

Choosing the Tax Regime for Private Pensions – Possibility of a New Option for the Beneficiary

A Escolha do Regime Tributário para Previdência Privada – Possibilidade de uma Nova Opção para o Segurado

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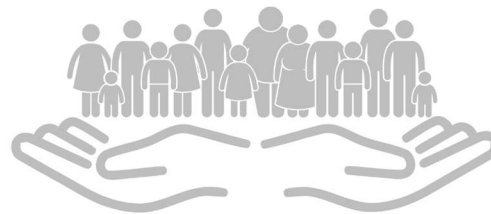
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ABSTRACT: This article aims to analyze the changes in the tax legislation for supplementary pension plans, specifically with regard to the timing of the option for the tax regime. The changes made to Law No. 11,053 of 2004 by Law No. 14,803 of 2024 allow the choice of tax regime to be made when the accumulated amount is first redeemed or when the supplementary pension benefit is obtained. With this legislative change, beneficiaries who were already in this condition before January 11, 2024, and who opted for the regressive regime will not be able to opt for the progressive regime. However, if these pensioners and beneficiaries were already in

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:1-19.

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this condition before the enactment of Law 14.803/2024 and were being taxed under the progressive regime, they may opt for the regressive taxation regime.

KEYWORDS: Pension funds; option moment; tax regime.

RESUMO: O presente artigo visa analisar as alterações na legislação tributária da previdência complementar, especificamente quanto ao momento de opção pelo regime de tributação. As modificações introduzidas na Lei nº 11.053, de 2004, pela Lei nº 14.803, de 2024, permite que a manifestação sobre o regime de tributação possa acontecer quando do primeiro resgate do valor acumulado ou quando da obtenção do benefício de previdência complementar. Com essa mudança legislativa, assistidos e beneficiários que já se encontravam nessa condição antes de 11 de janeiro de 2024 e que forem optantes pelo regressivo não poderão optar pelo Regime progressivo. Entretanto, se estes assistidos e beneficiários, que já estavam nesta condição antes da edição da Lei nº 14.803/2024 e que estiverem sendo tributados pelo regime progressivo, poderão optar pelo regime regressivo de tributação.

PALAVRAS-CHAVE: Previdência complementar; momento da opção; regime tributário.

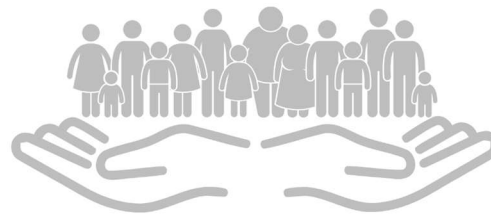
1 INTRODUCTION

Taxation for the Brazilian private pension system underwent a significant change in 2024. Participants and beneficiaries can now choose the taxation regime when they start receiving benefits or withdrawing their reserves, replacing the rule that determined this choice should occur when joining the benefit plan.

Although it may seem simple, changing the timing of the tax regime applicable to retirement benefits is extremely important for the private pension sector. The creation of the regressive tax regime, which may result in the application of an income tax rate of 10% on retirement income, regardless of the amount of income received, was intended to encourage long-term savings,

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:2-19.
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which is essential in a country where life expectancy increases every year, making it unfeasible for Social Security to support the growing elderly population.

Since joining a supplementary pension plan is complex, full of formalities for those who are starting their adult life, and considering that the choice of tax regime will impact an uncertain future for the citizen, forcing them to choose a taxation method that will only be known to be advantageous or not years after joining the plan, is to present the young person with many uncertainties, even harming their very desire to join a benefit plan.

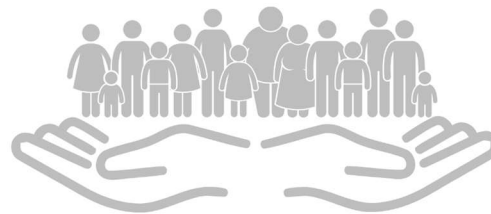
Unlike the progressive income tax regime, which is the standard for all income, the regressive tax regime involves a tax rate on retirement income that decreases as the social security reserve accumulation period increases. It is a definitive and exclusive form of taxation at the source and does not include the deductions provided in the progressive regime. Such income is not added to the taxpayer's other income for taxation purposes.

