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Tax reform in Brazil: a chance for fiscal justice and sustainability

Reforma tributária no Brasil: uma oportunidade para a justiça fiscal e a sustentabilidade

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Abstract

The Brazilian government has chosen a reformist approach regarding the raising of public funds. Society is often called upon to bear expenses that exceed its economic capabilities when faced with socioeconomic crises. This situation is worsened when public policies repress economic development and call on the poorer social classes to pay for public expenditures to maintain the status quo of the most privileged. At the current juncture, several factors affect the economic performance of a country, including environmental issues. Brazil stands out on these issues, as its biodiversity is one of the highest on the planet. This study analyzes the need for tax reform in Brazil that takes environmental policies into account, a strategy that has been used successfully by economically developed countries. The objective is to verify the socioeconomic profile of Brazil and map its current tax system, demonstrating the characteristics that determine if it is a progressive or regressive system. Based on this analysis, a simplified form of taxation is proposed that can provide greater social benefit and is more beneficial and effective than retrograde labor reforms. Finally, it demonstrates the feasibility of establishing a new foundation for Brazilian taxation, based on environmental steering taxes to promote sustainability.

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Kewywords: Tax reform; environmental steering tax; tax law; economic development; legal reform.

Resumo

O Estado brasileiro toma uma direção reformista na captação de recursos para os cofres públicos em face das crises socioeconômicas. Muitas vezes, a sociedade é chamada a assumir despesas que excedem sua capacidade econômica. Para agravar a situação, as políticas públicas reprimem o desenvolvimento econômico, convocando justamente as classes sociais economicamente desfavorecidas para cobrir os gastos públicos, mantendo o status quo dos mais privilegiados. Na situação atual, vários fatores pesam no desempenho econômico de um país, entre eles, a questão ambiental. O Brasil se destaca nessas questões por possuir uma das maiores biodiversidades do planeta. Este estudo propõe analisar a necessidade de uma reforma tributária no Brasil que incorpore políticas ambientais, estratégia que os países de econômias desenvolvidas têm utilizado com sucesso. A pesquisa verifica o perfil socioeconômico do Brasil e mapea seu atual sistema tributário, mostrando quais características revelam se esse sistema é progressivo ou regressivo. A partir dessa análise, propõe-se uma forma simplificada de tributação que pode representar um benefício social maior, que sem dúvida será muito mais benéfico e eficaz do que reformas trabalhistas retrógradas. Por fim, demonstra a viabilidade em se estabelecer uma nova base tributária brasileira, baseada na tributação ambiental extrafiscal como promotora da sustentabilidade.

***Palavras-chave**: Reforma tributária; extrafiscalidade ambiental; direito tributário; desenvolvimento econômico; reforma normativa.*

Contents

1. Introduction

Brazil is a country that produces a great amount of legislation whose norms often overlap and contradict one another. It is known as having one of the largest systems of tax legislation in the world. Not only is the amount of legislation and the continuous creation of standards frightening, but the consequences of this lack of regulation are as well. Taxation and income distribution on national soil are identified as major problems in the national tax system, with a series of resulting socioeconomic consequences. The Brazilian tax system concentrates its collection of taxes on goods and services (indirect taxes), corresponding to 51% of the total gross tax burden,

to the detriment of taxes on income and property (direct taxes), creating a regressive tax system that requires the population with less economic capacity to finance most of the State's expenditures (FERNANDES; CAMPOLINA; SILVEIRA, 2019, p. 6). The question then becomes how to simplify the tax system in order to reduce these inequalities and promote the creation of a progressive system.

Taxes are levied on three forms of contributory capacity, that is, there are three material objects that are sources of revenue: income, wealth, and consumption (FERREIRO LAPATZA, 1976, p. 231; NIETO MONTERO, 1995, p. 917; ESPADAFOR, 1999, p. 23, 51; IGLESIAS CASAIS, 2008, p. 41). They are the goods upon which the State determines taxable events to be able to collect for the public coffers and to meet public expenses (*e.g.,* health, education, security). With specific regard to income, profits and dividends in Brazilian territory are exempt, causing a great distortion and inequality in income distribution.[1] On the other hand, five taxes are levied on goods and services. The complexity of the tax issue is driven by the need for State entities to collect enough to cover public expenses and meet the growing demand for public services, rights that are constitutionally guaranteed.

Taxation passes through the economic system, and it cannot be denied that the State must encourage economic activity, while it has the responsibility to collect taxes to satisfy its obligations. Likewise, the Government is responsible for its choices and actions regarding the use of environmental resources, both renewable and nonrenewable. The way a country manages its policies and administers and directs its taxes can lead to the destruction of biological diversity, the acceleration of global environmental crises, and the generation of an increasing gap between rich and poor (MARTINE; ALVES, 2015).

