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# **FREEDOM OF ASSOCIATION AND CORPORATE CONTRACTS: LEGAL AND TAX ASPECTS OF DRAG-ALONG AND TAG-ALONG CLAUSES<sup>1</sup>**

## **LIBERDADE DE ASSOCIAÇÃO E CONTRATOS SOCIETÁRIOS: ASPECTOS JURÍDICOS E TRIBUTÁRIOS DAS CLÁUSULAS DRAG-ALONG E TAG-ALONG**

*Carina Mandler Schmidmeier\**  
*Bianca Martins Knap\*\**

*Abstract:* This article aims to analyze the legal and tax aspects of drag-along and tag-along clauses in corporate contracts, highlighting their relationship with freedom of association and the fiscal impacts arising from the transfer of corporate control. Through a deductive methodology and bibliographic research, the study examines the constitutional foundation of freedom of association, the mechanisms and functions of these clauses, and their tax consequences, especially regarding the incidence of Corporate Income Tax (IRPJ) and Social Contribution on Net Profit (CSLL). It is observed that the transfer of

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corporate interests governed by these clauses constitutes a taxable capital gain, subject to a 15% rate (plus an additional 10% for profits exceeding BRL 240,000 annually) for IRPJ, and 9% (which may vary depending on the sector) for CSLL, with tax incidence exclusively at the federal level, excluding state or municipal taxes. A thorough understanding of these fiscal effects is essential to ensure legal certainty and efficiency in tax planning for corporate operations. It is concluded that, by promoting predictability and uniformity in control transfers, drag-along and tag-along clauses, when applied transparently and with the autonomy of will, contribute to the protection of corporate rights and sustainable economic development, in accordance with constitutional principles and current tax legislation.

*Keywords:* Globalization. Economic Development. Economic Freedom. Drag-Along. Tag-Along.

*Resumo:* Este artigo objetiva analisar os aspectos jurídicos e tributários das cláusulas drag-along e tag-along nos contratos societários, destacando sua relação com a liberdade de associação e os impactos fiscais gerados pela alienação do controle societário. Por meio de uma metodologia dedutiva e pesquisa bibliográfica, o estudo examina a fundamentação constitucional da liberdade de associação, os mecanismos e funções dessas cláusulas, e suas consequências tributárias, sobretudo quanto à incidência do Imposto de Renda da Pessoa Jurídica (IRPJ) e da Contribuição Social sobre o Lucro Líquido (CSLL). Verifica-se que a alienação de participações societárias, disciplinada por essas cláusulas, configura ganho de capital tributável, sujeitando-se a alíquotas de 15% (mais adicional de 10% para lucros acima de R\$ 240 mil anuais) no IRPJ, e a 9% (podendo variar conforme o setor) na CSLL, incidência esta exclusiva de tributos federais, sem abrangência estadual ou municipal. A compreensão detalhada desses efeitos fiscais é essencial para garantir segurança jurídica e eficiência no planejamento tributário das operações societárias. Conclui-se que, ao promover previsibilidade e uniformidade nas transferências de controle, as cláusulas drag-along e tag-along, quando aplicadas com transparência e autonomia da vontade, contribuem

para a proteção dos direitos societários e para o desenvolvimento econômico sustentável, em consonância com os preceitos constitucionais e a legislação tributária vigente.

*Palavras-chave:* Globalização. Desenvolvimento Econômico. Liberdade econômica. *drag-along*. *tag-along*.

*Summary:* Introduction; 1. The Constitutional protection of freedom of association and its relation to development and the economic order. 2. Drag-Along And Tag-Along clauses: fundamental notions. 3. Tax implications arising from drag-along and tag-along clauses. Final Considerations.

## **Introduction.**

In the last decade of the twentieth century, the perception was consolidated that the world was entering a new era, marked by the advent of technological transformations, the reconfiguration of social structures, the emergence of a new economic order, and significant cultural changes. In this context, the need arose for the creation of new productive models and corporate forms that could reflect and sustain the phenomenon of economic globalization, characterized, above all, by the liberalization of international trade and the intensification of economic interactions between individuals and States.