When creating the personal income tax assessment system, the tax legislator may apply a 10% tax rate on income, regardless of the amount received, to encourage long-term savings. This system only applies to income paid by open or closed supplementary pension entities. Therefore, the inductive nature of the rule that institutes the regressive income tax regime for supplementary pension plans is evident. It is worth transcribing Schoueri's understanding in identifying tax rules of an inducing nature:

Inducing tax rules are thus identified based on their function. As an abstract cut, referencing such rules will only highlight a function (or one of the several functions) that the tax rule performs. Therefore, the object of this study is defined as follows: by inducing tax rules, we understand an aspect of tax rules identified based on one of their functions, the inducing one. [...] the legislator links a consequence to a specific behavior, which may consist of an advantage (incentive) or an increase of a tax nature (Schoueri, 2005, p. 30).

There are benefits for all parties involved – participants, who will have less onerous taxation; the Federal Union, which will have its debts extended and more investments in the





national economy; and pension entities, which will have an increase in the number of participants and in the amount saved to be invested.

In any case, the State must always be consistent when encouraging certain conduct by adopting extra-fiscal policies, under penalty of nullifying its effects and not achieving its objective. In this regard, there was a need for evolving the tax norm, which occurred almost ten years after the publication of Law No. 11,053 (Brasil, 2004), which instituted the regressive regime, with the publication of Law No. 14,803 of January 11 (Brasil, 2024a).

The new Law reworded § 6, article 1, of Law No. 11,053 (Brazil, 2004), changing the moment of the option for the regressive taxation regime. The participant can exercise it until the moment of obtaining the benefit or requesting the first redemption relating to the amounts accumulated in benefit plans, which will be irrevocable.

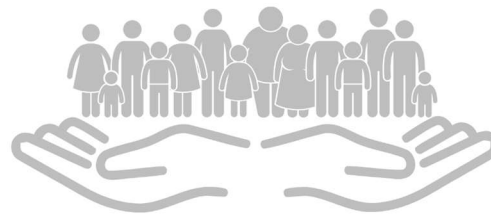
§ 6º The option referred to in the caput of this article may be exercised up until the moment of obtaining the benefit or requesting the first redemption relating to the amounts accumulated in benefit plans operated by a supplementary pension entity or by an insurance company or in Fapi and shall be irrevocable (Brasil, 2004).

Thus, the option for the regressive regime may be exercised by the participant until the moment of obtaining the benefit or requesting the first withdrawal. Consequently, those who had not opted for the Regressive Regime when they joined the plan and, therefore, would be subject to the Progressive Taxation Regime upon retirement may, at the moment of obtaining the benefit or requesting the first withdrawal, opt for the Regressive Regime, if it suits them.

Law No. 14,803 (Brasil, 2024a) did not limit itself to amending Law No. 11,053 (Brasil, 2004), only about the timing of the tax regime's options. It also introduced its provision, which provides that participants who opted for the regressive tax regime in the past may again exercise the option for the progressive tax regime until the moment of obtaining the benefit or requesting the first redemption; that is, it made the irrevocability of the option made initially under the aegis of the previous legislation more flexible.

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:4-19.
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In short, the option exercised by the participant when joining the plan (Regressive or Progressive Regime) is no longer valid, and he/she must exercise it in the future when receiving the benefit or redemption, which will allow for an accurate analysis of the tax regime that is most advantageous to him/her.

The question that still raises some doubts and that this study intends to answer is: Can the beneficiaries, thus considered the participants enjoying the benefit, review the option made in the past, as was the opportunity given to the participants who have not yet requested the benefit or redemption?

2 ANALYSIS AND SCOPE OF LAW N° 14.803/2024

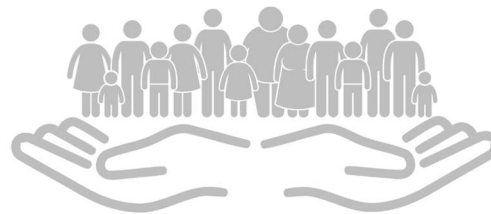
Why is there a doubt about the possibility of the beneficiary-participant already enjoying benefits, and who, before the validity of Law No. 14.803 (Brazil, 2024a), made his choice of the taxation regime (when joining the benefit plan) to change his choice of the taxation regime? Initially, it is worth highlighting the heading of Law No. 14.803 (Brazil, 2024a) itself, which is worded as follows:

