Revista Conhecimento Contábil
DOI:
ISSN: 2447 - 2921

HOLDINGS E ELISÃO FISCAL: Análise da Legalidade à Luz das Decisões do CARF

HOLDINGS AND TAX AVOIDANCE: An Analysis of Legality in Light of CARF Decisions

Sabrina Rafaela Borges
sabrinarpb@yahoo.com.br

Mateus Santos Caixeta
mateusscaixeta@hotmail.com

Abstract

This paper addresses the formation and management of family holding companies in Brazil, focusing on the distinction between tax avoidance and tax evasion. The research aimed to analyze the legitimacy of using holding companies for tax avoidance, seeking to identify the boundaries between lawful tax planning and abusive or simulated practices, based on interpretations by the Administrative Council of Tax Appeals (CARF). The methodology consisted of an analysis of holding company creation practices, studying current legislation and judicial decisions that distinguish between tax avoidance and tax evasion. The study also explored the tax benefits and legal complexities involved. The work highlighted the importance of conscious and informed management to ensure that tax avoidance practices are carried out within legal parameters, guaranteeing the protection, longevity, and stability of family assets. The results indicate that the use of family holding companies in Brazil is a legitimate strategy for asset and succession management, provided it is based on business purpose and economic substance. The role of CARF (Administrative Council of Tax Appeals) in ensuring legal certainty and the importance of tax compliance in mitigating tax risks are highlighted.

Keywords: Holding; Tax avoidance and tax evasion; Succession.

Resumo

O presente trabalho possui como tema a formação e gestão de holdings familiares no Brasil, com foco na distinção entre elisão e evasão fiscal. A pesquisa teve como objetivo analisar a legitimidade do uso de holdings para elisão fiscal, buscando identificar os limites entre o planejamento tributário lícito e práticas abusivas ou simuladas, com base nas interpretações do Conselho Administrativo de Recursos Fiscais (CARF). A metodologia consistiu em uma análise das práticas de criação de holdings, estudando a legislação vigente e decisões judiciais que distinguem elisão e evasão fiscal. O estudo também explorou os benefícios fiscais e as complexidades legais envolvidas. O trabalho ressaltou a importância de uma gestão consciente e informada para garantir que as práticas de elisão fiscal sejam realizadas dentro dos parâmetros legais, assegurando a proteção, longevidade e estabilidade do patrimônio familiar. Os resultados obtidos apontam que a utilização de holdings familiares no Brasil é uma estratégia legítima para gestão patrimonial e sucessória, desde que pautada em propósito negocial e substância econômica. Destaca-se o papel do CARF na segurança jurídica e a importância do compliance tributário para mitigar riscos fiscais.

Palavras-chave: Holding; Elisão e Evasão fiscal; Sucessão.

1 Introduction

Holding companies began to gain prominence in Brazil in 1976, driven by Law No. 6,404, known as the Brazilian Corporations Law. This legislation establishes that "a company may have as its corporate purpose an interest in other companies," thereby consolidating the legal basis for the creation and operation of holding companies in the country. The term "holding" derives from the English verb "to hold," meaning "to control" or "to maintain." In this context, Mamede and Mamede (2014) define a holding company as a company that holds an ownership interest in another company, regardless of whether it was specifically established for this purpose (Oliveira, 2015; Brasil, 1976).

According to Lodi and Lodi (2012) and Denck (2024), the establishment of a holding company constitutes a lawful and legitimate tax avoidance practice when carried out in accordance with applicable legislation and when it takes advantage of legally available opportunities to reduce the tax burden. Conversely, this practice may constitute unlawful tax evasion when the structure is used to conceal assets, omit documents, or create shell companies for the purpose of improperly reducing the tax burden.

Regarding these practices, Chen *et al.* (2010), Hanlon and Heitzman (2010), and Cotta (2017) argue that understanding the boundaries between tax avoidance and tax evasion is essential when establishing a family holding company because, although distinct, both practices involve the management of family assets for tax purposes. Understanding these boundaries enables managers to make sound decisions, ensuring that tax-reduction strategies remain lawful and that the structure operates within legally permitted parameters (Desai; Dharmapala, 2009; Armstrong *et al.*, 2015). Furthermore, informed and responsible management based on the Brazilian National Tax Code is recommended to ensure that all transactions conducted by the holding company comply with legal requirements. Article 2, paragraph 3, of Law No. 6,404/1976 establishes that "a corporation may have as its corporate purpose an interest in other companies; even if not provided for in its bylaws, such participation is permitted as a means of achieving its corporate purpose or benefiting from tax incentives" [our translation].

Within the scope of the Administrative Council of Tax Appeals (Conselho Administrativo de Recursos Fiscais — CARF), the distinction between lawful tax avoidance and abusive practices has been based on several criteria consolidated in Brazilian tax case law and legal scholarship. One of the main elements considered is business purpose, according to which transactions carried out by taxpayers must have genuine economic or legal grounds beyond merely achieving tax savings (Simantob, 2023; Ribas; Pereira; Konno, 2024). When the sole motivation for a transaction is to reduce the tax burden, it tends to be regarded as abusive or even simulated (Ribas; Pereira; Konno, 2024). Moreover, CARF extensively applies the substance-over-form principle, prioritizing the economic reality of transactions over the legal form adopted. Therefore, even when a taxpayer has formally structured a transaction in compliance with legal requirements, it may be disregarded if it lacks effective economic substance (Macedo, 2024).

Another fundamental requirement is the absence of simulation, since lawful tax avoidance is characterized by the effectiveness and authenticity of the legal acts performed. Simulation, in turn, occurs when apparent transactions are created solely to conceal the actual taxable transaction, constituting an irregular practice under tax legislation, particularly Article 149, item VII, of the Brazilian National Tax Code. CARF also assesses whether transactions are artificial, disregarding acts that, although formally lawful, produce no concrete economic effects or merely represent strategies to eliminate or reduce taxes, as may occur in certain corporate reorganizations that lack a legitimate economic purpose (Brasil, 1966; Rocha, 2020).

Although the literature includes several studies on the tax, succession, and asset-protection benefits of family holding companies, less attention has been devoted to recent

CARF decisions as an interpretive basis for defining the boundaries between legitimate tax avoidance and abusive tax planning. A gap therefore remains in understanding the administrative criteria used to validate or disregard corporate structures designed for tax-planning purposes.

Based on the foregoing, this study addresses the following research question: Under what circumstances may the use of holding-company structures be considered legitimate for tax-avoidance purposes, and what are the implications of the criteria adopted by CARF for organizations' accounting, documentation, and tax compliance practices?

The objective of this research is to analyze the circumstances under which holding-company structures may be considered legitimate for tax-avoidance purposes by identifying the criteria adopted by CARF and examining their implications for organizations' accounting practices, tax governance, and compliance mechanisms. More specifically, the study seeks to understand the criteria and grounds adopted by CARF to distinguish valid corporate reorganization transactions from those that exceed legal boundaries and constitute tax evasion or simulation within corporate groups.

To achieve the proposed research objective, the specific objectives are: (i) to examine the legal grounds applied by CARF to recognize or disregard the validity of goodwill amortization in transactions involving holding companies, based on the Bradesco Saúde/OdontoPrev case; (ii) to assess the administrative interpretation concerning the legality of the simultaneous imposition of an ex officio fine and a separate fine for failure to pay monthly Corporate Income Tax (IRPJ) and Social Contribution on Net Income (CSLL) estimates, based on the JBS S.A. case; (iii) to identify the elements that characterize business purpose and distinguish tax avoidance from tax evasion or simulation; and (iv) to examine the practical application of Articles 7 and 8 of Law No. 9,532/1997 and the guidance provided by COSIT Divergence Ruling No. 23/2013 in the context of holding-company activities.

This study seeks to contribute to the academic and practical debate on the legal boundaries of tax avoidance and the criteria applied by the Brazilian Federal Revenue Service and CARF to characterize abuse of legal form or simulation. It also provides a critical and applied analysis of the strategic use of holding companies under the Brazilian National Tax Code (CTN), based on recent administrative case law.

The scientific contribution of this study lies in integrating the literature on corporate governance, tax planning, and tax compliance with an analysis of CARF's administrative case law. Unlike studies that address either the legal aspects or the tax benefits of family holding companies in isolation, this research systematizes the main criteria used by the adjudicatory body to assess the legitimacy of these structures, offering an interpretation grounded in the accounting literature and Corporate Governance Theory. Accordingly, the study seeks to advance discussions on tax governance and accounting disclosure as applied to asset and succession planning. Its contribution therefore does not lie in discussing the advantages of holding companies themselves, but rather in developing an analytical interpretation of the administrative case law applicable to tax planning.

2 Theoretical Framework

To provide the context in which this study was conducted, the theoretical framework is divided into four sections. The first presents the different types of holding companies; the second discusses family holding companies in Brazil; the third examines holding companies in relation to tax avoidance and tax evasion; and the fourth presents related studies.

2.1 Types of Holding Companies

According to Grande (2021), an equity holding company, also referred to as a pure holding company, is established to hold and manage ownership interests in business entities, primarily to exercise control over companies engaged in different economic activities. In the Brazilian context, this control is generally exercised by family groups, with the holding company serving as an instrument for centralizing decision-making authority. The members of the controlling group do not exercise their voting rights individually; instead, these rights are exercised by the holding company as a legal entity, in accordance with the majority decision of its shareholders.