Therefore, the tax reform implemented in Brazil by the Constitutional Amendment 132, from December 20, 2023, needs to reduce the regressiveness of the current tax system. This necessary fiscal reform should leverage an old possibility that has been supported by economists and tax experts for decades, and correct existing distortions in the market, which do

[1] Law 9.249/1995, art. 10: "Profits or dividends calculated based on the results collected as of January 1996, paid or credited by legal entities that have been taxed based on the actual, presumed, or arbitrated profit, will not be subject to income tax at the source, nor will they make up part of the income tax base of the beneficiary, whether individual or legal entity, domiciled in the country or abroad." This means that the income is taxed exclusively by the legal entity, and investors who receive it are exempt, whether they are individuals or legal entities, domestic or foreign.

not account for negative externalities (PIGOU, 1920; VAQUERA GARCIA, 1999; MAY; MOTTA, 1994; TUPIASSU, 2006; RABBANI, 2012). This tax reform should: a) correct the distortions that cause tax injustice and, consequently, violate tax principles; and b) promote the incorporation of environmental elements in fiscal taxes, and through the possible creation of steering taxes.

This study is justified precisely by the existence of socioeconomic distortions promoted by the state tax system itself that, in addition to denying fundamental rights and guarantees, generates overwhelming and regressive inequalities, calling on those with the least contributory capacity to shoulder the highest tax burden. This study will make use of a bibliographic-deductive review to understand the socioeconomic profile of the Brazilian State and its tax system, examining the distinctions between regressive and progressive systems, in order verify the simplified taxation proposals that may contribute to reducing the existing tax distortions, including the possibility of instituting environmental taxes in a concrete and broad way through steering taxes.

2. The socio-economic profile of Brazil and its tax system

Throughout its history, Brazil has faced great difficulties in economic growth, which has reflected directly on its tax revenues. From the time of colonization, with the exploitation of sugar, gold, and slave labor, a dynamic economy was not fostered in Brazil, which perpetuated itself even after independence in 1822, even while the industrial revolution expanded other national economies between 1820 and 1870. With the fall of the empire in Brazil and the end of slavery in 1888, even with intense immigration into the country, economic growth remained insignificant. During the period from 1913 to about 1980, the economy grew steadily, suffering a grave setback with the 1982 crisis, which continued for several years (COASTWORTH, 2007, p.1.).

The country has experienced rapid growth over the past two decades, characterized by significant exploration of industrial, agricultural, mineral, and natural resource exploitation, as well as growth in the manufacturing and service sectors. However, in recent years, instabilities brought on by political corruption scandals have led to slow national GDP growth (FMI, 2019). Data from the year 2021 reveal that 39.9 million Brazilians (14.27 million families) live in extreme poverty, a condition where families must survive on an income of R$ 89 per month (about US$ 16.57), the highest rate

since 2014, when there were 10.3 million people living in extreme poverty (BRASIL, 2021). The Brazilian State is continuing to fail to protect human rights, being among the countries having the most unequal income distributions in the world (SILVA, 2019, p. 115; FERNANDES; CAMPOLA, 2019).

Brazil has more than 212 million inhabitants (IBGE, 2021), and because of its legacy of slavery, 26.5% of the population still lives below the poverty line. In general, Brazilian society also continues to have great weaknesses in the areas of education, health, housing, and basic sanitation (IBGE, 2018). This aligns with the perception that Brazil is an economically wealthy country, but one that sins when it comes to preserving its citizens' basic rights, a flaw that could be corrected through simplified and progressive taxation, which complies with tax justice.

The strong Brazilian federal government is a legacy of 19th century centralism, which prevented municipal and state governments from being able to borrow funds, either internally or externally, to invest in necessary infrastructure, such as schools, hospitals, basic sanitation networks, roads, ports, railway networks, etc. Even after the end of centralist imperialism in 1889, the concentration of power at the national level increased regional inequalities through poor public investment and unequal distribution of public goods, resulting in a well-developed south and a poorer central north. From this perspective, the tax and financial system of the 1988 Constitution of the Federative Republic of Brazil (CFRB) was characterized by its regionalist polarization, attributing revenue without attributing costs to states and municipalities, and referred to as "decentralization through absence" (ALMEIRA, 1995, p. 104-105; ARRETCHE, 1996, p. 64), which can be defined as the "decentralization of revenues and jurisdiction with no defined plan or action program between the Union and the federative entities," with the states and municipalities replacing the federal government in various areas of activity, such as health, education, housing, and sanitation (BERCOVICI, 2002, p. 19-20).

This fiscal disparity brought about by the Brazilian Constitution has been criticized by several authors, some of whom even defend the maintenance of revenues at the current level, but with a greater decentralization of jurisdiction to the states and municipalities. It should be noted that the federation does not necessarily seek the absolute financial self-sustainability of all its federated entities. What is sought is to reduce

socioeconomic heterogeneities through a process of social development (FERREIRA FILHO, 1995, pp. 63-66 e 137; OLIVEIRA, 1995, pp. 65- 89; AFFONSO, 2000, p. 127-152).

Within this spectrum, there is no way to sustain the decentralization of revenues without a corresponding decentralization of duties, a situation that has occurred in Brazil and generated a lack of coordination and cooperation between the federal government and the states. What is therefore required is decentralization linked to the strengthening of the institutional and administrative capacities of the federal government, it being the level of government responsible for directing and coordinating the implementation of decentralized policies by the states (ARRETCHE, 1996, p. 52-57, 68-74, 242-245).

