Federal Constitution).

Thus, the said tax should be analyzed in the light of the National Tax Code and, in a complementary manner, by the local legislation of each Municipality (for example, in the Municipality of Vitória/ES, ITBI is regulated by Municipal Law No. 3,571 of 1989).

The applicator of the Law should pay attention to the fact that the National Tax Code establishes the provision of ITBI jointly with the Tax on Transmission *Causa Mortis* and Donation - ITCMD, as stated in its article 35.

This is because the National Tax Code was published under the aegis of the 1946 Federal Constitution and the Constitutional Amendment n° 18/1965 (which established the Reform of the Tax System). At that time, property transfer taxes (*inter vivos* or *causa mortis*) were unified in a single tax type under the competence of the States¹⁰.

Therefore, for a proper understanding of the provisions contained in the National Tax Code, the reader should pay attention to the identification of the provisions that refer

⁷ For all: CARVALHO, Paulo de Barros. *Legal foundations of tax incidence*.

⁸ For all: ATALIBA, Geraldo. *Hypothesis of tax incidence*.

⁹ PAULSEN, Leandro. *Complete tax law course*. 10th ed. São Paulo, Saraiva Education. Year: 2019. p. 208.

¹⁰ CALIENDO, Paulo. *Tax Law Course*. 2. ed. São Paulo: Saraiva Education. Year: 2019. E-book. ISBN 9788553610433. p. 872.



to ITBI (under the competence of the Municipalities) and those that refer to ITCMD (under the competence of the States and the Federal District)¹¹.

The material criterion of the ITBI can be identified from the combination of the rule provided for in art. 156, II, of the CF/88 with art. 35, of the CTN, being, therefore, the *inter vivos* transfer, by any title, by onerous act, of real estate, by nature or physical accession, and of real rights over real estate, except for guarantee rights, as well as assignment of rights to their acquisition.

Given that the constituent chose to use expressions and concepts already enshrined in civil law for the purpose of defining the material criterion of ITBI, it is necessary to seek its definition in those branches of law, by virtue of the provisions of art. 110 of the CTN, which prevents the Tax Law from changing the content and scope of private law institutes.

Thus, for purposes of defining the material criterion of ITBI, it should be borne in mind that the *inter vivos transfer of ownership* of real estate or real right is only perfected with the registration of the translative title in the Real Estate Registry Office, under the terms of articles 1.227 and 1.245, both of the Civil Code. Therefore, prior to the registration of the respective title with the competent registry office, there is no need to speak of property transfer under Brazilian law, but only the right to acquire property or its monetary equivalent¹².

Therefore, there is no need to allude to the incidence of ITBI before the registration of the competent title before the Real Estate Registry Office, and there are even recent decisions¹³ confirming this understanding, as concluded by the Federal Supreme Court in the judgment of Theme No. 1,124 of General Repercussion, defining the taxable event of ITBI as the transfer of ownership in the real estate registry office. This decision, however, is not yet final.

It serves, however, to indicate the current dominant position on the subject, that only the *inter vivos* transmission made perfect, via registration, can be considered as a material criterion of ITBI.

¹¹ CONTI, José Maurício. The tax on the transfer of real estate assets (ITBI): main issues. *Revista Direito Tributário Atual*, n. 16, São Paulo, Dialética/IBDT, 2001. p. 100/111.

¹² SCHREIBER, Anderson. *Manual of contemporary civil law*. 3rd ed. São Paulo, Saraiva Education. Year: 2020. p. 728.

¹³ Cf. AgInt no AREsp 2088600/SP, issued by the Second Section of the Superior Court of Justice.



The spatial criterion of the tax can be identified in art. 156, § 2, item II, of the Federal Constitution, by providing that the said tax will be due to the Municipality of the situation of the property, that is, where the property subject to the transfer is located.

On this point, it should be emphasized that article 41 of the National Tax Code, which provides that the tax shall be due to the State in which the property is located, was not accepted by the 1988 Federal Constitution and should be read as a rule applicable exclusively to ITCMD.

Regarding the personal criterion, the tax liability will be defined by the applicable municipal legislation, given that the Federal Constitution did not define the issue, as well as that art. 42, of the National Tax Code does not make an option between the seller or acquirer, expressly referring to municipal legislation. In turn, the active subjection will be of the Municipality of the location of the property (art. 156, § 2, item II, of CF/88).

The quantitative criterion, as it is the subject of this paper, should be analyzed in more detail.

As already mentioned, the quantitative criterion of the tax incidence matrix rule is responsible for indicating the *quantum* due of the obligation which, in the case under analysis, refers to the amount due as ITBI by the taxpayer, being composed of the calculation basis and applicable rate.

The ITBI tax base is regulated in article 38 of the National Tax Code and refers to the venal value of the goods and rights transferred to identify the tax base. The difficulty, therefore, already arises in identifying the legislator's intention in using the expression "venal value" in the aforementioned provision.

