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THE UNCONSTITUTIONALITY OF THE ROUANET LAW IN FISCAL INCENTIVES NOT GRANTED TO MICROCOMPANIES

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Abstract: This article aims to address the partial unconstitutionality of the Rouanet Law from the perspective of the principle of Isonomy, with a view to the non-granting of Rouanet tax incentives for micro-enterprises compared to companies taxed on real profit that have double incentives. This work brings the entire context of the Rouanet Law that was born in 1986 with the Sarney Law and also a brief analysis of article 18 and article 26 of Law 8,313/91 which establishes rules for tax incentives. In the end, it establishes the unconstitutionality of not granting these benefits to companies taxed under the Simples Nacional regime.
Keywords: Tax Incentives, Taxes, micro-enterprises, Principle of Isonomy.

INTRODUCTION

The present work is a proposal to study the applicability of tax incentives of the Rouanet law in micro-enterprises with a focus on the importance of these incentives for this business community, their distinctions compared to companies taxed in real profit that receive double Rouanet tax incentives and considering the constitutional principle of isonomy from the perspective of free access to culture present in the Federal Constitution.

Currently, micro-companies taxed under the Simples Nacional regime enjoy the benefit of paying less taxes as the collection of these taxes is unified in a single guide, with this benefit not being extended to companies taxed on real profit which, even without this concession, also enjoy other benefits such as the fact of not needing to pay the government if a loss is found during its exercise, which makes it clear that even in their differences, the two regimes have benefits, albeit distinct. However, with regard to Rouanet tax incentives, the benefit is only attributed to companies taxed on real profit, which may even have double incentives.

This differentiation in regimes to the detriment of tax incentives raises an eminent concern with regard to the constitutional right of free access to culture present in article 215, Federal constitution / 1988, which clearly provides for the full exercise of cultural rights and access to sources of national culture.

In view of this, the topic gains greater emphasis on the conformity of the norm with the current national legal system, as it is not granted to micro-enterprises from the perspective of the constitutional principle of isonomy, which must guarantee fair and due equality to all, including micro-enterprises.

THE ORIGIN OF THE ROUANET LAW

The Rouanet Law is an improvement on the Sarney Law (Law number 7,505/86), created by José Sarney de Araújo Costa one year after the separation of the ministries of health and education. The proposal was presented for the first time in 1972 by Sarney, when he was in his first term as Senator, but due to the difficulties of the time, in the midst of the rise of the Military Dictatorship, it could not be approved. Then, a year after that date, there were two more failed attempts with similar projects, this time with the argument that they were unconstitutional.

In 1986, with the end of the dictatorship, José Sarney became the first civilian President after the military dictatorship, and that was when he was finally able to implement his bill, through Decree, thus creating the Sarney Law (Law number: 7,505/86).

> Its objective was to make more funds available for cultural production by granting federal tax incentives to companies that invested in culture. The procedure for using these benefits was through the registration of producers and cultural organizations with the **Ministry of Culture**. However, the State's lack of control over accountability caused controversies and accusations of

> misappropriation of funds, fraud and private benefits. Furthermore, it was criticized that the Sarney Law welcomed cultural projects without a public nature and gave prestige to projects of a commercial nature. (JULIANA LAVIGNE, 2015)[1]

The main criticism of the Sarney law is the fact that companies first financed, through tax waivers, the cultural actions of artistic producers and only then reported to the Federal Revenue and the Ministry of Culture about their applicability, that is, the provision of accounts were post-realization and not pre-realization, as described by Paulo Pélico, managing partner of ``*Casa Jabuticaba de Cinema e Teatro*``: "Today you present the project and it is judged in light of the budget. This prevents dozens, hundreds, perhaps thousands of illegitimate projects" (PAULO PÉLICO)[2]

In 1990, the Collor government revoked the Sarney Law, but after a year the Culture Incentive Law known as the Rouanet Law was created, in reference to Sérgio Paulo Rouanet, who at the time held the position of Secretary of Culture of the Presidency.

New mechanisms to encourage culture, previously suspended, were reestablished with Law number: 8,313, of December 23, 1991, which has the following configuration "Reestablishes principles of Law 7,505 of July 2, 1987."