From this perspective, the contemporary scenario of business corporations has been marked by a significant increase in corporate reorganization operations, mergers, and acquisitions, which makes it indispensable to use contractual mechanisms capable of providing greater legal certainty and predictability to those involved. In this regard, tag-along and drag-along clauses stand out, traditionally recognized for their corporate protection function but increasingly analyzed also from the perspective of their tax effects.

Therefore, the hypothesis to be confirmed by the object of the study is that tag-along and drag-along clauses, by conferring predictability and uniformity to control transfer operations, generate tax effects.

Accordingly, the guiding question of this research is: To what extent are tag-along and drag-along clauses, by regulating the transfer of corporate control, capable of generating tax effects?

To achieve the stated objective, the research methodology adopted was deductive analysis, which starts from general premises and seeks to reach specific conclusions through a logical sequence of inferences. As the procedural method, bibliographic research was used as a means to obtain results and a deeper study of the subject.

To answer the research question, the article was divided into three chapters. The first topic seeks to analyze the constitutional protection of freedom of association and its relationship with development and the economic order. Subsequently, the second chapter addresses the concept of drag-along and tag-along clauses, as well as the fundamental notions on the subject. The third chapter briefly examines the tax implications arising from drag-along and tag-along clauses. Finally, the article presents its concluding remarks.

## **1. The constitutional protection of freedom of association and its relation to development and the economic order.**

The Constitution of the Federative Republic of Brazil of 1988 enshrines, among fundamental rights, the freedom of association, under Article 5, item XVII, ensuring the right to establish associations for lawful purposes. Complementarily, item XX of the same constitutional provision expressly establishes the impossibility of coercion regarding associative ties, by stating that “no one shall be compelled to join or to remain in an association,” thereby reaffirming the voluntary

and autonomous nature of associative relations in the Democratic Rule of Law.<sup>2</sup>

José Afonso da Silva<sup>3</sup> teaches that “Freedom of association is a liberty right that presupposes both the right to associate and to disassociate, and it is forbidden, whether by the State or by the associations themselves, to force an interested party to remain in the entity.”

In the same vein, Gilmar Ferreira Mendes<sup>4</sup> emphasizes that “Freedom of association is a right of horizontal effectiveness, relating both to public and private relations. No one is obliged to remain associated, and any requirement to that effect would be unconstitutional, as it would violate individual freedom.”

Furthermore, Article 170 of the Federal Constitution of 1988 provides that “The economic order, founded on the valorization of human labor and free enterprise, has as its purpose to ensure a dignified existence for all, in accordance with the dictates of social justice, while observing the following principles [...]”.<sup>5</sup>

In the words of Eros Roberto Grau,<sup>6</sup> “The economic order is guided by freedoms — the freedom to contract, to work, to undertake — and the right to remain or to disassociate from an organization is part of this freedom.”

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2 BRAZIL. *Constitution of the Federative Republic of Brazil of 1988*. DF: Presidency of the Republic, 2016. Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed on: June 28, 2025.

3 SILVA, José Afonso da. *Course on Positive Constitutional Law*. São Paulo: Juspodivm, 2022. p. 258–260.

4 MENDES, Gilmar Ferreira. *Constitutional Law Course*. São Paulo: Saraiva, 2017. p. 312–314.

5 BRAZIL. *Constitution of the Federative Republic of Brazil of 1988*. DF: Presidency of the Republic, [2016]. Available at: [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed on: June 28, 2025.

6 GRAU, Eros Roberto. *The economic order in the 1988 Constitution: interpretation and critique*. São Paulo: Malheiros, 2022. p. 177–191.

This idea is further reinforced by Article 421-A of the Civil Code, and defended by civil law scholars such as Pablo Stolze Gagliano and Rodolfo Pamplona Filho,<sup>7</sup> who state: “Contractual freedom is a presupposition of the legal transaction, in which the contract results from the consent of the parties, who are in an apparent situation of parity.”

Amartya Sen argues that true development must be understood as the expansion of the real freedoms that people enjoy, and not merely as an increase in income or economic production. For him, freedom is both the primary means and the ultimate end of development.<sup>8</sup>

Development, therefore, consists in expanding people’s capabilities to enable them to live the life they value, that is, to have real choices and opportunities to achieve well-being.<sup>9</sup>

In criticizing approaches that focus solely on wealth or growth, Sen proposes that attention be given to aspects such as health, education, political participation, security, and human rights, which are essential to individual freedom.