In the doctrine, the use of this expression is considered to be the equivalent of the value that "the good would reach in a cash purchase and sale operation, under normal market conditions"¹⁴.

However, this concept is still vacillating in the doctrine, especially since the legislation indicates the same reference - venal value - for the Urban Property Tax - IPTU, as provided in article 33 of the National Tax Code.

This is because, in the case of IPTU, the Municipality uses the value indicated in its Generic Value Plan - PGV's for the purpose of assigning the calculation basis of this tax.

¹⁴ HARADA, Kiyoshi; HARADA, Marcelo Kiyoshi. *Ctn commented article by article*. 4th ed. rev. actual. and ampl. São Paulo, Rideel. Year: 2019. p. 63.



For this reason, Leandro Paulsen¹⁵ states that the determination of the tax obligation related to ITBI would occur depending on the casuistry of the specific case. The author states that the calculation basis of the tax would be determined by the Tax Authorities through the acceptance of the value indicated by the taxpayer in the legal transaction signed or, if this is considered lower than the venal value by the tax administration, it would be up to the latter to carry out the launch indicating the venal value¹⁶.

This arbitrariness granted to the tax administration has always been astonishing, and it is preferable to conceive as the calculation basis for ITBI the value at which the property was effectively negotiated between the parties. This is because the calculation basis must refer to a measurable perspective of the taxable event, and is therefore inherent to the respective hypothesis that gives rise to taxation¹⁷.

In other words, there must be a correlation between the taxable event and the respective calculation basis for calculating the tax obligation, under penalty of making the institutes unfeasible and taxing beyond the limits of the sign of wealth expressed by the taxpayer in the operation, incurring in confiscation, which is prohibited by the national order, *ex vi* art. 150, IV, of the Federal Constitution.

Notwithstanding this, it is still common for many municipalities to act at the margin of discretion - without due administrative legal process - ignoring values declared by the taxpayer and applying to determine the tax base another one that it deems appropriate for the case.

Attention is drawn in this regard to the provisions of Article 10 of Municipal Law No. 3,571 of 1989 of Vitória/ES¹⁸ which assigns as the basis of calculation the actual value of the property or, if this proves to be lower than the value of the legal transaction entered into, the latter shall prevail. See:

Art. 10 - The tax base is the real value of the goods or rights transferred or assigned, determined in an evaluation carried out by the competent tax agency or the value of the transfer, if this is greater.

¹⁵ PAULSEN, Leandro. *Complete tax law course*. 10th ed. rev., ampl. and current. São Paulo, Saraiva Education. Year: 2019. p. 349.

¹⁶ *Supra*.

¹⁷ ATALIBA, Geraldo. *Hypothesis of tax incidence*. 6th ed. São Paulo, Malheiros. Year: 2000. p. 108.

¹⁸ VITORIA. City Hall of Vitória. *Law No. 3.571 of 1989*. Provides for the tax on the transfer of real estate inter-vivos and on the retail sale of liquid and gaseous fuels and makes other provisions. Vitória, 24 Jan 1989. Official Gazette, 27 Jan 1989. Available at: <<https://sistemas.vitoria.es.gov.br/atosnormativos/arquivos/agrupadas/1/L3571.PDF>>. Accessed on: Nov 14, 2022.



There is, at first analysis, a logical-legal deviation on the part of the municipal legislator in relation to what the national tax legislation provides about the ITBI calculation basis, since the concepts of real value and venal value would not be confused. The venal value refers to the hypothesis of negotiation of the asset which, in turn, will be influenced by parameters that dictate the rules of the real estate market (*e.g.* supply and demand criteria) which, unless there is a better judgment, will not translate into the real value of the asset, but the one for which it may be subject to negotiation.

Although there was a bad technique in the wording of the provision of the municipal law of Vitória/ES, it must be recognized that there is an approximation between it and the thesis established by the Superior Court of Justice in the judgment on Theme No. 1,113.

4 EFFECTS OF THE THESIS ESTABLISHED IN BINDING PRECEDENT FOR THE TAX ADMINISTRATION.

As explained so far, from the precise identification of the elements that constitute the tax assessment matrix rule, the administration will be responsible for the typical activity of tax assessment to constitute the obligation, an activity that, as provided for in article 3 and 142 of the National Tax Code, is strictly bound by legality.

Thus, it is a cliché of administrative activity, again the Public Administration is bound by compliance with legality, as already known provision of Article 37 of the Federal Constitution.

In this regard, it is worth emphasizing that the best understanding of the principle of legality alluded to in the aforementioned constitutional provision is not limited to the terms of the normative statement, as if the Public Administration were bound to apply what the law expressly provides.

