The Brazilian Tax System and Post-Covid Pandemic Challenges

By:

Isaac Rodrigues Cunha

December 5, 2020

If Less Is Not More, Neither better, What (Tax) is? The Tax system Post-Covid Pandemic Challenges - From Inconvenient Truths to Necessary Updates on Consumption Taxes Over Digital Economy

In her famous TED talk speech called “The danger of a single story”, that also became a book, with the same name, the Nigerian writer and activist Chimamanda Ngozi Adichie alerted us on the prejudiced, outdated, and unilateral vision, by the North and the West, about Africa: not the diverse, multiple, multifaceted Africa, but the single story about a poor, catastrophic, undeveloped Africa. “So that is how to create a single story”, she says, “show a people as one thing, as only one thing, over and over again, and that is what they become” (Adichie 2009). The same “single-history-telling” mechanism took place in Brazil and this ‘hominem unius libi timeo’ issue had affected the Brazilian economic and taxation narratives.

There is a “tale” about a “high tax burden” that lays on consumption and business activities and inhibits business development and Brazilian economic

growth (Nes 2012). The problem of that single “story” lives on the expressive movement against tax administrations and, consequently, against States themselves. Taxation is deemed guilty of unspeakable issues like tax evasion, informal economy, etc. In Brazil, that movement developed the “tax income calculator” called “Impostômetro” - maintained by economic sector representatives, commercial and industrial associations, and a Brazilian tax lawyers institute – to “denounce” the excessive tax burden in Brazil.

At 11:00 AM on Sunday, October 11, 2020, the hour and date of the conclusion of this post, the “Impostômetro” shouts a “tax burden” of R$1.574.700.913.443,00, almost US$ 290 billion! (Impostômetro 2020). The same website reinforces the “negativity” of such tax burden with other “information”: all this money could be converted into millions of houses, apartments, luxury cars, etc. All this negative image of the tax authorities contributes to a generalized feeling that “you pay too much, but you receive practically nothing or very little in return”.

The average citizen, influenced by the “high tax burden” discourse, is driven to resist, at least rhetorically, to State and taxation. This scenario raised the problem of the so-called “tax resistance”, in its most diverse forms, legitimate or not, a theme that we early focused on (Cunha 2017). On the other hand, the mentioned “calculator” does not take into account the tax liability reduction, whether by evasion or avoidance strategies. Even regarding licit tax liability reduction, abuses can happen such as in the case of “aggressive tax planning” or the BEPS, the acronym for “base erosion and profit shifting”, an issue that has concerned the OECD in the last decade. (OECD 2013).

In addition to the aforementioned debate, whether the “Impostômetro” is legitimate or not, another tax calculator competes with its data, going the opposite way: how much tax is NOT paid. At the same time on the same day, October 11, 2020, the “Sonegômetro” also marked a significant number - R$ 488,469,237,067.10 - in not paid taxes in Brazil, almost US$ 90 billion! (Sonegômetro 2020). Such discrepancy will not be solved by a mere arithmetic operation between these impressive numbers such as a simple subtraction between tax paid and tax due. All that these calculators represent is, on the scenario of tax resistance, that “there is something rotten in State of Brazil”

from the average citizen's point of view.

The problem is that tax resistance influences the taxation political agenda, now personified in current Minister of Economy Paulo Guedes' discourse that advocates for a "minimum State" agenda as the primary goal. In fact, the imposition of the "minimum State agenda" was only mitigated by the Coronavirus Pandemic and its Keynesian instruments to protect Brazilian lives, health, and the economy itself, a phenomenon that has happened 'mutatis mutandis' around the world, including the Trump's USA (Hidalgo 2020).

Otherwise, the Pandemic has also shown that the still-highly-based on consumption taxes (indirect taxes) doesn't work when consumers do not consume: when indirect taxpayers don't pay indirect taxes. As the most effective health measure against COVID-19, social isolation was implemented by State and local administrations in Brazil, despite the inertia of the federal government. The commerce stopped almost completely. As the consumption dropped down, so did the consumption-based tax collection, especially in States that are substantially maintained by the imposition of the "ICMS", a State tax on products and certain services. (Pitombo 2020 e Cunha 2020).