To this end, the main freedoms highlighted by Amartya Sen are: (a) political freedom; (b) economic freedom; (c) social freedom; (d) political freedom to ensure transparency guaranteed by institutions; and (e) freedom of security.<sup>10</sup>

In a concise synthesis, development is seen as the removal of obstacles that limit people’s freedoms (poverty, tyranny, social exclusion, lack of opportunities). Without these basic freedoms, it is not possible to fully exercise one’s capabilities to achieve what is valued

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7 GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. *New course of civil law: contracts*. São Paulo: Saraiva, 2018. p. 289–304.

8 SEN, Amartya. *Development as Freedom*. Translated by Iwo Korytowski. São Paulo: Companhia das Letras, 1999. p. 36.

9 *Ibidem*.

10 *Ibidem*.p.36.

in life. The expansion of these freedoms improves well-being and promotes a more just and inclusive society.<sup>11</sup>

Flávio Pansieri,<sup>12</sup> analyzing the concept established by Sen, highlights freedom as:

Escaping this dichotomy, I prefer to understand that freedom is established in Brazil based on the concept set forth by the Indian scholar Amartya Sen: free will be the one who participates, the one who possesses the condition of an agent – that possibility which any individual has to participate and to understand their position.

Pansieri further relates economic freedom to other freedoms, considering it one of the paths to the effectiveness of freedom as a whole.<sup>13</sup>

In view of the foregoing, based on doctrinal understandings, it is clear that in order to achieve full freedom, no one should be excluded from economic opportunities, from the freedom to contract in a manner that promotes social development, and that the withdrawal from a contract or association must be respected, thereby enhancing the effectiveness of freedom, while preventing any abusive situation that may cause harm to the other parties or to the collective interest.

## **2. Drag-along and tag-along clauses: fundamental notions.**

Notwithstanding the constitutional guarantee of freedom of

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11 PANSIERI, Flávio. *Freedom in Western Thought. Vol. 4: Freedom as Justice and Development*. Porto: Juruá, 2019.

12 PANSIERI, Flávio. *The dichotomy between justice and freedom*. Básica Comunicações, 2016. Available at: <https://www.basicacomunicacoes.com.br/a-dicotomia-entre-a-justica-e-a-liberdade-porflavio-pansieri>. Accessed on: June 17, 2025.

13 PANSIERI, Flávio. *Freedom in Western Thought. Vol. 4: Freedom as Justice and Development*. Porto: Juruá, 2019.

association, provided for in Article 5 of the Constitution of the Federative Republic of Brazil of 1988, it is observed, within the scope of corporate law, the existence of contractual clauses that relativize such prerogative. Among these provisions, tag-along and drag-along clauses stand out, which, although valid within the contractual framework, impose conditions on the free permanence or withdrawal of the associate, directly interfering with the self-determination of shareholders in the context of business corporations.

In this chapter, an individual analysis of tag-along and drag-along clauses is carried out.

Firstly, the contractual clause known as drag-along constitutes a legal mechanism that enables the compulsory and joint sale of a company's shares. It is a provision that imposes on certain shareholders the obligation to transfer, in whole or in part, their corporate interests to a third-party acquirer, under the same conditions negotiated by the majority or controlling shareholder. This contractual provision seeks to safeguard the interests of the selling shareholder, even to the detriment of the autonomy or will of the other partners, who are compelled to adhere to the share transfer transaction.<sup>14</sup>

Thus, the drag-along clause generally establishes that, in the face of a proposal for the acquisition of corporate control, the controlling shareholder may require that the minority shareholders bound by the agreement also transfer their shares to the acquirer under the same negotiated conditions. The main purpose of this provision is to facilitate control transfer operations, by allowing the buyer to obtain the entirety — or at least a substantial portion — of the voting capital. This mechanism is particularly relevant in contexts where the interested investor intends to reorganize the corporate structure, exclude certain shareholder profiles — such as funds with short-term strategies or investors with speculative behavior — or