From the same perspective, Gersick *et al.* (1997) argue that formal governance mechanisms promote business continuity across generations by strengthening the alignment between family and business objectives. Zellweger (2017) emphasizes that maintaining family control through organized structures reinforces the preservation of the business family's socioemotional wealth, understood as the set of values, identity, and legacy associated with the family business.

Holding-company structures are particularly relevant to succession processes because they prevent the fragmentation of family investments. The founding shareholder's ownership interest remains concentrated in the holding company, while the heirs receive equity interests in that entity rather than direct ownership interests in the operating companies. As noted by Jayme and Carneiro (2023), a family holding company may be used as an inheritance-succession instrument that offers advantages over traditional succession methods. This arrangement mitigates the risk of corporate disputes that could jeopardize the continuity of business activities, preserving the stability of the controlled companies by concentrating potential conflicts within the holding company. It is also relevant to succession planning because it allows the controlling shareholder, during their lifetime, to transfer their interests in the operating companies to their heirs in advance, thereby enabling the planned succession of business assets (Grande, 2021; Lodi; Lodi, 2011).

Unlike equity holding companies, asset holding companies are established to hold assets other than equity interests, such as movable and immovable property. When an asset holding company is established, the founders contribute their movable and immovable property to its share capital. Consequently, these assets cease to form part of the founders' personal estates and become the property of the legal entity. This structure offers several advantages, including asset protection, since the assets are generally separated from the shareholders' personal obligations, and succession planning, as it prevents the creation of co-ownership arrangements among heirs and allows decisions to be governed by the majority principle. Furthermore, the disposal of real estate held by the company is facilitated because spousal consent is not required, thereby providing greater efficiency and legal certainty in such transactions. Another advantage of an asset holding company is the simplification of probate proceedings because the distribution of the estate applies to equity interests or shares rather than directly to the real estate assets (Grande, 2021; Mamede, 2018).

Regarding real estate holding companies, Longo (2017) and Ward (2011) state that this type of holding company is widely used as a strategy for organizing, protecting, and managing assets, particularly real estate. This structure separates assets from the risks associated with business activities, preventing personal or strategically important real estate from being exposed to the debts and liabilities of the operating company. It also supports succession planning, facilitates asset management through majority decisions, and may preserve the privacy of beneficial owners, thereby avoiding the public disclosure of ownership in public records and the difficulties typically associated with co-ownership arrangements. Accordingly, formal asset-governance mechanisms contribute to preserving family assets across generations (Ward, 2011; Denck, 2024). Real estate holding companies therefore serve not only an asset-

protection function but also operate as instruments of governance, succession planning, and the long-term sustainability of family wealth (Ward, 2011; Denck, 2024).

Although the literature identifies several advantages associated with family holding companies, adopting this structure does not, in itself, guarantee economic or tax benefits. As demonstrated by recent CARF case law, structures established exclusively to reduce the tax burden, without effective economic substance or a legitimate business purpose, may be disregarded by the tax authorities. Therefore, the benefits frequently attributed to holding companies depend not only on their formal establishment but also on the effective legitimacy of the transactions performed.

Another relevant consideration is taxation. By transferring real estate to a holding company and establishing a lease arrangement with the operating company, it may be possible to optimize the tax burden, particularly when the companies are subject to different tax regimes (Ward, 2011; Longo, 2017). This structure therefore represents not only a legal and asset-protection mechanism but also an instrument for improving tax and succession efficiency (Ward, 2011; Longo, 2017).

Table 1: Differences Among Types of Holding Companies

Aspect	Equity Holding Company	Asset Holding Company	Real Estate Holding Company
Primary purpose	Control of equity interests	Holding movable and immovable assets	Management of real estate, particularly operational properties
Priority objective	Centralization of corporate control	Protection and organization of personal assets	Separation of real estate assets from business risks
Nature of assets	Equity interests/shares in other companies	Various non-operating assets	Real estate intended for lease and asset protection
Specific tax advantage	Succession without fragmentation of control	Reduction of probate costs	Potential tax savings through intercompany leasing
Owner anonymity	Less relevant	Moderate	Relevant (avoids public disclosure of real estate ownership)

Source: Prepared by the authors.

Based on the foregoing, equity, asset, and real estate holding companies share several characteristics, including the facilitation of succession processes, asset protection, centralized management and decision-making, and legal certainty. To clarify the differences among these types of holding companies in a clear and structured manner, the information drawn from the studies discussed above was compiled and organized in Table 1.

2.2 Tax Avoidance and Tax Evasion

Based on Article 113, paragraph 1, of the Brazilian National Tax Code Código Tributário Nacional (CTN), which defines the principal tax obligation as arising upon the occurrence of the taxable event, tax evasion may be understood as the failure to comply with this obligation. According to Dória (1977), tax evasion encompasses any action or omission intended to avoid, reduce, or defer tax payments. Some scholars, including Canto (1993) and Huck (1997), distinguish unlawful evasion, characterized by fraud or simulation, from lawful evasion, also known as tax avoidance, which involves the use of lawful or ostensibly lawful means to prevent the occurrence of a taxable event. The former is objectionable and subject to annulment under Article 171, item II, of the Brazilian Civil Code; the latter, although controversial, is supported by alternatives permitted under civil legislation.

In the context of holding companies, when shareholders contribute assets to a legal entity, they are not subject to the Real Estate Transfer Tax (Imposto sobre Transmissão de Bens

Imóveis Inter Vivos — ITBI), since Article 156, paragraph 2, item I, of the Brazilian Federal Constitution establishes that "the tax shall not apply when assets and rights are contributed to the equity of a legal entity as share capital" (Brasil, 1988, [our translation]).

Tax evasion occurs when taxpayers intentionally omit or provide false information to the tax authorities to reduce or avoid the payment of taxes due (Jayme; Carneiro, 2023). Such conduct constitutes a criminal practice governed by Law No. 4,729, which addresses tax evasion offenses (Brasil, 1965). Tax evasion is also characterized by the fact that the nonpayment of taxes results from intentional conduct rather than mere lack of knowledge. The willful nature of this practice is specifically addressed by the Law on Crimes Against the Tax System (Brasil, 1965).

The international academic literature characterizes tax evasion as the deliberate noncompliance with tax obligations through the concealment of income, falsification of information, or omission of taxable events from the tax authorities. In their seminal study of taxpayer behavior, Allingham and Sandmo (1972) argue that the decision to evade taxes is associated with an assessment of audit risks and applicable penalties. Subsequently, Kirchler, Hoelzl, and Wahl (2008) emphasized that factors such as trust in institutions, perceptions of tax fairness, and the legitimacy of the tax administration also influence taxpayers' level of compliance.

Tax evasion may have tax-related consequences, criminal consequences, or both. The sanctions and penalties arising from tax evasion are addressed by Law No. 4,729/1965, under which the penalty ranges from six months to two years of imprisonment, in addition to a fine ranging from two to five times the amount of tax evaded (Brasil, 1965).

Despite their phonetic similarity in Portuguese, *elisão fiscal* and *evasão fiscal* are legally distinct concepts. Tax avoidance also involves preventing the payment of taxes; however, it relies on practices regarded as lawful, including the use of opportunities and options provided by Brazilian law. According to the Brazilian Federal Senate, "tax avoidance is planning intended to reduce the tax burden payable by an individual or legal entity through lawful means or accounting arrangements, without committing an unlawful act" (Brasil, 1988, [our translation]).

Machado (2002) defines tax avoidance as lawful taxpayer conduct intended to avoid, reduce, or defer tax payments. This perspective distinguishes legally permitted actions that generate tax savings from prohibited and punishable actions characterized as fraud. Nevertheless, legal scholarship has evolved to recognize tax-avoidance practices that, although formally lawful, may exceed the boundaries of legality. In comparing the two concepts discussed above, Huck (1997) emphasizes that the essential distinction between tax avoidance and tax evasion lies in the means employed: lawful means in the former and unlawful means in the latter.

In addition to the traditional categories of tax planning, more recent legal scholarship has addressed tax circumvention (*elusão fiscal*), an expression referring to the use of legal forms that are lawful only in appearance, with the exclusive purpose of preventing the application of the tax rule governing the transaction that actually occurred. According to Alexandre (2016), although formally legitimate, this practice is characterized by the abuse of legal forms and constitutes an artificial attempt to escape taxation without a genuine business purpose, rendering it ineffective or abusive.

Tax planning involves lawful strategies to minimize the financial effects of tax obligations and is therefore a fundamental process for business operations. Both tax avoidance and tax evasion are present within the tax system and must be understood and carefully managed by taxpayers (Araújo; Paulus; Queiroz, 2017). Under the Brazilian National Tax Code, administrative authorities are authorized to disregard acts or legal transactions carried

out for the purpose of concealing the occurrence of a taxable event (Araújo; Paulus; Queiroz, 2017; Brasil, 1965).

In summary, from an accounting perspective, Hanlon, Maydew, and Saavedra (2023) observe that tax evasion differs from legitimate tax planning because it involves violating legal rules and distorting the information reported to regulatory and tax authorities. Thus, whereas tax avoidance relies on alternatives permitted by law to reduce the tax burden, tax evasion involves concealing or manipulating information to avoid paying legally owed taxes. In this context, governance mechanisms, internal controls, and tax compliance practices are essential to preventing unlawful conduct and promoting greater transparency in the relationship between taxpayers and the tax administration.

