



**THE COMPLEX BRAZILIAN TAX SYSTEM:  
AN APPROACH TO A CIVIL LAW COUNTRY**

**Artur Alves da Motta**

**Attorney of the Public Finances (or attorney at law in the Brazilian treasury, in Portuguese  
known as Procurador da Fazenda Nacional).  
Master degree in Public Law (Mestre em Direito Público – UFRGS).**

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### **Introduction**

In their professional life lawyers face a peculiar situation: although they live in the quest of fairness, they often earn their gains from unfairness. Besides, in a better world with no need of law enforcement their jobs would be useless. It seems that the existence of lawyers, as far attorneys, prosecutors and judges, depends on injustice.

And I assume that injustice always find a place in tax systems. And it must be quite clear that unfairness and faithless may occur on both sides of the tax relation. I do not believe any side of this story may claim a role as a saint. If taxation is unfair it is also known that many taxpayers enjoy tax evasion.

Tax burden is commonly referred as the most known injustice in taxation, mainly due to its excessive burden. In Brazil, particularly because the taxation system does not care much about progressive taxes or even regarding the taxpayer economic capacity. But I will not mention it because there are lots of papers discussing these issues. I guess there is already a consensus among Brazilians that excessive tax burden is a real problem but the persons that could help to solve these questions are not very concerned about how to do it. What I

intend is to face another problem, as unfair as it but many times unconsidered: the complexity of the Brazilian tax system.

### **Warning to English (non-Portuguese readers) and common law readers**

First of all, I shall remember that Portuguese is the official language in Brazil: it is declared by the Constitution on article 13 (*Article 13. Portuguese is the official language of the Federative Republic of Brazil*). With the eyes on Brazilian tax system, this paper is an attempt to make it clear to people unable to read in Portuguese.

For the references to the Brazilian Constitution, to its articles (abbreviation **Art.** and paragraphs identified by the symbol **§**), used all over this paper, it was used the English 3rd Edition of the *Constitution of the Federative Republic of Brazil* found at <http://english.tse.jus.br/arquivos/federal-constitution> (a PDF file), made by Brazilian *Superior Electoral Court* (or *Tribunal Superior Eleitoral*, abbreviation **TSE** in Portuguese)<sup>1</sup>. Also useful was Will Reichert English translation of the Brazilian Constitution (a HTML file), available at <http://web.mit.edu/12.000/www/m2006/teams/willr3/const.htm>. I am very thankful to both.

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<sup>1</sup> “Article 118. The following are the bodies of Electoral Justice: I – the Superior Electoral Court;”

As a first advice, I would tell that there are a lot of false cognates or false friends in both languages (English and Portuguese). Legal expressions often seem to have the same meaning in English and Portuguese but many times they do not. Here I will make an attempt to explain the most common mistakes and explain some expression meanings, mainly in Portuguese. Although I guess I am able to express quite enough in English I would also warn the reader that I am not as skilled in English as I am in Portuguese. And my impressions are based upon my experience in Brazil as a lawyer and as an attorney. So take the observations to English terms and common law with some complacency.

Before we walk into the Brazilian Constitution and the Brazilian tax system, as a first approach it is necessary to make some definitions (according to art. 145 of the Brazilian Constitution). *Tribute*, in general, is the expression for any *tax*, duty, excise or contribution imposed by a government in the Brazilian system. As far as I concern, it seems the common law system use the word *tax* as a synonym for what we call *tribute* in the Brazil (a civil law system). However *taxes* in Portuguese are called **impostos**, so *Imposto* is the equivalent in English to **tax**. For example: income tax in Portuguese is *imposto de renda*.