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14 CARVALHOSA, Modesto. *Shareholders' Agreement: Homage to Celso Barbi Filho*. São Paulo: Saraiva, 2011, p. 315.

even make possible the delisting of the company from the capital market.<sup>15</sup>

Furthermore, according to the scholar Carvalhosa, the price agreed upon for the transfer of corporate control is freely stipulated between the parties, with the buyer of control making the payment directly to the controlling shareholder, with or without discount, as provided in the respective agreement. However, any clause establishing a discount must comply with the maximum limit of 20%, as set forth in Article 254-A of the Corporations Law, under penalty of characterizing an undue advantage for the acquirer of control and, indirectly, for the transferor himself.<sup>16</sup>

Thus, the functionality of the drag-along clause must be interpreted in light of the interest of the acquirer, with the reasons that led him to acquire the company's shareholding being irrelevant.<sup>17</sup>

What frequently occurs is that Venture Capital, Private Equity, or Entrepreneurial Credit Funds require the controlling shareholder of the investee company to accept the inclusion of this clause in the shareholders' agreement to be executed prior to the capital injection into the business.<sup>18</sup>

In the words of Modesto Carvalhosa, the drag-along clause may be defined as follows:

It is provided therein that, should the controlling shareholder receive a proposal for the acquisition

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<sup>15</sup> *Ibidem*.

<sup>16</sup> CARVALHOSA, Modesto. *Commentaries on the Corporations Law: Law 6.404/76*. 4th ed. São Paulo: Saraiva, 2009, v. 1. p. 304–305.

<sup>17</sup> PEREIRA, Guilherme Döring Cunha. *Transfer of Corporate Control*. São Paulo: Saraiva, 1995. p. 54.

<sup>18</sup> BORBA, Rodrigo Rabelo Tavares. *Liquidity contractual mechanisms in shareholders' agreements: From structure to function*. Master's Dissertation. Graduate Program in Law, State University of Rio de Janeiro, Concentration Area: Civil Law, p. 59. Rio de Janeiro, 2016.

of control, he may, in the manner stipulated in the agreement, require that the minority shareholders who are parties to the agreement also sell their shares to the bidder, for the offer price accepted by the controller. The function of the drag-along is to broaden the spectrum of potential interested parties in the acquisition of control, insofar as they may have no interest in maintaining the current minority shareholders who are parties to the agreement, whether, for example, due to their profile (investment funds, possible strikers) or, alternatively, with a view to the future delisting of the company.<sup>19</sup>

Therefore, it is easily identifiable that the drag-along clause “drags” the minority shareholders into a single block, alienating the company to a third party. Often, we also observe an inverse position, widely used, namely in favor of a minority block, where the minority being an investment fund with this clause inserted in the shareholders’ agreement, they may “drag” the majority so that the entirety of the company is sold.

That said, investors must also keep in mind the projection of the exit of their investments, without being prevented from doing so by minority shareholders. The drag-along right is a central feature of the shareholders’ agreement to be executed, for the future allocation of resources. The Authentix case suggests that there may be circumstances that cannot be enforced against minority shareholders, and other deadlock provisions should be considered for implementation before the investment is made, thus diverting potential challenges at the time of enforcing the drag-along clause upon exit.

On another front, tag-along is enshrined in Law 6.404/76 (Brazilian Corporations Law – LSA), in Article 254-A, which obliges the controlling shareholder to ensure the minority shareholders a mini-

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19 CARVALHOSA, Modesto. *Commentaries on the Corporations Law: Law 6.404/76*. 4th ed. São Paulo: Saraiva, 2009, v. 1. p. 304–305.

imum price of 80% (eighty percent) of the amount paid per share or per lot of shares in the case of a sale of the company.<sup>20</sup>

It should be noted that, according to the legal provision, tag-along applies to minority shareholders holding common shares, with voting rights, in order to guarantee them the same price offered to controlling shareholders.