Although the conceptual distinction between tax avoidance and tax evasion is relatively well established in the literature, the practical boundary between them remains subject to debate. This is because certain transactions may simultaneously exhibit elements of legitimate tax planning and characteristics that raise questions regarding their economic substance. In this context, criteria such as business purpose and economic reality play a central role in assessing the legitimacy of transactions, particularly in complex corporate structures such as family holding companies.

2.3 Corporate Governance Theory and Its Relationship with Family Holding Companies

Corporate Governance Theory seeks to explain the mechanisms that promote transparency, accountability, fairness, and responsibility in organizational management. According to Shleifer and Vishny (1997), corporate governance refers to the set of mechanisms employed to ensure that invested resources are managed efficiently and in alignment with the interests of owners and other stakeholders.

In family businesses, corporate governance plays an even more important role because of the overlap among family relationships, ownership, and management. According to Claessens and Yurtoglu (2013), appropriate governance structures help reduce conflicts of interest, strengthen control mechanisms, and increase transparency in decision-making processes. In this regard, the establishment of family holding companies may be understood as a governance instrument that enables the organization of ownership, the centralization of strategic decisions, and the establishment of rules designed to preserve assets and ensure the continuity of family businesses.

In addition to succession and asset-related considerations, corporate governance is also associated with the adoption of compliance and tax-governance practices. Armstrong *et al.* (2015) emphasize that control and monitoring mechanisms help reduce opportunistic behavior and promote tax strategies consistent with the organization’s long-term objectives. From this perspective, the use of family holding companies must be supported by legitimate business purposes and effective economic substance, both of which are directly related to the criteria adopted by CARF to distinguish lawful tax avoidance from abusive or simulated practices.

Corporate Governance Theory therefore provides an appropriate analytical lens through which to understand how family holding companies may contribute to asset organization, succession planning, tax management, and the legal compliance of transactions, reinforcing their relevance not only from a legal perspective but also from accounting and managerial perspectives.

2.4 Related Studies

An examination of related studies makes it possible to establish connections that support the present article; however, the literature is limited in terms of the specific topic addressed.

Existing studies generally focus on broad definitions of tax planning, holding companies from a legal perspective, holding companies in the agricultural sector, and other related topics. From an accounting perspective, however, the literature remains underdeveloped. Nevertheless, considering the research objective, relevant studies are available and provide important contributions to this research.

From a tax perspective, Richter (2016) emphasizes that tax avoidance, as an instrument of tax planning, must be implemented before the taxable event occurs and must be based on structures and principles consistent with the legal system; it is therefore a lawful practice. Within the boundaries of legality, tax planning may be associated with the benefits of asset protection by separating business activities from family assets. Plaszewski *et al.* (2021) argue that asset protection, also referred to as asset shielding, encompasses a set of measures designed to protect an individual's personal assets against external contingencies.

From tax and succession perspectives, Resende (2022) analyzed the relationship between family and business, focusing on the tax and succession planning of a family holding company. The study concluded that accounting and legal professionals are the most qualified to assist family businesses in establishing holding companies. It further argued that these structures may represent the future of family businesses in Brazil, given the scientific evidence of their tax, succession, and asset-protection advantages.

Scholes *et al.* (2015) emphasize that effective tax planning must be integrated with an organization's strategic and asset-related objectives, considering not only reductions in the tax burden but also asset preservation and the long-term sustainability of the business. Complementarily, Chen *et al.* (2010) found that family businesses tend to adopt tax strategies more closely aligned with preserving their reputation and ensuring business continuity, thereby avoiding risks that could jeopardize the family legacy. Accordingly, the establishment of family holding companies may be understood not only as a tax-saving instrument but also as a mechanism for governance, succession planning, and asset protection, thereby contributing to the longevity of family businesses.

Jorge and Lobo (2021) sought to demonstrate the use of a holding company as a management strategy for tax planning. To this end, the authors divided their research into two stages: a literature review followed by a case study. The case study examined an asset holding company established in 2016 in response to the need for an asset reorganization following the deaths of the family patriarchs. Through comparative calculations of the taxes applicable to the holding company and to individual ownership, the results demonstrated tax savings, in addition to other benefits that this type of corporate structure may provide.

Also in the context of family holding companies, Wartha and Muller (2025) support the literature identifying these entities as instruments capable of reducing succession costs and organizing the transfer of assets. However, the economic feasibility of these structures cannot be generalized because their benefits depend on the composition of the family's assets, the applicable tax regime, and the costs of maintaining the corporate structure. In this context, the literature suggests that the establishment of holding companies should be assessed from a broader governance and asset-planning perspective rather than exclusively on the basis of potential tax savings.

From a tax perspective, Scholes *et al.* (2015) emphasize that effective tax planning should be analyzed in conjunction with the asset-related and succession objectives of the business family rather than being restricted to tax reduction. Accordingly, the use of family holding companies may constitute a governance strategy that integrates asset protection, business continuity, and tax efficiency, thereby contributing to the long-term preservation of family wealth. Additionally, Gómez-Mejía *et al.* (2007) emphasize that business families frequently adopt organizational mechanisms intended to preserve their socioemotional wealth,

understood as the family's legacy, identity, and control over the business. These factors reinforce the relevance of holding companies as succession-planning instruments.

Regarding the benefits of establishing a family holding company for the transfer of an individual's assets, Souza and Souza (2024) conducted an analysis using a descriptive qualitative approach based on a literature review and a case study. Their research examined a self-employed real estate professional in Sinop, Mato Grosso, assessing the costs of establishing a holding company and comparing them with succession costs through probate proceedings or lifetime transfers. The authors also simulated and compared the taxation of rental transactions conducted by an individual and by a legal entity. Their findings indicate that establishing a holding company did not provide significant short-term advantages in the case analyzed. In the long term, however, it may offer meaningful asset protection, particularly in the event of legal disputes, while also facilitating the succession process, reducing costs, and ensuring a more efficient transfer of assets.

Based on the studies discussed above, Table 2 was prepared to summarize their research variables and conclusions.

Table 2: Summary of Related Studies

Author(s) and Year	**Research Variables**	**Authors' Conclusions**
Desai and Dharmapala (2009) and Richter (2016)	Tax avoidance; tax planning; legality; asset protection	Tax avoidance, when planned before the taxable event and conducted within legal boundaries, is lawful and may be used to separate family assets from business activities.
Armstrong *et al.* (2015) and Plaszewski *et al.* (2021)	Asset protection; asset shielding	Asset shielding seeks to protect personal assets against external risks and constitutes a lawful asset-management strategy.
Resende (2022) and Denck (2024)	Tax and succession planning; family holding company; family–business relationship	Accounting and legal professionals are essential to establishing family holding companies, which constitute an efficient alternative for family businesses in Brazil.
Jorge and Lobo (2021) and Hanlon, Maydew, and Saavedra (2023)	Asset holding company; tax planning; asset reorganization	The asset holding company proved to be an effective strategy for achieving tax savings and reorganizing assets following the deaths of the family patriarchs.
Scholes *et al.* (2015) and Wartha and Muller (2025)	Economic feasibility; family holding company; succession planning; gift with retained usufruct; probate	The family holding company proved to be more economically viable for succession planning and tax reduction than traditional alternatives.
Chen *et al.* (2010) and Souza and Souza (2024)	Tax planning; succession; asset protection	In the case analyzed, the advantages of establishing a holding company were particularly evident over the long term, including asset protection and a more efficient succession process.

Source: Prepared by the authors.

As observed, studies examining the establishment of family holding companies from tax, succession, and economic perspectives have identified significant benefits, particularly over the long term. Despite a gap in the literature specifically addressing the accounting perspective, the reviewed studies indicate that adopting a holding-company structure may provide advantages such as tax savings, asset protection, and simplified succession procedures. These advantages do not necessarily arise immediately and tend to become more apparent in long-term planning contexts. Moreover, the studies demonstrate that the feasibility of a holding company depends on the composition of the family's assets, its succession objectives, and the

involvement of qualified professionals, such as accountants and attorneys, to ensure the effectiveness of the structure.

The literature review shows that family holding companies are frequently presented as instruments for asset protection, succession planning, and tax efficiency. However, a substantial portion of the Brazilian literature focuses on describing the advantages of these structures while devoting less attention to the criteria employed by tax authorities to assess their legitimacy. This gap supports the relevance of the present research, which examines how recent CARF interpretations have defined the boundary between legitimate tax planning and practices regarded as abusive.

Based on the literature and tax case law, demonstrating a business purpose and economic substance appears to positively influence the recognition of the legitimacy of family holding companies. Therefore, the legitimacy of family holding companies for tax-planning purposes is expected to be associated with evidence of a business purpose, economic substance, and adequate documentation of transactions. Recent CARF decisions are also expected to reinforce tax compliance, business purpose, and economic substance as criteria for distinguishing lawful tax avoidance from abusive or simulated practices.

3 Methodological Procedures

With regard to its objectives, this study is classified as both descriptive and exploratory. Lakatos and Marconi (2008) describe descriptive research as a type of investigation intended to collect opinions and develop future projections in the search for solutions to problems through different methods. The techniques employed include bibliographic research, which involves the examination of previously published materials, and direct and indirect observation, which enable a more detailed and contextualized analysis of the phenomena under investigation. According to Gil (1999), the primary objective of exploratory research is to develop, clarify, and refine concepts and ideas to formulate more specific research problems for subsequent in-depth investigation.

