


HOLDING AS A FORM OF SUCCESSION PLANNING

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ABSTRACT

Holding companies as a form of succession planning has gained prominence in the business and family context, being used as an effective strategy for protecting assets and minimizing taxes. The general objective will be to analyze the use of holding companies as a succession planning mechanism, addressing their advantages, and legal and tax aspects, in addition to highlighting their importance in organizing family assets. The research methodology used is bibliographic, involving the analysis of doctrines, academic articles, and legislation relevant to the subject, aiming to provide an in-depth understanding of the advantages and challenges associated with the creation of holding companies. The justification for choosing this topic lies in the growing need for succession planning in Brazil, where the lack of an adequate strategy can lead to asset disruption and family conflicts. In addition, the relevance of the topic is evidenced by the complexity of tax laws and the search for alternatives that guarantee efficiency in the transfer of assets. Thus, the analysis of holdings as a succession planning tool not only contributes to academic knowledge but also guides entrepreneurs and families in adopting practices that promote asset security and the continuity of their legacies.

Keywords: Holding. Succession Planning. Succession.

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INTRODUCTION

Human life is finite. Successors and those close to a person inherit not only their intangible assets but also their material assets. Dealing with succession during life is a delicate matter and is often avoided, as it is considered a negative omen. However, it is a fundamental right of every individual to plan the fate of their assets both during life and after death.

Therefore, succession planning is a topic that is gaining increasing prominence in the legal arena, especially when seeking solutions that aim to preserve assets, the continuity of family businesses, and the organization of an efficient transfer of assets between generations. In this context, the creation of a holding company emerges as a strategic and effective alternative for those who wish to organize the succession process in an orderly manner, minimizing potential family conflicts and reducing the tax burden.

The holding company, which can be defined as a legal entity created to control and manage the assets of a family group, represents an important tool in succession planning, especially because it allows greater control over assets and facilitates their transfer among heirs, without the need for a lengthy inventory process. In this study, the general objective will be to analyze the use of the holding company as a succession planning mechanism, addressing its advantages, legal and tax aspects, in addition to highlighting its importance in organizing family assets. The methodology applied to develop this research will be based on the deductive method, with exploratory characteristics, bibliographic and documentary techniques, through observation and analysis, describing the facts verified with data and information collected through the main academic articles, websites, documentaries, books, and relevant legislation. The choice of bibliographic research is justified by the vast production of knowledge already existing on the subject and by the possibility of identifying different approaches and interpretations from authors who study succession planning and corporate law. In addition, practical case studies will be considered, which allow us to observe how the holding company has been used in Brazilian inheritance law, and the analysis of case law related to the subject, which helps to understand how the courts have positioned themselves regarding the use of this corporate structure in the context of the inheritance of assets. The research will be developed based on the collection of secondary data, that is, data already available in the literature, to provide a theoretical and practical understanding of the subject.

The justification for developing this work lies in the growing interest on the part of business families and those with large assets in using holding companies as part of their succession planning. The complexity of inheritance law and the numerous issues that arise in the transmission of assets and rights between generations demonstrate the importance of thinking about efficient solutions that avoid litigation and family conflicts. Inventories, traditionally used in the succession of assets, can be time-consuming, and costly and often cause divisions between heirs, in addition to resulting in significant taxation on assets. Thus, the formation of a holding company allows the division of assets to be anticipated and the succession to be organized more quickly and safely, avoiding the need to resort to the judicial probate process. The possibility of distributing shares of the holding company among the heirs while the patriarch or matriarch of the family is still alive provides greater control over the administration and destination of assets, avoiding future disputes.

In addition, holding companies offer tax advantages that are highly relevant in succession planning. In Brazil, taxes on inheritance can be quite onerous, especially the Tax on Transmission Causa Mortis and Donation (ITCMD), which is levied on the transfer of assets due to the death of the owner. The formation of a holding company allows the reorganization of family assets, transferring personal assets to the name of the legal entity, and, from there, facilitating the early donation of shares to heirs, often with the payment of significantly lower taxes than those that would be due in an inventory. This tax benefit, however, should be analyzed with caution, as tax legislation is constantly changing, and it is essential that succession planning be carried out in a way that complies with all current legal requirements.

Another important aspect is that, in addition to avoiding the emotional and financial stress of an inventory process, the holding company also allows the maintenance of control over the assets, even after the donation of shares to the heirs. This is possible because the donor can reserve all or part of the usufruct of the shares for himself, ensuring that he continues to have control over the assets and the direction of the holding company's activities until his death. In this way, the founder of the holding company can ensure that the administration of the assets and family businesses continues according to his wishes, even after the distribution among the heirs has been brought forward.

The relevance of this topic is closely linked to the current Brazilian economic and legal scenario, in which there is a growing search for mechanisms that make the succession process more efficient and less costly. The creation of family-holding companies

not only facilitates the succession of assets but also contributes to the continuity of family businesses, preventing succession issues from interfering with the management of companies. In many cases, disputes between heirs can compromise the future of family businesses, leading to their dissolution or sale, which represents a significant loss for the family and the economy as a whole. Using the holding company as part of succession planning minimizes this risk by establishing clear rules for the administration of assets and the participation of heirs in the management of the estate.

In addition, studying the use of the holding company as a succession planning tool is relevant for the development of legal solutions that can meet the demands of business families and those with large assets, allowing for an organized succession in compliance with legal provisions. In a country with a high tax burden and an often overburdened judicial system, anticipating succession through a corporate structure can be an effective solution from both a tax and succession perspective. Therefore, lawyers, accountants, and wealth managers must be prepared to guide their clients in the formation of holding companies and in carrying out appropriate succession planning, to avoid future conflicts and losses.