The new legislation in force implemented the National Culture Support Program (PRONAC). Pronac established three instruments to support culture: Cultural and Artistic Investment Fund (FICART), Tax Incentive and National Culture Fund (FNC).

Ficart is the only mechanism that has not yet been implemented. Its objective is to support cultural projects of considerable economic feasibility and cultural notability, through financing that provides a profit for the investor. Furthermore, there is the FNC that represents the Union's investment through financing from resources from other sources for cultural projects that are submitted to sponsorship notices.

CURRENT TAX INCENTIVE MECHANISM

Among the three mechanisms for encouraging culture, the most popular is Patronage, which establishes standards for financing cultural projects through tax exemptions for individuals and also for companies taxed based on real profit, through deductions in income tax. income that will depend on the type of support: sponsorship or donation.

To submit a project for approval, the natural or legal person must present a proposal of a cultural nature defined through actions, programs and graphic information of the event related to the proposed cultural product and send it to SALIC (Support System for Laws to Incentive culture), according to normative instruction number: 1/2017 of the Ministry of Culture, which will later be forwarded to the National Commission for Cultural Incentive (CNIC), which will recommend it to the Ministry of Culture or reject it.

The Rouanet Law in its article 18 provides clear possibilities for the taxpayer (individual or legal entity) to fully deduct from income tax amounts arising from support for cultural projects through donations or sponsorship. Let's see:

> Article 18: With the aim of encouraging cultural activities, the Union will provide individuals or legal entities with the option of applying the portion of Income Tax, as donations or sponsorships, both in direct support of cultural projects presented by individuals or legal entities of a cultural nature, such as through contributions to

1. Available at https://www.caleidoscopio.blog.br/> accessed on 03/31/2019 at 2:42 pm.
2. Available at www.culturaemercado, accessed on 03/31/2019.

the FNC, in accordance with article 5, item II, of this law, as long as the projects meet the criteria established in article 1 of this law. (As amended by Law number: 9,874, of 1999).

§1 Taxpayers may deduct from their income tax the amounts actually spent on the projects listed in §3, previously approved by the Ministry of Culture, within the limits and conditions established in the current Income Tax legislation, in the form of: (Included by Law number: 9,874, of 1999)

Donations; Sponsorships;

§2 Legal entities taxed based on real profit will not be able to deduct the value of the donation or sponsorship referred to in the previous paragraph as operating expenses.

§1°will exclusively serve the following segments: a) performing arts;

b) Books of artistic, literary or humanistic value;

c) Classical or instrumental music; d) visual arts exhibition;

e) donations of collections to public libraries, museums, public archives and cinematheques, as well as staff training and acquisition of equipment to maintain these collections;

f) Production of short and medium-length cinematographic and videophonographic works and preservation and dissemination of the audiovisual collection; It is

g) Preservation of cultural, material and immaterial heritage.

h) Construction and maintenance of cinema and theater rooms, which may also function as cultural and community centers, in Municipalities with less than 100,000 (one hundred thousand) inhabitants

The description of the device mentioned above provides for a full refund of Income Tax to the taxpayer in cases of donation and sponsorship, always respecting the 6% allowed for individuals and 4% for legal entities, as provided for by Income Tax legislation. Regarding cultural elements not mentioned in the previous provision, these will be noted in article 26 of the same law.

Article 26: The donor or sponsor may deduct from the tax due in the Income Tax declaration the amounts actually contributed in favor of cultural projects approved in accordance with the provisions of this Law, based on the following percentages:

In the case of individuals, eighty percent of donations and sixty percent of sponsorships;

In the case of legal entities, taxed based on real profit, forty percent of donations and thirty percent of sponsorships.

§1° A legal entity taxed based on real profit may deduct donations and sponsorships as operating expenses.

§2° The maximum value of deductions referred to in the caput of this article will be fixed annually by the President of the Republic, based on a percentage of the taxable income of individuals and the tax owed by legal entities taxed on real profit.

§3°The benefits referred to in this article do not exclude or reduce other benefits, rebates and deductions in force, in particular donations to public benefit entities made by individuals or legal entities.