Thus, tag-along refers to a contractual clause that, by providing for the sale of the shares held by one or more members of the agreement, grants the other participants the right to jointly sell these holdings. This provision may apply both to shares conferring control and to minority shares. Thus, the signatories agree among themselves on the right to sell their shares together. The creditors of this obligation are the shareholders who, being parties to the agreement, were not directly involved in the negotiation with third parties.<sup>21</sup>

In summary, for better understanding, common shares are classified as those which, in principle, grant their holders participation in the company's dividends and in the deliberations of the shareholders' meetings, which are the highest authority and in which each share entitles its holder to one vote, thereby granting the full set of rights to the holders.<sup>22</sup>

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20 CARVALHOSA, Modesto. *Commentaries on the Corporations Law: Law 6.404/76*. 4th ed. São Paulo: Saraiva, 2009, v. 1. p. 310.

21 CARVALHOSA, Modesto. *Shareholders' Agreement: Homage to Celso Barbi Filho*. São Paulo: Saraiva, 2011. p. 311.

22 CVM Instruction 361: Art. 2 A Public Tender Offer for the acquisition of shares of a publicly-held company (OPA) may be one of the following types: I – OPA for cancellation of registration: a mandatory OPA conducted as a condition for the cancellation of the registration for trading shares on regulated securities markets, pursuant to §4 of art. 4 of Law 6.404 of December 15, 1976, and §6 of art. 21 of Law 6.385 of December 7, 1976; II – OPA due to increase in shareholding: a mandatory OPA conducted as a consequence of the controlling shareholder increasing its stake in the share capital of a publicly-held company, pursuant to §6 of art. 4 of Law 6.404/76; III – OPA due to transfer of control: a mandatory OPA conducted as a condition for the effectiveness of a legal transaction involving the transfer of control of a publicly-held company, pursuant to art. 254-A of Law 6.404/76; IV – Voluntary OPA: an OPA aimed at acquiring shares of a publicly-held company, which is not required to be conducted according to the specific procedures established in this Instruction for any mandatory OPA referred to in the previous items; V – OPA for acquisition of control of a publicly-held company: a voluntary OPA

The provision of tag-along was only effectively implemented with the insertion of Article 254-A into the LSA, which established rules for the direct or indirect transfer of control of a listed company, where the referred clause can only be contracted under the condition, suspensive or resolutive, that the acquirer undertakes to make a public tender offer for the voting shares owned by the other shareholders of the company, so as to assure them a price at least equal to 80% (eighty percent) of the amount paid per voting share that is part of the controlling block.

Article 28 of CVM Instruction No. 361 mentions tag-along, imposing a restriction regarding the class of shares covered by the guarantee of the tag-along right. According to the CVM, only shares with voting rights would be covered by such guarantee.

The translation of the English expression is, precisely, “to follow, to accompany”: the other shareholders shall have the right to accompany the selling shareholder. For this reason, in Brazil, the clause is referred to as the joint sale or joint exit clause.<sup>23</sup>

Moreover, as explained by Gladston Mamede, the mechanism called “extension of the control premium,” also known as tag-along, aims to safeguard the value of shares not included in the controlling block, preventing their excessive devaluation. It is common that, although the shares have an established market value, the acquirer of control pays a higher amount, thus characterizing the so-called con-

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as provided in art. 257 of Law 6.404/76; and VI – Competing OPA: an OPA submitted by a third party who is not the offeror or a person related thereto, targeting shares covered by an OPA already submitted for registration with the CVM, or by an OPA not subject to registration whose notice has already been published, pursuant to art. 11.

23 CASQUET, Andréia Cristina Bezerra. *Transfer of control in closely held companies*. São Paulo: Quartier Latin, 2015. p. 228; CRAVEIRO, Mariana Conti. *Contracts among partners: interpretation and corporate law*. São Paulo: Quartier Latin, 2013. p. 95; CARVALHOSA, Modesto. *Shareholders' Agreement: Homage to Celso Barbi Filho*. São Paulo: Saraiva, 2011. p. 311; EIZIRIK, Nelson. *The Corporations Law commented*. 2nd ed., revised and expanded. São Paulo: Quartier Latin, 2015, v. 2. p. 277.

control premium. By way of example, the author cites a case of a common share usually traded at R\$70.00, where the purchaser of control pays R\$100.00 per share. This will trigger the tag-along obligation, which requires the presentation of a public tender offer (OPA) at a minimum value of R\$80.00, unless otherwise provided in the by-laws.<sup>24</sup>

