Constitutional Guidelines of the Brazilian Tax System

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SUMMARY

The constitutional guidelines of the Brazilian tax system highlight the fundamental rights of the citizen-taxpayer in the Constitution. In Brazil constitutional guidelines are very important in the fight to control state excesses by limiting taxpaying powers and insistently repeating the set of fundamental rights and guarantees of the citizen-taxpayer. Today one of the great challenges of Brazil is to economically develop a federated system and actually have fiscal justice regarding so many inequalities.

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INTRODUCTION

Contents:

The article highlights the Brazilian Tax System as the constitutional guidelines emphasizing the need of this system to adapt to new paradigms of the Law in the 21st Century. In Brazil, the Constitutional Tax System made great progress with the provision expressed in the "limitations to the taxpaying power", strengthening the citizen-taxpayer rights at constitutional level. In this "principle logic" era reaffirmation of the principles expressed in the constitutional text focusing on the materialization of these specific rules, or in simple and far-reaching[1] steps must be sought.

1. BRAZILIAN FISCAL FEDERALISM

Brazil is characterized by its federative form of State, consisting of the indissoluble alliance of the Federal Union, 26 State-members; 5,564 Municipalities and the Federal District, integrating all the Federal Republic of Brazil[2] .

Entities of the Federation are equipped with autonomy, which allows sovereignty to the Federal Republic of Brazil to act internationally.

When the autonomy of federated entities was established, it meant that they do not have a hierarchical relationship between themselves[3] , being able to have their own administration and management, however, economic dependence on States and poorer municipalities seriously compromise such autonomy, since there should be no talk about autonomy without the adequate financial capacity.

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1 *Please be advised that all quotes from Brazilian and Portuguese authors are a free translation of the author.*

2 *As provided for in the Federal Constitution: "Art. 1º. The Federal Republic of Brazil, formed by the undivided union of the States and Municipalities of the Federal District, becoming a Democratic State un the Rule of the Law and its main principles are:*
I – Sovereignty:
II - Citizenship;
III – The dignity of the human being;
IV – Social values of work and prívate initiative;
V – Political pluralism.

3 *In this regard, Roque Carrazza states: "Individuals working a hierarchical relation between the central government and the local governments work in contradiction. What there truly is among these political entities, are autonomous and exclusive fields of action, outlined strictly in the Magna Charta, that no Law One of the great challenges of the Brazil is exactly to economically develop a federated, system before so many existing inequalities and a geographical dimension accentuated by such differences."* ***(Curso de direito constitucional tributário. São Paulo: Malheiros, 1996, p. 96).***

Brazil versus the large regional differences, financial autonomy is still fragile, having huge inequalities between federated entities and the nation.

One of the great challenges of Brazil is to economically develop a federated[4] system, amidst so many existing inequalities and a geographical dimension accentuated by such differences.

The Brazilian Federal fiscal system requires having the conditions for the States and municipalities to have not only political autonomy, but also, mostly, financial autonomy, reaching independence as provided by for Paulo Bonavides[5] :

> In the Federal State, a number of States that are associated with a view to a harmonious integration of their destinations, have no external sovereignty and from the point of view of internal sovereignty are partly subject to a single power, the federal power, which partly preserves its independence. Moving freely in the area of competition constitutional that was noted for self-organization effects. Since they have this capacity for self-organization, which means the power to found their own constitutional order, the State-members acting outside of any submission to a higher power and being able in the table of Federative relations demand from the Federal State compliance with certain obligations, and become political organizations that have undeniable State nature.

In the Brazilian context there is a large economic submission of the States and Municipalities to the Federal Union, since the Union not only holds the greatest part of the tax collection, but also, conditions funds to review and this is compulsory for States and municipalities, which are submitted to new rules causing a visible aggression to the Federative principle.