§4° (VETOED)

§5° The Executive Branch will establish a mechanism for preserving the real value of contributions in favor of cultural projects, in relation to this chapter.

In summary, the device deals with Income Tax waiver percentages. Unlike the total refund in article 18, the above provision deals with partial waivers of Income Tax. For individuals who donate to a cultural project, for example, they will have an 80% deduction,

and in the case of sponsorship, 60%. In any case, complying with the 6% limit permitted in current IPR legislation. In accordance with the standard, for a legal entity, it must first be taxed on real profit, that is, earning more than 48 million reais per year. In this case, in relation to the donation, the waiver will be 40%, and in cases of sponsorship the deduction will be made of 30%, also respecting the limit of 4% that the relevant legislation to Income Tax determines.

ROUANET TAX INCENTIVE IN LEGAL ENTITY

The Rouanet Law brought an opportunity for Companies to participate in cultural actions through tax incentives in their Income Tax. A legal entity may have 4% of its Income Tax due to a cultural project and obtain a full deduction of this amount, as governed by article 18 of Law number: 8,313/91, or a partial deduction in accordance with article 26 of the same rule. It concerns a type of Patronage.

> The Law encompasses two types of contributions: donations – in which there is a transfer of values, goods or services, as long as they are not used in advertising and sponsorships, in which the company's brand is promoted. In donation, the investor's main objective is to allow the project to be carried out, while in sponsorship, the purpose is promotional, with more focus on promoting the brand on a large scale.[3]

Several productive sectors in Brazil receive tax incentives, such as automotive, agribusiness and white goods.

> With this incentive, a powerful investment front can be created, actively promoting the circulation of resources. The results are, for example, the implementation and maintenance of museums and cultural centers, the professionalization of artistic groups, the training of specialized professionals, the growth of festivals in all areas, the development of diverse genres and cultural markets.[4]

T However, only companies taxed in Real Profit will be able to enjoy the Rouanet tax incentive, in this case it is necessary for the company to have a prior estimate of what tax will be collected by it in the year. Once this policy has been complied with, the company will be able to choose the cultural project that most identifies it and support it.

DIFFERENCE BETWEEN ARTICLE 18 AND ARTICLE 26 OF THE ROUANET LAW FOR LEGAL ENTITIES

The specific legislation distinguishes the devices due to their type of tax incentives and also by cultural genres. Article 18 of the Rouanet Law is closely related to the perpetuation of public goods such as: library collections, museums, exhibitions, etc. In this category, there is an incentive mechanism through donation or sponsorship.

> According to article 18 of Rouanet, closely linked to the conservation of heritage and public collections, legal entities can obtain a reduction of up to 4% of the income tax due, calculated at a rate of 15%, to support projects. When declaring their tax, the legal entity that supports projects classified by the Ministry of Culture in article 18 cannot deduct the value of the donation or sponsorship as operational expenses. The tax incentive expense is considered non-deductible, however 100% of its value can be deducted from the tax to be payed.[5]

In Article 26, companies will also be able to make donations of the income tax due, however, unlike the previous article, in this modality the waiver will only be partial. In sponsorship values, for example, the percentage will be 30% and 40% in cases of donations.

3. Primer regarding the use of tax incentives, 2015
4. Rouanet Law Portal, 2019
5. Primer regarding the use of tax incentives, p. 32.

> Via article 26, aimed mainly at carrying out projects and shows, the company can also allocate 4% of the tax calculated at a rate of 15%. However, there is a tax deduction of only 40% of the donation value and only 30% of the sponsorship value. The law determines that tax deductions are greater for donations (40%) than for sponsorship (30%). This is because, through sponsorship, there will also be a gain through brand exposure. When declaring their tax, the legal entity that supports projects classified by the Ministry of Culture in article 26 will be able to consider 100% of the amount invested as deductible in operational expenses, both for donations and sponsorships. By deducting it as an operating expense, the investor increases his incentive by around 25%.[6]

Investors have the possibility of contributing up to the limit of stipulated resources. And, after choosing the project and if approved, the project will have its data published in the Gazette. You should always be aware that, if the project falls under article26, the rebate will be lower than in article18.