Decentralization is linked to historical issues of regional inequality, which have never been treated as a national priority. The absence of a national development policy has sparked a fiscal war between states to attract industries. Therefore, under the argument that new job creation will be boosted, state governments have made a series of concessions, further reducing the available revenue that was previously destined for public policies. Instead of investing in their population, states have subsidized companies, often multinationals (RODRÍGUEZ-POSE; ARBIX, 1999; BERCOVICI, 2003), resulting in “social dumping”, a term used to designate nations that sell their goods at much lower prices because they pay their workers low wages and subject them to grueling journeys (SAAD, 1995, p. 174; DESTERRO E SILVA, 2020).

Policies to obtain more resources or industries for less-developed areas are useless without a public expenditure development and orientation policy at all levels, having the purpose of improving the quality of life of the population. The role of the federal government is clear: it must supply the planning and decision-making necessary at the supra-regional level. The lack of proper administration has led to a fiscal war, to the indebtedness of the states, to the “decentralization through absence” of social policies, and to the reconcentration of tax revenue in the federal sphere, all aligning with a lack of coordinated national policy (MARINS; OLIVEIRA, 2018, p. 158 e ss.).

It can be affirmed that there is no confusion in the distribution of jurisdiction. The anachronistic forms of regional action occur due to a lack of autonomy in the Brazilian federal system, because of the lack of a tax system that can sustain it. The revitalization of state autonomies could be a solution,

ending regional imbalances that disfavor the North and Northeast, converting them into territories that are constantly dependent on the intervention of the central government. Regional autonomy within a federation is based on the plurality of the system and, without causing a break in ties with the union, it attributes to the regions varying degrees of decentralization, culminating in a new, more participative statehood. However, this regionalism must always maintain balance in the system to protect the institutional values of the association that represents the federative pact. Note that with the administrative autonomy instituted by the Italian Constitution of 1947, financial autonomy was also granted, with the attribution of taxes and participation in the treasury's tax revenue in such a way that the states can spend whatever is necessary to perform their normal duties BONAVIDES, 2004, p. 53-55; PERGOLESI, 1962, p. 177).

It can therefore be seen that the Brazilian tax crisis is not a result of federalism, but of decentralization due to lack of planning, coordination, and cooperation between the federal government and the states, that is, the lack of effectiveness of the CFRB itself and the cooperative federalism that it expects. It is worth pondering whether the movement described by history was something planned by its protagonists to perpetuate the wealth of rich families or whether it grew out of successive unfortunate acts committed in ignorance by leaders promoting the deprivation of the populace to maintain social balance.

A tax regime motivated primarily by political values proves to be destructive to the interests of society and undoubtedly has a negative impact on the environment, as the production and consumption of natural resources are carried out at the lowest cost for producer-polluters. Therefore, the environmental factor is key in the process of social improvement, and environmental taxation can be seen as an alternative capable of mitigating unsustainable production and attributing the costs of pollution to the polluters. In fact, greater attention has been demanded for decades from the public sphere regarding environmental issues, and greater financial responsibility on the part of public entities will be required in the years to come, especially environmental steering taxes that can promote behavioral change through economic convenience, both on the part of producers, as well as consumers. This type of taxation allows economic agents to adapt their facilities and can promote a new paradigm of social behavior.

Regarding the power of taxation, the units of the Brazilian federation have administrative, political, and financial autonomy. These autonomies are associated with the capacity for self-organization that make up the federative system. Financial autonomy is therefore one of the pillars on which the federative system rests. However, this financial autonomy conferred on the Union, the states, the Federal District, and the municipalities does not equate with sovereignty, this being one of the structural principles that are established in the CFRB (art. 18, art. 37, § 8, art. 34). The determination of financial autonomy defines the system of income and expenses, with the purpose of bringing the public power closer to the citizen (GARCÍA MORILLO *et al.*, 1998, p. 15; FEITOSA, 2019).

The taxation power is the part of the financing system that occurs through tax instruments. The financing system is one of the parts that make up the financial autonomy of the federated entities, which is determined by: a) the constitutional delimitation of jurisdictions and the setting of competitive limits; and b) demarcation of resources that make up this autonomy, as explained below.

The concept of the State is inherently linked to the concept of the distribution of powers by a constitution, organizing affairs that should be the responsibility of the Union, the states, the federal district, and the municipalities. In general, jurisdiction is divided according to the "predominance of interest:" the Union will be responsible for matters in which the general or national interest predominates, while the states are assigned matters in which there is a predominant regional interest, with municipalities being responsible for matters of local interest (SILVA, 2019, p. 482). Despite this organization, there is often difficulty under the Brazilian federal system, and likewise in any modern state, in identifying what constitute the general, regional, and local interests, as they are often interconnected (e.g., health, education, and environmental protection).

Due to the inequality that plagues the various regions, mainly caused by insufficient direct collection, a technique of "vertical division and distribution of income" was instituted, with intergovernmental transfers from the Union to the states, the federal district (Art. 157, CFRB), and the municipalities (Art. 158, CFRB), these transfers being mandatory, direct, and not linked.

The insufficiency of the total collected by the states and municipalities is notorious, with these entities depending on constant transfers from the

Union. In 2018, the flow of financial resources from the population to the Brazilian State through taxes was 2,291.41 billion reais, equivalent to 33.26% of GDP (BRASIL, 2020)[2]. In other words, more than a third of what is produced in Brazil as goods and services is reverted to public coffers.