Furthermore, the distinguished scholar Mamede adds that, usually, such rule only covers common shares with voting rights, and it is common for preferred shares to be excluded from the extension of the control premium, except in the case provided for in Article 17, item III. However, some companies guarantee, in their bylaws, the recognition of this right also to holders of preferred shares.<sup>25</sup>

Thus, the joint sale clause represents a limitation on the free transfer of shares contemplated in the agreement, by binding the transfer to third parties to the obligation to also acquire the shares of the other signatories.<sup>26</sup>

In light of the foregoing, the main characteristics of tag-along and drag-along clauses have been duly clarified, highlighting their purposes, mechanisms of operation, and legal implications in the context of shareholders' agreements. These instruments, inserted in shareholders' agreements, aim to safeguard rights and impose specific obligations in situations of transfer of corporate interests, directly affecting governance dynamics and the protection of the interests of both minority and controlling shareholders, as the case may be.

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24 MAMEDE, Gladston. *Brazilian Business Law – Corporate Law*. 14th ed. Rio de Janeiro: Atlas, 2022. E-book, p. 437. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559772582/>. Accessed on: June 28, 2025.

25 Idem.

26 CARVALHOSA, Modesto. *Shareholders' Agreement: Homage to Celso Barbi Filho*. São Paulo: Saraiva, 2011. p. 311.

### 3. Tax implications arising from drag-along and tag-along clauses.

According to the teachings of Fernando Bonfá de Jesus and Isabela Bonfá de Jesus, in the event of an onerous transfer of corporate ownership by a legal entity, if a positive difference between the transfer value and the respective acquisition cost is verified, a capital gain is characterized. In such circumstance, Corporate Income Tax (IRPJ) applies, the collection of which falls under the competence of the Federal Government, as provided for in the applicable tax legislation.<sup>27</sup>

This is because the taxable event of Corporate Income Tax (IRPJ), pursuant to Article 43 of the National Tax Code (CTN), consists of the acquisition of economic availability, when the cash basis method is adopted, or legal availability, in the case of the accrual method, related to: a) income, understood as the result derived from capital, labor, or the combination of both; and b) proceeds of any nature, characterized as patrimonial increases that do not fall under the strict concept of income. Meanwhile, the taxable event of the Social Contribution on Net Profit (CSLL), as provided in Article 195 of the Federal Constitution of 1988, is the determination of profit.<sup>28</sup>

In this regard, it should be noted that taxpayers of Corporate Income Tax (IRPJ), and therefore subject to its payment, include legal entities domiciled in the country, as well as individuals treated as such under applicable legislation.<sup>29</sup>

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27 JESUS, Fernando Bonfá de; JESUS, Isabela Bonfá de. *Taxation in merger and acquisition operations*. Revista Jurídica Luso-Brasileira, Lisbon, year 6, no. 4, pp. 1171–1196, 2020. Available at: [https://www.cidp.pt/revistas/rjlb/2020/4/2020\\_04\\_1171\\_1196.pdf](https://www.cidp.pt/revistas/rjlb/2020/4/2020_04_1171_1196.pdf). Accessed on: July 10, 2025.

28 PÊGAS, Paulo H. *Manual of Tax Accounting*. 10th ed. Rio de Janeiro: Atlas, 2022. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559772087/>. Accessed on: July 9, 2025; POHLMANN, Marcelo C. *Tax Accounting*. 2nd ed. Rio de Janeiro: Atlas, 2024. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559775873/>. Accessed on: July 9, 2025.