The provision of the original Constitution's drafters determined in article 160 of the Brazilian Constitution the ban of constitutional review vetoes, which later through Constitutional Amendment, then such veto was restricted, allowing withholding and blocking in the case of debts of State bodies in the following terms:

> **Article 160.** The withholding or any restriction on delivery and the use of the attributed resources, in this section, the States, the Federal District and the municipalities in the same, additional and relative tax increases.
> Single paragraph. The veto laid down in this article does not prevent the Union and the States to condition the delivery of their resources:
> I. to the payment of their credits, including their autarchies;
> II - to comply pursuant to Article 198, § 2, II and III[6]. (Single paragraph and letter paragraphs added by Constitutional Amendment No. 29, 13 September 2000).

This constitutional device is still today point of criticism, as it enables the withholding of resources belonging to federated entities, and has no restrictions in the case of debts. The fact of having debts by itself cannot justify withholding and blocks, mainly in the Brazilian context where almost all municipalities are Social Security debtors.

Besides economic discrepancies between Brazilian federated entities, there are still economic differences in the population. Therefore, the difficulties in managing the fifth

4 *Federalism is a clause stipulated in art. 60, § 4º, letter paragraph I, of the Federal Constitution: "The amendment proposal leading*
5 *BONAVIDES, Paulo. Ciência Política. 7. ed. Rio de Janeiro: Forense, 1988, p. 207-208.*
6 *This article is about the application of the mandatory percentages for health.*

largest country in the world with 15,700 km of land borders, with a population of over 195 million are quite evident.

Just to give you an idea of the economic distortion which prevails in Brazil, of its vast population, we can say that about 25 million Brazilians are income tax taxpayers, i.e. just over 10% of the population this characterizes the poor distribution of income per capita in the country[7].

Difficulties are many in this country of continental proportions, reason why the originating the Constitution's drafters in 1988 determined as one of the fundamental principles provided for in the Federal Republic of Brazil is the quest to reduce social and regional inequalities, as provided for in the Federal Constitution:

> Article 3. The following are key objectives of the Federal Republic of Brazil:
> I - Build a free, fair and mutually supportive society;
> II - Ensure national development;
> III - Eradicate poverty and marginalization and reduce social and regional inequalities
> IV - Promote the welfare of everybody, without prejudice of origin, race, sex, color, age, and any other forms of discrimination.

This constitutional provision is important, since it exerts greater legislative pressure on public policies recognizing the establishment of behaviors that are geared towards minimizing socio-economic problems which cause regional inequalities.

Therefore, regarding so many discrepancies between the formal text and social reality, the Constitution exerts an important role in the constant struggle to control excesses originating from poor understanding of the State sovereignty, by limiting the power to pay and insistently repeating the list of the fundamental rights and guarantees of citizen-taxpayer.

Hence the relevance of the so-called **Constitutional Tax Law** and not **Tax Constitutional Law**, as well highlighted by José Osvaldo Casás[8] the constitution always has to be the base of all and any study of the rules of taxation.

In this regard Rodolfo Spisso[9] states that all juridical analysis must as from the constitutional perspective:

> "Therefore the tax institution as well as other legal institutions that make up our system cannot be sufficiently understood and explained if it is not from the point of view of the constitutional perspective. The constitutional program illuminates and conditions so the concrete legal institutions, to meet justice criteria should not be only in the service of their specific purposes and objectives, but also to serve the purposes and constitutional objectives. Hence, the

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7 *Brazil is a country that has the weight of being the most unfair country of the world, having the worst income distribution. Injustice is not a consequence of poverty [sic] – Brazil is the 11th economy of the world, in terms of gross production - , but a terrible distribution. Injustice is not a consequence of the contrast between the rich and the poorest of the poor, between the wealth pole – similar to countries of the developed world – and the poverty pole, similar to the poorest countries of the world" (SADER, Emir. Perspectives. Colecció Os porquês da desordem mundial. Rio de Janeiro: Record, 2005, p. 129).*

