Taxing for Vulnerabilities

By:

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The debate about the need for amendments to the current Social Contract is not a novelty. Nonetheless, a microorganism uncovered the imbalance of rights and obligations in such a way that the renegotiation of the Social Contract may permeate the international and national agendas in the following years.

In the Post-COVID pandemic world, vulnerability is a new dimension that should permeate the international and domestic taxation systems debate, although not replacing inequality concerns. Vulnerability is broader than and aggravates inequality. Some individuals and corporate entities were particularly affected by lengthy confinements, business closures, and the burden of keeping essential activities running despite the risks. At the same time, some high net-worth individuals and corporate entities benefited from an unexpected increase in wealth and profits related to the combat and prevention of the COVID-19.

Public transportation operators and health professionals born higher risk of contamination than those who could work from home. The vulnerability of those on the outskirts of the social contract such as undocumented migrants

was dramatic. They were afraid of seeking medical care and not eligible for minimum income measures.

In the corporative context, while some sectors experienced unprecedented increases in profits, i.e. pharmaceuticals, others were hardly hit by the imposition of emergency measures that affected the provision of goods and services like the aviation sector and restaurants.

Shockingly for some stakeholders, not only the already labelled “vulnerable” but also those who misread the tinny letters of the current Social Contract and assumed their “economic distance” from official financial aid or public health services were hit by pandemic’s related measures due to private hospital capabilities or sudden total or partial loss of household income either for job loss or prohibition to carry on business activities.

Unique times demand extraordinary measures. Lockdown and confinement measures were sustainable for the recommended period when countries could grant stimulus packs or bailouts for the affected individuals or corporations. However, public financial aid depends on public revenue, and tax collection plunged during the period.

The question remains about how the Social Contract could be renegotiated and provide resources to finance necessary and urgent measures to deal with exceptional circumstances that are unpredictable, unforeseen like in the case of a pandemic. To narrow the question: what type of tax-related measures should be available in the case of natural disasters, calamities, and pandemics to finance extraordinary expenses? How should tax measures be implemented not only to face extraordinary expenses but also to finance economic recovery for the affected sectors in the aftermath of the pandemic?

The fiscal response to the pandemics so far has been the grant of subsidized loans, minimum income payments, and tax exonerations. In that context, public expenditures have increased while revenue collection has declined to unprecedented levels. Yet, revenue mobilization measures were not put in place despite the unexpected profit and wealth increase experienced by some economic sectors and individuals. The debate about inequality and taxation

has focused on wealth tax[ii] or global excess profits tax[iii] so far. Nonetheless, other means of financing extraordinary expenses may also be discussed. To illustrate how the current debate could be enriched with the inclusion of such measures, the Brazilian response to the COVID pandemic will be analyzed.[iv]

The Brazilian response to combat the effects of the Coronavirus pandemic was a mix of tax exemptions, stimulus packs, minimum income grants, and deferrals without a clear public policy regarding the Post-COVID.

The Brazilian Constitution of 1988 provides for the imposition of compulsory loans by the Federal government to finance extraordinary expenses in the case of public calamity.[v] Provisions concerning the payback conditions shall be included in the Act that imposes the compulsory loan.[vi] A bill creating a compulsory loan for financing extraordinary expenses related to the COVID-19 pandemic was introduced in the National Congress.[vii] However, the bill has low chances of approval not only for not observing constitutional provisions but also for controversial provisions regarding tax liability and payback conditions, among others.

The imposition of a compulsory loan or a similar tax should observe not only legal but also economic and social requirements. First, a compulsory loan should be levied on the sectors that have experienced an increase in profits due to the pandemic such as medical equipment producers and suppliers and pharmaceuticals. The revenue should be earmarked, i.e., for a Post-COVID fund to finance post-COVID stimulus packs. The rate should be a fraction of the increase in profit attributable to extraordinary demand for the good or service.

The benefits of a compulsory loan over a global excess profit tax or a wealth tax are: (1) as a domestic measure independent of international coordination that could be implemented more quickly, (2) the tax authority could rely on information already available in its systems, (3) lower administrative costs for implementation and audit procedures (4) the compulsory loan is a *tailored measure* - each tax jurisdiction may assess what sectors and individuals experienced an increase in profits attributable to the pandemics and the sectors or individuals that would be eligible for official financial aid, (5) the

compulsory loan may be paid back according to the economic recovery of sectors hardly affected by the pandemics, and (6) lower susceptibility to the "punishment" argument associated to the imposition of wealth tax or excess profit tax.

However, the most relevant advantage of the Post-COVID Compulsory Loan would be the opportunity to amend the current Social Contract. The imposition of such a measure should be preceded by dialogue and negotiations to determine what sectors would contribute or benefits, earmarks, and public policies and measures. Moreover, that may be a chance to increase trust and solidarity among stakeholders.

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[ii] Emmanuel Saez and Gabriel Zucman, Letter addressed to Senator Elizabeth Warren, (last accessed 06/24/2020), available at https://www.warren.senate.gov/imo/media/doc/saez-zucman-wealthtax.pdf.

[iii] Allison Christians and Tarcisio Diniz Magalhaes, It's Time for Pillar 3: A Global Excess Profits Tax for COVID-19 and Beyond, Tax Notes, (last accessed 06/26/2020), available at https://www.taxnotes.com/featured-analysis/its-time-pillar-3-global-excess-profits-tax-covid-19-and-beyond/2020/05/01/2cg34.

[iv] For a report about Brazil's fiscal response to the COVID-19 pandemic see *Brazil - COVID-19 Tax Monitor, Tables IBFD* (accessed 26 June 2020), available at https://research.ibfd.org/#/doc?url=/document/covidem_br.

[v] Art 148 The Union, through a complementary law, may impose compulsory loans: I. to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof Available at https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en.

[vii] PLP 34/2020, (last accessed 06/23/2020) available at https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2241701
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