The study therefore adopts a qualitative approach based on the analysis of administrative cases and the interpretation of federal legislation. Regarding data collection, bibliographic and documentary sources were used to establish relationships among the data and support their interpretation.

CARF is a collegiate body affiliated with the Brazilian Ministry of Finance and is responsible for adjudicating, at the second administrative level, disputes between taxpayers and the Federal Government concerning the application of federal tax legislation. Its jurisdiction encompasses both appeals against first-level decisions issued within the Brazilian Federal Revenue Service and special appeals involving divergent interpretations of tax rules. Through its specialized and technical activities, CARF constitutes an important body within administrative tax litigation, operating as a mechanism for reviewing and overseeing tax assessments (Ministério da Economia, 2025).

CARF's parity-based composition, comprising representatives of both the National Treasury and taxpayers, seeks to ensure greater balance in deliberations and promote impartial, technically grounded decisions. This structure contributes to legal certainty by encouraging the resolution of disputes at the administrative level and reducing the number of cases referred to the courts. A recent milestone was the reinstatement of the casting vote through Law No. 14,689/2023, which grants the chair of the adjudicating panel the authority to break tied votes. This measure is intended to ensure that decisions can be reached in complex cases, prevent deadlocks, and strengthen predictability and stability in the interpretation of tax matters (Ministério da Economia, 2025).

CARF organizes its adjudicating panels according to a parity-based structure, with equal numbers of council members appointed by the National Treasury and taxpayer representatives, thereby promoting balance and the perception of neutrality. Following a panel decision, a special appeal may be filed with the Superior Chamber of Tax Appeals (Câmara Superior de Recursos Fiscais — CSRF), provided that a divergence in the interpretation of the law compared with other adjudicating bodies is demonstrated, as established in Articles 67–71 of Brazilian Federal Revenue Service Ordinance No. 256/2009 (Almeida, 2017).

In recent years, CARF has adopted measures to address its historically lengthy proceedings, including the digitization of case files, the creation of extraordinary adjudicating panels, the establishment of case-processing time targets under its new Internal Rules (Ordinance No. 1,634/2023), and the use of artificial intelligence through the IARA system to support decision-making. Although a substantial case backlog remains and proceedings have historically taken up to 10 years, CARF has significantly reduced processing times, moving closer to the reasonable 360-day period established by Law No. 11,457/2007 (Oliveira; Duro, 2025).

Based on the research question and the specific objectives outlined above, the variables investigated in this study are organized into two main dimensions: the legitimate use of holding-company structures and the administrative and legal interpretations of tax avoidance and CARF's application of tax rules. The research variable concerns the adoption of holding companies as instruments of corporate reorganization and the resulting legal and tax effects, including the possibility of the tax amortization of goodwill, the presence or absence of a business purpose, and the legality of imposing cumulative tax penalties.

The decisions were selected through purposive sampling, considering precedent-setting rulings that directly address the use of holding companies in tax-planning contexts. In qualitative research, cases are selected to deepen the understanding of the phenomenon under investigation rather than to achieve statistical representativeness of CARF's case law. Accordingly, the findings should be interpreted as analytical evidence derived from the selected cases and not as generalizations applicable to all administrative decisions.

An initial attempt was made to obtain the case records through Jusbrasil and the state courts of Minas Gerais and São Paulo. However, this search did not produce satisfactory results because registration with the Brazilian Bar Association (Ordem dos Advogados do Brasil — OAB) was required to conduct more specific searches. For this reason, the data were collected directly from CARF's online portal. The research sample consists of two CARF decisions involving holding companies, both obtained directly from the agency's official portal, thereby ensuring the authenticity and currency of the information used. Access to the full text of the decisions enabled the extraction of the legal grounds debated in the proceedings and a detailed analysis of the reasoning adopted by the council members. This process was essential for critically assessing the elements that distinguish lawful tax avoidance from tax evasion or simulation in the context of family holding companies.

The following inclusion criteria were adopted: (i) decisions issued by the Administrative Council of Tax Appeals (CARF); (ii) decisions involving family holding-company structures or asset reorganizations undertaken for tax purposes; (iii) decisions expressly addressing criteria such as business purpose, economic substance, simulation, tax avoidance, or tax evasion; and (iv) decisions containing sufficient reasoning for qualitative analysis. Decisions exclusively addressing procedural matters or lacking a direct relationship with tax planning through family holding companies were excluded. Table 3 presents the study's analytical framework.

Table 3: Analytical Framework

Specific Objective	Category	Analytical Question
Identify the criteria employed by CARF	Business purpose	Does the decision demonstrate an economic purpose?
Assess legitimacy	Economic substance	Is there evidence of genuine business activity?
Examine the boundaries of tax avoidance	Simulation	Are there indications of artificiality?
Establish a relationship with governance	Compliance	Are the documentation and transparency sufficient?

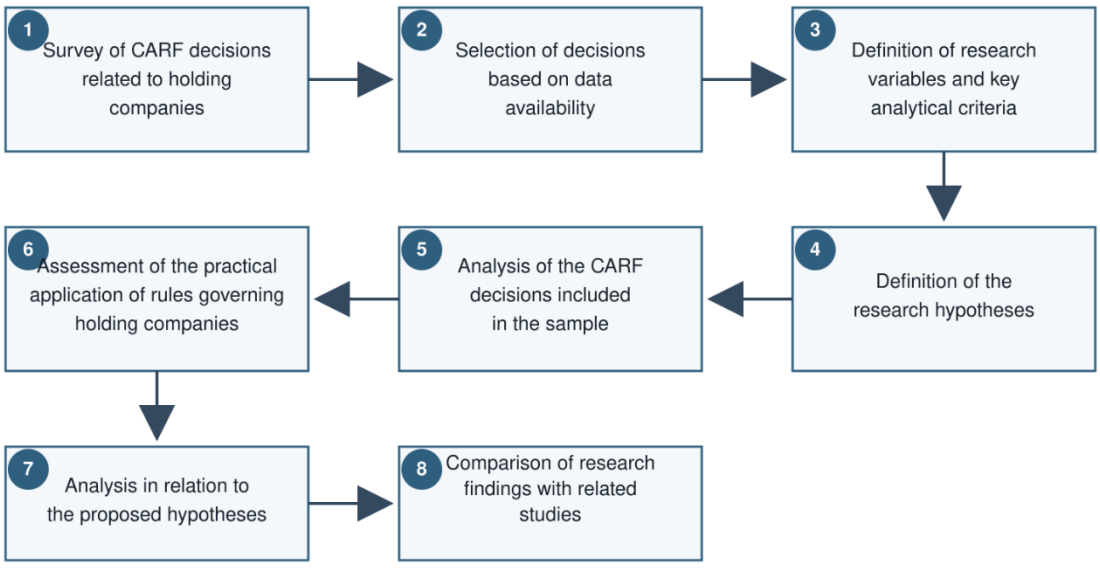
Source: Prepared by the authors.

These variables enabled a critical and comparative analysis of the factual and legal elements considered in the administrative decisions, particularly in the precedent-setting Bradesco Saúde/OdontoPrev and JBS S.A. cases. The investigation also considered variables such as the existence of relationships among the parties involved in the transactions, the effective operation of the holding companies in performing their corporate activities, and the availability of technical documentation supporting expected future profitability. By mapping these factors, the study sought to define the boundaries of lawful tax avoidance and identify the criteria supporting legitimate taxpayer conduct in dealings with the tax authorities.

Accordingly, the final sample comprised only two decisions, both involving holding-company transactions and the application of international tax rules and principles. Decision No. 1401-007.370, issued in 2025, examined the amortization of goodwill in corporate transactions involving holding companies and recognized its legality when supported by a business purpose and economic substance, consistent with the guidelines of the Organisation for Economic Co-operation and Development (OECD). Decision No. 9101-007.316, also issued in 2025, addressed the principle of absorption to prevent the imposition of duplicate tax penalties, reflecting concerns regarding legal certainty and proportionality consistent with international practices. The decisions were identified through a search of CARF's official database for recent and relevant rulings concerning tax planning and international standards.

To provide a clear and organized overview of the methodological procedures adopted in this study, Figure 1 presents a flowchart illustrating the main stages of the research process.

Figure 1: Flowchart of the Research Development Stages



Source: Prepared by the authors.

Based on the foregoing, the documents were examined using the content analysis technique proposed by Bardin (2016), following a thematic categorization procedure. First, the decisions were read in full, after which passages related to the categories previously established in the literature were identified. The information was then compared across the cases to identify convergences and divergences in the criteria employed by CARF to assess the legitimacy of family holding-company structures.

Figure 2 presents a comparative summary of the two selected CARF decisions comprising the research sample, involving JBS S.A. and Bradesco Saúde S.A. Each decision addressed a different issue: the first concerned the simultaneous imposition of an ex officio fine and a separate fine, while the second addressed the tax amortization of goodwill and the use of holding companies. The findings indicate the prevailing interpretations adopted in the adjudication of each case.

Figura 2: Comparativo entre as duas decisões do CARF



Source: Prepared by the authors.