Of this total, the Union collected and administered 67.53%, the states 25.90%, and the municipalities 6.57%. However, following the distribution of the tax burden through constitutional transfers, in 2018, the Union kept 54.8% of the total tax revenue collected, with the states receiving 25.2%, and the municipalities receiving 20% (AFONSO; CASTRO, 2019, p. 8). The insufficiency of the taxes collected by the municipalities can be seen, which required transfers from the Union and the states superior to their own collections. This insufficiency is also reproduced at the state level, where transfers from the Union were also necessary.

The Brazilian reality reveals a situation of insufficient revenue at the state and municipal level that has been perpetuated over many years, in which there is a clear dependence on the Union to be able to afford the expenses demanded in each region. It will be necessary to reformulate the current collection system so that states and municipalities can fully achieve their financial autonomy and effectively obtain their political-administrative autonomy. It is advocated here While it is important to maintain financial transfer to regions of the country where they are necessary due to social and economic inequalities, this does not justify the failure of state and municipal entities to seek revenue to meet their expenses.

It is precisely at this point that environmental taxation can be framed within the Brazilian tax system: through the recognition of the need for economic agents to have to decide on the feasibility of maintaining a polluting activity by supporting the environmental tax burden, or change their behavior to more environmentally friendly ways. Environmental steering taxes will not bring fiscal emancipation for states and municipalities, as many theorists have long argued, since the new collection linked to environmental purposes is not concerned with the value collected, but with the motivation to avoid environmentally harmful effects. There is therefore still a wide area that can be explored by taxation in Brazil, especially in the field of steering taxes, which is yet another foundation for defenders of tax reform in Brazil.

[2] The Gross Domestic Product (GDP) corresponds to the sum of all final goods and services produced in a certain region, expressed as a monetary value, which in 2018, in Brazil, totaled 6,889.18 billion reais.

Professor Richard Miller Bird points out that regional governments are responsible for significant expenditures and any relationship between different subnational levels of government requires careful consideration. He emphasizes that the conventional tax allocation model is inappropriate for countries that have subnational governments. Subnational taxes must first allow for sufficient collection so that the wealthiest subnational units are essentially autonomous, from a fiscal point of view. Also, they must impose fiscal responsibility on the margins of subnational governments so that any transfer from the Union to subnational governments carried out for the purpose of regional equalization must be clearly marginal (BIRD, 1999, p. 5 e ss.). In the Brazilian case, research must demonstrate whether there should be a centralization of collection in practice and, if there is centralization, how it will be distributed among the federal entities regarding fiscal and extra-fiscal matters (ORAIR; GOBETTI, 2018; MACHADO; BALTHAZAR, 2017; PANDOLFO, 2019; FAGNANI e*t al.*, 2018).

3. Fiscal justice and progressive and regressive tax systems: the Brazilian tax reality

Regressive and progressive taxation systems can be differentiated by several characteristics. Objectively, it can be said that the progressive nature of the tax system is directly related to its compliance with tax principles, in particular with capacity to contribute, with progressivity, with equality, and with proportionality.

The principal characteristic of regressive systems is the disregard for the principle of the taxpayer's capacity to contribute and an emphasis on one’s capacity to consume. Everyone is called upon to contribute to the sustenance of public spending through a system that focuses more on consumption, meaning that, as everyone pays the same amount, there is a disproportional weight placed on those with a lower income. As a result, the principle of proportionality is also disregarded, burdening the poorest and the working class (FELICIO; MARTINEZ, 2019, p. 177).

The “progressivity” or “regressivity” of a tax system must be analyzed based on the fundamental principle of taxation, which is that of economic capacity, understanding progressivity within this system.

It can be affirmed that the dignity of the human being and the construction of a free, just, and solidary society is directly connected with the collective solidarity imposed by taxes graduated according to the

economic capacity of the taxpayer (see Art. 1, III; Art. 3, III, and Art. 145, § 1, CFRB). Economic capacity refers to the obligation to contribute in support of public spending, which necessarily implies a direct relationship with fundamental rights, because, in guaranteeing equal treatment in the support of public expenditures, there is a corresponding support for all of society that requires state services, thereby preserving the dignity of the populace (PÁEZ MEDINA, 2012, p. 85). Contribution to public spending is a duty driven by solidarity between human beings, which makes possible the carrying out of state activities.

In this sense, the proportionality that derives from the State's tax activity corresponds to the public expenditures distributed according to the ability of everyone to cover them. It should not be confused with the broad principle of proportionality as a form of legal exegesis for maintaining the unity of the normative system, which is applied during the analysis of the collision between fundamental rights and principles, and which considers the "application of possible limitations to rights, freedoms, or essential purposes of a legal system" (FORNIELES GIL, 2008, p. 261). In taxation, proportionality corresponds to the graduated application of the economic capacity of each taxpayer to contribute to public spending, as a result of the broader application of the principle of equality, in treating those that are unequal according to their inequality.

From this point of view, fiscal justice is presented as an idea that intends to construct a relationship between citizens, the State, and society, seeking to balance the tax burden in the system of duties, rights, and obligations (BOLAÑOS BOLAÑOS, 2017, p. 61). The Brazilian federal tax agency shows that the tax burden in the country between 2002 and 2018 varied between 31.39% and 33.26% of GDP (BRAZIL, 2020, p. 2). This means that more than one third of everything produced in the country is contributed as taxes.