HEADNOTE: Amends Law No. 11,053 of December 29, 2004, to allow participants and *beneficiaries* of a supplementary pension plan to opt for the taxation regime when obtaining the benefit or the first redemption of accumulated amounts (Brazil, 2024a). (emphasis added by the authors)

According to the website of the Federal Senate, the heading of a law, in legal terms, is the summary or abstract of the content of the Law, which appears at the beginning of the text: rubric. It also means that text is reduced to the essential points: summary, synthesis, and synopsis. In other words, the heading is a summary of the content of the Law. In this case, the heading of Law No. 14,803 (Brasil, 2024a) provides that it amends Law No. 11,053 (Brasil,

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:5-19.
ISSN 2966-330X





2004) to allow participants and beneficiaries of a supplementary pension plan to opt for the taxation regime when obtaining the benefit or the first withdrawal of accumulated amounts.

The doubt also arises given the inclusion, by Law No. 14,803 (Brasil, 2024a), of § 8, in article 1, of Law No. 11,053 (Brasil, 2004), which expressly mentions beneficiaries. Transcribe as follows:

§ 8º If the participants have not exercised the option for the new tax regime referred to in this article, *the assisted, the beneficiaries, or their legal representatives* may do so, provided that the requirements for obtaining the benefit or redemption are met (Brasil, 2004). (emphasis added by the authors)

Notwithstanding the mention, in the title of the Law, of beneficiaries, as well as the mention of beneficiaries in §8 above, it could be argued that the wording of the Law is not precise in the sense of admitting that beneficiaries who in the past when they joined the benefit plan, had the opportunity to choose their tax regime and failed to do so, may exercise the option for the regressive tax regime under the new tax rule since they are not starting to enjoy benefits, as they are already receiving private pension benefits.

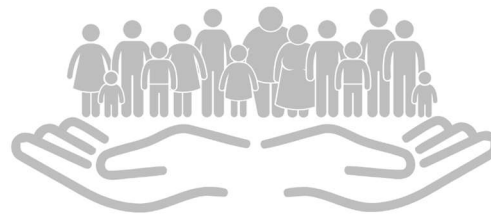
Firstly, as already highlighted, the new Law clearly defined the moment for exercising the option for the Tax Regime. According to the new Law, the option could only occur until the benefit is obtained or the first redemption is requested.

When does the benefit occur? When the participant meets the retirement requirements in the plan regulations and submits his/her application. Those receiving the benefit have already passed this point. The new rule would cover them if the Law established a time frame that would cover them, as Law No. 11,053 (Brasil, 2004) did, about participants who had already joined the plan when it was published.

It could then be argued that § 8, reproduced elsewhere, makes express reference to beneficiaries. In this sense, by mentioning beneficiaries, the legislator would have demonstrated

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:6-19.
ISSN 2966-330X





his intention to extend to them the right to exercise a new option so that the tax regime that is currently most advantageous to them would apply to them.

However, carefully reading § 8 does not favor such an understanding. It is because its text establishes an initial condition for the beneficiaries, their legal representatives, or their beneficiaries to opt for the regressive regime. The beneficiaries, their legal representatives, or their beneficiaries may only opt for the regressive regime if the participants have not exercised this option.

Now, why condition the exercise of the option of the assisted beneficiaries or their legal representatives for the regressive tax regime to the non-exercise of this option by the participants? What is the causal link between the non-exercise of the option by the participants, which generates the possibility for the assisted beneficiaries or their legal representatives to exercise it?

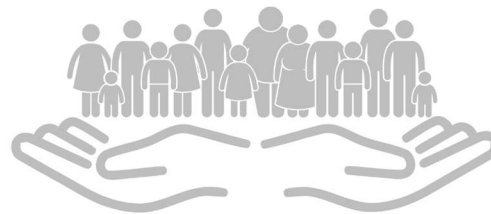
To answer these questions, we bring to the table Article 8 of Complementary Law No. 109 (Brazil, 2001), which defines who are considered participants and who are considered beneficiaries:

Art. 8. The following are considered:
I - participant, the individual who joins the benefit plans; and
II - beneficiary, the participant or his/her beneficiary enjoying a continuous benefit (Brasil, 2001).

From the start, note that the supplementary legislator considers not only the participant receiving the benefit to be assisted but also his/her beneficiary.