Although one of the decisions analyzed does not directly address the establishment of a family holding company, its inclusion was justified by the relevance of the criteria employed by CARF to assess the legitimacy of tax-planning transactions, particularly business purpose, economic substance, and documentary compliance. The case was therefore used as a complementary element for understanding the application of these criteria, which are also employed in the analysis of structures involving family holding companies.

4 Analysis of the Results

This section presents the analysis of the results based on the adjudicatory structure of the CARF decisions selected as the objects of study. The analysis was conducted in light of the specific research objectives and sought to understand how CARF has interpreted the use of family holding companies in the context of tax planning.

4.1 Analysis of the JBS Decision

The decision issued by CARF in Administrative Proceeding No. 10880.746637/2019-50, involving JBS S.A., addressed a recurring issue in tax litigation: whether an ex officio fine and a separate fine may be imposed concurrently for the same taxable event when monthly

estimates of Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL) are underpaid or not paid. The dispute centered on the interpretation of Article 44 of Law No. 9,430/1996, particularly following the amendments introduced by Law No. 11,488/2007.

The dispute intensified with the National Treasury's argument that the violations underlying the fines were distinct: one concerned the failure to make advance tax payments, giving rise to the separate fine, whereas the other concerned the failure to pay the amount ultimately assessed, giving rise to the ex officio fine. However, the prevailing interpretation was that the concurrent imposition of these penalties constituted duplicate punishment—that is, the imposition of two penalties for the same conduct—which violates the principle of absorption, under which the lesser violation is absorbed by the more serious one.

The reasoning of the decision is directly aligned with CARF Precedent No. 105, which establishes that a separate fine for failure to pay monthly estimates cannot be imposed when an ex officio fine has already been assessed on the amount determined at the end of the fiscal year. Although the National Treasury argued that this precedent applied only to taxable events occurring before Law No. 11,488/2007, the reporting council member's interpretation, which was accepted by the majority of the panel, was that the legislative amendment did not eliminate the legal basis preventing the cumulative imposition of penalties.

CARF therefore concluded that the concurrent imposition of these two fines constituted an excessive sanction not permitted under the legal system, even after the legislative amendments introduced in 2007. Simultaneously imposing both penalties results in excessive punishment and violates the principles of reasonableness and proportionality that underpin tax enforcement. This position is consistent with the observations of Plaszewski *et al.* (2021), who emphasize the use of holding companies as asset-protection instruments and demonstrate how corporate structures may contribute to organizing business assets while remaining within legal boundaries.

In its final decision, the panel granted the taxpayer's special appeal, canceling the concurrently imposed separate fines and maintaining only the ex officio fine. This precedent strengthens legal certainty, provides tax authorities with guidance regarding the legal limits governing the imposition of tax penalties, and contributes to the uniform interpretation of tax law at the federal administrative level.

The findings arising from this decision broaden the understanding of the criteria employed by CARF to assess the legitimacy of tax-planning structures involving family holding companies, demonstrating that the formal establishment of a legal entity is not, by itself, sufficient to prevent scrutiny by the tax authorities. Evidence of a business purpose, economic substance, and effective transaction governance plays a central role in validating such structures. This interpretation is consistent with the corporate governance literature, which emphasizes the need for transparency, accountability, and internal control mechanisms capable of conferring legitimacy on organizational decisions (Shleifer; Vishny, 1997; Armstrong *et al.*, 2015).

4.2 Analysis of the Bradesco Saúde Decision

The CARF decision in Administrative Proceeding No. 10166.720845/2022-08, involving Bradesco Saúde S.A., concerns the legitimacy of the tax amortization of goodwill arising from the acquisition of Santa Rita de Cássia Empreendimentos S.A., which held a significant ownership interest in OdontoPrev S.A. through ZNT Empreendimentos S.A. The tax authorities regarded the transaction as abusive tax planning, arguing that Santa Rita and ZNT were shelf companies established exclusively to facilitate the improper amortization of goodwill and lacked a genuine business purpose. This interpretation is consistent with Hanlon and Heitzman (2010), according to whom tax planning may be considered legitimate only when

it is based on transactions possessing economic substance. However, some Brazilian tax scholars maintain that the pursuit of tax savings does not, by itself, render tax planning unlawful, provided that no simulation or fraud is involved. This divergence demonstrates that the application of the business-purpose criterion remains the subject of intense scholarly debate.

In the case at issue, CARF overturned the tax authorities' interpretation after concluding that the transaction had a legitimate business purpose and that the holding companies involved had not been artificially established. Rather, they had existed and operated regularly for approximately 16 years before the transaction. The reporting council member emphasized that the companies effectively performed functions typical of holding companies, whose legal and operational nature does not require physical facilities or employees because their corporate purpose consists of holding interests in other companies. The decision also noted that the holding companies had previously distributed interest on equity, thereby demonstrating genuine business activity. This position supports the observations of Plaszewski *et al.* (2021), who identify holding companies as asset-protection instruments and argue that corporate structures may contribute to organizing business assets without violating legal boundaries.

Another relevant issue addressed in the decision was the absence of simulation or artificiality in the establishment of the corporate structures. CARF concluded that the use of Santa Rita and ZNT as intermediary companies did not preclude the deductibility of the goodwill, particularly because the goodwill had been calculated based on legitimate and substantiated expected future profitability and supported by an independent technical appraisal prepared by Ernst & Young. The reporting council member also emphasized that the acquisition involved an actual financial outlay and was conducted by parties regarded as independent at the time of the transaction, thereby rejecting the allegation that the transaction involved related parties.

Additionally, the decision recognized that Bradesco Saúde's merger of the holding companies satisfied a regulatory requirement imposed by the Central Bank of Brazil, further supporting the transaction's business purpose and undermining the allegation of tax abuse. It was therefore established that the amortization of goodwill complied with the legal requirements set forth in Articles 7 and 8 of Law No. 9,532/1997 and Articles 250 and 386 of the 1999 Income Tax Regulations (RIR/99). Accordingly, the panel unanimously granted the voluntary appeal and canceled the IRPJ and CSLL assessments arising from the disallowance of the amortization deductions. The CARF decision reinforces the perspective advocated by Richter (2016) by recognizing that tax avoidance, when implemented before the occurrence of the taxable event and based on legitimate structures, constitutes a lawful practice. The goodwill amortization was therefore validated based on the existence of a business purpose, while the allegations of simulation and abuse were rejected.

This decision represents an important precedent concerning tax planning and the interpretation of corporate structures involving asset holding companies. CARF reaffirmed that, in the absence of simulation and where a legitimate business purpose is demonstrated, goodwill arising from corporate transactions structured within legal boundaries is fully deductible. A careful analysis of the case-specific elements reinforces the importance of economic substance and supporting documentation in validating tax-planning arrangements.

Although the decisions analyzed demonstrate a tendency within CARF to value economic substance, the administrative case law is not entirely consistent regarding the weight assigned to business purpose. The reasoning adopted may vary across periods and adjudicating chambers according to the characteristics of the transactions under examination, reinforcing the need for an individualized assessment of each corporate structure.

The findings from this case therefore reinforce the view that corporate governance extends beyond organizational management and control and also serves as a mechanism for legitimizing tax-planning structures before the tax authorities. From this perspective,

appropriate governance of family holding companies constitutes not only sound management practice but also a relevant factor in tax compliance and the reliability of accounting information.

4.3 Interpretation of the Findings and Implications for Tax Accounting

The analysis of the Bradesco Saúde S.A. v. National Treasury case shows that CARF recognized the validity of the tax amortization of the goodwill arising from the indirect acquisition of OdontoPrev through the Santa Rita and ZNT holding companies. The principal basis adopted by the Council was the existence of a legitimate business purpose, since the intermediary companies had existed for more than 16 years and had originally been established as asset holding companies to control equity interests, with no evidence of artificiality or simulation.

The decision demonstrated that the mere absence of physical facilities or employees does not undermine the legitimacy of holding companies, particularly when their corporate purpose is consistent with the function of holding interests in other companies. CARF also reaffirmed that the deductibility of goodwill is supported by Articles 7 and 8 of Law No. 9,532/1997 and Article 386 of the 1999 Income Tax Regulations (RIR/99), provided that no new goodwill is artificially created, no improper tax benefit is obtained, and the amounts are linked to the investment's expected future profitability.

Regarding the JBS S.A. case, the dispute concerned the legality of simultaneously imposing a separate fine for failure to pay monthly IRPJ and CSLL estimates and an ex officio fine for failure to pay the tax due at the end of the fiscal year. CARF concluded that the concurrent imposition of these penalties constituted excessive punishment, contrary to the principle of absorption and CARF Precedent No. 105. This decision demonstrates the Council's concern with preventing tax-related *bis in idem* by reaffirming that the penalty for failing to make advance tax payments cannot coexist with a fine already imposed for the final nonpayment, since both relate to the same taxable event. The precedent thus reinforces the legal limits of tax enforcement, provides taxpayers with legal certainty, and prevents expansive interpretations that exceed the statutory basis of tax penalties.

The administrative case law analyzed confirms that, even in complex or long-standing structures, the legitimacy of transactions is recognized when a business purpose and the effective operation of the companies are demonstrated. Although the JBS S.A. decision addresses a different aspect of tax litigation, it is also consistent with the studies reviewed because it reaffirms CARF's role in defining what is permitted under tax law. By regarding the concurrent imposition of penalties as excessive punishment, the decision reinforces legal certainty, a principle supported by the studies discussed above. In summary, the CARF decisions not only corroborate the theoretical and empirical studies reviewed but also expand the discussion by introducing technical and legal elements that contribute to a clearer interpretation of the boundaries among tax avoidance, tax evasion, and simulation in the use of family holding companies.