In conclusion, the holding company represents an essential tool in succession planning, as it can provide greater security, tax savings, and the preservation of family assets. Throughout this work, its advantages, and legal and tax aspects will be explored, in addition to discussing its relevance as an instrument capable of guaranteeing business continuity and the well-being of future generations.

SUCCESSION

Succession law, associated with the continuity of religion and family, has its origins in antiquity. Ancient cultures evolved historically and treated inheritance law in different ways, but it was the French Revolution that abolished privileges such as primogeniture and male preference, establishing equality between heirs. In Brazil, French influence was evident in pre-codified laws and in the Civil Code of 1916, which followed the Germanic-French model. The Civil Code of 2002 introduced significant changes, including the spouse as a necessary heir (Gonçalves, 2024).

In the legal context, succession refers to the transfer of rights and obligations from a deceased person to their heirs or legatees. It is a natural process that occurs upon the death of a person, in which what is called "succession" automatically opens. This concept encompasses both legitimate succession, arising from the law, and testamentary

succession, which occurs through the manifestation of the will of the deceased person, expressed in a will. According to Pereira (2024), succession is the entry of someone, by force of law or the will of the deceased, into the ownership of the deceased's assets, or part thereof.

In a broad sense, Gonçalves (2024) defines succession as the act by which one person takes the place of another, replacing him or her in the ownership of certain assets. Furthermore, according to Tartuce (2024), succession can occur through an act *inter vivos* or *causa mortis*, with succession *inter vivos* occurring between living persons, while succession *causa mortis* occurs after someone's death.

For Diniz (2024), succession law is the set of rules that regulate the transfer of a person's assets after they die to the heir, whether by legal provision or by will. This involves the transfer of the deceased's assets, values, and debts to the heir, maintaining the elements of the legal relationship, except for the subject, who becomes the successor. Thus, the heir assumes the legal position of the deceased, while the title, content, and object of the legal relationship remain unchanged.

The Brazilian Civil Code, when providing for succession, deals not only with the transfer of assets but also with obligations. Succession, therefore, involves the complex of rights and duties left by the deceased. The deceased person's assets are transferred to their successors, who may be heirs, when the succession is legitimate, or legatees when there are provisions of last will. Legitimate succession, regulated by articles 1,829 to 1,844 of the 2002 Civil Code, occurs in the absence of a will and follows an order of hereditary vocation, in which descendants, ascendants, spouses, and, finally, collaterals up to the fourth degree are called in succession.

Testamentary succession, on the other hand, is one in which the transfer of assets is made by the express will of the deceased, as set out in a will. However, this autonomy of disposition is not unlimited. As Gonçalves (2024) points out, testamentary succession encounters legal restrictions, mainly regarding the legitimate share, which must be respected in favor of the necessary heirs. The necessary heirs, according to Article 1,845 of the Civil Code, are descendants, ascendants, and spouses. They are entitled to at least half of the deceased's assets, regardless of any possible testamentary provisions. It is important to note that succession occurs at the time of the death of the owner of the assets, at which time the entire estate is transferred, by the rules of inheritance law. Mamede (2015), in his studies on the subject, states that "if the existence has ended, the assets are left without

owners at that moment and, as Brazilian Law recognizes inheritance, there is an immediate transfer to the heirs", the so-called Saisine Principle. Thus, at the exact moment of death, the assets of the deceased are transferred to the heirs, opening the probate process to formalize this transfer.

Probate is the legal procedure intended to determine the assets left by the deceased so that their debts can be paid and the assets can be divided among the heirs and legatees. The probate process can be judicial or extrajudicial, the latter being possible only when there is consensus among the heirs and there are no minors or incapacitated persons among the successors. Article 611 of the Code of Civil Procedure establishes that the probate must be initiated within two months after death and completed within twelve months, with this period being able to be extended by court order.

Legitimate succession is based on criteria established by law, which aim to preserve the family unit and ensure the fair distribution of assets among the heirs. Brazilian law grants special protection to certain family members, such as descendants and the surviving spouse, who occupy the first places in the order of hereditary vocation. Maria Helena Diniz (2024) highlights that legitimate succession is that which occurs independently of the deceased's will and is governed solely by law, which establishes a mandatory order of vocation.

On the other hand, testamentary succession allows the holder of the estate to exercise a certain autonomy in the disposal of his or her assets. However, as already mentioned, the freedom to make a will is not absolute, as it must respect the legitimate share of the necessary heirs. If the testator disposes of assets to the detriment of this legitimate share, the will may be partially annulled, as provided for in Article 1,968 of the Civil Code. In short, a will can be a useful tool to fulfill specific wishes of the deceased, such as benefiting third parties, but its effectiveness is limited by legal requirements that guarantee the protection of the necessary heirs.

In addition to the inventory and the will, another relevant aspect of inheritance law is the issue of debts left by the deceased. According to Article 1,997 of the Civil Code, heirs are only liable for the debts of the deceased up to the limit of the value of the inheritance received. This means that if the deceased left debts greater than the value of his/her estate, the heirs are not obliged to pay the outstanding balance with their resources. This rule is an important guarantee for heirs, who have the right to accept the inheritance under the benefit of the inventory, protecting themselves from possible losses.

Finally, it is essential to emphasize that inheritance law is not limited to the distribution of assets and debts. It also involves issues related to the maintenance of the family unit and the preservation of family assets, especially in business families. Succession is often a delicate moment for families, and adequate succession planning can avoid litigation and disputes, ensuring a harmonious transition between generations. In this sense, succession planning gains special importance, as highlighted by Mamede and Mamede (2018), who state that planned succession is a powerful instrument for preserving family assets and avoiding disputes between heirs.