According to the same official information, the principal tax bases in 2018 were income (7.19% of GDP and 21.62% of the total collected), payroll (9.11% of GDP and 27.39% of the total collected), property (1.54% of GDP and 4.64% of the total collected), goods and services (14.88% of GDP and 44.74% of the total collected), and financial transactions, 0.53% of GDP (BRASIL, 2020, p. 4). As seen previously, it is possible to divide the material objects of taxation into three broad categories: income, consumption, and assets. In this sense, the total taxation corresponding to income

encompasses both income and payroll, or 16.30% of GDP and 49.01% of the total tax collected. Consumption taxes, corresponding to goods and services purchased or rendered, total 14.88% of GDP and 44.75%. The collection on assets is equivalent to revenue on property, corresponding to only 1.54% of GDP and 4.64% of the total tax collected.

It can therefore be observed that the two major sources of tax collection in Brazil are income and consumption, with property responsible for only 5% of the total collected. This is one of the main targets of criticism by economists and tax analysts, and is one of the key flaws that contribute to the regressivity of the Brazilian taxation system. The element of indirect taxation in the tax burden, "added to a tax on income having a low degree of progressivity when compared to social inequalities, results in regressive effects on the tax system as a whole." VIANNA, 2000, p. 124).

The Brazilian federal tax agency itself includes data from the OECD to compare tax collection between countries. The tax burden in Brazil compared to the GDP is not as high as in other countries, with the OECD average being 34.2% compared to Brazil's 33.26%. The tax burden on income, profit, and capital gains corresponds to 7% in Brazil, with the OECD average being 11.4%; the burden on payroll is 9% in Brazil with an average of 9.9%; the burden on property is 1.5% in Brazil with an average of 1.9%; and the burden on goods and services is 14.3% in Brazil compared to the average of 11.1% of GDP, fourth highest in the world, behind only Hungary, Greece, and Denmark. The study indicates that Brazil has the highest tax burden in Latin America and the Caribbean, corresponding to 32.3%, with the average for the region being 22.8% of GDP (BRASIL, 2020, p. 6-10).

The indicators demonstrate that Brazil has a total tax burden similar that those of countries with developed economies and, compared to these, there is a lack of taxation on income and property with correspondingly increased taxes on goods and services, indicated by studies as the main factor behind the regressivity of the Brazilian taxation system. When compared to other countries in Latin America and the Caribbean, Brazil has a higher tax burden in all aspects: on income 7.03% of GDP, while the other countries average 6.10%; on payroll 8.97% with the others averaging 4.10%; on property 1.48%, with the others averaging 0.80%; and on goods and services 14.32%, with the other countries averaging 11.40%. In other words, despite being a country classified as an emerging economy, Brazil has a level

of taxation equivalent to countries with developed economies (BRAZIL, 2020, p. 10).

An analysis of the data collected by the Brazilian federal tax agency and the OECD studies shows that the main issue that needs to be corrected in the Brazilian tax system is the high taxation on consumption, i.e., taxes related to goods and services used, which is approximately 22% higher than the average of other countries, along with the weaker taxation on assets and income. The regressivity of the system is translated, therefore, into a system of taxation that emphasizes consumption, treating everyone with an "unequal equality," that is, ignoring the principles of economic capacity, of proportionality, and of equality itself, by imposing an equal tax burden on those who are in an unequal economic situation. The economically limited are required to pay for their basic needs with a tax burden, while the economically well-off are required to pay the same tax burden and are relieved of taxes on their property and income, in a clear distortion of the imperative of tax justice.

4. Proposal for simplified taxation and environmental taxation

Various studies and proposals for tax reform and simplification of taxes in Brazil have been underway for years: there were more than one hundred Proposals for Constitutional Amendments (PCA), each with countless modifications, aiming to reform the national tax system. Among these, PCA 45/2019 and PCA 110/2019 stood out, that in fact resulted in the Constitutional Amendment 132, from 2023. The core feature of the tax reform proposals in Brazil is a reduction in the number of taxes levied on goods and services, incorporating them into a single tax shared among the three entities of the Federation, with a single rate for all goods and services, called "Tax on Goods and Services" (*Imposto sobre Bens e Serviços - IBS*) or "Value Added Tax" (VAT), as it is currently applied in the European Union. A "Selective Tax" would also be introduced for specific goods with extra-fiscal objectives, to discourage certain behaviors, such as alcoholic beverages, cigarettes, etc.

The intention of these proposals is to unify five taxes into one: the Tax on Industrialized Products (TIP)[3], the Social Integration Program[4], the

[3] *Imposto sobre Produtos Industrializados – IPI.*

[4] *Programa de Integração Social – PIS.*

Contribution to the Financing of Social Security (*Cofins*), the Tax on Circulation of Goods and Services (*ICMS*), and the Services Tax (*ISS*). Added to these five taxes is a 26.9% tax on goods and services (10.2% of the Union, 14.7% of states, and 2.0% of municipalities), corresponding to 12.1% of the Brazilian GDP (ORAIR; GOBETTI, 2019, p. 13-14). In fact, all these taxes were unified in the IBS by the Art. 156-A of the CFRB.