8 *"The environment of our legal sector, pursuant to the best traditions of the Latin taxation doctrine – American and European – it finds it most correct characterization when called "Tax Constitutional Law", and not as "Constitution Tax Law". (...) In the vast spectrum formed by "Constitutional Tax Law" two sections clearly standout; one developed as from the dogmatic part of the constitutions of States under the Rule of Law or "Constitutional Law of Freedom," which comprises a system of citizen rights and guarantees acting as a limit and the exercise of the State's regulatory-taxation power (...)."(CASÁS, José Osvaldo.* ***Derechos y garantías constitucionales del contribuyente.*** *Buenos Aires: Ad Hoc, 2002, p. 119).*

9 *SPISSO, Rodolfo R.* ***Derecho Constitucional Tributario****. 2. ed. Buenos Aires: Depalma, 2000, p. 3.*

> need for the analysis of the constitutional plan or program to build in the future one of the basic points in the doctrinal elaboration of scholars of any legal science. From that perspective, the Constitution before us as an exclusively non-regulatory instrument of the cardinal principles of the organization and functioning of the Government, but essentially, of the restriction of power in the protection and guarantee of individual liberty."

Regarding this peculiarity, we share the thought of Humberto Ávila when he affirms that Brazilian Tax Law is essentially Constitutional Tax Law[10].

2. BRAZIL's TAX SYSTEM IN THE CONSTITUTION OF 1988

Brazil stands out for having in its constitutional text an extended chapter on the National Tax System[11].

It may be affirmed that the Brazilian Constitution, due to its extension and details has a regulatory orientation, adopting here the term used by Domingo García Belaunde[12]:

> And the point is the following, or a principled (or analytical) Constitution is drafted or a comprehensive Constitution (or rules based) is preferred. The idea that causes the first is that the Constitution, without being a long text, must be sober in its exposure, containing only the most general principles in what refers to the fundamental rights and the means to protect them, as well as the precise mechanisms for the behavior and control between the powers. Other aspects shall be treated in laws or constitutional statutes (as stated by Alberto Borea O., in this same paper) and which amendment must have a special procedure. Otherwise it falls in all our republican tradition, of very tight and detailed texts which age over time. It must be emphasized that this fundamental idea that a Constitution can be a memory of grievances or a political catechism."

The Brazilian Tax System in the 1988 Constitution is excessively detailed and often runs the risk of containing elements that are materially spurious, as stated by Portuguese Constitutionalist Paulo Ferreira Cunha[13].

This is the manner in which it is discussed in Chapter I, of Title VI, of the Brazilian Constitution: Taxation and Budget, with its 19

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10 *ÁVILA, Humberto.* ***Sistema constitucional tributário****. São Paulo: Saraiva, 2004, p. 110.*

11 *"The national tax system is the set of positive principles and standards, which ápex is the Federal Constitution, ruling the tax rights and duties of the taxpayers as well as Public Power. The duty of paying taxes is fundamental regarding the rights stipulated in the CF (health, education, housing, freedom), because collection is the logic background of the exemption, effective public means of fundamental rights." (WEISS, Fernando Lemme.* ***Princípios tributários e financeiros****. Lumen Juris: Rio de Janeiro, 2006, p. 140).*

12 ***Constitución y Política.*** *3. ed. N. 2. Lima: Biblioteca Peruana de Derecho Constitucional, 2007, p. 107.*

13 *"The 1988 [Brazilian] Constitution is one of the most progressive constitutions of the world, in spite of the fact that its detailed nature makes it contain materially spurious elements. However, it is a framework in the constitutional construction and specially concerned about citizens, this is why it is called the "The Constitution of the Citizens." (CUNHA, Paulo Ferreira.* ***Direito constitucional geral.*** *Guid Juris: Lisboa, 2006, p. 225).*

(nineteen) articles and over 100 (one hundred) letter paragraphs and lines stipulating on the National Tax System.