In summary, the general aspects of succession involve the transfer of rights and obligations from the deceased to the heirs and legatees, regulated by legal norms that guarantee the fair distribution of the assets and the protection of the necessary heirs. The succession process, whether legitimate or testamentary, must be conducted in a way that respects the principles of legality and justice, ensuring the continuity of the family assets and avoiding conflicts.

HEREDITARY SUCCESSION

Hereditary succession is one of the oldest institutions in civil law and is directly related to the transfer of assets, rights, and obligations from the deceased to his or her heirs. This process, which occurs upon the death of the owner of the estate, aims to ensure the continuity of possession and ownership of the assets, preserving the interests of the heirs and respecting the wishes of the deceased expressed in a will, if applicable. In Brazil, the inheritance system is provided for in the Federal Constitution of 1988 and the Civil Code of 2002, which regulate the rights of heirs, the limits on testamentary disposition, and the general rules for the division of the inheritance process.

As provided in Article 1,784 of the Brazilian Civil Code, "Once the succession is opened, the inheritance is immediately transferred to the legitimate and testamentary heirs". This means that, upon the death of the owner of the assets, the succession is opened and the heirs immediately have rights over the assets left behind. Inheritance is seen as an indivisible whole, and assets will only be individually assigned to each heir after the division of the inheritance. As Mamede (2015, p. 2) explains, "Upon the death of a person, other people (their heirs, legitimate or testamentary) will succeed the deceased in the ownership of the assets".

Inheritance succession is divided into two main branches: legitimate succession and testamentary succession. Legitimate succession occurs when the transfer of assets follows the order of hereditary vocation provided for by law, that is, in the absence of a will. Testamentary succession, on the other hand, arises from the expressed will of the deceased through a will or codicil, respecting the limits imposed by law, called legitimate succession (Oliveira; Amorim, 2024). Legitimate succession and testamentary succession can occur together, that is, part of the assets can be allocated to the legal heirs and another part to the heirs mentioned in the will, as established by Article 1,788 of the Civil Code. The legitimate succession follows an order of priority among heirs, established by the Civil Code. Descendants (children, grandchildren, great-grandchildren) are called to inherit first and, in their absence, ascendants (parents, grandparents, great-grandparents). If the deceased has no descendants or ascendants, the assets will be passed on to the surviving spouse and, in their absence, to collateral relatives up to the fourth degree, such as siblings, uncles, and nephews. If there are no heirs in these categories, the assets are declared vacant and collected by the State, as provided for in Article 1,844 of the Civil Code. The order of hereditary vocation reflects the principle of family protection, ensuring that the deceased's assets remain within the family nucleus, which is a reflection of the importance attributed to family continuity in inheritance law (Venosa, 2018).

In legitimate succession, necessary heirs play a fundamental role. Necessary heirs are descendants, ascendants, and the spouse, who are entitled to a part of the inheritance called "legitimate", that is, a fraction of the estate that cannot be freely disposed of by the deceased in a will. According to Article 1,846 of the Civil Code, "half of the assets of the inheritance, constituting the legitimate portion, belongs to the necessary heirs by full right". Therefore, even if the deceased leaves a will, he cannot dispose of more than half of his estate, which must be reserved for the necessary heirs. Madaleno (2020) emphasizes that the legitimate portion aims to protect the family, preventing the author of the inheritance from unjustifiably depriving his necessary heirs of a minimum fraction of his estate.

A will, in turn, is an instrument by which the person expresses his will regarding the destination of his assets after death, as long as the rights of the necessary heirs are respected. According to Gonçalves (2024), a will is a unilateral, personal, revocable, and free legal transaction by which someone disposes of all or part of their assets after their death. It is a way for the owner of the assets to ensure that part of their assets are allocated to people or institutions that they wish to benefit, even if they are not covered by the legal

order of succession. In addition, a will may contain non-patrimonial provisions, such as the recognition of children or the appointment of a guardian for minor children.

Despite the advantages offered by a will, such as the possibility for the testator to organize the succession according to their wishes, the law imposes restrictions on this freedom, especially regarding legitimate inheritance. Even if the deceased wishes to benefit third parties with the entirety of their assets, they may only do so about half of the assets, since the other half is allocated to the necessary heirs. As stated by Pereira (2024), the principle of intangibility of legitimate inheritance represents a restriction on testamentary freedom, demonstrating the legislator's intention to ensure that the necessary heirs are not harmed in their rights.

In addition to legitimate and testamentary succession, Brazilian law also provides for the succession of partners in a stable union. Although the recognition of inheritance rights to partners has been the subject of much controversy in the past, the Federal Constitution of 1988 and the Civil Code of 2002 brought significant advances by ensuring the right of succession to the surviving partner. The jurisprudence of the Federal Supreme Court (STF) also consolidated the equalization of rights between spouses and partners, ensuring that the surviving partner has the same inheritance rights as the spouse (Oliveira; Amorim, 2024).

Inheritance succession also involves important procedural aspects, such as the inventory and division of assets. The inventory is the judicial or extrajudicial procedure that aims to determine the assets left by the deceased, identify the heirs, and proceed with the division of assets. It can be judicial, when there is a dispute between the heirs, or extrajudicial when all the heirs are in agreement and the deceased did not leave a will. In the inventory, the assets are assessed and the taxes due are calculated, such as the Tax on Transmission Causa Mortis and Donations (ITCMD). After the taxes have been paid and all legal formalities have been fulfilled, the assets are divided among the heirs, according to the deceased's will or according to the order of hereditary vocation established by law. (Oliveira; Amorim, 2024).