Considering that the participant now has the right to exercise the option for the Regressive Regime until the moment of obtaining the benefit or requesting the first withdrawal, if this participant has not exercised this option – and only in this case – the assisted, the beneficiaries





or their legal representatives may do so, as long as the requirements for obtaining the benefit or withdrawal are met.

Regarding the conjunction “or”, Domingos Paschoal Cegalla, in his work, *Novíssima Gramática da Língua Portuguesa* (Cegalla, 2014), classifies it as an “alternative coordinating conjunction”:

A conjunction is an unchangeable word that connects sentences or words of the same sentence. Conjunctions are divided into coordinating and subordinating. Coordinating conjunctions can be:

[...]

– Alternatives

They express alternative, alternation: or, or ... or, now ... now, now ... now, either ... that, etc. The kidnappers had to surrender, or they would be killed.

Either you study or get a job (Cegalla, 2014).

Given that the Law must be interpreted according to the relevant grammatical rules, when the legislator used the conjunction “or”, he expressed that if the participants have not exercised the option for the new regressive regime, “or” the assisted, “or” the beneficiaries, “or” their legal representatives may do so, giving the idea of alternative or alternation, as explained by Domingos Paschoal Cegalla.

This circumstance may occur in three cases:

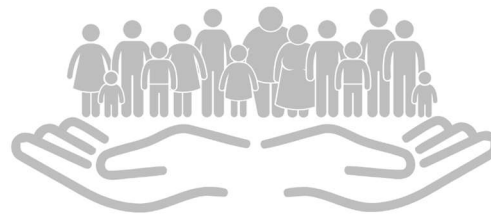
1. If the participant, when obtaining the benefit or requesting the first withdrawal, has not opted for the regressive regime, remaining in the progressive regime;
2. If the participant dies before obtaining the benefit or requesting the first withdrawal *or*
3. If the participant is affected by some disability before obtaining the benefit or requesting the first withdrawal.

Thus, if participants have not exercised the option for the new regressive regime in the face of one of the three hypotheses listed above, “or”, “either” the assisted, “the beneficiaries”, “or” their legal representatives may do so.

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:8-19.

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It means that:

1. When obtaining the benefit or requesting the first withdrawal, suppose the participant has not opted for the regressive regime but remains in the progressive regime. In that case, his/her beneficiary (Assisted Beneficiary) may do so OR.
2. If the participant dies before obtaining the benefit or requesting the first withdrawal, his/her beneficiary may do so, provided that the requirements for obtaining the benefit or withdrawal are met. *Or*
3. If the participant is affected by some disability before obtaining the benefit or requesting the first withdrawal, his/her legal representative may do so, provided the requirements for obtaining the benefit or withdrawal are met.

For these reasons, the reading of Law No. 14,803 (Brasil, 2024a) did not provide entities or beneficiaries with the necessary security to change from the progressive to the regressive taxation regime.

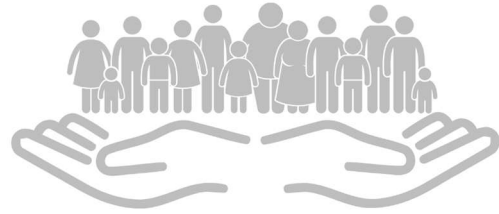
3 RECEITA FEDERAL DO BRASIL REGULATORY INSTRUCTION No. 2,209/2024

The plausible doubt regarding the possibility of assisted persons and beneficiaries who are already receiving benefits being able to opt for the regressive taxation regime seems to have been clarified with the publication of RFB Normative Instruction No. 2,209, of August 8 (Brazil, 2024b), which came to regulate the provisions of Law No. 14,803 (Brazil, 2024a), thus amending SRF Normative Instruction No. 588, of December 21 (Brazil, 2005), which provides for the taxation of pension benefit plans.

Normative Instruction consists of a normative act issued by an authority with established or delegated authority to regulate the matter in order to regulate the execution of the Law and guide the administrative units about more specific matters. Considering that Law No. 14,803 (Brasil, 2024a) deals with issues of a federal tax nature, the Normative Instruction that regulates

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:9-19.
ISSN 2966-330X





its execution and guides tax agents must be issued by the Federal Revenue of Brazil. It is precisely what Normative Instruction RFB No. 2,209 (Brazil, 2024b) did.