Another kind of tribute, in Portuguese called **taxa** is translated to English as *fee*. So if you see the word **taxa** in the Brazilian tax law system you must know that the expression is referred *only* to a certain kind of tribute paid in return for services (the effective use) or when those services are available to

the taxpayer (art. 145, II)<sup>2</sup>. Unfortunately the sound of this words, *tax* in English and *taxa* in Portuguese are very similar. That is why many people (even in Brazil!) who do not know tax law and legal terms used in the country tend to think they are synonym when they are not at all. **Tax** (in English) is not *taxa* (in Portuguese); taxation (English) is not *taxação* (in Portuguese). Remind that **Tax** is *imposto* in Portuguese and the word for **taxation** (in English) is *tributação* in Portuguese. I guess this is a necessary first explanation in order to avoid future problems due to misinterpretation.

Brazilian law system is considered an example of the *civil law*, *roman law* or romano-germanic system. Although is said so, nowadays in practical terms Brazilian system is slowly leaning to the *common law* and the importance to judicial sentences to declare or emphasize what is not clear enough on its basic legal terms. As legal terms I consider the ground of the romano-germanic system: the Constitution, its amendments, the statute law (bills or legal acts) and the referred on art. 59 of the Brazilian Constitution<sup>3</sup>.

A typical confusion is made due to some slight differences between civil and common law institutes, concerned to the terms law and jurisprudence. **Law** in common law should be regarded to civil law readers as a

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<sup>2</sup> “Article 145. (...) II – fees, by virtue of the exercise of police power or for the effective or potential use of specific and divisible public services, rendered to the taxpayer or made available to him;

<sup>3</sup> “Article 59. The legislative process comprises the preparation of: I - amendments to the Constitution;  
II - supplementary laws; III - ordinary laws; IV - delegated laws; V - provisional measures; VI - legislative decrees;”

complete *system of law*, what we call in civil law a *law system* (or *sistema jurídico* in Portuguese) or a system of regulations. Many people, even in civil law system, think that law in English is equivalent to *lei* in Portuguese. But that idea is completely wrong. *Lei* in Portuguese, means simply *a statute* (a written law, a legal act or a bill) or a legislative act. And *jurisprudence*, the study of positive law principles and legal relations means *teoria do direito*, in Portuguese. The word *jurisprudência*, in Portuguese, is not jurisprudence but the *case law*.

### **The origins of complexity**

As part of the civil law or roman law system (or roman-germanic system, as is said in Portuguese), the source of our legal system is a Constitution. Therefore if someone intends to seek for the cause of complexity should take a glance at the Brazilian Constitution. I know this task would be a little hard for those who are not able to read in Portuguese, language that is spoken in Brazil and used to all legal acts and documents.

But in simple words, we must regard that Brazil is a Federation or a federal state. The country official name is *Federative Republic of Brazil*<sup>4</sup>. It is made by 26 states and a federal district (*Distrito Federal*, in Portuguese). And

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<sup>4</sup> *Preamble* of the Brazilian Constitution.

there is something very peculiar in the Brazilian federation: it is also compound by local governments or municipalities (in Portuguese called *municípios*)<sup>5</sup>.

It means that every city in the country (more or less like a county), formally and legally a *municipality* – or *município*, for legal purposes – like the central government (The Union or *União*, in Portuguese) and the states are able to collect taxes after a bill is approved or enacted becoming a statute. For the Brazilian taxation system the *Distrito Federal* (Federal District) where Brasilia is located, encompasses state taxes and local taxes<sup>6</sup>. As you can see the Brazilian Federation has three levels of governments: the central (The Union or *União*), the states (and here I include the Federal District) and the *município*. To make it more simple to understand I will call all instances of government (the central, the states, the federal district and the *municípios*) simply the *federation members*. The Brazilian Constitution, on article 145, declares that the federation members are entitled to impose tributes<sup>7</sup>.

And here is the first problem. There are at least 5.570 *municípios* in Brazil, so far. I said so far because if a population of a *município* decides to divide from its origin, after a long political and legal process is legally allowed to create a new *município*. At first sight it should not be a problem but looking

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<sup>5</sup> “Article 18. The political and administrative organization of the Federative Republic of Brazil comprises the Union, the states, the Federal District and the municipalities, all of them autonomous, as this Constitution provides.” Underlined by the text author.

<sup>6</sup> “Article 147. (...) municipal taxes are within the competence of the Federal District.”