The division of inheritance is the final act of the inheritance process, in which the deceased's assets are distributed among the heirs. According to Venosa (2024, p. 765), the division is “the division of assets among the heirs and legatees and the separation of the spouse's share or the partner's rights, if applicable”. After the division, the heirs become

full owners of the assets assigned to them and may exercise all rights inherent to the property.

Regarding the rules of inheritance, it is important to highlight that inheritance law is constantly evolving, reflecting social transformations and new family configurations. Hereditary succession, especially about stable unions and new family forms, has been the subject of legislative and jurisprudential discussions, to ensure equal rights between spouses, partners, and children, regardless of the form of a family constitution. Likewise, the Supreme Federal Court has expanded the concepts of family to recognize inheritance rights for same-sex partners (Oliveira; Amorim, 2024).

In short, hereditary succession is an institute of great relevance in Brazilian civil law, ensuring the transfer of the deceased's assets to his or her heirs, whether through legitimate or testamentary means. The order of hereditary vocation, the protection of necessary heirs, and the restrictions on testamentary freedom reflect the legislator's commitment to preserving family ties and the continuity of family assets. The study of hereditary succession, therefore, is fundamental for understanding patrimonial and family dynamics, as well as for developing succession strategies that guarantee the preservation of the interests of the heirs and the deceased himself.

SUCCESSION PLANNING

Succession planning is a central topic in family law, mainly because it addresses the preservation of assets and the organization of the transfer of assets between generations. Its importance is directly linked to the search for efficiency in the transmission of assets, so that this transition occurs with the least possible conflicts, respecting the rights of the heirs and, simultaneously, ensuring the protection of the interests of the testator. In Brazil, succession planning has received greater attention in recent years, driven not only by the increasing complexity of estates but also by concerns about the high tax burden on inheritance, which can significantly reduce the value passed on to heirs.

According to classical doctrine, succession planning consists of a series of legal and patrimonial strategies that aim to facilitate the succession of assets, avoiding judicial probate and providing a less conflictive and costly transition. According to Gagliano and Filho (2024, p. 375), succession planning consists of “a set of acts that aim to operate the organized and stable transfer and maintenance of the assets of the disposer in favor of his successors”. This planning may involve several legal tools, such as wills, donations, life

insurance, and agreements between heirs, to organize the distribution of assets clearly and efficiently, avoiding lengthy probate processes.

Brazilian inheritance law is governed by specific principles, including family continuity, preservation of assets, and legitimization of heirs. The 2002 Civil Code establishes the general rules for succession, providing that, in the absence of a will, the necessary heirs – descendants, ascendants, and spouses – are entitled to a portion of the deceased's estate, called the legitimate portion. On this basis, inheritance planning aims to adapt the legal provisions to the particularities of the estate and family relationships, seeking to reconcile the interests of the author of the inheritance with the legal guarantees of the heirs.

One of the main tools used in succession planning is the will, an instrument that allows the holder of the estate to dispose of his or her assets after his or her death, as long as the legitimate inheritance of the necessary heirs is respected. For Gomes (2019, p. 76), the will is “a legal transaction by which a person disposes of his or her succession. It becomes perfect and complete at the moment in which the testator declares his or her will in the manner authorized by law”. The great advantage of the will is that it gives the testator greater autonomy, allowing him or her to allocate part of his or her assets to people or institutions that would not be included in the legitimate succession, such as friends, employees, or philanthropic entities. In addition, the will can serve as a way to avoid disputes between heirs, by clearly and unequivocally establishing the deceased's wishes.

Another tool widely used in succession planning is the donation during life, which allows the holder of the estate to anticipate the distribution of his or her assets, preventing these assets from being subject to inventory after his or her death. Donations can be made with reservation of usufruct, allowing the donor to maintain the right to use and manage the assets until the end of his or her life. This modality is quite common in families that wish to ensure the continuity of their assets, especially in the case of real estate and family businesses. According to Gagliano (2021, p. 60), donations with reservation of usufruct “operate through the free transfer of the property from the donor to the donee, reserving the usufruct of the donated asset in his or her favor.”

However, when donating during a lifetime, it is important to respect the legal limits established for the legitimate share. Brazilian law guarantees the necessary heirs the right to half of the deceased's assets, with the other half, known as the “available share,” subject to free disposal by the donor. If the donation exceeds this limit, it may be challenged in

court by the heirs, who may demand a reduction in the donation to ensure respect for the legitimate share. As Rizzardo (2019) points out, succession planning through donations must always observe the rights of the necessary heirs, under penalty of nullity of donations that exceed the value of the legitimate share, as provided for in Article 549 of the Civil Code.

In addition to the will and donation, succession planning may also involve the use of life insurance, which, although not directly considered part of the inheritance, represents a way of guaranteeing the financial protection of the heirs in the event of the death of the owner of the assets. According to Diniz (2024), if there is a personal insurance with survival coverage, such as the Vida Gerador de Benefício Livre (VGBL), the amount paid (premium) will be allocated to the designated beneficiary in the event of the death of the insured, as this amount is not part of the inheritance. If the beneficiary dies before the insured, his or her heirs will not receive this amount, which will also not be included in the inventory or in the distribution of assets. In the case of life insurance, it is also not part of the inheritance and will not be inventoried. If the insured person dies, the chosen beneficiary will receive the compensation without the incidence of Income Tax or ITCMD.