Based on these two decisions, it may be concluded that holding companies can legitimately be used as tax-avoidance instruments, provided that they are structured around a demonstrable business purpose and do not involve simulation or abuse of legal form. The findings are consistent with the conclusions of Plaszewski *et al.* (2021), Resende (2022), Jorge and Lobo (2021), Wartha and Muller (2025), and Souza and Souza (2024), who emphasize the succession and tax-related benefits of holding companies.

CARF has recognized the validity of transactions involving special-purpose entities when the effective performance of their functions is demonstrated, thereby eliminating the appearance of artificiality and reinforcing their legitimacy. Similarly, the decisions demonstrate

the importance of correctly applying legal provisions, such as Articles 7 and 8 of Law No. 9,532/1997 and COSIT Divergence Ruling No. 23/2013, while respecting the boundaries of tax legality. The distinction among tax avoidance, tax evasion, and simulation is therefore based on the economic substance and purpose of the transactions, with business purpose serving as the principal distinguishing element recognized in administrative case law.

These decisions also reinforce that CARF does not limit its assessment to the formal aspects of corporate acts but considers the economic characteristics and broader context of the transactions. This indicates an evolution in administrative case law toward recognizing the dynamics of modern business without presuming taxpayer bad faith when adequate documentary, financial, and regulatory support is available. The answer to the research question is therefore that holding companies may be used for lawful tax-planning purposes, provided that they comply with legal requirements and perform a genuine economic function, with no evidence of abuse, simulation, or artificiality.

Based on the analysis of CARF decisions and the studies used as the theoretical foundation, family holding companies in Brazil are expected to be associated with lawful tax avoidance, although they are often confused with tax evasion because of the limited transparency of these structures. The Bradesco Saúde/OdontoPrev case illustrates this issue. Despite the presence of intermediary holding companies, CARF recognized the legitimacy of the goodwill amortization because it was based on expected future profitability and supported by a technical appraisal. The allegation of abusive tax planning was rejected after it was established that the companies involved had existed for several years and regularly performed their functions.

This decision demonstrates that, even in complex structures that may raise questions regarding their authenticity, the recognition of lawful tax avoidance depends on evidence of the business purpose and economic substance of the transactions. Although the use of holding companies may raise concerns, particularly when they lack physical facilities or employees, documentary transparency and compliance with applicable legislation demonstrate that such structures do not constitute tax evasion but rather a permitted and strategic use of legal instruments.

Another theoretical proposition is that recent CARF decisions may be helping to define the boundary between tax avoidance and tax evasion in family holding-company structures. The analysis of the Bradesco Saúde and JBS S.A. cases demonstrates CARF's efforts to establish clear technical and legal criteria concerning the lawfulness of tax-related conduct. In the JBS S.A. case, for example, the Council rejected the cumulative imposition of penalties relating to monthly estimates and the final assessment of IRPJ and CSLL, grounding its decision in CARF Precedent No. 105 and the principle of absorption.

This position reaffirms the Council's commitment to legal certainty and the consistent application of tax rules. Similarly, in the Bradesco case, CARF demonstrated sensitivity to the business context and rejected the allegation of simulation after verifying the consistency of the corporate structure. These decisions therefore reinforce the understanding that tax compliance, appropriate documentation, and evidence of a business purpose are essential to legitimizing tax avoidance and preventing incorrect interpretations by the tax authorities.

The findings thus support the expected theoretical propositions, indicating that the strategic use of family holding companies may be legitimate and that CARF has played an important role in developing administrative case law capable of clearly distinguishing lawful tax planning from tax evasion or simulation. These findings not only answer the research question but also reinforce the importance of specialized accounting and legal expertise in structuring and documenting such transactions.

The analysis of the decisions summarized in Table 4 identified five central criteria employed by CARF to distinguish legitimate tax planning from abusive practices.

Table 4: Criteria Applied by CARF to Recognize Lawful Tax Avoidance

Criterion	Evidence Identified
Business purpose	Existence of an economic rationale independent of tax savings
Economic substance	Effective operation of the holding company
Absence of simulation	Genuine and properly documented transactions
Tax compliance	Compliance with applicable legal requirements
Proportionality of penalties	Prohibition of excessive punishment

Source: Prepared by the authors.

The criteria identified in the decisions analyzed—particularly business purpose, economic substance, tax compliance, and supporting documentation—may be interpreted through the lens of Corporate Governance Theory. These elements constitute control and transparency mechanisms that reduce information asymmetries and contribute to the legitimacy of transactions before tax authorities. CARF's interpretations therefore reinforce the need to adopt governance practices capable of demonstrating that family holding-company structures serve a genuine economic purpose and are not intended exclusively to obtain tax advantages.

The systematization of the criteria identified in the decisions analyzed indicates that CARF has adopted an approach increasingly oriented toward the economic substance of transactions, moving away from strictly formal assessments. The findings demonstrate that the legitimacy of corporate structures used for tax planning depends not only on literal compliance with legal requirements but also on evidence of a genuine economic and business purpose.

The first criterion identified concerns business purpose, which was regarded as a central element in validating the transactions analyzed. The case law examined demonstrates that obtaining tax savings alone is not sufficient to invalidate a transaction. However, when reducing the tax burden constitutes the only identifiable objective of a corporate structure, the likelihood that the transactions will be disregarded increases. This interpretation is consistent with contemporary discussions regarding the abuse of tax law and the alignment between legal form and economic reality.

The second criterion concerns the economic substance of the transactions. The decisions demonstrate that CARF has valued evidence of genuine activities, an operating history, actual asset management, and documentary records capable of establishing that the companies involved perform real functions within the corporate structure. In this context, the absence of employees or proprietary physical facilities does not, in isolation, constitute sufficient grounds to invalidate a holding company, provided that its activities are consistent with its corporate purpose.

The absence of simulation represents another relevant aspect identified in the analysis. The decisions examined show that CARF seeks to determine whether the legal transactions performed correspond to the economic events that actually occurred. Artificial structures created exclusively to generate tax benefits therefore tend to be disregarded, whereas transactions supported by reliable documentation and involving the effective transfer of economic risks and benefits tend to be recognized as legitimate.

Tax compliance also stands out as an important factor supporting the validity of transactions. Maintaining adequate documentation, independent technical appraisals, consistent accounting records, and compliance with legal requirements significantly contributes to the validation of tax-planning arrangements before the tax authorities. This finding reinforces the need to integrate corporate governance, internal controls, and tax management.

Finally, the decisions reveal CARF's concern with the proportionality of tax enforcement. The JBS S.A. decision demonstrates that the Council not only assesses taxpayer conduct but also imposes limits on the sanctioning authority of the tax administration, thereby

reinforcing the principles of reasonableness, legal certainty, and the prohibition of excessive punishment. This position broadens the understanding of CARF's role as a balancing institution in the relationship between the tax administration and taxpayers.

Although the decisions involve different transactions, both converge in recognizing that the mere formalization of a corporate reorganization is insufficient to characterize legitimate tax planning. In both cases, CARF prioritized the economic reality of the transactions, assigning particular importance to evidence of business purpose, supporting documentation, and genuine economic substance. The primary difference lies in the context of the transactions analyzed: one case directly involves a family asset structure, whereas the other concerns a more complex corporate reorganization. Nevertheless, the criteria employed by the Council are substantially similar.

From an accounting perspective, the decisions analyzed demonstrate that the legitimacy of holding-company structures depends not only on the legal compliance of the transactions but also on the quality of the information generated and disclosed through accounting. Both cases demonstrate the relevance of corporate records, financial statements, technical appraisals, and supporting documentation in shaping the adjudicators' conclusions.

In the Bradesco Saúde case in particular, substantiating expected future profitability and the effective operation of the companies involved required evidence extending beyond the strictly legal dimension, including information generated by accounting systems and corporate governance mechanisms. This demonstrates that accounting plays a fundamental role in substantiating the economic substance of transactions, thereby enabling legitimate tax-planning structures to be distinguished from potentially abusive practices.

The findings further indicate that tax compliance depends directly on the quality of organizations' internal controls and accounting documentation. The accounting professional therefore assumes a strategic role not only in calculating taxes but also in developing evidence capable of supporting the legality of transactions before tax authorities.

To summarize the research findings, Table 5 presents an analytical systematization of the criteria identified in CARF's administrative case law.

Table 5: Proposed Framework for the Criteria Identified in CARF Case Law

Analytical Dimension	Evidence Identified in CARF Decisions	Accounting Implication
Business purpose	Economic rationale for the transaction	Documentation and planning
Economic substance	Effective operation of the holding company	Consistent accounting records
Corporate governance	Corporate organization	Internal controls
Tax compliance	Legal compliance	Reduction of tax risk
Disclosure	Supporting documentation	Transparency and accountability

Source: Prepared by the authors.