<sup>7</sup> “Article 145. The Union, the states, the Federal District and the municipalities may institute the following tributes: I - taxes; II - fees, by virtue of the exercise of police power or for the effective or potential use of specific and divisible public services, rendered to the taxpayer or made available to him; III - benefit charges, resulting from public works.”

closer you will see that it is. Many municípios does not have enough revenue to support its legal duties related to medical assistance, education, street pavement, sewage treatment or traffic control. So, they need the help of the state they are in but they also collect their own taxes.

Well, let us suppose that is enough money for every *município* and it will not be a problem. Even in that case the problems would not be solved. Let us get back to the Brazilian federation to check this out. Every member of the (Brazilian) federation is able to collect tributes after they approve legal acts to allow them to do so. Therefore the central government (called in Portuguese *União*), the local government (the states and the Distrito Federal) and the *municípios* (those 5.570 that I referred before) may collect taxes.

So Brazilian citizens or companies have to pay tributes to these three levels of governments. And you could simply calculate the kinds of taxes for each government (central, state and municipal – related to the *município*) to imagine how many kinds of them are. This is the first step in this complexity history. And if a company has business in more than a município, something occur very frequently, you may notice that for every office or shop located in a different state or município there is another kind of tributes. Here another step in our path.



## The main tax regulations on the Brazilian Constitution

The Brazilian Constitution also made limits to every member of the federation in order to establish the legal boundaries of the taxation system, prevent each other to compete or destroy another by taxation, discipline its limits and the manner to collect taxes. I will not give a fully detailed description of the tax regulation on the Brazilian Constitution, because our purpose is to offer a wider perspective just in order to expose why the country taxation system is so complex.

But is not the Constitution itself that will provide an entire solution for the taxation main roles. In fact, many and main legal aspects of a tax, after being previously identified in the Constitution, are found in a specific kind of statute called *lei complementar*. In English *lei complementar* is often translated as *supplementary law*.

The Constitution disposes that the *lei complementar* (art. 146) or *supplementary law* will take care of: the tax jurisdiction of the federation members; will regulate the constitutional limits to the taxation powers; will establish the general terms of the tax acts (tax definition and its species, its causes, temporal limits, taxable amount, etc.)<sup>8</sup>.

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<sup>8</sup> “Article 146. A supplementary law shall: I - provide for conflicts of competence concerning tax matters between the Union, the states, the Federal District and the municipalities; II - regulate the constitutional limitations on the power to tax; III - establish general rules concerning tax legislation, especially with regard to: a. the definition of tributes and their types, as well as, regarding the taxes specified in this Constitution, the definition of the respective taxable events, assessment bases and taxpayers; b. tax liability, assessment, credit,

In the Brazilian tax system the *lei complementar* (Portuguese form for supplementary act) is the most important kind of legal act or statute, right after the Constitution. It is called supplementary (*lei complementar*) because it goes further on constitutional tax aspects, they tend to make the constitutional regulations more complete or fulfill the constitutional terms. This is another step in the complexity way but the journey has just began. There is another sort of act, the *lei ordinária* (or ordinary law, as mentioned in Brazilian Constitution) whom provides specific characteristics to the tax system, as taxation brackets, legal definitions, taxable events, a schedule for tax payment, compliance rules and other necessary details.

The Constitution has certain articles that forbidden its federation members to (art. 150)<sup>9</sup>: impose or raise tributes without specific act (art. 150, I)<sup>10</sup>; unequal treatment (art. 150, II)<sup>11</sup>; collect taxes before the specific tax act is valid (art. 150, III, a)<sup>12</sup>; collect taxes in the same fiscal year which the statute made the institution or the tax raise (art. 150, III, b)<sup>13</sup>; collect taxes within 90

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limitation and laches; c. adequate tax treatment for the cooperative acts of cooperative associations.”