Many constitutional devices could be justified if we consider that the Brazilian Constitution was enacted in 1988, i.e. over twenty years after the National Tax Code – CTN -, which was enacted by law No. 5.172, 25 October 1966. Being the CTN earlier than 1988 Constitution it appointed it as a complementary law, pursuant to article 146 of the Constitution that determines that only Complementary Laws[14] may confer General Tax Law Standards.

The National Tax System is divided into six sections in the Federal Constitution of Brazil as follows:

Article 145 to Article 162:

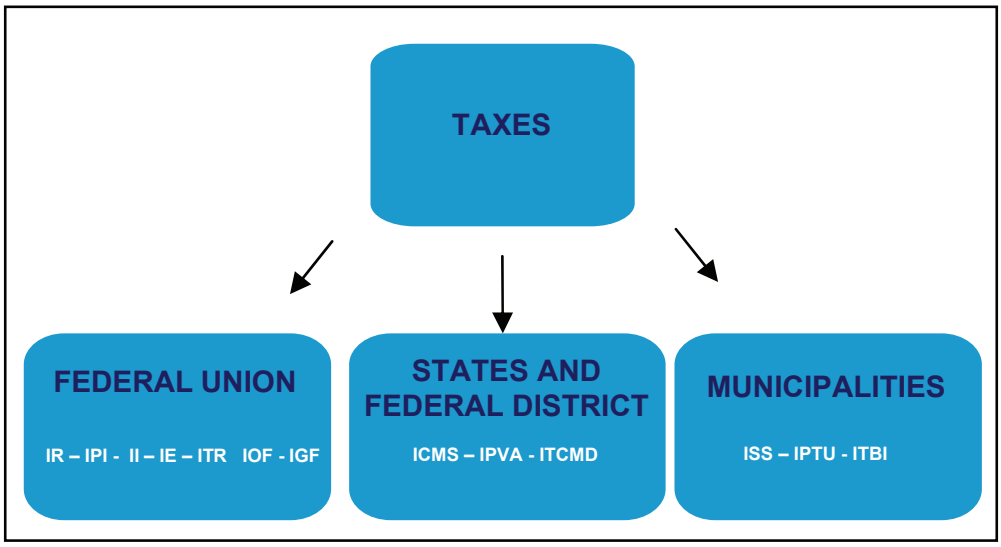
- Of General Principles;
- Of Limitations of the Taxpaying Power;
- Of the Taxes of the Union;
- Of State Taxes and the Taxes of Federal District;
- Of Municipal Taxes;
- Of the Distribution of National Treasuries.

In relation to the distribution of the tax, the Constitution's drafters established which taxes each entity of the Federation may establish, this is why in Brazil they say "the constitutional discrimination against competence" is rigid, not allowing other State bodies to establish new taxes[15], excepting only the "residual jurisdiction" of the Federal Union.

14 *In the Brazil laws can be complementary or ordinary. The general rule is ordinary law, the law complements the exception, therefore, when necessary, depending on the subject, the constituent expressly determines. José Afonso da Silva clearly states: "Regarding the latter [Supplementary law] it seems to say that they only differ from the procedure for the drafting of ordinary laws in the requirement of a majority vote of the Houses, for approval (article 69), thus formed by ordinary procedure with special quorum"." (Curso de direito constitucional positivo. 32. ed. São Paulo: Malheiros, 2009, p. 531).*

15 *"The abovementioned exclusive powers involve, on the one hand, the statement of the tax power its holder, and on the other, involves a denial of this same power. In fact, based on its sovereignty, the State can do it. Meanwhile, the Constitution limits this special power since what it shares among the partial government orders that form the Federation. Such is the fact through the assignment of determinate economic fields for each one. Therefore, the competent legislator has the possibility of establishing the tax within the limits of its field. If, meanwhile, beyond any form or of capturing manifestations of diverse richness attributed thereto, there will be constitutionality by invasion of competition. Therefore, the importance of researching if the facts stated and selected by the tax law are within the field reserved to the competition of the taxpayer entity or even if the tax assessment criteria does not denaturalize it [sic]." (SOUZA, Hamilton Dias de. A competência tributária e seu exercício: a racionalidade como limitação ao poder de tributar. In Princípios e limites da tributação. Coord. Roberto Ferraz. São Paulo: Quartier Latin, 2005, p. 260).*

The following graph summarizes the current taxes in Brazil[16]:



It must be clarified that in Brazil taxes represents the genre, whose species are: taxes, rates, improvements contributions, coercive loans and social security payments.