The panorama of Brazilian taxes is a true "tax asylum," paraphrasing a 1959 study on the Italian tax system (GANGEMI, 1959), and is recognized as one of the "knots" impeding the country's economic and social development (JUNQUEIRA, 2015, p. 93). The reform proposals seek to nationally standardize taxes by simplifying the system, which will facilitate the calculation and collection of taxes, as well as improve fiscal transparency, creating a single tax on final consumption with a single rate (ORAIR; GOBETTI, 2019, p. 11). This would annihilate the fiscal war between the federated entities, in which some grant tax incentives and, when the incentive period has expired, investors migrate to other states or municipalities, with the burden falling, in the end, on a population that will not receive any long-term benefit.

One of the principal arguments against this in the inconclusive debate that has gone on for decades in Brazil is the supposed unconstitutionality of the standardization of taxes, which would override the autonomy of states and municipalities to manage their own budgets. Another argument is doubt about what a fair tax rate(s) would be that would correspond to all goods and services in a uniform manner throughout the entire country.

Despite these doubts, reform of the Brazilian tax system is necessary for public order and social justice. Society is crushed by a State that does not assure the minimum conditions for a dignified life, while it coerces them to insidiously pay through various fiscal facets. Tax simplification that can make the current system more agile and comprehensible is a maxim that should be among the priorities of any government, well ahead of any labor or administrative reforms.

In this sense, one of the foundations of this tax reform should be the inclusion of an environmental steering tax, an extremely late adoption when compared to developed countries, which have been implementing it since the 1970s (RABBANI, 2010, 2012 e 2013). The possibility of instituting environmental taxes and taxes related to environmental issues is generally understood, based on the principle of the polluter-payer (RABBANI, 2012,

2017c, 2017d). More precisely, within the environmental steering tax, the economic capacity principle begins to be adjusted to the environmental necessity, and it follows a new direction that adjusts and transforms it into what is called the polluting capacity principle, which is the materialization by the taxpayer of damaging the environment through a polluting activity (RABBANI, 2017b, p. 224-225), without denaturing economic capacity as the maximum and minimum limits of taxation: the tax cannot be confiscatory and should not fall upon those who cannot afford its imposition. Within the dynamics of judicial science, it can be said that environmental taxation is an adjustment to new socioeconomic and environmental realities, uses taxes to instrumentalize environmentally proper behaviors.

Within this reform proposal, environmental taxation must obey both the tax jurisdiction, and the environmental jurisdiction. The jurisdiction to legislate and institute cannot be delegated, that is, it can only be created by the jurisdiction holder (Art. 7 of the Brazilian National Tax Code - NTC). Instituting the tax is optional (Art. 8 of the NTC) and another entity cannot appropriate this jurisdiction (it is inappropriable). For example, the Tax on Large Fortunes (IGF), Art. 153, VII, of the CFRB, is of under the Union's exclusive jurisdiction. Once created, it can be administered by the other entities. One should not confuse the right to institute a tax with the ability to demand it from the active party, which includes supervision, collection, and execution (Art. 119 of the NTC). The jurisdiction holder and the active subject may or may not coincide, because, while the function of instituting a tax cannot be delegated, the function of being the active subject can be delegated to another public legal entity (Art. 7 of the NTC). Therefore, the functions of supervising, collecting, and executing the tax can be delegated to other public legal entities, with the function of tax collection able to be assigned to private legal entities (Art. 7, §3º of the NTC).

Environmental jurisdiction can be synthesized, in a general way, as common among the federative entities (Art. 23, clauses VI and VII, CFRB), with concurrent legislative jurisdiction (Art. 24, clause VI, CFRB), with the Union (due to its position of supremacy over environmental protection) responsible for editing general rules of a national nature, that are binding on the states, federal district, and municipalities. The goal of environmental protection, within the jurisdictions attributed by the Constitution, enables the federative entities, through ordinary legislature and within the spheres of their jurisdiction, to adopt various public policies and instruments to fulfill

the constitutional duty to defend and preserve the environment, with environmental taxation included among these measures.

Environmental taxations were not listed in the Brazilian Constitution as taxes that can be instituted by the federal entities, requiring the creation of legal authorization through a complementary law. PCA's 45/2019 and 110/2019 precisely sought to allow environmental taxes to be created, i.e., taxes created specifically for the purpose of protecting the environment (and not to collect money for public expenses).

Within the limits of the taxation power, newly listed in the Brazilian Constitution by the Constitutional Amendment 132, from 2023, in the Art. 153, VIII, states that the Union is responsible for imposing taxes on "production, extraction, commercialization or import of goods and services harmful to health or the environment, in accordance with complementary law". This is the new opened door to legislate the environmental taxation in Brazil, but still needs to the regulated by a complementary law[5].

It is interesting to note that tax intervention in the environmental domain in Brazil is still in its embryonic stage, had has not reached the degree of diffusion it has in countries with developed economies, such as the Member States of the European Union (EU). Although they are not environmental taxes per se, some examples of this type of intervention can be cited: a) Law 5,106 of September 2, 1966, which grants tax incentives to forestry enterprises that reforest and conserve soil or water; b) The Rural Territory Tax (RTT), insofar as the CFRB provides for taxes that enforce the social function of property through the adequate use of available natural resources and preservation of the environment (Art. 186, II, CFRB); and c) Law 10,165 of December 27th, 2000, which amended Law 6,938 of August 31, 1981, that inserted articles 17-B through 17-O and instituted the

[5] Along with the modifications brough by the Constitutional Amendment 132, from 2023, the Art. 43, § 4º states that the Union can articulate action within the same geo-economic and social complex, aiming at its development and the reduction of regional inequalities, in which "regional incentives" (such as exemptions, reductions or temporary deferral of federal taxes), whenever possible, will consider criteria of environmental sustainability and reduction of carbon emissions.