<sup>9</sup> “Article 150. Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to:”

<sup>10</sup> “(...) impose or increase a tribute without a law to establish it;”

<sup>11</sup> “II – institute unequal treatment for taxpayers who are in an equivalent situation, it being forbidden to establish any distinction by reason of professional occupation or function performed by them, independently of the juridical designation of their incomes, titles or rights;”

<sup>12</sup> “a) for taxable events that occurred before the law which instituted or increased such tributes came into force;”

<sup>13</sup> “b) in the same fiscal year in which the law which instituted or increased such tributes was published;”

days after the specific tax bill has passed (art. 150, III, c)<sup>14</sup>. The Brazilian Constitution has even stated that its federation members must not impose taxes on other federation member on its assets, revenues or services (art. 150, VI, a)<sup>15</sup>; shall not impose taxes on any religious temple (art. 150, VI, b); political parties, labors unions or educational and social assistance institutions (with non profit purposes) who follow the legal terms (art. 150, VI, c)<sup>16</sup>.

Regarding to those bans on taxation, I must remember that this is one of the biggest revenue drains: especially the art. 150, VI, c. There are a massive number of companies who classifies themselves as “educational or social assistance” and formally state not to have any profit purpose (trying to act like NGO) only to get rid of many taxes, especially those heavy ones (social contributions) to support the Social Security. But are they really profitless? One of the Brazilian Department of Federal Revenue<sup>17</sup> tasks is to take a careful look on their papers and activities, to prevent noncompliance. And these organizations whereas they have no purpose on making money gains, why some of them play in the market like most of companies? I assume that the answer points to art. 195, § 7º in the Brazilian Constitution.

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<sup>14</sup> “c) within the period of ninety days as from the date of publication of the law which instituted or raised such tributes, with due regard for the provision of letter *b*;”

<sup>15</sup> “VI – institute taxes on: a) the property, income or services of one another;”

<sup>16</sup> “c) the property, income or services of political parties, including their foundations, of worker unions, of non-profit education and social assistance institutions, observing the requirements of the law;”

<sup>17</sup> Secretaria da Receita Federal

The art. 195, § 7º tells that the social assistance entities in compliance to the statute law will be free of the taxes (called *social contributions*) made to keep the social security system<sup>18</sup>. And the *social contributions* an important kind of taxation is by far the heaviest burden on Brazilian tributes. It is only levied by the central government - The Union – according to art. 149<sup>19</sup>.

Concerning to the central government (called by the Constitution *União* or The Union, in English) there are some forbiddances and a role of certain taxes. The Union (*União*) is prohibited to tax unequally in the national territory or make a specific tax advantage to any of the federation members (states, federal district or município), but the concession of legal benefits to balance the economic development in the country area (art. 151, I)<sup>20</sup>. *União* is also forbidden to institute tax exceptions on other federation member specific

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<sup>18</sup> “Paragraph 7. Benevolent entities of social assistance which meet the requirements established in law shall be exempt from contribution to social welfare.”

<sup>19</sup> “Article 149. The Union shall have the exclusive competence to institute social contributions regarding intervention in the economic order and the interest of categories of employees or employers, as an instrument of its activity in the respective areas, observing the provisions of articles 146, III, and 150, I and III, and without prejudice to the provisions of article 195, paragraph 6, as regards the contributions mentioned in the latter article.

<sup>20</sup> “Art. 151 (...) I – to institute a tribute which is not uniform throughout the entire national territory or which implies a distinction or preference regarding a state, the federal district or a municipality to the detriment of another, it being allowed to grant tax incentives for the purpose of promoting the balanced social and economic development of the various regions of the country;”

taxes (art. 151, III)<sup>21</sup> and every federation member is banned from imposing tax distinctions according from its origin or destination (art. 152)<sup>22</sup>.

The Brazilian Constitution identifies what sort of taxes the *União* (central government) is allowed to impose (art. 153): import and export taxes; income tax; tax on manufactured goods; tax on credit operations, currency exchange, insurance and financial titles; rural area property. The income tax shall obey certain characters, like taxing every income, from everyone and be progressive according to specific act terms (art. 153, § 2º). Among other dispositions, the Constitution also have detailed commands to the central government taxes and dispositions concerned to the distribution of the tax revenue to the states, federal district and *municípios*. In addition it allows the *lei complementar* to impose taxes not previously mentioned before as far they do not have the same causes of the tax species referred by its text and extraordinary taxes in case of war (art. 154, I and II).