TAX INCENTIVE ON THE COMPANY'S OPERATING EXPENSES

Operating expenses are the expenses that a company incurs that are not related to the production of a product.

When supporting projects covered by article 26, the legal entity based on real profit may still deduct donations and sponsorships as operational expenses. In this case, there will be a reduction in the resulting profit and, consequently, in the income tax payable.

According to the Federal Revenue Service, expenses not included in costs, necessary for the company's activities and maintenance of the respective production source, are operational, understanding as necessary those payed or incurred to carry out the transactions or operations required by the company's activity.

Thus, the percentage of income tax deduction to support projects in article 26 of the Rouanet Law reaches, in practice, the following percentages for legal entities:

For donations, the percentages to be deducted vary between 65% and 75%. To support projects such as sponsorship, the percentage is between 55% and 60%.

MICROENTERPRISES AND THEIR DIFFERENCES

Micro-enterprises are small businesses that generally have a maximum of 10 employees, often with the entrepreneur himself contributing. As a rule, it will always be a business company, simple company, individual limited liability company and the entrepreneur with the essential requirement of registration with the competent bodies. Furthermore, to be characterized as a micro-enterprise and benefit from its differentiated taxes, revenue must correspond to the limit of R$ 360,000.00 (three hundred and sixty thousand).

In Brazil, there is specific legislation regarding the protection of small and medium-sized companies, it is Complementary Law 123/2006.

> It is the General Law for Micro and Small Businesses. It was established in 2006 to regulate the provisions of the Brazilian Constitution, which provides for differentiated and favorable treatment for micro and small businesses. Since it was created, it has gone through four rounds of changes, but it remains with the objective of contributing to the development and competitiveness of Brazilian micro-enterprises and small businesses, such as employment generation strategies, income distribution, social inclusion, reduction of informality and brand strengthening.[7]

The benefits of this general law that supports this businessman are simplification

6. *Merula Steagall*, p. 32

7. Sebrae Portal, Available at:< www.sebrae.com.br/> Accessed on April 25, 2019

and reduction of bureaucracy, ease of access to the market, ease of obtaining credit and justice, and encouragement of innovation and exports.

Among all tax regimes, Simples Nacional is the most used, proving to be the best alternative for small companies. In fact, Simples Nacional was created precisely to make the lives of these entrepreneurs easier, as only businesses with gross revenue of up to R$3.6 million – updated to up to R$4.8 million in 2018 – can participate. If previously it was necessary to pay municipal, state and federal taxes separately, which were often equivalent to those payed by large organizations, with this regime, enterprises became exempt from federal taxes and began to pay a monthly bill with a fixed amount, which unifies all taxes. This unification takes place through the Simples Nacional Collection Document (DAS). It is also responsible for the automatic distribution of taxes to the accounts of municipalities, states and the Union. And this facility has a direct impact on companies' activities, as it saves time and eliminates possible difficulties in business management related to tax matters. (CARIN TOM, 2017)[8]

For EPPs, the Simples limit is set at R$4.8 million. Once this revenue limit is exceeded, in the next year the company must opt for the Presumed Profit or Real Profit regime.

As a rule, companies pay 8 taxes that have rates that, depending on the type of taxation, will be different. Once the DAS payment has been made, the amounts are sent to the Banco do Brasil computerized system. Upon receipt, taxes will be automatically transferred to the aforementioned competent entities, namely the Union, states and municipalities.

DIFFERENCE BETWEEN M.E.I. AND M.E

Micro-enterprises and individual micro-entrepreneurs enjoy the same benefit of paying less taxes and making their declarations differently. However, they are different in their modality. The main difference is in relation to the revenue limits that must be observed to continue enjoying the tax benefits.

An individual microentrepreneur is a person who operates on their own, but regularizes with the competent bodies in order to become a small business owner. You must have a turnover of R$81,000 and you will never be able to participate in other companies with a partnership or even be a holder. In addition, you can have a CNPJ, which means you will be able to issue invoices and enjoy greater facilities in opening bank accounts, loan etc.

He is a businessman covered by the Simples Nacional regime, with a lower tax burden and simple payment.