IN SRF No. 588 (Brazil, 2005) regulated, in its article 13, the option for the regressive taxation regime. Considering the legislative change in January 2024, IN RFB No. 2,209 (Brazil, 2024a) changed the wording of Article 13. See how the new wording of paragraph 5 is:

§ 5º The option dealt with in the caput and § 1º:

I - until January 10, 2024, could be exercised until the last business day of the month following the entry into the benefit plans operated by a supplementary pension entity or by an insurance company in the Fapi or the life insurance plan with a survival coverage clause, irrevocably even in the cases of portability of resources and transfer of participants and their respective reserves, and covered any benefits offered by the respective plan; and

II—From January 11, 2024, it may be exercised irrevocably until the moment of obtaining the benefit or requesting the first redemption relating to the amounts accumulated in benefit plans operated by a supplementary pension entity, an insurance company, or in Fapi (Brazil, 2024a).

So far, nothing is new since the Normative Instruction practically replicates what is already provided for in Law No. 14,803 (Brasil, 2024). The paragraph above mentions that the option for the regressive regime, until January 10, 2024, could be exercised until the last business day of the month following the entry into the benefit plans operated by a supplementary pension entity. Moreover, as of January 11, 2024, it may be exercised irrevocably until obtaining the benefit or requesting the first redemption.

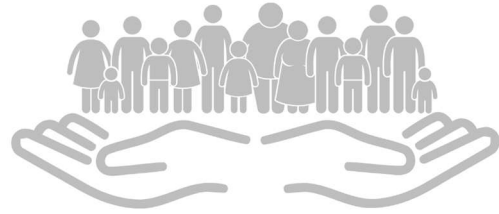
§ 7 of IN SRF No. 588 (Brazil, 2005) , as amended by IN RFB No. 2,209 (Brazil, 2024a), provides that the regressive regime option was exercised only by participants through an Option Term when joining the benefit plan until January 10, 2024.

The new feature includes § 7º-A in Normative Instruction No. 588 (Brasil, 2005). Transcribe it as follows:

§ 7º-A. The option mentioned in item II of § 5º will be:

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:10-19.
ISSN 2966-330X





I - exercised individually by participants, insured or quota holders, including assisted persons, and beneficiaries or their legal representatives, using:

- a) Option Term, in the form of the Sole Annex; or
- b) statement before the supplementary pension entity or insurance company, duly completed and signed, in digital or paper format; and

II - communicated by the supplementary pension entity or insurance company to the RFB through e-Financeira (Brasil, 2005). (emphasis added by the authors)

This paragraph states that, as of January 11, 2024, the option for the regressive regime will be exercised individually by participants, insureds, or shareholders, including beneficiaries and beneficiaries or their legal representatives.

In a normative text, inclusive is only used in the sense of inclusion of something and as an antonym of exclusivity.

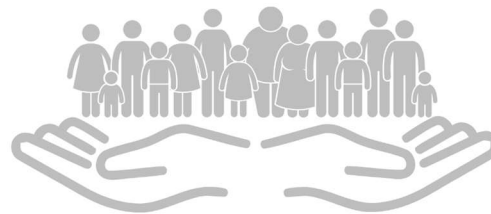
In other words, according to the understanding set forth by the Brazilian Federal Revenue Service, participants, including beneficiaries, may indeed exercise the option for the regressive regime.

Again, one could ask if the option for the regressive regime must be made up until the moment of obtaining the benefit or requesting the first withdrawal, considering that the beneficiary has already passed this moment (since he or she is a participant enjoying the benefit), how can the beneficiary's option for the regressive regime be accepted?

Given the clarity of the wording of § 7º-A, which states that the option for the regressive regime as of January 11, 2024, will be exercised individually by participants, including beneficiaries, it is impossible to interpret it without using the Legislative Technique Manual.¹, used by legislators at federal, State, and municipal levels.

¹ Legislative technique: guidance for standardizing works / Sérgio F. P. de O. Penna, Eliane Cruxên B. de Almeida Maciel; presentation by. — Brasília: Federal Senate, Special Secretariat for Publishing and Publishing, 2002.





According to the Manual, to obtain logical order in a normative text, the paragraphs must express the aspects that complement the rule outlined in the article's caption and the exceptions to the rule established by it (Penna; Maciel, 2002, p.127).