29 PÊGAS, Paulo H. *Manual of Tax Accounting*. 10th ed. Rio de Janeiro: Atlas, 2022. Available

Thus, in the event of a capital gain, the applicable Corporate Income Tax (IRPJ) rates are as follows: a) a basic rate of 15%, levied on profit, whether actual, presumed, or arbitrated; b) an additional 10% applied on the portion of profit exceeding R\$ 20,000.00 per month, equivalent to R\$ 240.000.00 annually.<sup>30</sup>

Furthermore, in addition to Corporate Income Tax (IRPJ), Fernando Bonfá de Jesus and Isabela Bonfá de Jesus (2020) assert that the Social Contribution on Net Profit (CSLL) also applies. The taxable event of CSLL, in accordance with Article 195 of the Federal Constitution of 1988, is the determination of profit. Thus, all legal entities domiciled in Brazil, as well as those equated to them under the legislation applicable to Corporate Income Tax, are taxpayers of this contribution.<sup>31</sup>

As for CSLL, the standard rate, established since the early 2000s, is 9% for most companies; however, differentiated rates apply depending on the type of activity, as follows: a) for financial institutions in general, provided in item I of § 1 of Article 1 of Complementary Law No. 105/2001, a rate of 20% applies, as included by Law No. 14.183/2021; b) 15% for legal entities operating private insurance, capitalization companies, as well as those mentioned in items II, III, IV, V, VI, VII, IX, and X of § 1 of Article 1 of Complementary Law No. 105/2001, as amended by Law No. 14.183/2021.<sup>32</sup>

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at: <https://app.minhabiblioteca.com.br/reader/books/9786559772087/>. Accessed on: July 9, 2025. p. 326.

30 PÊGAS, Paulo H. *Manual of Tax Accounting*. 10th ed. Rio de Janeiro: Atlas, 2022. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559772087/>. Accessed on: July 9, 2025. p. 326.

31 PÊGAS, Paulo H. *Manual of Tax Accounting*. 10th ed. Rio de Janeiro: Atlas, 2022. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559772087/>. Accessed on: July 9, 2025. p. 326; POHLMANN, Marcelo C. *Tax Accounting*. 2nd ed. Rio de Janeiro: Atlas, 2024. Available at: <https://app.minhabiblioteca.com.br/reader/books/9786559775873/>. Accessed on: July 9, 2025. p. 71.

32 *Ibidem*.

It is also worth emphasizing that no state or municipal taxes are levied on the purchase and sale of corporate ownership interests, as such transactions are subject exclusively to federal taxation.<sup>33</sup>

At times, questions arise as to which tax regime applies to legal entities that adopt the presumed profit method for purposes of calculating Corporate Income Tax. In such cases, it is extremely rare for these companies to carry out purchase and sale transactions involving corporate ownership interests, since this would require consideration of the acquisition cost or the amount of the investment made in previous fiscal years — an element not accounted for under this method of taxation.<sup>34</sup>

As a rule, the presumed profit method is adopted by companies with lean operational structures and low fixed costs. For this reason, it is uncommon to find, under this regime, entities engaged in the negotiation of corporate ownership interests. This is because, under presumed profit, taxation is levied exclusively on revenue or gross receipts, without considering actual expenses or costs incurred, which may generate significant distortions in operations that depend on the accurate measurement of patrimonial gains and losses.<sup>35</sup>

Nonetheless, it is important to note that, in certain situations, a company may calculate the result of its main activity — not involving the negotiation of corporate ownership interests — under the presumed profit regime, while simultaneously holding an ownership interest in another company operating in the same sector. In this spe-

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33 JESUS, Fernando Bonfá de; JESUS, Isabela Bonfá de. *Taxation in merger and acquisition operations*. *Revista Jurídica Luso-Brasileira*, Lisbon, year 6, no. 4, pp. 1171–1196, 2020. Available at: [https://www.cidp.pt/revistas/rjlb/2020/4/2020\\_04\\_1171\\_1196.pdf](https://www.cidp.pt/revistas/rjlb/2020/4/2020_04_1171_1196.pdf). Accessed on: July 10, 2025. p. 1190.

34 *Ibidem*.