> To contribute and be regularized, MEI must pay a fixed amount according to the activity: R$50.90 for commerce or industry; R$54.90 for provision of services; R$55.90 for commerce and services. These amounts are allocated to Social Security and ICMS or ISS. Contributions guarantee benefits such as sickness benefit, retirement, etc.…[9]

The MEI regularization process is simple, as much of the registration is on the entrepreneur's portal. However, it is necessary to observe what type of activity the entrepreneur will carry out, as not all are permitted in these types of activities.

Despite also being micro like the MEI, the Me has a chunkier feature than the previous one.

At the same time that the MEI's annual revenue is R$81 thousand, the gross revenue of an ME can be up to R$360 thousand per year,

8. Available at https://blog.contaazul.com/quanto-uma-microempresa-paga-de-impostos. Accessed on 04/14/2019

9. Available at <https://osayk.com.br/mei-me-diferencas- Quando-vale-a-pena-migrar/>. Accessed on 05/14/2019

while this formalization of a micro-enterprise is agreed upon through a social contract that is also registered with the competent body. Furthermore, the entrepreneur, depending on his turnover size, will be able to choose his taxation regime not only according to the Simples Nacional regime, but also according to Real Profit or Presumed Profit.

If you choose Simples Nacional regulation, this tax is collected in a single way incorporating federal taxes.

In addition to these relevant differences, there are others that are important to highlight.

> Formalization: It is simple in the case of MEI (online and without bureaucracy) and more complex in the case of ME (needs social contract);
>
> Employees: MEI can only have one hired employee who receives the minimum wage or the minimum wage for the category; the ME may have a team of employees;
>
> Accounting management: for MEI it is simple, because, although the entrepreneur must record entries and exits monthly, there is no need to have a book with the company's accounting, for example. The ME must comply with all the accounting obligations of a normal company.
>
> Activities: To be a MEI you must perform one of the activities that fall into the category.
>
> Contribution: MEI pays a fixed monthly amount according to the activity, ME pays an amount based on revenue.[10]

THE EXCLUSION OF MICRO-ENTERPRISES FROM THE TAX INCENTIVES OF THE ROUANET LAW

According to Federal Law, number 8,313/91, only companies taxed on real profit can take advantage of Rouanet tax incentives through sponsorships or donations to cultural projects. On the other hand, micro-companies taxed under the Simples Nacional regime are excluded from this privilege, because their taxation is already reduced and simplified, while companies based on Real Profit have a double incentive: Total or partial waiver of Income Tax (depending on the type of contribution to the cultural project) and discount on operating expenses.

What makes this restriction contradictory is the fact that the MEI (individual microentrepreneur), for example, being a legal figure (it has no partners) has rights inherent to a legal entity as it has business activity, therefore, it should have the same rights as a Person legal entity taxed on real profit, given that this taxpayer has the same obligation to pay taxes to the State.

Some states in the country do not recognize the ME professional as a Legal Entity, let's see:

> But for the ProAC/ICMS of São Paulo (State Culture Incentive Law), the understanding is that the MEI is equated to Individuals, that is, it does not have the same rights as other Legal Entities because it is an Individual Entrepreneur.
>
> The MEI, in official and governmental terms, is a company that does not have a social contract and cannot have a partner: "The Social Contract" is the legal instrument between the people who come together to form a company. As MEI cannot have a partner, it does not have a social contract".[11]

However, it is still a company, as it has all the rights related to a Legal Entity. Complementary Law number: 147/2014,

10. Comparison available at <https://osayk.com.br/mei-me-diferencas- Quando-vale-a-pena-migrar/>. Accessed on 05/14/2019
11. Available at <https://www.propostacultural.com.br>. Accessed on 05/14/2019

which amended the Complementary Law, number: 123, of December 14, 2006, describes:

> Article18 –E: The MEI institute is a public policy that aims to formalize small businesses and social and social security inclusion.
>
> [...]
>
> §4° It is prohibited to impose restrictions on the MEI regarding the exercise of profession or participation in tenders, depending on their respective legal nature.