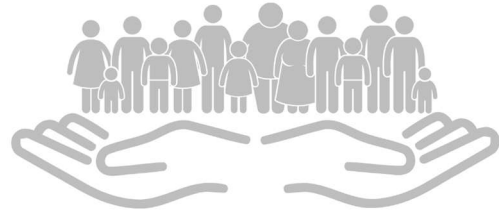
In the case under analysis, § 7º-A expressly refers to item II of § 5º, thus demonstrating that it intends to complement, clarify, or exempt it. Section II of § 5, in turn, establishes that as of January 11, 2024, the option for the regressive regime may be exercised irrevocably until the moment of obtaining the benefit or requesting the first withdrawal. Thus, by providing that participants, including beneficiaries, may exercise the option referred to in section II of § 5, § 7-A, it is admitting an exception for beneficiaries to the time limit established for exercising the option for the regressive regime. Otherwise, the mention of beneficiaries would not make sense. Furthermore, it is worth remembering that the rule does not contain useless words and must be coherent.

Indeed, the basic principle of legal hermeneutics is that, according to which the Law does not contain useless words: *verba cum effectu sunt accipienda*. In other words, words must be understood as having some effectiveness. Useless words are not presumed in the Law (Maximiliano, 1965, p. 262). It is also a principle of hermeneutics that determines that the interpretation of the norm must seek coherence so that it cannot be admitted that the propositions stated by the legislator are contradictory.

According to Carlos Maximiliano, “value is given to all words and, mainly, to all sentences, to find the true meaning of a text; because it must be understood in such a way that all its provisions have effect, no part is inoperative or superfluous, null or without any meaning” (Maximiliano, 2011, p. 204).

Given the express determination of § 7º-A, to the effect that the option for the regressive taxation regime will be exercised individually by participants, including beneficiaries, to state





that beneficiaries cannot exercise such right would imply assuming an unreasonable legislator, who sets out to achieve certain ends but fails to achieve them.

To help understand how the rules should be analyzed, the three essential rules of interpretation developed by Norberto Bobbio will be used, the first of which is the following:

No rule may be given a meaning that makes it incompatible with another rule of the system (and, if two rules appear to be incompatible, the interpreter must make every possible effort to eliminate the contradiction by resorting to an interpretation that results in its correction or the abrogation of one of the two rules) ; (Bobbio, 2021, p. 3)

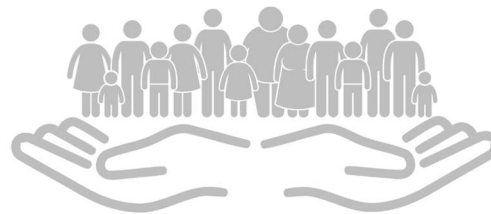
In the present case, the rule establishing that the option for the regressive regime must be exercised until the benefit is obtained or until the first withdrawal is requested seems incompatible with the rule that states that the regressive regime will be exercised individually by participants, including beneficiaries. This is because the individual will always be a participant and not a beneficiary until the benefit is obtained or until the first withdrawal is requested.

However, by allowing the beneficiary to opt for the regressive regime in a paragraph after the one that establishes the moment for exercising this option, the rule should be interpreted as meaning that the general rule regarding the moment for exercising the option for the regressive regime will not be observed for the participant who was already enjoying the benefit when Law No. 14,803 (Brazil, 2024) was published.

Bobbio's second rule of interpretation determines that “Every rule must be interpreted taking into account the purpose or purposes for which it is set, based on the idea that it is the most appropriate means that a reasonable person can find to achieve this or these purposes in a given situation [...]” (Bobbio, 2021, p. 3)

Considering that the very title of Law 14.803 (Brazil, 2024a) states that such Law amended the previous one to allow participants and beneficiaries of a supplementary pension plan to opt





for the taxation regime at a time other than the time of joining the plan, the interpretation aimed at the purpose set out in the Law (providing an incentive for pension savings and a benefit to long-term savers) should authorize those participants who were already enjoying the benefit when it was published also to be reached by it.

Paulo de Barros Carvalho clarifies that the preamble, the summary, and the explanatory statement all have the function of disciplining intersubjective behaviors:

2.3.4.2. Preamble, summary, and explanatory statement

(...)