Social security payments in the Brazilian tax law deserves to be highlighted, being still today of great relevance in tax collection, representing a high percentage of the total revenue, which alters their previously extra-fiscal nature for predominantly tax if a distinction can still be made.

16 *In order to clarify the acronyms used, the text of the Federal Constitution is transcribed as follows:*
Of the Taxes of the Union
Art. 153. *The Union must impose taxes on:*
I – the import of foreign products (II);
II – the export of national or nationalized products (IE);
III – income and salaries of any nature (IR);
IV – industralized products (IPI);
V – credit, Exchange and insurance operations, or pertaining to securities or unregistered securities (IOF);
VI – rural territorial property (ITR);
VII – huge fortunes, as provided for in the suplementary law (IOF).
Total expenditure collected in the above;
Of the taxes of the States and the Federal District
Art. 155. *The States and the Federal District shall establish taxes on:*
I – transmission causa mortis and donation, of any asset or right (ITCMD);
II – operations relating to the circulation of goods and on the provision of inter-state and inter-municipal transportation services and communication services, even when operations and benefits originate offshore (ICMS);
III – property of motor vehicles (IPVA).
Of the taxes of the Municipalities
Art. 156. *The municipalities must establish the tax on:*
I – property and urban territorial tax (IPTU);
II – transmission inter vivos, at any title, for a good and valuable consideration, of real estate, by nature or physical action or real rights on real estate, excepting guarantees, as well as the assignment of preemptive rights (ITBI);
III- services of any nature not covered by Article 155, II, defined by the supplementary law (ISS).

3. OF THE CONSTITUTIONAL TAX PRINCIPLES

The principles laid down in the Brazilian Constitution reflect historical-political changes in the Brazilian law, when establishing definitively in 1988 democracy in the Brazil. Despite many policy forecasts, although they still not have enjoyed full effectiveness, already represent a big step forward in the rules laid down in the chapter relating to the National Tax System. The Brazilian lawyer must effectively make these rules to be in agreement with reality, as Paulo Bonavides[17] teaches:

> In the entire minimal effectiveness over reality is established - the minimum which the jurist should possibly turn into a maximum - clearly that the constitutional problem takes nowadays new dimension by postulating the need to place in global terms, in the realm of society. That society, invaded of state interferences, does not dispense, therefore, the recognition of forces acting powerfully in the same, capable of quickly and frequently changes, the meaning of constitutional standards, which are malleable and adaptable insofar in a satisfactory manner, to the fundamental and pressing demands of the social environment.

The Constitution's drafters by establishing so many guidelines stipulate the commitment of the transformation of Brazilian society through a new Constitutional[18] order, in counterpoint to the socioeconomic "disorder" still prevailing in the country[19].

Hence, at the beginning, a first reading you have the feeling that many standards are redundant or obvious, while what the Constitution's drafters intended was essentially to protect the fundamental rights of the citizen-taxpayer by limiting the powers of the State to strictly legal links.

Constitutional limitations to the taxpaying power are treated as General Principles (Section I) from Article 145 to Article 149-A, of the Federal Constitution.