The relevance of succession planning is closely linked to the possibility of reducing the costs and time of the succession process, especially in cases of complex assets, such as family businesses, real estate and financial investments. The judicial probate, which is the traditional succession process in Brazil, can be time-consuming and costly, mainly due to the incidence of taxes, such as the Tax on Transmission Causa Mortis and Donations (ITCMD). This tax varies according to the state and can reach 8% of the total value of the inheritance, which represents a significant burden on the transferred assets (Nigri, 2021). Therefore, succession planning also involves tax strategies that aim to minimize the tax impact on the inheritance, ensuring that the heirs receive the highest possible value of the assets.

It is important to highlight that succession planning is not limited to the mere organization of the division of assets, but also involves protecting the interests of the testator and the heirs, as well as preserving the assets for future generations. According to Gagliano and Filho (2024), succession planning is a responsible measure, the objective of which is not only to ensure an equitable distribution of assets, but also to preserve the estate, avoiding possible conflicts and its eventual deterioration. In this way, succession

planning can be seen as a way to guarantee the continuity of family projects and values, preserving the legacy built throughout the testator's life.

The choice of appropriate tools for succession planning depends on the specific characteristics of each estate and the family relationships involved. In many cases, it is recommended that the estate owner seek the assistance of specialized lawyers and consultants who can advise him on the best options available, taking into account both the legal and tax aspects of the succession. As highlighted by Mamede and Mamede (2015), the lawyer's role is to develop legal solutions in accordance with the Law (legislation, doctrine and case law), preventing conflicts and litigation. In addition, the lawyer can suggest alternatives that seek excellence, offering more efficient and satisfactory paths.

In conclusion, succession planning is an essential practice to ensure the organization and efficiency of the transmission of assets between generations. Through tools such as wills, donations and life insurance, it is possible to minimize conflicts between heirs, reduce the tax burden on the inheritance, and ensure that the estate is distributed according to the owner's wishes. In Brazil, where the inventory process can be long and costly, succession planning represents a way to protect assets and ensure their continuity for future generations, constituting an important instrument for family and asset organization.

HOLDING

The creation of holding companies is a strategy widely used in corporate and business law and estate planning. Its application has expanded significantly in recent decades, especially due to the complexity involved in managing large assets and organizing successions. A holding company can be defined as a legal entity created to control other companies or family assets. According to Mamede (2015), a holding company is a company that does not directly engage in an economic activity but aims to participate in other companies. The holding company acts as an administrator of assets, whether they consist of real estate, financial assets, or equity interests, providing greater control and flexibility in the management of these assets. Mamede (2015, p. 118) explains the Holding as:

To hold, in English, translates as to hold, to detain, to sustain, among related ideas. Holding translates not only as the act of holding, detaining, etc., but as domain. The expression holding company, or simply holding, is used to designate legal entities (companies) that act as holders of assets and rights, which may include real estate, movable assets, corporate interests, industrial property (patent, trademark, etc.), financial investments, etc. Precisely for this reason, this legal entity serves corporate

planning, that is, it allows the creation of corporate structures that not only adequately organize the business activities [of a family, for example], but can also constitute an appropriate corporate body to contain and protect the participation and control maintained over other companies, among other undesirable fragmentations of rights.

The creation of a holding company as an instrument for estate and succession planning has several purposes. Among the most common are the protection of family assets, the facilitation of business administration, and the organization of the succession process in advance, avoiding the long and costly probate process. According to Lodi (2012), the holding company offers its partners the possibility of ordering the distribution of assets, anticipating the succession, with greater savings and less emotional stress. In this sense, the holding company emerges as an efficient alternative to minimize conflicts between heirs and ensure that the assets remain within the family structure, without external interference.

Another relevant aspect of holding companies is related to tax efficiency. Brazilian legislation allows, through the creation of a holding company, taxes levied on the transfer of assets and rights to be significantly reduced. This occurs mainly because the succession can be organized during life, with the donation of the holding company's shares to the heirs, instead of waiting for the probate process after death. According to Machado (2016), tax planning through the creation of a family holding company allows for a reduction in tax burdens, as long as it is carried out within legal limits. However, it is important to emphasize that tax planning through holding companies must be conducted carefully and in strict compliance with legal standards, to avoid questions from the tax authorities.

In addition to tax savings, the creation of a holding company can guarantee greater control over assets, even after the donation of shares to heirs. This is because the donor can reserve the usufruct of the shares for themselves, which ensures control over the assets while they are alive. According to Mamede and Mamede (2018), the holding company allows the founder to maintain decision-making power over the assets, while organizing the succession in an anticipated and planned manner. This aspect is especially relevant in business families, in which the patriarch or matriarch wants to ensure the continuity of the business without giving up control while they are alive.

The holding company also offers advantages related to family management and governance. By concentrating family assets in a single legal entity, asset management becomes simpler and more efficient. Decisions can be centralized, and rules for succession, governance, and profit distribution can be previously established in a

shareholders' agreement or bylaws. As Colli (2021) points out, family-holding companies help to professionalize asset management, allowing for a clear definition of the roles, rights, and duties of each partner, which helps to prevent future conflicts and misunderstandings. This type of corporate organization is especially useful in family businesses, where the personal interests of heirs can often conflict with the interests of the business.