The literal interpretation of the normative text makes it clear that the MEI is a Legal Entity and cannot be equated with an Individual and receive limitations of any kind. Therefore, there could be no exclusion of this professional, limiting him to participate in the tax incentives arising from the Rouanet Law that are extended to Companies, considering that according to the positive norm of the prevailing legislation, there is no distinction of any nature for this taxpayer.

PARTIAL UNCONSTITUTIONALITY FOR THE NON-GRANTING OF ROUANET TAX INCENTIVES TO MICRO-COMPANIES UNDER THE LIGHT OF THE PRINCIPLE OF ISONOMY

CONCEPT OF ISONOMY

The 1988 Federal Constitution is characterized as an open normative system of rules and principles. These constitutional principles are the ethical, religious and cultural values that guided the action of the original constituent power and continue to shape the application of legal norms in our legal system. Ataliba explained submission to constitutional principles as follows:

> (...) principles are the main lines, the great guidelines, the great guidelines of the legal system. They point out the directions to be followed by the entire society and necessarily pursued by government bodies (constituted powers). They express the ultimate substance of popular will, its objectives and designs, the main lines of legislation, administration and jurisdiction.
>
> For these reasons they cannot be contradicted; they have to be honored until the last consequences." (*Apud* CARRAZA, 2007. p. 47).

Constitutional principles are characterized as the supreme and founding values of our legal system, they determine all guidelines and interpretations of national legislation. Due to their special normative quality, they promote cohesion, the internal unity of the entire system. According to Luís Roberto Barroso:

> Constitutional principles are the norms chosen by the constituent as essential foundations or qualifications of the legal order it establishes. The activity of interpreting the constitution must begin by identifying the major principle that governs the topic to be assessed, descending from the most generic to the most specific, until arriving at the formulation of the concrete rule that will govern the species [...] In every legal order there are superior values and fundamental guidelines that 'sew' the different parts together. Constitutional principles embody the basic premises of a given legal order, radiating throughout the system. They indicate the starting point and the paths to be followed. (BARROSO, 1999, p. 147-149)

And yet, according to Rizzatto Nunes:

> In the same way as the more general ethical-legal principles, constitutional principles are the most important point of the normative system. They are true girders, foundations on which the legal system is built. Constitutional principles give structure and cohesion to the legal edifice. Therefore, they must be obeyed, otherwise the entire legal system will be corrupted. (RIZZATTO NUNES, 2002, P. 37)

The prevailing doctrine foresees the partial unconstitutionality of the normative text in the hypotheses.

In addition to the majority legal system, in the 1988 Constitution we find several observations on the applicability of the principle of Isonomy to unequals: article 4, VIII, it provides for racial equality; article 5, I, it deals with equality between the sexes; VIII, it deals with equality of religious belief; XXXVIII, it deals with jurisdictional equality; article 7, XXXII, it deals with labor equality; article 14, provides for political equality, and article 150, III, it regulates tax equality.

It is important to clarify this content to truly understand the exclusion used for micro-entrepreneurs in relation to the tax incentives of the Rouanet Law, according to art 26 of Law number: 8.313/91.

> Article 26: The donor or sponsor may deduct from the tax due in the Income Tax declaration the amounts actually contributed in favor of cultural projects approved in accordance with the provisions of this law, based on the following percentages:
>
> [...]
>
> II- In the case of legal entities taxed based on real profit, forty percent of donations and thirty percent of sponsorships.
>
> §1° A legal entity taxed based on real profit may deduct donations and sponsorships as operating expenses.
>
> §2°The maximum value of deductions referred to in the caput of this article will be set annually by the President of the Republic, based on a percentage of the taxable income of individuals and the tax owed by legal entities taxed based on real profit.

It is observed that when reading the article there is no reference to the micro-entrepreneurial Legal Entity, only the Legal Entity that has taxation based on the Real Profit regime, thus excluding this "business community" in its entirety.