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17 *BONAVIDES, Paulo. Curso de Direito Constitucional. 11. ed. São Paulo: Malheiros, 2001, p. 79.*

18 *Ives Gandra da Silva Martins rightly states: "The 20 years of the 7th Brazilian Constitution show that the legal regime established by the same resulted in an institutional stability never achieved by the previous constitutions. (...) In other words: the democratic system operated perfectly, so I believe this was due to the fact that the 1988 Constitution formed a balance of powers, unknown for example, by our neighbors (Venezuela, Ecuador, Bolivia), whose constitutions, newer than ours, were not able to establish. In effect, in these countries, the constitutions barely give precedence to the Executive Power – they are almost dictatorships - turning the other two (2) powers (legislative and judicial) subject and subordinate to the Executive. This may have been the great merit of Supreme Law of 1988, which, notwithstanding the 62 amendments (56 in ordinary proceedings and six (6) in the so-called process review which is called "revisional") and 1,600 draft amendments in the works, in Congress, maintains democratic stability thanks to the stability of the institutions. With these specificities, the effectiveness of the Constitution is unequivocal. In the tax field, there are still indisputable impasses, which have led to successive amendments." (Efetividade da Constituição em matéria tributária. In* ***Revista Brasileira de Direito Tributário e finanças públicas****. São Paulo: Magister e CEU. Vol. 12, jan./feb., 2009, p. 23).*

19 *On this subject, read: SADER, Emir.* ***Perspectives****. Colection Os porquês da desordem mundial. Rio de Janeiro: Record, 2005.*

These principles[20] represent on the one hand, the fundamental guarantees of the citizen-taxpayer and on the other, a stop to fiscal power.

The Brazilian Tax System recognizes the following general tax law principles in the Constitution[21]:

1) Tax capacity (Art. 145, § 1º)
2) Legality (Art. 150, I)
3) Equality before the law (Art. 150, II)
4) Non-retroactivity (Art. 150, III, a)
5) Precedence (Art. 150, III, b)
6) No seizures (Art. 150, IV)
7) Freedom of movement (Art. 150, V)

In addition to the principles specified, the Constitution's drafters also established in the Brazilian Constitution immunity concerning taxes, this immunity also represents a constitutional limitation on the taxpaying Power.

Tax immunity means the impossibility of the Union, of the States and the Municipalities of establishing taxes on property, income or services in the cases provided for in the Constitution. This is the case of a constitution guarantee, in the following terms[22]:

"Constitutional impact represents a guarantee for citizens when duly provided. There being a limitation standard which determines that people, goods and services should not be taxed, such norm will be generating laws [sic], which is the guarantee for the non-collection of taxes.

"Contrary to the incidence of the norm, once it happens rights are born for the Treasury, precisely the right to establish a credit, the rule that prevents the incidence or the advanced vetoed thereof, any interference in certain cases, also creates rights for the citizen only and not for the Treasury."

As mentioned, immunity is restricted solely to taxes, and these are one of the tax species.

In the 21st Century principles have grown and guide the Law in a more direct

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20 *"As Jean Boulanger taught, principles are an essential element for the fertilization of the positive legal order. They contain, in a virtual state (à virtualité l´état), a large number of solutions required in real life. Once stated and applied by the case-law, the principles are the material thanks to which the doctrine can build legal constructions with trust. This French author concludes that: `Le constructions juridiques ont les príncipes pour armature´ - the conception of the law as a normative system fenced bu principles requires a legal order vision different from the one built in the past. To accept the fact that the legal-positive order is articulated around principles, which confer organic planning on the actual operation of the law, have as a consequence a profound alteration in the way of thinking and applying the law." (PONTES, Helenilson Cunha.* ***O princípio da proporcionalidade e o direito tributário****. São Paulo: Dialética, 2000, p. 28).*