But there is another peculiar issue in the Brazilian taxation system: a multiple taxation procedure, called the *non-cumulative*. The *non-cumulative* taxation means that a tax shall be levied in many proceedings during and economical activity, but what was charged previously from one taxpayer will be a credit for the next on another transaction. One of the most know taxes subjected to *non-cumulative* is the tax on industrialized products (art. 153, II, §

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<sup>21</sup> “Art. 151. (...) III – to institute exemptions from tributes within the powers of the states, of the federal district or of the municipalities.”

<sup>22</sup> “Article 152. The states, the Federal District and the municipalities are forbidden to establish a tax difference between goods and services of any nature, by reason of their origin or destination.”

3, II)<sup>23</sup> or *Imposto sobre Produtos Industrializados*, in Portuguese. Is this a minor point? Definitely not! The major source of tax revenue to the Brazilian states is a tax on *sales and services* (art. 155, II), in Portuguese known as *Imposto sobre Circulação de Mercadorias e Serviços* – ICMS, which follows the *non-cumulative* principle (art. 155, § 2, I)<sup>24</sup>. We will see it further.

To the states and the Federal District (which is treated as a Brazilian state for taxation matters, as I said before) the Constitution reserves these taxes (art. 155): inheritance and donation tax; a sales, goods transmission and services tax, which I will simply call the *sales and service tax* and a automobile ownership tax.

The *sales and services tax* (called in Portuguese *Imposto sobre Circulação de Mercadorias e Serviços*, commonly know by its abbreviation ICMS), the gross revenue of the brazilian states, has several specific regulations in the Constitution (art. 155, § 2º), concerning to its causes, conditions, terms, etc. Is by far the most regulated tax in the Brazilian Constitution. The ICMS alone has more lines and words related to it more than any tax. It is certainly the most

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<sup>23</sup> “Article 153. The Union shall have the power to institute taxes on: (...) IV – industrialized products; (...) Paragraph 3. The tax established in item IV: (...)ii – shall be non-cumulative, and the tax due in each transaction shall be compensated by the amount charged in previous transactions;” (underlined and bold made by the text author).

<sup>24</sup> “Article 155. The states and the Federal District shall have the competence to institute taxes on: (...) II – transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and services of communication, even when such transactions and renderings begin abroad; (...) Paragraph 2. The tax established in item II shall observe the following: i – it shall be non-cumulative, and the tax due in each transaction concerning the circulation of goods or rendering of services shall be compensated by the amount charged in the previous transactions by the same or by another state or by the federal District;”

detailed tax and I risk more than all taxes together. It is also stated that the *lei complementar* will define its taxpayers, tax substitution, compensations, responsible establishment, tax exemptions, benefits and other legal aspects.

Although is deeply considered and regulated in the Brazilian Constitution, every state and the Federal District (I will remind you there are 27 states in Brazil, with the Federal District included) has its own particular State Constitution with ICMS regulations and a huge, complex and fully detailed range of statutes concerning to the ICMS. What else? This tax is levied on fuel, petroleum products, electric energy supply, telecom services, mineral and in a rough manner in every sale made within the country. And there is an extra legal issue: in many cases, when something is made in one state, carried by one territory or sold to another, every state related is entitled to charge the tax. I hope you can realize how much trouble it causes to Brazilian companies, not even mentioning that many states compete against each other with special regulations and benefits to attract new facilities, specially industrial plants.

Going ahead in the Constitution tax ways, we reach the local taxes. Here are the municipalities (or *municípios*, in Portuguese) responsible to collect taxes upon urban properties, urban lands, goods and estate transmission, and other services not taxed by the states as defined by supplementary law (art. 156).