Also, the Art. 155, § 6º, II positions that tax rates on "ownership of motor vehicles" may have different rates depending on the type, value, use and environmental impact.

The new Art. 158, § 2º, III considers that on partition of tax revenues, 5% of the IBS belongs to the municipalities on environmental preservation indicators, according to what State legislation disposes.

And the Art. 159-A stablishes the "National Regional Development Fund", to reduce regional and social inequalities, and obliges in the § 2 º that in the application of these resources, the States and the Federal District will prioritize projects that provide for environmental sustainability actions and reduction of carbon emissions.

Environmental Control and Inspection Fee (TCFA), to control and inspect potentially polluting activities that use natural resources, in which the triggering event is the regular exercise of the police power vested in the Brazilian Institute of the Environment and Renewable Natural Resources (*IBAMA*), whose constitutionality was recognized by the Federal Supreme Court (BRASIL, 2006).

A systematic interpretation of the CFRB leads to the conclusion to the possibility of instituting environmental taxes. The new Art. 153, VIII brings this opportunity to the Union, and all mechanisms are available to the legislature to promote the constitutional and infra-constitutional changes necessary to incorporate this form of intervention in favor of the environment. Thus, the use of taxation as a tool to attribute the costs of environmental degradation caused by facilities, activities, or consumption finds no impediment in the constitutional order, and is even encouraged, as observed by the normative provisions cited.

On a practical level, the institution and creation of environmental taxes by the Union, states, federal district, or municipalities can only be widely applied by means of a systematized change to some constitutional provisions, combined with changes in the Brazilian infra-constitutional legislation, specifically in the NTC itself, which has the status of a complementary law.

The preferable solution would be a constitutional amendment, following the model of the Spanish and Portuguese constitutions, which treat the issue of taxation in a summarized and general way, reserving its organization and application for specific legislation. As an example, the new constitutional text may mention that the tax system generally covers the obligation of everyone to contribute to public spending, according to the principle of economic capacity and following a fair, egalitarian, progressive, and non-confiscatory system, with the power to tax falling under the exclusive jurisdiction of the State, with states, the federal district, and municipalities able to establish and require taxes through complementary law, according to the CFRB and a New National Tax Code to be established, which incorporates an environmental steering tax. In this sense, see Articles 31 and 133 of the Spanish Constitution of 1978, and Articles 103 and 104 of the Portuguese Constitution of 1976.

Alternatively, there is a possibility of establishing environmental taxes through the residual jurisdiction of the Union, using complementary Law, cf.

Art. 153, VIII of the CFRB, combined with the Constitutional Amendment of Art. 167, clause IV of the CFRB, which allows for the institution of taxes not foreseen in Art. 153, as long as they are non-cumulative and do not have a triggering event or calculation basis specific to those listed in the Constitution (Art. 154, clause I of the CFRB). The modification of Art. 167, clause IV of the CFRB, should add to the list of exceptions the possibility of linking the environmental tax revenue to an ecological purpose, which translates into using the revenue from the environmental tax to cover environmental expenses, to manage a specific fund, or be destined to a specific environmental agency. The environmental tax was even enforced by the Constitutional Amendment 132, of 2023, that added the paragraph 3 to Art. 145 of the CFRB, which allowed the National Tax System to observe the principles of tax justice and environmental protection, what, in our perspective, is in accordance to the polluter-pays principle. In any case, the rule foreseen in Art. 157, II, of the CFRB, which makes mandatory the delivery of 20% of the proceeds from the tax created by the Union in the exercise of its residual jurisdiction to the states and the federal district, should still be respected.

If these constitutional reforms do not come to pass, one way out would be to intensify the targeting of the fiscal taxes already foreseen in the constitutional text and direct them towards environmental purposes. For example, the Rural Territory Tax (RTT) exemption at the federal level for forested areas that make up "legal reserves," where the cutting of trees is prohibited (Art. 10, clause II, line *a*) of Law 9.393/ 1996, c/c Art. 41 of Law 12.651/2012), or the establishment of lower Tax on Industrialized Products (TIP) rates for alcohol-powered vehicles (Federal Decree 755/1993, which established a rate between 25% and 30%, according to the specifications, for gasoline-powered vehicles, and a rate between 20% and 25%for alcohol-powered vehicles). Examples on the state level include the “Ecological” Tax on Circulation of Goods and Services (TCGS) laws (Paraná State Ecological TCGS, State Complementary Law 59/1991, which provides for the apportionment of 5% of the TCGS, referred to in Art. 2 of Law 9.491/1990, to municipalities with springs used for water supply and environmental conservation units; the Ecological TCGS of the State of Minas Gerais, State Law 13.803/2000, which establishes differentiated criteria for the division of tax revenue, among them one referring to the municipality indices obtained from care of the environment through conservation units and waste and

sewage treatment; and Mato Grosso do Sul's Ecological TCGS, instituted by State Complementary Law 77/1994, which altered State Complementary Law 57/1991, which establishes a 5% tax for distribution among the municipalities located in environmental preservation units).