However, the creation of a holding company is not a solution that applies across the board to all cases of succession or asset management. The decision to create a holding company must be based on detailed planning, which takes into account the nature of the assets to be transferred, the costs involved in creating and maintaining the holding company, and the specific tax requirements applicable to each case. According to Mamede and Mamede (2018), the creation of a holding company requires a thorough prior study, as it involves operating costs and requires compliance with specific legal requirements, such as the formalization of a bylaw that clearly defines the company's objectives. Therefore, the process of creating a holding company must be conducted by specialized professionals, such as lawyers and accountants, who can assess the viability and benefits of this type of corporate structure. It is also important to emphasize that the creation of a holding company is not immune to risks. Although it offers significant benefits in succession planning and asset management, the misuse of this tool can generate legal and tax problems. Succession planning through a holding company may be challenged in court by heirs who feel harmed or by tax authorities if there is evidence of fraud or simulation. According to Mamede (2022), the misuse of legal personality can lead to serious legal implications, especially in cases of abuse of rights or attempted tax evasion. Therefore, the creation and operation of the holding company must be conducted transparently and in compliance with legal standards, to avoid litigation and penalties.

In short, the holding company is a valuable tool in estate and succession planning, providing benefits such as asset protection, reduced tax burden, and facilitation of the administration and succession of assets. However, its implementation requires careful planning and monitoring by qualified professionals to ensure that all legal and tax aspects are observed. As highlighted by Mamede and Mamede (2018), the holding company is an instrument that, when used correctly, can contribute significantly to the organization of family assets and business continuity. Therefore, its use should be considered as part of a broader succession and estate planning strategy that takes into account both the benefits and risks involved.

CONSTITUTION AND PAYMENT OF SHARE CAPITAL

The constitution and payment of share capital in a holding company are issues of great relevance in the context of corporate law, especially regarding succession planning and asset preservation. The partners' choice regarding the form and composition of the share capital has legal and economic implications that need to be carefully analyzed to ensure that the corporate structure meets the intended objectives. To this end, it is necessary to understand how the constitution and payment of this capital take place, considering the legal and practical aspects involved in the operation.

The constitution of a holding company involves, as in any company, the definition of the share capital, which corresponds to the total value of the resources that the partners or shareholders contribute to form the company's assets. According to Fazzio Júnior (2020), the share capital is one of the essential components for the constitution of a legal entity, representing the initial contribution of the partners or shareholders, who commit to the subscription and payment of this capital. This capital may consist of movable or immovable property or money, as established in the articles of association or the company's bylaws, and it is on this that the company's activities are based.

The payment of the share capital in a family holding company is generally done by transferring part of the family's assets to the company, which characterizes it as a patrimonial company. It is not necessary to transfer all the assets, and it is possible to choose certain assets, such as equity interests, forming a holding company, or just real estate, creating a real estate company, for example. There is flexibility in choosing the couple's assets that will be used to pay up the share capital of the holding company, and all assets may even be transferred. After the transfer, the assets become the property of the company, while the partners become holders of the shares or stocks of that company. (Mamede; Mamede, 2018).

When establishing a holding company, the payment of the share capital is particularly important, since, in many cases, the holding company is used as a vehicle for succession planning, and the share capital often reflects the assets that make up the family's wealth. This contribution of assets can be made either at the time of the company's establishment or later, through a capital increase.

The payment of real estate or corporate shares in the holding company is a procedure that requires attention to the assessment of the assets, the formalization of corporate acts, and compliance with legal provisions. As Venosa (2024) observes, the

payment of non-monetary assets in the share capital of a company must follow strict assessment criteria to ensure that the value attributed to the assets is compatible with the amount subscribed by the partners. In this sense, Brazilian legislation requires that the payment of share capital with assets be accompanied by an accurate assessment, which may require the hiring of experts or specialists to prepare technical reports.

Additionally, the payment of capital with real estate requires the formalization of a public deed, since, according to Article 108 of the Brazilian Civil Code, “the transfer of ownership of real estate worth more than thirty minimum wages shall only be carried out using a public deed”. This procedure is essential to ensure that the payment is duly recorded, both in the company's books and in the property registry, avoiding possible future questions about the validity of the transaction. Therefore, when opting to pay capital with real estate, the partners must follow the legal procedures required to transfer the property to the company.

On the other hand, when the payment of capital is made through the transfer of shares or stocks of other companies, the procedure is simplified, since there is no need for a public deed. In this case, the articles of association or the bylaws of the holding company must provide for the subscription and payment of capital with equity interests, and the transfer of these shares or stocks must be recorded in the corporate books of the companies involved. In family holding companies, it is common for all share capital to be subscribed and paid up at the time of incorporation, which usually occurs through the transfer of assets to the company, such as equity interests or other assets, whether movable, immovable, tangible or intangible, such as trademarks and patents. However, it is important to note that this practice is not mandatory; it can be agreed that the payment will be made later, in installments, although this situation is rare in the creation of family holding companies (Mamede; Mamede, 2018). In this way, the holding company comes to hold shareholding or corporate control of the family businesses, facilitating the management and administration of the assets.

Another important aspect to be considered when paying up the share capital of a holding company is the tax impact of this operation. The transfer of assets or equity interests for the payment of capital may give rise to the incidence of taxes, such as ITBI (Property Transfer Tax), in the case of real estate, or ITCMD, in the case of donations of shares or stocks. However, Brazilian legislation offers some tax exemptions for these transactions, as provided for in Article 156, paragraph 2, item I, of the Federal Constitution,

which establishes that ITBI does not apply to the transfer of assets or rights incorporated into the assets of a legal entity, provided that this transfer is not onerous.

In short, the formation and payment of the share capital in the holding company are essential steps that require care and attention, especially in the assessment of assets, the formalization of corporate acts, and compliance with tax legislation. Payment with real estate or equity interests can bring significant advantages for succession planning and the management of family assets, as long as it is carried out by legal standards. In this way, the holding company consolidates itself as an effective structure for centralizing the management of assets and ensuring business continuity between generations.