Por fim, os resultados expostos corroboram Armstrong et al. (2015), ao demonstrar que mecanismos Governance and internal control mechanisms reduce the risks associated with aggressive tax-planning practices. The findings are also consistent with Hanlon and Heitzman (2010), according to whom the legitimacy of tax strategies depends on the genuine economic substance of transactions and the transparency of the information provided to tax authorities. However, unlike part of the Brazilian literature, which frequently emphasizes only the tax benefits of family holding companies, the decisions analyzed demonstrate that the absence of a business purpose may result in corporate structures being disregarded, even when they are formally valid.

5 Conclusions

This study aimed to analyze the use of holding companies as legitimate instruments of tax avoidance without engaging in abusive or simulated practices, based on two recent CARF decisions. The research demonstrated that, although holding companies are widely used for asset protection, succession planning, and tax efficiency, their legitimacy depends on compliance with rigorous legal criteria, particularly evidence of a business purpose and economic substance in the transactions performed.

The CARF decisions analyzed, involving Bradesco Saúde S.A. and JBS S.A., demonstrate the Council's increasingly technical and rigorous approach to distinguishing lawful tax avoidance from abusive practices. In the Bradesco Saúde case, the prior existence of the holding companies involved and evidence of expected future profitability were decisive factors in validating the tax deduction of goodwill and rejecting the allegation of simulation. The JBS decision, in turn, reinforced CARF's concern with preventing excessive sanctions by prohibiting the concurrent imposition of a separate fine and an ex officio fine for the same taxable event, thereby reaffirming the principles of reasonableness and proportionality.

A limitation encountered in this research concerns the restricted access to certain case data and legal documents, particularly during the initial search for proceedings on platforms such as Jusbrasil and state court databases, which require registration with the Brazilian Bar Association for more detailed searches. Because of this limitation, the analysis focused on decisions obtained directly from CARF's portal. Although this ensured the reliability of the information, it restricted the range of potential cases available for examination.

The findings confirm some of the theoretical propositions by demonstrating that holding companies may legitimately be used as tax-avoidance mechanisms when supported by genuine economic grounds, aligned with tax legislation, and accompanied by appropriate documentation substantiating the authenticity of the transactions. Additionally, the CARF decisions analyzed contribute significantly to defining the boundaries between lawful tax planning and tax evasion or simulation, thereby providing greater legal certainty for both taxpayers and tax professionals.

It may therefore be concluded that the use of family holding companies in Brazil remains a legitimate and effective strategy for asset and succession management. However, compliance with legal boundaries and evidence of a business purpose and economic substance are essential to preventing challenges by the tax authorities. The study also demonstrates the importance of CARF's role in promoting consistent interpretations of tax law and the need for robust tax compliance mechanisms to mitigate tax risks and ensure the legality of business transactions.

In addition to the individual analysis of the selected cases, this research identified a set of criteria that have guided CARF's recent assessment of the legitimacy of holding-company structures used for tax-planning purposes. The findings indicate that lawful tax avoidance is primarily associated with evidence of a business purpose, economic substance, absence of simulation, compliance with tax requirements, and observance of the principles of proportionality and legal certainty. The systematization of these elements constitutes a contribution of the study by consolidating parameters that may assist researchers, accounting professionals, tax attorneys, and managers in understanding the legal boundaries applicable to family holding companies in Brazil.

From an academic perspective, the study connects the literature on family holding companies and tax planning with contemporary administrative case law, demonstrating how concepts frequently discussed at the theoretical level are interpreted and applied by CARF. It thereby broadens the understanding of the mechanisms employed by the tax administration to distinguish legitimate corporate reorganizations from practices regarded as abusive or simulated. Furthermore, through the lens of Corporate Governance Theory, the study

contributes to the literature by systematizing the principal criteria employed by CARF to assess the legitimacy of family holding companies used in tax-planning arrangements.

From an accounting perspective, the findings demonstrate that accounting plays an essential role in supporting the legitimacy of tax planning conducted through holding companies. Producing reliable information, preparing technical appraisals and financial statements, maintaining appropriate records, and adopting tax compliance practices constitute fundamental mechanisms for demonstrating the economic substance of transactions and reducing the risk of challenges by tax authorities. The study therefore expands the discussion regarding the strategic role of accounting in tax governance and organizational asset management.

In this regard, the findings indicate that recent CARF interpretations have implications extending beyond the legal sphere and directly affect organizations' accounting practices and tax-governance mechanisms. The need to demonstrate business purpose, economic substance, and transaction regularity reinforces the importance of accounting professionals in producing reliable information, maintaining supporting documentation, and implementing internal controls capable of reducing the risk of tax disputes.

The findings therefore bring administrative tax case law closer to accounting practice by demonstrating that accounting plays a strategic role not only in calculating taxes but also in supporting the legitimacy of tax-planning arrangements implemented through holding companies.

A limitation of this study is that it examined only two decisions considered precedent-setting, which prevents the findings from being generalized to CARF's entire body of case law. The results should therefore be interpreted in light of the cases examined and regarded as qualitative evidence of the criteria applied when assessing family holding companies. Future studies could expand the sample of decisions to include different adjudicating chambers, periods, and types of transactions, thereby assessing the consistency of these interpretations over time. Moreover, the cases analyzed enabled the identification of criteria employed by CARF in assessing tax-planning arrangements: one case directly addressed a family holding company, while the other contributed to understanding the application of the principles of business purpose and economic substance in corporate reorganizations.

Future research should further examine the use of holding companies from the perspective of other regulatory bodies, such as the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários — CVM), particularly regarding requirements for disclosing corporate and tax information that may affect investors. Empirical studies involving interviews with independent auditors and institutional investors would also be relevant to understanding their perceptions of the tax and regulatory risks associated with holding-company structures, especially in publicly traded companies. Such investigations could contribute to improving tax compliance practices and broadening the debate on transparency and governance in corporate transactions.

References

ALEXANDRE, R. **Direito Tributário Esquematizado**. 10 ed. São Paulo: Método, 2016.
ALLINGHAM, M. G.; SANDMO, A. Income tax evasion: a theoretical analysis. **Journal of Public Economics**, Amsterdam, v. 1, n. 3-4, p. 323-338, 1972. Disponível em: https://doi.org/10.1016/0047-2727(72)90010-2. Acesso em: 12 jun. 2026.
ALMEIDA, M. R. O. **A utilização da via recursal no processo administrativo tributário federal brasileiro e questões conexas**. Florianópolis: Portal Jurídico Investidura, 2017. Disponível em: https://investidura.com.br/artigos/direito-tributario/a-utilizacao-da-via-

recursal-no-processo-administrativo-tributario-federal-brasileiro-e-questoes-conexas/. Acesso em: 20 jun. 2025

ARAÚJO, J. J.; PAULUS, C. I.; QUEIROZ, A. Z. Planejamento tributário por meio de holding: aspectos econômico-financeiros. **Revista de Direito Internacional Econômico e Tributário**, v. 12, n. 1 Jan/Jun, p. 597-631, 2017.

ARMSTRONG, C. S.; BLAOUIN, J. L.; JAGOLINZER, A. D.; LARCKER, D. F. Corporate governance, incentives, and tax avoidance. **Journal of Accounting and Economics**, Amsterdam, v. 60, n. 1, p. 1-17, 2015. Disponível em https://doi.org/10.1016/j.jacceco.2015.02.003. Acesso em: 12 jun. 2026.

BARDIN, L. **Análise de conteúdo**. Tradução de Luís Antero Reto e Augusto Pinheiro. São Paulo: Edições 70, 2016.

BRASIL. [Código Civil (2002)]. **Lei de nº 10.406/02, de 10 de janeiro de 2002**. Institui o Código Civil. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm. Acesso em: 19 set. 2024.

BRASIL. [Código Tributário Nacional (1966)]. **Lei nº 5.172/66, de 25 de outubro de 1966**. Dispõe sobre o Sistema Tributário Nacional. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/l5172compilado.htm. Acesso em 30 abr. 2025

BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Presidente da República. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 19 set. 2024

BRASIL. [Crime de Sonegação (1965)]. Lei nº 4.729, de 14 de julho de 1965. Define o crime de sonegação fiscal e dá outras providências. [...]. Brasília, DF. Disponível em: https://www.planalto.gov.br/Ccivil_03/leis/1950-1969/L4729.htm. Acesso em: 19 set. 2024

BRASIL [Lei das S.A.s (1976)]. **Lei nº 6.404, de 15 de dezembro de 1976**. Dispõe sobre as Sociedades por Ações [...]. Brasília, DF. Disponível em: https://www.planalto.gov.br/ccivil_03/leis/l6404consol.htm. Acesso em: 19 set. 2024

BRASIL. Ministério da Fazenda. CARF. Brasília, DF. Disponível em: https://www.gov.br/fazenda/pt-br/acesso-a-informacao/acoes-e-programas/futuro-seguro/carf. Acesso em 20 jun. 2025.

CANTO, G. U. Evasão e Elisão Fiscal. Um Tema Atual. **Revista de Direito Tributário**, n. 63, 1993, São Paulo.

CHEN, S.; CHEN, X.; CHENG, Q.; SHEVLIN, T. Are family firms more tax aggressive than non-family firms? **Journal of Financial Economics**, v. 95, n. 1, p. 41-61, 2010. Disponível em: http://dx.doi.org/10.2139/ssrn.1014280. Acesso em: 13 jun. 2026.