Although the author uses syntactical means that suggest the form of a descriptive report, as is typical, their function is fundamentally to discipline intersubjective behaviors. In Law, the preamble tends more towards the side of the values that the normative message intends to implement, therefore emphasizing its rhetorical tone. At the same time, the summary aims to summarize the legislated product, extract it, and reduce it to its simplest expression. The explanatory statement emphasizes the historical institutional climate in which the diploma was produced, often discussing theses in conflict when elaborating a certain dogmatic tendency (giving the reasons). (Carvalho, 2009, p. 423).

To conclude the triad of teachings on the interpretation of Bobbio, the jurist teaches that “No rule can have a meaning such that it seems to be the repetition of another rule, that is, a useless rule” (Bobbio, 2021, p. 3).

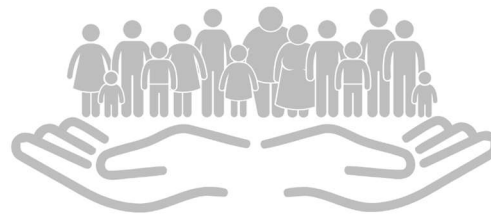
Assuming that article 13 of IN SRF no. 588 (Brazil, 2005), with the amendments of IN RFB 2.209 (Brazil, 2024b), mentions, more than once, the possibility of participants opting for the regressive taxation regime, adopting the interpretation of § 7º-A, item I, that only participants can opt for the regressive regime, implies accepting that this provision is useless since it does not bring anything new.

Therefore, we understand that the correct and reasonable interpretation of the rule is that participants, including those enjoying benefits when Law no. 14.803 (Brazil, 2024a) was published, may opt for the regressive regime.

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:14-19.

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It is also important to note that the option will be made individually, as expressly determined in § 7º-A, item I, transcribed above. This means that if there is more than one beneficiary for the same participant, they may choose the option that suits them best.

As Paulo de Barros Carvalho² Explains that, for social change to produce legal effects, it must be provided for in the legal norm. In other words, for acts to be configured as “legal acts,” it is essential that they are described in the language of Law:

For a legal fact and a relationship between legal subjects, a language is also necessary: a language that describes the event that occurred in the world of experience and a language that describes the legal bond established between two people. The corollary of accepting these assumptions is extremely serious because if changes occur in the social circumstance, described in the antecedent of the legal rule as giving rise to legal effects, but which for any reason do not find their form of language, they will not be considered legal facts and, consequently, will not propagate related rights and duties (Carvalho, 2008, p. 10).

Another point to be highlighted is that Normative Instruction RFB No. 2,209 (Brazil, 2024a) adds § 10 to the aforementioned article 13, which is nothing more than the reproduction of § 8 of Law No. 14,803 (Brazil, 2024a) and which was the subject of our previous explanation and interpretation.

The reproduction of paragraph 8 of the Law, only in § 10 of article 13 of the Normative Instruction, that is, after the statement that participants, including those assisted, can opt for the regressive option (which occurred in § 7º-A), is revealing. This is because every rule has a logical order, and its paragraphs express the aspects that complement the statement in the article. The command of § 7-A should not be confused with the command of § 10.

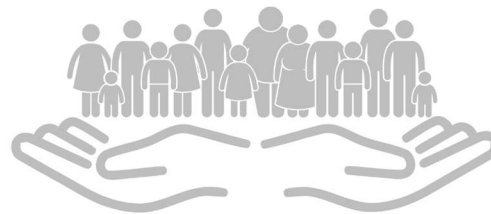
Therefore, we understand that § 7º-A added by Normative Instruction RFB nº 2.209 (Brazil, 2024a) to article 13 of Normative Instruction SRF nº 588 (Brazil, 2005), now grants to assisted and beneficiaries (retirees and pensioners who were already in this condition when Law nº

² CARVALHO, Paulo de Barros – *Legal Basis of Incidence*, 6th edition, Saraiva, 2008 p. 10

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:15-19.

ISSN 2966-330X





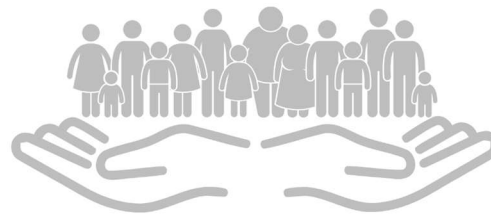
14.803/2024 was published) the opportunity to exercise the option for the regressive taxation regime.