Despite this, they maintain the probability of violating the constitutional principle of Isonomy present in the Federal Constitution of 1988, which reproduces in its article 215 cultural access for all. Let us analyze: "The State will guarantee to everyone the full exercise of cultural rights and access to the sources of national culture, and will support and encourage the appreciation and dissemination of cultural manifestations." (Federal constitution / 1988, article 215)

It appears that the constitution's provision highlights access to the sources of national culture. This means full access to culture in all forms, including through tax incentives arising from sponsorship of Rouanet cultural projects. Keeping taxpayers from this expectation is an affront to the supreme norm.

José Afonso da Silva states in his book that the principle of Isonomy has not had as many discussions as the principle of equality, since isonomy constituted the fundamental sign of democracy. By not admitting permitted privileges and distinctions and a Liberal State, the principle ends up directly clashing with the interests of the bourgeoisie that aims to dominate the classes. (AFONSO DA SILVA, 2004)

In view of the above, the Constitution only recognizes the principle in its formal aspect in accordance with the equality of the cold rule of law.

Ruy Barbosa, based on the Aristotelian lesson, stated that the rule of equality consists only of treating unequals unequally to the extent that they are unequal. In this social, proportional and natural inequality, the true law of equality is found, so that treating equals with inequality, or unequals with equality, would be blatant inequality, and not real equality. It is, therefore, real equality and not formal equality.

The jurist Fábio Konder Comparato brilliantly says that the so-called material

freedoms aim at equal social conditions, objectives to be achieved, not only through Laws, but also through the application of policies or state action programs within the constitutional norms of effectiveness limited programmatic.

In seeking to promote equality, the 1998 Constitution has as its backdrop cooperation between the federation's entities.

It is from this perspective that, through the National Culture System (SNC), the Union, states and municipalities act in the planning and shared management of cultural policies and their actions are guided by the National Culture Plan, the guidelines and goals must guide the formulation of public cultural policies. Article 216-A of the 1988 Constitution sets out its powers.

> Article216-A: The National Culture System, organized under a collaborative regime, in a decentralized and participatory manner, establishes a process of joint management and promotion of democratic and permanent public cultural policies, agreed between the entities of the Federation and Society, aiming to promote human, social and economic development with the full exercise of cultural rights.

The exposed Article describes the institution of a process of joint management and promotion of democratic and permanent public cultural policies between the entities of the Federation and Society. The State's responsibility for the democratization of State policies soon becomes clear, which presupposes the error of removing the microbusiness community from the tax incentives of the Rouanet Law.

However, we can only hope that government policy reveals the blockage that still persists on this controversial topic. Tax incentives are the greatest example of how the government helps companies to develop, and when it comes to Rouanet tax incentives there is an even greater importance: the fact that companies can help with the country's cultural development through sponsorships and donations for projects cultural activities, many of which are aimed at poor communities.

FINAL CONSIDERATIONS

As presented in this work, the State, in order to fulfill its obligations necessary for access to culture, seeks the necessary means to remedy this responsibility, one of which is through tax incentives that constitute financing standards for cultural projects through tax waivers that are available only to companies taxed on real profit according to specific legislation in force.

This tax incentive makes constitutional access to culture possible through resources related to projects involving performing arts, literature, art exhibitions, etc., all through sponsorships or donations.

Companies taxed on real profit have tax incentives in Income Tax at different percentages that will depend on the type of incentive (donation 40% or sponsorship 30%) and you can also obtain tax incentives on your operating expenses, which will deduct the resulting profit and consequently the IPR due to pay. Such concessions feature a double tax incentive.

Based on this study, the position and benefits given to this business community, research was carried out related to the unconstitutionality of the Rouanet law in tax incentives not granted to micro-enterprises that remained excluded in their entirety, since they do not have any means of tax incentives. culture in your Income Tax.

Thus, this article was concerned with presenting the unconstitutional aspects of this failure to grant incentives to micro-enterprises taxed under the Simples Nacional regime, from the perspective of the principle of isonomy, which provides an explanation of its applicability to the topic at hand.

During this work, many difficulties were encountered, highlighting the bibliographical limitation, as unfortunately there are few authors who address the topic. However, the study applied to this possible unconstitutionality, despite the precociousness of the research and knowing that I am a mere student and recognizing the remarkable instruction of the Masters, I still perceive too many differences between the two forms of taxation with regard to tax incentives.

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