CLAESSENS, S.; YURTOGLU, B. B. Corporate governance in emerging markets: a survey. **Emerging Markets Review**, v. 15, p. 1-33, 2013. DOI: https://doi.org/10.2139/ssrn.1988880

COTTA, Victor Oliveira. **Análise da holding familiar como opção de planejamento sucessório, com ênfase nos aspectos tributários**. 2017. 50 f. Monografia (Graduação) - Faculdade de Ciências Jurídicas e Sociais, Centro Universitário de Brasília, Brasília, 2017.

DENCK, R. Holding familiar: planejamento sucessório e redução da carga tributária. **Lumen et Virtus**, São José dos Pinhais, V. XV N. XLII, p.6993-7016, 2024. Disponível em: https://doi.org/10.56238/levv15n42-033 . Acesso em: 15 jun. 2026.

DESAI, M. A.; DHARMAPALA, D. Corporate tax avoidance and firm value. **Review of Economics and Statistics**, Cambridge, v. 91, n. 3, p. 537-546, 2009. Disponível em: https://www.jstor.org/stable/25651357 . Acesso em: 12 jun. 2026.

DÓRIA, A. R. S. **Elisão e Evasão Fiscal**. 2. ed. São Paulo: Bushatsky, 1977.

GERSICK, K. E.; DAVIS, J. A.; HAMPTON, M.; LANSBERG, I. **Generation to Generation: Life Cycles of the Family Business**. Boston: Harvard Business School Press, 1997.

GIL, A. C. **Métodos e técnicas de pesquisa social**. 5. ed. São Paulo: Atlas, 1999.
GÓMEZ-MEJÍA, L. R.; HAYNES, K. T.; NÚÑEZ-NICKEL, M.; JACOBSON, K. J. L.; MOYANO-FUENTES, J. Socioemotional wealth and business risks in family-controlled firms: evidence from Spanish olive oil mills. **Administrative Science Quarterly**, Thousand Oaks, v. 52, n. 1, p. 106-137, 2007. DOI; https://doi.org/10.2189/asqu.52.1.106. Acesso em: 13 jun. 2026.
GRANDE, A. V. **Holding como instrumento de organização patrimonial e planejamento sucessório**. 2021.
HANLON, M,; MAYDEW, E. L.; SAAVEDRA, D. The taxman cometh: tax research in accounting. **Journal of Accounting and Economics**, Amsterdam, v. 76, n. 2-3, 2023. Disponível em: http://dx.doi.org/10.2139/ssrn.2292020. Acesso em: 14 jun. 2026.
HUCK, H. M. **Evasão e Elisão**. São Paulo : Saraiva, 1997.
JAYME, D. M. G.; CARNEIRO, S. H. S. **Holding familiar e a possibilidade de elisão fiscal durante o processo sucessório.** 2023. 22f. Trabalho de Conclusão de Curso (Graduação) Curso de Direito, Faculdade Evangelista de Goianésia, 2023.
JORGE, L. O.; LOBO, J. D. Holding como estratégia de planejamento tributário: estudo de caso em uma holding patrimonial. **Revista da Graduação – UNIGOIÁS**, Goiânia, ano 2, n. 2, 2021. Disponível em: https://unigoias.com.br/wp-content/uploads/Artigo-5.pdf. Acesso em 01 mai. 2025.
KIRCHLER, Erich; HOELZL, Erik; WAHL, Ingrid. Enforced versus voluntary tax compliance: the “slippery slope” framework. **Journal of Economic Psychology**, Amsterdam, v. 29, n. 2, p. 210-225, 2008. Disponível em: https://doi.org/10.1016/j.joep.2007.05.004. Acesso em 15 jun. 2026.
LEMOS Jr, E. P.; SILVA, R. S. V.. Reorganização societária e blindagem patrimonial por meio de constituição de holding. **Scientia Iuris**, Londrina, v.18, n.2, p.55-71, dez.2014.
LODI, M. L., AVELINO, L.. 2012. **Holding familiar:** a importância do planejamento tributário na administração de bens e no sucesso empresarial. São Paulo: Revista dos Tribunais.
LODI, J. B.; LODI, E. P. **Holding**. 4 ed. São Paulo: Cengage Learning, 2011.
LONGO, J. H. Criação de Holding e Proteção Patrimonial. **Instituto Brasileiro de Estudos** Tributários. São Paulo. 2017. Disponível em: https://www.ibet.com.br/wp-content/uploads/2017/12/Jos%C3%A9-Henrique-Longo.pdf. Acesso em: 20 abr. 2025.
LAKATOS, E. M; MARCONI, M. A. **Metodologia científica**. 2008. São Paulo: Atlas.
MACEDO, M. J. L. **Essência vs. forma no CARF**: Uma análise sob a ótica da primazia da realidade. 2024. Disponível em: https://www.jota.info/opiniao-e-analise/colunas/por-dentro-do-carf/essencia-vs-forma-no-carf. Acesso em 28 jun. 2025.
MACHADO, H B. **Curso de Direito Tributário**. São Paulo: Malheiros, 2002.
MAMEDE, G.**. Holding Familiar e Suas Vantagens**. São Paulo: Atlas, 2018.
MANGANELLI, D. L. Holding familiar como estrutura de planejamento sucessório em empresas familiares. **Revista de Direito**, v. 8, n. 02, p. 95-118, 2016.
OLIVEIRA, D. P.. **Holding, administração corporativa e unidade estratégica de negócio.** 5. ed. São Paulo, Atlas, 2015.
OLIVEIRA, L. M. M.; DURO, S. O. **O centenário do CARF que desejamos**. Consultor Jurídico. 2025. Disponível em: https://www.conjur.com.br/2025-mar-19/o-centenario-do-carf-que-desejamos/. Acesso em 20 jun. 2025.
PLASZEWSKI, L. S. S.; SILVA, L. D. S.; SOUZA, P. C. M.; WEBER, S. Holding como planejamento tributário. v. 1. Pará de Minas, MG: **VirtualBooks**, 2021. p. 159-183. Disponível em: http://hdl.handle.net/11690/2539. Acesso em: 19 set. 2024

RIBAS, L. M.; PEREIRA, A. R.; KONNO, F. R. Voto de qualidade no CARF: tensão entre arrecadação e legalidade. **Revista de Direitos Fundamentais e Tributação** – RDFT, v.8, n.2, p.1-24, 2025. DOI: https://doi.org/10.47319/rdft.v8n2.111.
RICHTER, B. S. Holding familiar e proteção patrimonial. **Revista Jus Navigandi**, Teresina, ano 21, n. 4710, 24 maio, 2016. Disponível em: https://jus.com.br/artigos/49138. Acesso em: 19 set. 2024.
RESENDE, S. M. **Holding familiar**: planejamento tributário e sucessório de empresas familiares. 2022. 17 f. Trabalho de Conclusão de Curso (Graduação em Ciências Contábeis) – Universidade Federal de Uberlândia, Uberlândia, 2022.
ROCHA, J. **Planejamento Tributário**. São Paulo: Editora Senac, 2020.
SCALCO, A. G. Impactos Tributários na Constituição de uma Holding Patrimonial. **Jusbrasil**. 2022. Disponível em: https://www.jusbrasil.com.br/artigos/impactos-tributarios-na-constituicao-de-uma-holding-patrimonial/1524748520 . Acesso em: 19 set. 2024
SCHOLES, M. S.; WOLFSON, M. A.; ERICKSON, M.; MAYDEW, E.; SHEVLIN, T. **Taxes and Business Strategy***:* A Planning Approach. 5. ed. Boston: Pearson, 2015.
SHLEIFER, A.; VISHNY, R. W. Corporate governance. **The Journal of Finance**, v. 52, n. 2, p. 737-783, 1997. Disponível em: https://shleifer.scholars.harvard.edu/publications/survey-corporate-governance. Acesso em: 21 jun. 2026.
SIMANTOB, A. D. O Conselho Administrativo de Recursos Fiscais (CARF), por meio de seus precedentes e jurisprudência, poderia, em que medida, contribuir para a melhoria das relações entre fisco e contribuintes, conferindo-lhes maior segurança jurídica? **Revista de Direito Tributário**, São Paulo, n. 48, abr./set.2023. Disponível em: https://revistas.apet.org.br/index.php/rdta/article/view/179/128. Acesso em: 15 jun. 2026.
SOUZA, L. I. M.; SOUZA, V. R.. HOLDING FAMILIAR: UMA ESTRATÉGIA DE PLANEJAMENTO SUCESSÓRIO PATRIMONIAL. **Revista UNEMAT de Contabilidade**, [S. l.], v. 13, n. 26, p. 159–184, 2025. Disponível em: https://periodicos.unemat.br/index.php/ruc/article/view/12829. Acesso em: 20 jun. 2025.
WARD, J. L. **Keeping the Family Business Healthy**. New York: Palgrave Macmillan, 2011.
WARTHA, J. A.; MULLER, J. S. **Holding como estratégia de negócio familiar: um estudo de caso de um grupo familiar no município de Francisco Beltrão** - PR. 2025. Trabalho de Conclusão de Curso (Bacharelado em Ciências Contábeis) - Universidade Tecnológica Federal do Paraná, Pato Branco, 2025. Disponível em: https://repositorio.utfpr.edu.br/jspui/handle/1/36432. Acesso em: 01 mai. 2025.
ZELLWEGER, T. M. **Managing the Family Business**: Theory and Practice. Cheltenham: Edward Elgar Publishing, 2017.