It is also worth noting that SRF Normative Instruction No. 588 (Brazil, 2005), with the amendments introduced by RFB Normative Instruction No. 2,209 (Brazil, 2024), allows, in article 11-A, that participants who joined benefit plans of a social security nature structured in the defined contribution or variable contribution modalities up until January 10, 2024 and have opted for the Regressive taxation regime may be subject to the Progressive taxation regime, through a new option until the moment of obtaining the benefit or the request for the first redemption made as of January 11, 2024. However, its § 2 expressly determines that this right does not apply to participants or beneficiaries receiving the benefit.

It should be noted that Normative Instruction RFB No. 2,224 (Brazil, 2024) amends article 2 of Normative Instruction RFB No. 2,209 (Brazil, 2024), establishing the deadline until December 30, 2024, for the option of the progressive or regressive tax regime, in the event of obtaining the benefit or requesting the first redemption that occurs between January 11 and September 30, 2024.

It should be noted that this new wording of article 2 of Normative Instruction RFB No. 2,209 (Brazil, 2024a), when establishing a deadline for exercising the option, explicitly mentions cases of obtaining a benefit or requesting the first redemption between two dates: January 11 and December 30 of the current year. Therefore, there is no link between those already in the condition of beneficiaries on a date before the January 11, 2024 milestone and the December 30, 2024 deadline.





4 CONCLUSIVE SUMMARY

The Legislative Branch acknowledged the request of the leading players in the Brazilian private pension system: participants and beneficiaries, pension entities and associations that represent them, and supervisory bodies (PREVIC and SUSEP). The enactment of Law No. 14,803 (Brazil, 2024a) implemented a vital tool to promote supplementary pensions by changing the old tax rule and allowing participants, beneficiaries, and their legal representatives to choose the tax regime when receiving their benefits or redeeming reserves and no longer when joining the benefit plan.

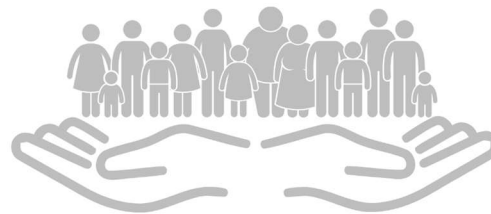
Law No. 14,803 (Brasil, 2024a), despite expressly stating that the option for the taxation method could also be exercised by beneficiaries, beneficiaries and their legal representatives, in addition, of course, to participants, was not sufficiently clear about the possibility of beneficiaries and beneficiaries who were receiving benefits when Law No. 14,803 (Brasil, 2024a) was enacted and were being taxed under the progressive regime, being able to opt for the regressive regime, since the moment of exercising their option had occurred when they joined the benefit plan, even if this possibility was plausible according to the interpretation of the Law and was in line with the legislator's objective.

With the publication of Normative Instruction RFB No. 2,209 (Brazil, 2024b), which added § 7º-A to article 13 of Normative Instruction SRF No. 588 (Brazil, 2005), any doubts regarding the possibility of beneficiaries and retirees (retirees and pensioners who were already in this condition when Law No. 14,803 (Brazil, 2024a) was published) to exercise the option for the regressive taxation regime were clarified.

In short, with the publication of Law No. 14,803 (Brazil, 2024a) and its regulation by Normative Instruction RFB No. 2,209 (Brazil, 2024b), beneficiaries and retirees who were already in this condition before January 11, 2024, and who opted for the regressive regime will not be able to opt for the progressive regime. However, these assisted beneficiaries were already

Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:17-19.
ISSN 2966-330X





in this condition before the enactment of Law No. 14,803 (Brazil, 2024a) and were being taxed under the progressive regime. In that case, they may opt for the regressive taxation regime.

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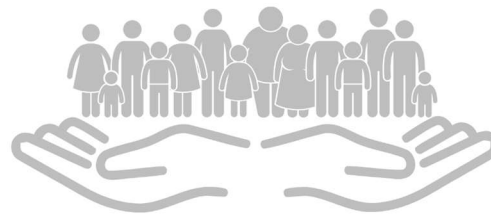
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Revista ANPPREV de Seguridade Social – RASS – v. 1, n.2, 2024, pp:18-19.
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