Let us take a breath and see that the Constitution determines the shares of states and the federal district on part of central government (*União*) taxes (art. 157) and the municipal rights on *União* taxes and state taxes (art.

158). The Constitution also mentions that the *União* will deliver a part of its revenues on certain taxes to federal funds to the states, the federal districts and the *municípios*. Where still going through in the complicated Brazilian tax system.

### **Tax acts complications and other legal issues**

At a first glance you would assume that the limits and matters of the *lei complementar* and the *lei ordinária* are already made by Constitution. In simple terms, the main role would be with the *lei complementar* and the supporting role, the rest and beyond, would be the job of the *lei ordinária*. Yes, this is how it should be in a better world but not actually!

During the law enforcement the practical limits of these legal statutes species are not so clear or are far less clear than required. What happens if the *lei complementar* takes care of the *lei ordinária* subjects? Is this unconstitutional? Should this kind of act (*lei complementar*) in this case be taken as a simple act (*lei ordinária*)? And what *supplementary law* will apart the services concerned to the state taxes (art. 155, II) or municipal taxes? A Union supplementary law whether a state supplementary law or a municipal supplementary law? What happens if the state does not have this supplementary law? Will the *município* have the right to levy on every service, even those reserved to the state?



Fortunately the Brazilian Supreme Court already solved some of these issues. But how long did it take in this long and winding road? What more problems the conflicts between these two kind of acts, *lei complementar* and *lei ordinária*, will bring us in the future? No one knows. We will have to wait for the courts to decide. Meanwhile, some will pay more taxes than necessary, others few less. After will the department of revenue levy everything correctly?

As I mentioned before, Brazil has three species of federation members. They all approve tax statutes in an incredible amount, these acts have a lot of details and frequently lack of systematic. Some of its terms do not care a lot about being dubious. There is no year without any legal innovation related to taxation, creating or expanding new duties. With the frequent bill edition, and its constant expansion, we are wondering if everything is correct. Compliance for companies is a hard and expensive task.

The vast complex of taxation acts and rules, its minimalistic details, instead of getting us rid of the problems in fact they create new ones. Every time a new act is edited we start to think what will be the consequences and implications with the old statutes. How many time is spent with this huge lot of regulations, in order to understand it, to enforce them or even to dodge them? I guess the time used to unveil the legal problems related to tax law could be used on more useful tasks.

I wonder if our congressman and authorities did not realize the waste of time and effort on the comprehension of the taxation that could be used to achieve economic development. How many people are engaged on

compliance? I guess the members of the parliaments on the central government and in the states are guilty for not making the tax system more simple, rational, systematic and useful. A hard effort on systematization would be something remarkable.

The Brazilian taxation system must evolve towards efficiency, legal certainty and rationality. I believe we are able to do it. I doubt that in most developed countries there are such a massive volume of legal acts and so many detailed tax prescriptions as there are in Brazil. I wonder if this kind of growing complexity of the Brazilian tax law is not unfair itself because it makes very hard to ordinary citizens to know all their rights and duties in this area.

### **Complexity in the Judicial Branch**

All these problems reported before will come to the Judicial Power or Judicial branch, due to a specific constitutional disposition<sup>25</sup>.

The very detailed taxable events and assessment bases, sprawled in several articles, paragraphs, many kinds of law, statutes and legislation will come to a flood of lawsuits against the government. Probably there is no country in the world which such a number of taxation lawsuits. In a report published in July 2011, called "*A Execução Fiscal no Brasil e o Impacto no*

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<sup>25</sup> "Art. 5, XXXV – the law shall not exclude any injury or threat to a right from the consideration of the Judicial Power;"

*Judiciário*<sup>26</sup> is mentioned that lawsuits for tax enforcement (to charge taxpayers) reaches 32% of all lawsuits in 2010. And in the Federal Courts the amount of this kind of lawsuits where up to 34,6% of all the lawsuits.