In a very happy way and with the precision that is worthy of him, Claudio Madureira¹⁹ is emphatic in stating that the legality referred to by the Federal Constitution and that should serve as a basis for the Public Administration to carry out its typical activities is synonymous with legality.

This understanding implies a necessary distinction between order and system to understand the proposal of juridicity. The order consists, then, in the set of legal norms edited that constitute prescriptive statements, while the system would be the

¹⁹ MADUREIRA, Claudio. *Public Advocacy*. 2nd ed. Belo Horizonte, Forum. Year: 2016. p. 39.



harmonization of legal norms by the operator of the law, eliminating the typical contradictions of the prescriptive statements created to give life to the Law²⁰.

Thus, by attributing legality as the driving force of administrative activities, it is to say that the Public Administration - including the tax administration - must observe the system of Law, that is, the organization carried out by the law enforcers. It is also necessary to recognize that, in the face of the Constitutional Rule of Law, the Public Administration may under no circumstances turn to the application of rules in disagreement with the constitutional provisions.²¹

In this context, it is necessary to see the turn of Brazilian law in admitting jurisprudence as a primary source of law, given the phenomenon of constitutionalization of the process.²²

Article 927 of the Code of Civil Procedure presents an exemplary list of judicial decisions and guidelines that form the precedent model system adopted by the Brazilian legal system. For the study in question, the judgment rendered in a repetitive special appeal (art. 927, III) stands out.

The adoption of the system of binding precedents implies in attributing to the system of law greater rationality, equality and predictability on the part of the jurisdictions that, in a certain way, will know the correct application of the Law. Likewise, the Public Administration must, in attention to the principle of legality / legality, seek the correct application of the Law, which will permeate the observance of binding precedents, since such precedents will claim observance and, if not complied with, may lead to the judicialization of the issue to settle the controversy, leaving the judges horizontally and vertically the binding and duty to observe the binding precedent.

This is exactly the question regarding Theme No. 1,113, judged by the Superior Court of Justice in the context of the Incident of Resolution of Repetitive Appeals. As previously explained, the judgment in question established the following thesis:

- 1) The ITBI calculation basis is the value of the property transferred under normal market conditions and is not linked to the IPTU calculation basis, which cannot even be used as a tax floor;

²⁰ *Supra*

²¹ MADUREIRA, Claudio. *Public Advocacy*. 2nd ed. Belo Horizonte, Forum. Year: 2016. p. 40.

²² ZANETI JUNIOR, Hermes. *The constitutionalization of the process: the constitutional model of brazilian justice and the relationship between process and Constitution*. 2nd ed. rev., ampl. and current. São Paulo, Atlas. Year: 2014. p. 217.



- 2) The value of the transaction declared by the taxpayer enjoys the presumption that it is consistent with the market value, which can only be removed by the tax authorities through the regular initiation of proper administrative proceedings (Article 148 of the National Tax Code - CTN);
- 3) The municipality cannot arbitrate in advance the ITBI calculation basis based on a reference value established by it unilaterally.²³

It is therefore clear from the judgment in question that the Superior Court of Justice has resolved the issue regarding the establishment of the ITBI calculation basis, which should be the value of the property transferred under normal market conditions.

It is possible to extract from Justice Gurgel de Faria's vote the link between the material criterion and the taxable base on which the calculation must fall to determine the quantitative criterion, as had already been defended in previous lines:

If the transfer or assignment is made between living persons, as is the case of the Real Estate Transfer Tax (ITBI), the taxable event arises from a legal transaction, because it arises from an agreement of wills between the seller and the buyer.

With regard to the calculation basis, the expression "venal value" contained in Article 38 of the CTN must be understood as the value considered under normal market conditions for real estate transfers.²⁴

And more. It is worth emphasizing that there is a prevalence of the legal business under the "interest" in taxing the public entity. This is for an obvious reason, the good faith of the allegations of the taxable person of the tax obligation that informs the tax administration of the realization of a certain legal business in which the tax is levied is presumed.

Objective good faith - which is a logical consequence of the positive system of law - imposes the recognition that the subjects of a given legal relationship act imbued with the interest of effecting the fulfillment of their obligations, based on values of probity, ethics and loyalty.²⁵ Furthermore, it will be natural to assume that the behavior

²³ BRAZIL. Superior Court of Justice. Resp 1937821/SP. Rel. Minister Gurgel de Faria, First Section, Dj.: 24 feb 2022, Dje.: 03 mar 2022. Available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202000120791&dt_publicacao=03/03/2022. Accessed on: 12 Nov 2022.

²⁴ BRAZIL. Superior Court of Justice. Resp 1937821/SP. Rel. Minister Gurgel de Faria, First Section, Dj.: 24 feb 2022, Dje.: 03 mar 2022. Available at: https://scon.stj.jus.br/SCON/GetInteiroTeorDoAcordao?num_registro=202000120791&dt_publicacao=03/03/2022. Accessed on: 12 Nov 2022. p. 12.