21 *OF THE LIMITATIONS OF THE TAXATION POWER (Constitution):*
Article 150. *Without detriment of other guarantees assured to taxpayers, the Union, States, Federal District and the municipalities are barred from:*
I – requiring or increasing taxes if not provided for by law;
II - introducing unequal treatment between taxpayers who are in the same situation, any distinction is prohibited due to of professional occupation or function they exercise regardless of the legal name of performance, titles or rights;
III – collecting taxes:
a) in relation to generating events which occurred before the start of the validity of the Law that introduced or increased the same;
b) in the same financial year in which the law has been published or on which it was instituted or increased;
c) observing line "b" (Including Constitutional Amendment No. 42 of 19.12.2003) after ninety days have elapsed as of the date on which the law establishing or increasing the same has been published;
IV - using tax to make seizures;
V - setting limitations on the transit of persons or goods by means of inter-state or inter-municipal taxes, excepting the collection of tolls for the use of roads kept by the Public Power.

22 *RODRIGUES, Denise Lucena.* ***A imunidade como limitação à competência impositiva.*** *São Paulo: Malheiros, 1995, p. 21.*

manner, exceeding the phase of the strict application of the rules. This is perceived in jurisprudence-based decisions and is no longer limited to the strictly application of the rule.

The argument defended is that new paradigms prevail in this era, where the idea of justice, than the mere application of the generic law, whether good or bad must be sought more. In this context, we can affirm with certainty that the "bad-law" must be purged from the system through the constitutional force of the general principles of Law.

In the words of Paulo Ferreira da Cunha, it would be the guardianship of the specific case and not of the law in general[23]:

> "The law of the concrete. The Law in addition to the guardianship of the concrete case than a general law (Perelman, Müller). We would dare to say that the topical-problematic thought should be taken, because of judicialism and not because of regulations and, even because of legla pluralism (of course pluralism in the sources considered) and not because of legal monism – mostly in the form of legal positivism of the dura lex sed lex and, even worst in its very Portuguese version, <son ordes>, with or without the follow-through of the argumentandum baculinum... Post-modern law also gives priority to the compliance with a minimum set of laws, against the regulatory jungle, which makes frivolous or trivial the norm: and a bad norm, as a bad coin, expels the good one."

These ideas are very important for the Tax Law, since this is one of the strictest branches of the Law, because it is always related to property conflicts between the Treasury and citizen-taxpayer.

The tax law must also adapt to the new paradigms of post-modernity, minimizing its coercive and bureaucratic aspect, and often threatening, as stated by Brazil's "Receita Federal" which symbol today is the figure of the "lion" as a representative of this body. The lion symbol is completely incompatible with the current democratic State of Law, apart from damaging the image of the Treasury, which insists on the propagandist figure of the seventies, when military dictatorship still reigned in Brazil.

The major changes in the Brazilian Tax System should begin in small details (it is suggested, of course, the extinction of the inappropriate "lion" symbol), starting from bureaucratic public attention services at the treasury until the reaffirmation of the tax constitutional principles.

23 *Geografia constitucional – sistemas juspolíticos e globalização. Lisboa: Quid Juris, 2009, p. 314.*

4. TAX REFORM IN BRAZIL

A comprehensive tax reform is currently being discussed in Brazil, which is in process in the National Congress through Proposed Constitutional Amendment n. 233 - PEC n. 233/2008. However, in spite of the significant alterations planned, more than 60 (sixty) alterations in constitutional devices are already in place in the National Tax System through 10 (ten) constitutional amendments implemented after the enactment of the Constitution in 1988, which are:

1. EC n. 3, of 17/03/1993
2. EC n. 20, of 15/12/1998
3. EC n. 29, of 13/09/2000
4. EC n. 33, of 11/12/2001
5. EC n. 37, of 12/06/2002
6. EC n. 39, of 19/12/2002
7. EC n. 41, of 19/12/2003
8. EC n. 42, of 19/12/2003
9. EC n. 44, of 30/06/2004
10. EC n. 55, of 20/09/2007

So many alterations have basis in the Brazilian Constitution which has an explicit estimate on the need for the periodic evaluation of the National Tax System functionality, and whereas the principal guidelines for the system can be found in the constitutional text, almost all alterations only can be made through constitutional amendments. Article 52 thus provides:

> **Article 52.** Federal Senate of the State is exclusively in charge of:
>
> XV – periodically evaluate the operation of the National Tax System, in its structure and its components and the performance of the tax administrations of the Union, States and the Federal District and the Municipalities. (Text included by Constitutional Amendment Nº 42, of 19.12.2003).