FAMILY HOLDING AS A FORM OF SUCCESSION PLANNING: ADVANTAGES AND DISADVANTAGES

The holding company as a form of succession planning is a strategy widely adopted by business families and individuals with significant assets to organize the transfer of their assets and ensure the continuity of their businesses between generations. This model offers a series of legal and tax advantages, allowing the succession process to occur in a structured, efficient, and less costly manner. Over the years, several authors have discussed the importance and benefits of using holding companies in the context of succession, highlighting their role in preserving family assets and mitigating conflicts between heirs.

According to Silva, Melo, and Rossi (2023), succession planning, carried out through a holding company, allows the division of assets between heirs to be anticipated, while they are still alive, thus avoiding the complex and time-consuming probate processes that usually occur after the death of the family patriarch or matriarch. This mechanism provides greater control over the assets since the founder of the holding company can maintain the usufruct of the shares and, consequently, the administration of the assets. Furthermore, the holding company facilitates the distribution of shares among the heirs, allowing all of them to participate in the management and benefit from the income from the estate without the need for direct transfer of assets.

Another relevant aspect addressed by Silva, Melo, and Rossi (2023) is the fact that the creation of a holding company in succession planning can significantly reduce the costs and tax burden on the succession. In Brazil, the succession of assets is heavily taxed by the Tax on Transmission Causa Mortis and Donations (ITCMD), which can represent a

considerable loss for the family's assets. However, when transferring assets to a holding company, the heirs receive shares in the company, which can be done through a donation during life, with usufruct reserved for the donor. In this way, the payment of high taxes that would be due in a traditional probate process is avoided.

In addition to tax issues, the holding company offers a structure that allows greater stability and continuity in family businesses, especially in business families. Using a holding company to control family businesses allows governance and management rules to be established in advance, ensuring that business management follows guidelines previously defined by the founder. This is particularly important to avoid family disputes that could compromise business continuity since the separation between ownership of shares and management of companies can be formalized in the holding company's bylaws (Mamede; Mamede, 2018). Silva, Melo, and Rossi (2023) highlight that succession planning is one of the pillars of creating a family holding company, allowing for the advance and careful organization of the transfer of assets to heirs, in addition to ensuring an efficient succession in the management of businesses that may be part of the assets. This planning allows patriarchs to define, while still alive, the fate of their assets. Additionally, planning is crucial to protect family assets and ensure their continuity, by offering patriarchs mechanisms to safeguard their assets against unforeseen events, such as divorce or the death of heirs, which can often generate disputes and compromise family stability.

Therefore, the main advantages of a family holding company are: the protection of assets against third-party interference; the selection of more qualified heirs to manage the family business; and the prevention or reduction of conflicts at the time of succession, especially in the event of the death of one of the patriarchs; reduction of costs associated with the inventory process; planning for the payment of taxes related to the succession; and elimination of the need to divide or sell family assets to cover taxes and procedural expenses.

On the other hand, Oliveira (2014) highlights that some disadvantages may occur in the creation of a holding company, which executives must be aware of, such as financial, administrative, legal, and corporate aspects. Oliveira (2014) also mentions that the effective performance of the holding company will depend mainly on the way executives act and make decisions.

Mamede and Mamede (2018, p.120) emphasize that the creation of a family-holding company does not necessarily bring tax advantages, as tax results may vary according to

the corporate structure adopted. Therefore, the creation of a holding company should not be seen as a universal solution to tax issues; it is essential to consult experts to assess the specific situation.

The creation of a family holding company must take into account the asset and tax challenges, taking advantage of the available legal opportunities. Tax legislation can offer alternatives that minimize the tax burden, justified by adequate tax planning, which may include more complex corporate structures. Therefore, tax planning must be an ongoing process, given that Tax Law is dynamic and subject to frequent changes. Adopting effective tax planning is essential to deal with constant legal and regulatory changes, as well as to take advantage of tax incentives and tax refinancing (Mamede; Mamede, 2018).

The creation of a Patrimonial Holding Company, like any legal entity, involves costs, which may include operating expenses, registration, fees, and taxes. Estate planning must take these costs into account to assess the advantages of forming a legal entity. If the assets are small, the expenses to create the company may make this option unfeasible. In this case, it may be more advantageous to keep the assets in the individual's hands and plan the succession through other methods, such as drawing up a will. Therefore, a careful evaluation of each alternative is essential (Silva; Melo; Rossi, 2023).

The creation of a family holding company is especially advantageous for families with large assets or with business ventures, since, centralizing asset control in a single legal entity, facilitates the management of assets and avoids the fragmentation of assets among the heirs. This centralization is important to ensure the continuity of family businesses, which often face difficulties when control is fragmented among several heirs. In addition, the holding company allows the founder to establish clear rules for the administration and succession of the business, protecting the assets from untimely or misguided decisions by the heirs.

Another relevant point is that the creation of a holding company in succession planning can also be advantageous from the point of view of asset protection. This is because, when transferring personal assets to the holding company, these assets become the property of the legal entity, which can offer greater protection against potential personal creditors of the founder or his heirs. Thus, the holding company acts as a legal barrier, separating the personal assets of the founder and his heirs from the assets of the company, ensuring greater security in the event of litigation or judicial executions. The use of holding companies in succession planning has become increasingly common in Brazil, especially

among families who wish to avoid long and costly probate processes. By anticipating the distribution of assets through the donation of shares, with reservation of usufruct, the heirs already begin to participate in the administration and income of the assets, while the founder of the holding company maintains control over the management of the assets. This not only facilitates the succession process but also allows the founder to have greater control over the fate of his assets, ensuring that they will be managed according to his wishes, even after his death.