For the year of 2015, the National Council of Justice made a report (with an an English version) called “Court Figures”<sup>27</sup> which states that “tax foreclosure accounts for 30% of all cases being processed in the Judicial Branch”(page 17), and the number of new cases keep on growing each year. Just to realize how far the stuff goes, the total amount of tax proceedings in all Brazilian Courts where up to 30.347.466 lawsuits (table 10 of the report, page 19). The report is plenty of tables where you can see a fully detailed analysis of that data and I will not go further. I only mentioned these numbers to mean what I say<sup>28</sup>: the complex taxation in Brazil is becoming expensive even to its governments. I assume that if we would not have such amount of taxation, a complex tax system, Brazilian Judicial Branch would work much better without so much strain.

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<http://www.cnj.jus.br/files/conteudo/arquivo/2016/03/2d53f36cdc1e27513af9868de9d072dd.pdf> (note: this file is written only in Portuguese).

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<http://www.cnj.jus.br/files/conteudo/arquivo/2015/11/491328c33144833370f375278683f955.pdf>

<sup>28</sup> For further information, The National Council of Justice has English version reports since 2012. You may find it at <http://www.cnj.jus.br/programas-e-acoes/pj-justica-em-numeros>

But this maybe is merely the half part of the problem. A fully detailed Constitution, mainly in the tax system, with a complex tax system, multiple courts, a procedural system that offers several chances of appeals allows these lawsuits to go sluggish for years. Meanwhile, no one really knows who is right and who is not; if the taxpayer is wrong or the government itself. In the aftermath, the cost of being sure and right is very expensive and its path much longer than necessary and far away from the desirable.

I believe stability, development and efficiency also relies on certainty or legal security (*segurança jurídica*, in Portuguese). But how can we reach it? If we are looking forward to sustainable economic growth we must consider that all these complexity in tax law, red tapes in procedural law and at Judicial Branch, and excessive bureaucracy everywhere leads us more and more far away from our goals.

### **Some proposals**

For the complexity in the Constitution I would recommend a full review on the taxation system, making it more clear in the government competences on tax matters, and the role of supplementary law and other legal acts. The supplementary law should also be more used and descriptive, not the Constitution itself. This rearrangement would spare much discussion at the Supreme Federal Court since the main tax issues would not rely on the Constitution dispositions. I know many people and even lawyers would not like

it because there would be less chance to stall while they file appeals to the Brazilian Supreme Court.

As a solution to tax law complications and other legal issues I would bid a full systematization of all tribute species, to every member of the Brazilian Federation (Union, the states, the Federal District and the municipalities). This reviewed law should be written in a simply and plain Portuguese (even English and Spanish) and a permanent commission to keep it simple must exist.

And we must consider giving it up the *non-cumulative* proceedings on our taxes. Why is it so? Only to keep accounts and legal agents engaged on calculating the taxes and watching whether everything is correct or not? We must tackle this. Lets tax in a simple way, in small rates, balancing the tax burden over the society and regarding economic capacity of all taxpayers.

Concerning the Judicial Branch, all those suggested changes would benefit it. Even in this case we should do so more. Perhaps the main change is to allocate part of the Federal Supreme Court (*Supremo Tribunal Federal*, commonly known as STF in Brazil)<sup>29</sup> responsible on tax competence to another Court. For instance The Superior Court of Justice. With more Justices, the Superior Court of Justice (*Superior Tribunal de Justiça* or simply called STJ, in Brazil),<sup>30</sup> is far more equipped and fast enough to solve many legal lawsuits in

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<sup>29</sup> “Article 101. The Supreme Federal Court is composed of eleven Justices (...).”

<sup>30</sup> “Article 104. The Superior Court of Justice is composed of a minimum of thirty-three Justices.

taking less time. We must avoid the cost of procrastination. This does not mean that the Brazilian Supreme Court should not have any duty on tax issues. It could take care of them within the actions of unconstitutionality of federal or state statutes (as mentioned in art. 102, I of the Constitution). Besides, it also could have granted the right to a judicial review (by extraordinary appeal) in case the Superior Court of Justice (STJ) consider a federal or state statute or act unconstitutional (this model is already working for the Superior Labour Court).

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