So many alterations still did not attain the main goal of meeting the contemporary needs of the country, within the same, the implementation of an efficient system that makes tax justice more visible; the creation of a State structure compatible with the changes made and the specific conditions to address the mass fiscal “litigiousness” which prevails in Brazil.

Considering the amount of distortions that prevail in the Brazilian Tax System, the alterations of the PEC n. 233/2008 have as main objectives:

1. simplification of taxation, reducing and riding the legislation of bureaucratization;
2. end of the tax war;
3. correct distortions in the tax structure that harm investment and efficiency;
4. tax exemption with focus on taxes that harm growth;
5. improvement of the Regional Development Policy;
6. improvement of the quality of federal relations.

5. DISTRIBUTION OF THE TREASURY

The technique adopted in Brazil to better distribute tax collection among the entities of the Federation was the constitutional distribution of tax administrations.

Collection coming from taxes is not sufficient to ensure the necessary autonomy to States and municipalities, causing a situation of economic submission thereof in relation to the Federal Union, responsible for most of the collection and subsequent distribution to the tax administrations.

In order to consolidate these imbalances in collection, the Constitution established in Articles 157-162 the provision of constitutional transfers, which consists of set of Federal treasuries collected by the Union.

The proportional division of the tax administrations gives tax collection between federated entities should be a mechanism to reduce regional disparities, in an attempt to promote the socio-economic balance between federated entities, but ahead of political interference and the centralized economic strength of the Federal Union, it is still far from being a fair system.

Major transfers of the Union for the States, Federal District and the municipalities, provided for in the Constitution, include: the Participation Fund of the States and of the Federal District (EPF); the Participation Fund of the municipalities (FPM), the Compensation Fund for the export of industrialized products – FPEX; the Assistance and Development Fund for Fundamental Education and Valorization of the Teachers' Union - FUNDEF; and taxes on the Rural Territorial Property - ITR.

6. FINAL CONSIDERATIONS

The purpose of this study was to approach the current National Tax System pursuant to the constitutional guidelines, emphasizing due to its applicability in specific cases, and in the need this system has to adapt to the new legal paradigms of the 21st Century.

When a certain legal structure of a country presents itself, it must give an overview of institutions of that embody the Law set out in rules, making clear the reality coming from specific cases.

In el Brazil, the Constitutional Tax System made great advances with the provision stated in the "Limitations to the Taxpaying Power", reinforcing in the constitutional scope the rights of the citizen-taxpayer.

In this "principle-logic" era to look for a reaffirmation of the principles expressed in the constitutional text, focusing on the materialization of these in specific or simple measures as well as far-reaching, such as the

de-bureaucratization of the attention to the citizen-taxpayer; in the need of the personnel providing attention to the public of being cordial; in the development of collective guidelines to clarify new rules; simplified and available electronic attention; in short, concrete actions and rights to increasingly facilitate the citizen-taxpayer routine.

What is important in this contemporary context is to make Tax Justice a fundamental principle adapted to reality[24].

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24 *As Klaus Tipke says well: "Justice is primarily assured through equality before the law, and in the tax law it is through the equality in the distribution of the tax burden. Who wishes to check if principle of equality is respected or undermined requires a comparison term adapted to reality. It is obtained as from principles adapted to the reality in which positive law should be ideally based on. Who wishes to find the suitable principle adapted to the reality should be familiar with this reality." (TIPKE, Klaus. Tax Moral of the State and the Taxpayers. Translated by Pedro M. Herrera Molina. Madrid: Marcial Pons, 2002, p. 30).*

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