35 JESUS, Fernando Bonfá de; JESUS, Isabela Bonfá de. *Taxation in merger and acquisition operations*. *Revista Jurídica Luso-Brasileira*, Lisbon, year 6, no. 4, pp. 1171–1196, 2020. Available at: [https://www.cidp.pt/revistas/rjlb/2020/4/2020\\_04\\_1171\\_1196.pdf](https://www.cidp.pt/revistas/rjlb/2020/4/2020_04_1171_1196.pdf). Accessed on: July 10, 2025. p. 1190.

cific case, if such ownership interests are sold, the gain calculation shall be performed according to the traditional method for determining capital gains, i.e., by calculating the difference between the transfer value and the acquisition cost of the shares or quotas. In this context, the same system applicable to companies under the actual profit regime applies, including the corresponding IRPJ and CSLL rates.<sup>36</sup>

Finally, with regard to individuals — as opposed to legal entities — the income they derive is subject to the incidence of Personal Income Tax (IRPF), according to the traditional annual progressive table, applying the legally established rates.<sup>37</sup> Accordingly, the Personal Income Tax (IRPF) table valid for the 2025 filing — concerning income earned in 2024 — has been updated with new brackets, as follows: monthly income of up to R\$ 2.259.20 is exempt from tax; for monthly income between R\$ 2.259.21 and R\$ 2.826.65, a rate of 7.5% applies, with a deduction of R\$ 169.44; in the bracket of R\$ 2.826.66 to R\$ 3.751.05 per month, the rate is 15%, with a deduction of R\$ 381.44; for income between R\$ 3.751.06 and R\$ 4.664.68 per month, a rate of 22.5% applies, with a deduction of R\$ 662.77; finally, income exceeding R\$ 4.664.68 per month is taxed at a rate of 27.5%, with a deduction of R\$ 896.00.<sup>38</sup>

In summary, drag-along and tag-along clauses, by influencing the transfer of corporate ownership interests, generate significant tax effects, particularly regarding the incidence of Corporate Income Tax (IRPJ) and the Social Contribution on Net Profit (CSLL). Moreover, it is emphasized that such transactions are subject exclusively to federal taxation, with no incidence of state or municipal taxes. Therefore, a proper understanding of the tax implications of these clauses is es-

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<sup>36</sup> *Ibidem*.

<sup>37</sup> *Ibidem*.

<sup>38</sup> G1. *Income Tax 2025: See the rate table and learn how to calculate*. Rio de Janeiro: Globo Comunicação e Participações, May 22, 2025. Available at: <https://g1.globo.com/economia/imposto-de-renda/noticia/2025/05/22/imposto-de-renda-2025-veja-a-tabela-de-aliquotas-e-saiba-como-fazer-o-calculo.ghtml>. Accessed on: July 10, 2025.

sential for ensuring tax compliance and the strategic planning of the companies involved.

### **Final Considerations.**

The drag-along clause is a contractual mechanism that establishes a joint sale of a company's shares; from another perspective, the tag-along provision obliges the controlling shareholder to ensure minority shareholders receive a minimum of 80% of the price paid per share or per block of shares in the event of the company's sale. These are contractual guarantee mechanisms, in which the parties exercise their autonomy of will by agreement, allowing the full exercise of the right to associate or not associate with a particular company or individual.

This study aimed to answer the extent to which drag-along and tag-along clauses, by regulating the transfer of corporate control, are capable of generating tax effects.

The present study demonstrated that drag-along and tag-along clauses, by governing the transfer of corporate control, constitute essential contractual mechanisms for legal certainty and predictability in corporate operations, especially in contexts of reorganizations, mergers, and acquisitions. These clauses balance the interests of majority and minority shareholders, protecting rights and promoting stability in business relationships.

In the tax sphere, it was evidenced that such clauses generate significant fiscal impacts, as they directly influence the incidence and timing of capital gain recognition, which is taxed under the Corporate Income Tax (IRPJ) and the Social Contribution on Net Profit (CSLL). The disposal of equity interests subject to these clauses is linked to the calculation of taxable profit, subject to the rates provided by law, and to compliance with applicable tax regimes, such as actual or presumed profit.

Moreover, the correct interpretation and application of drag-along and tag-along clauses are fundamental to avoiding tax contingencies, ensuring compliance with tax obligations, and enabling strategic tax planning. A lack of clarity or transparency in these operations may lead to tax challenges, fines, and assessments, negatively impacting the financial sustainability of the companies involved.

In summary, the incorporation of drag-along and tag-along clauses in corporate contracts, when carried out transparently and grounded in contractual autonomy, functions as an effective instrument for legal protection and tax compliance, contributing to a more solid, stable business environment that is conducive to sustainable economic growth.