²⁵ GUIMARÃES, Bruno A. François. Objective good faith in tax law and the attached duties in the tax obligation relationship. *Journal of current tax law*. No. 47, pp. 102-121. São Paulo, IBDT, 1st semester. Year: 2021. p. 113.



adopted by the taxpayer in the constitution of the tax obligation will be adequate²⁶, that is, from the provision of adequate, credible and sufficient information for the constitution of the tax credit in the form of the law.

It is not denied, however, that the existence of simulation - as in private law - may give rise to the disregard of the terms presented by the taxpayer to the tax administration and the latter assign, by means of arbitration, the appropriate value for the tax obligation.

As taught by Ricardo Mariz Oliveira²⁷, simulation is a legal defect, making the act irregular and ineffective. The author continues on the subject:

[...] the consequence of simulation is not only to make the intention of saving tax through the simulated act unfeasible, as there may be a tax incidence on the concealed act, which civil law honors, recovers and protects since the 2002 code so that there is hygiene of the legal system.

In fact, the commandment of the sole paragraph of art. 116 of the CTN is no different, when it determines that "the administrative authority may disregard acts or legal transactions carried out with the purpose of concealing the occurrence of the taxable event or the nature of the constituent elements of the tax obligation, observing the procedures to be established by ordinary law". By acting in this way, the null act is abandoned and the act that was concealed by it is recovered, applying to it the tax normatization that is correct for it.²⁸

This is the emphasis that should mirror the actions of the municipal tax administration, according to the understanding established by the Superior Court of Justice in the judgment of Theme No. 1,113, since, as established in the thesis, the administration may set aside the amount indicated by the taxpayer, provided that it observes the regular initiation of the tax administrative procedure.

What is clearly forbidden, however, would be the use of a pre-fixed calculation basis, such as the use of the same calculation basis used by the municipal tax administration for launching the IPTU, since the externalization of wealth and the material criterion of ITBI itself refers to the real estate transaction carried out and must be compatible with it.

Furthermore, resuming the analysis of the tax legislation of the Municipality of Vitória/ES, it is possible to carry out a propositional analysis, indicating a new wording to art. 10 of Municipal Law No. 3,571 of 1989 of Vitória/ES so that it is more appropriate

²⁶ GUIMARÃES, Bruno A. França. Objective good faith in tax law and the attached duties in the tax obligation relationship. *Journal of current tax law*. No. 47, pp. 102-121. São Paulo, IBDT, 1st semester. Year: 2021. p. 116.

²⁷ OLIVEIRA, Ricardo Mariz. Fundamentals of tax planning. *Revista Direito Tributário Atual*, no. 47, p. 614-638. São Paulo, IBDT. 1st semester. Year: 2021. p. 622.

²⁸ OLIVEIRA, Ricardo Mariz. Fundamentals of tax planning. *Revista Direito Tributário Atual*, no. 47, p. 614-638. São Paulo, IBDT. 1st semester. Year: 2021. p. 622/623.



to the recent decision of the Superior Court of Justice. It proposes a new wording, which could take place as follows, highlighting the amended parts:

Art. 10 - The tax base is the venal value of the goods or rights transferred or assigned, as declared by the taxpayer in the translative title or ascertained in an evaluation carried out by the competent tax agency in its own administrative process, if this is higher.

This wording is sufficient to adapt the legislation to the recent thesis established by the Superior Court of Justice, providing greater security and stability to legal relations.

Notwithstanding this, in line with all that has been exposed, even in the face of a prescriptive statement covered with inconsistencies and contradictions with the order, such as art. 10 of Municipal Law No. 3,571 of 1989 of Vitória / ES, the Public Administration, observing the application of legality, must respect the terms of the binding precedent established by the Superior Court of Justice in the judgment of Theme No. 1,113, under penalty of judicial control of the administrative act of tax assessment.

5 CONCLUDING SUMMARY

In view of all the above, in a tight conclusive summary, without the pretension of having exhausted the theme in the brief lines, the conclusion was reached that the judgment rendered by the Superior Court of Justice in the judgment of Theme No. 1,113 binds the tax Public Administration to the extent that non-compliance with the thesis for the purpose of launching ITBI will give rise to judicial control of the administrative act in question.

In addition, it was found that it is more appropriate to link the ITBI calculation basis to the value transacted between the parties that enter into the legal transaction, since it is a measurable quantity and is intrinsic to the material criterion chosen by the legislator for the tax in question.

Finally, the objective good faith that prevails in the legal system of positive law must be respected, without, however, forgetting the possibility on the part of the tax administration to review the vitiated declaration that may eventually be presented by the taxpayer, applying art. 116, sole paragraph, of the National Tax Code for adequate configuration of the tax obligation according to the Law.



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