It must be emphasized that Art. 255, §3 of the CFRB mentions that activities and conduct that are harmful to the environment will subject the violators (individuals or legal entities) to criminal and administrative sanctions, independent of the obligation to repair the damage caused. Once again, attention needs to be drawn to the fact that environmental taxation is not levied on illicit activities, but on those that are, in fact, licit. The objective is not to tax typical unlawful and culpable facts. The constitutional provision cited supports this model. One cannot argue that environmental taxation would be prohibited in Brazil by the existence of the mentioned constitutional provision. Finally, the constitutional amendment that would alter the CFRB to institute environmental taxes could alter Art. 225, §3, to mention that environmental taxes would be levied on activities that are legal, but undesired by the State, reserving the application of administrative, fiscal, and criminal sanctions for illegal activities, in addition to civil liabilities.

5. Conclusion

The Brazilian tax system is a cancer: the taxes applied are aggressive and unrestrained, their petrified obsolescence reproduced over the decades, crushing the economic power of the majority of the Brazilian population, who bear a high regressive tax burden, precisely in taxes on consumption of goods and services. Brazil urgently needs true fiscal reform that holds to the maxim of social and environmental justice, reform that is opposed by political and economic groups with large incomes and accumulated wealth.

The retrograde Brazilian tax regulations protect the wealth of the economically favored classes that, at times, may have a direct relationship with politicians. In practice, the creation of a simplified, global, unified, coordinated, and transparent system is avoided, a system that could be adapted from the many diverse models in the specialized literature of economists and tax specialists, and that have been successfully adopted by various countries. The organization of the Brazilian State is characterized by an excess of federal power, which has driven unequal regional development and the attribution of revenue to municipal and state entities without requiring proper accounting. This distortion could be corrected by the

reduction of social inequalities and the fostering of environmental protection through the promotion of true tax justice that leads to cooperation between the Union and the other government entities, strengthening decentralized public policies that allocate public resources to improve quality of life and the conservation of nature. One of the flaws of the Brazilian tax system is its decentralization due to lack of planning and, to correct this, the revitalization of state autonomy and the correction of regional imbalances should be promoted.

Within the newly born tax reform in Brazil by the Constitutional Amendment 132, of 2023, it is expected that the included environmental taxation should be implemented by complementary law, considering that it is capable of correcting market failures, assigning to polluters and users of the ecosystem the financial obligation of their production and consumption. Tax justice requires an attribution of each person's capacity to bear the costs of the public treasury, and the environment, because of its transindividual nature (which surpasses individual and public interests), should be incorporated into this tax transition. In fact, it is important to speak of environmental tax justice, which should equip the State with the means to deal with the attacks on the environment that have plagued the Brazilian territory since colonization.

The struggle for citizenship passes through a stage of opposition to injustice, including injustice imposed by the State. The power of taxation is one of the monopolies of the State, which has the duty to correct distortions in a system that is unfit to carry out its function, that of raising funds for the public coffers, always obeying the maxims of social and environmental justice, in which governmental choices should benefit the broad collectivity and favor ecosystemic balance. This includes sustainability, in its three pillars: social, economic, and environmental.

From the data analyzed, it can be seen that tax reform in Brazil requires an immediate imposition on large fortunes, as well as a better degree of progressivity in tax rates on income and wealth, while at the same time, taxes on consumption of goods and services need to be merged, in order to improve tax justice and meet the principles of economic capacity, generality, equality, progressivity, and non-confiscation.

In addition to these structural fiscal reforms, it is also necessary to implement the environmental steering taxes that will, according to the new tax reform by the Constitutional Amendment 132, of 2023, and based on the

models adopted by European countries, fall into the category of "special taxes" (which are those indirect taxes on the consumption of specific items that serve both as revenue and to promote certain policies, e.g., health, energy, or environmental policies), with the objective of reducing polluting activities that are legal but undesirable. Environmental users must be allowed to change their behavior. With an environmental steering tax, economic agents and players decide whether it is more beneficial for them to maintain their production and consumption processes, or whether it is better for them to change their behavior to more environmentally friendly configurations, including the substitution of technologies and materials.

These changes are socioeconomic and environmental imperatives. Society demands new standards of living that are not contemplated by the current regulations. Legislators are urgently needed to implement the tax system reform. Financial stagnation prevents the achievement of social and economic development. Tax justice is a matter of survival in the globalized world. To deny tax reform is to keep society imprisoned, preventing it from becoming sustainable.

To reject the possibility of green steering taxes in Brazil is to petrify the scientific advances that were the target of discussions in the early 1970s. Human beings have evolved and realize that nature is inherent to their existence; and governments must understand that doubts about environmental protection are outdated issues: there is no uncertainty regarding its importance for the perpetuation of the human race. On one hand, tax changes may contribute to minimize the suffering that has dragged on for centuries in Brazil, with a high tax burden having a distinctly regressive character. On the other hand, new tax reform should incorporate environmental steering taxes as a tool to mitigate anthropic conduct that is socially accepted but undesirable by a society in constant evolution. The newly born tax reform is an imperative to apply the tax justice, and the implementation of environmental taxation is a chance for the Brazilian State to protect its inestimable natural wealth.

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