It is essential that planning is carried out with the help of specialized professionals and that all legal and tax issues are duly analyzed. The use of a holding company as a form of succession planning is not a single, ready-made solution for all families, but must be adjusted to the particularities of each case, taking into account the assets involved, the interests of the heirs, and the applicable legislation. For Mamede (2018), there are situations in which it is advantageous to establish and/or maintain a holding company, while in others it is not the best option. It is essential to seek a specific solution for each individual, family, asset configuration, business, or group of businesses.

In short, the holding company is an effective tool for succession planning, as long as it is used appropriately and in compliance with current legislation. Its establishment allows for more efficient management of family assets, which can reduce tax costs and avoid lengthy probate processes. Furthermore, it offers greater security and stability for the continuity of family businesses, protecting assets from litigation and ensuring that the founder's wishes are respected after his death.

CONCLUSION

The use of holding companies as an instrument for succession planning has been gaining prominence in the Brazilian legal and business scenario and is a tool widely adopted by those seeking to efficiently organize the transfer of their assets and businesses to future generations. After a more detailed analysis of this strategy, it is possible to conclude that holding companies offer a series of advantages that go beyond simple asset organization, playing a fundamental role in preserving family wealth, reducing conflicts between heirs, and optimizing taxes. Firstly, holding companies allow for greater predictability and control in the succession process, since they allow the founder to determine, while still alive, how their assets will be divided among the heirs. This planning avoids the extension of probate processes, which can often drag on for years, causing

financial and emotional losses for the family. Unlike probate, which generally involves the distribution of assets proportionally to the heirs, holding companies facilitate the distribution of company shares, allowing the assets to be divided more equitably and by the founder's wishes. This possibility of adjusting the division of assets according to the interests of the family patriarch or matriarch is one of the main advantages of holding companies in the context of succession.

Furthermore, the creation of a holding company allows the founder to maintain control over the assets, even after donating the shares to the heirs. This is possible through the reservation of usufruct, which guarantees the donor the right to enjoy the assets and the income generated by them while he or she is alive, without this interfering with the heirs' right to ownership of the shares. This tool is essential to ensure that succession planning meets the interests of the founder, while also providing greater financial stability to the family. By guaranteeing usufruct, the founder maintains control over the management of the assets, being able to closely monitor the administration of the assets and the participation of the heirs in the management of the holding company, which avoids potential conflicts and future problems.

The holding company also offers a series of advantages in terms of mitigating family conflicts in the succession process. By centralizing the assets in a single entity, the holding company allows the heirs to participate jointly in the administration and income, which can avoid disputes over direct ownership of the assets. In many families, the succession process is marked by disputes between the heirs, who often disagree on the best way to manage or dispose of the inherited assets. By establishing clear governance and management rules in the holding company's articles of association, the founder can anticipate and minimize these disputes, providing a more harmonious and organized environment for the administration of the assets. In addition, the holding company allows for a clear separation between the ownership of the shares and the administration of the assets, which avoids the fragmentation of asset control and ensures greater continuity in the management of the family business.

Regarding taxation, the holding company stands out as an effective tool for reducing the tax burden on the succession. In Brazil, the tax on the transfer of assets due to death and donations (ITCMD) is one of the main sources of taxation in the inheritance of assets. By opting to create a holding company and donate the shares to the heirs with reservation of usufruct, the founder can avoid the incidence of this tax at a later date, since the transfer

of assets occurs during life and gradually. This strategy can result in significant savings for the family since the ITCMD amounts can vary from state to state, and in some cases, reach high percentages on the total value of the assets transferred. Therefore, succession planning through a holding company is an attractive alternative for those who wish to minimize the financial impact of the inheritance.

In addition, the holding company offers asset protection, since when transferring personal assets to the legal entity, these assets become the property of the company, which can protect them from possible personal creditors of the founder or his heirs. This separation of assets is especially relevant for business families or for individuals who wish to protect their assets from risks associated with professional or business activities. The holding company thus allows family assets to be managed independently and protected from litigation that could compromise their integrity.

Furthermore, the continuity of family businesses is another fundamental point ensured by the holding company. Many family businesses face difficulties in management and continuity after the death of the founder, especially when there is no adequate succession planning. The creation of a holding company to control family businesses makes it possible to create clear governance rules, preventing the management of the business from being fragmented or subject to conflicting decisions among the heirs. In this way, the holding company acts as an instrument for preserving the business legacy, ensuring that the companies continue to operate efficiently, even after the transfer of control to the next generation.

However, it is important to emphasize that the creation of a holding company as a form of succession planning requires careful planning and the assistance of specialized professionals. The creation of the holding company involves a series of legal, tax, and operational issues that must be observed to avoid future problems. In addition, each case is unique, and the holding model must be adjusted to the needs and particularities of the family and the assets in question. The lack of adequate planning may result in questions from tax authorities or even in disputes between heirs, compromising the benefits intended by the creation of the holding company.

Therefore, given everything that has been stated, it can be concluded that the creation of a holding company as an instrument of succession planning presents itself as an effective solution for the organization of assets and the continuity of family businesses. The legal, tax, and operational advantages offered by this corporate structure make it an

attractive choice for families who wish to ensure an orderly and efficient succession. By allowing the division of assets to be anticipated, the founder's control to be preserved, the reduction of conflicts between heirs, the protection of assets, and tax savings, the holding company plays a central role in modern succession planning.

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