How to protect the health and life of the Brazilian people in this scenario? If the Brazilian State is necessary to save the Brazilians now, a modernized Brazilian Tax System will also be needed in a near future, and this update is not just a matter of size. The modernization of the tax system is necessary, and the Pandemic has shown the urgency to achieve this goal. First of all, and for several reasons, Brazil needs to overcome the still predominantly regressive aspect of its taxation system. However, that is not the only necessary change, and neither the idea of consumption tax's abrogation is reasonable: it must be simplified, not suppressed.

Indirect taxes are the greatest obstacle to an effective taxation awareness (tax citizenship) because they create a generalized state of "tax anesthesia", "tax illusion", with taxpayers unrelated to the tax phenomena. Despite the considerable advance introduced by Law 12.741 of December 12, 2012 (e. g., showing the percentage of taxes in the price of each product in the market and turning this information into a basic consumer right). (Brazil 2012). They also

provoke the unfair reality where low-income households, proportionally, pays more than wealthy individuals, once the first spend their economies on consumption, lasting nothing or little to save.

In this scenario, simplification is the key, not total or partial suppression. Currently, there is the proposal of a VAT, a “Value Added Tax”, in substitution of some federal, state, and local taxes (only the acronyms: IPI, PIS/COFINS, ICMS, and ISS). Also, 2 (two) Constitution Amendment Projects (the famous “PECs”) on the topic are under discussion in the Brazilian Congress, the PEC 45/2019, and the PEC 110/2019. Besides, the recently “Tax Reform” proposal was introduced by the Ministry of Economy (Sousa 2020). Once again, it will be not enough. Beyond simplification, consumption taxes need to consider newer forms of consumption too.

The COVID19 pandemic has shown that, while physical presence-based commerce was suffering the consequences of social isolation, with many businesses going into bankruptcy, the e-commerce increased. With millions of new customers - lots of those who had never bought anything on the internet before - the sector experienced unprecedented growth, despite the Pandemic, despite the crisis. (Desidério 2020). This unexpected growth has name and surname: Jeff Bezos, CEO of Amazon, who is about to become the first trillionaire in the world’s history. (Togoh 2020).

However, that was not a paradox, but a logical consequence of the new forms of investments, trade, consumption, business, education, communication, etc., that generate not only one, but many billionaire businesses such as software, browsing, streaming, e-commerce companies. This resource reallocation - from the physical to the digital world - demands a proper adaptation and modernization of tax systems, especially in fragile economies.

As Xavier Oberson (Oberson 2019) wrote, a “fair taxation” of the profits generated by those companies on the digital economy is necessary. The author, in “Taxing Robots”, reported the development of the concept of “significant economic presence” in the OECD current debate, considering the relevance of “remote automated activities performed by non-resident enterprises, which have an impact characterized as a digital presence in a

specific location” (Oberson 2019). The digital economy represents the major, if not all the tax basis on certain locations. To deny taxing rights on digital transactions condemns the people who live in these areas, the same people that sustain the digital economy, consuming day after day the goods and services it provides.

In Brazil, the issue attracted even more attention with the forthcoming implementation of the "Pix" payment system, scheduled for next November, with the possibility of instant online transactions. (Brazil 2020). A similar payment mechanism, Mark Zuckerberg’s WhatsApp® Payments is coming soon, using the successful messenger application that counts with millions of users from the most diverse social classes in Brazil. (WhatApp Inc. 2020). However, this increasing virtualization contrasts with the recent and controversial creation of the R$ 200 bill: printed money in times of cryptocurrency and online payment systems, which seems to be a waste of time (and money, because of printing costs), if not a real setback. (Russi 2020).

Recently, a “new” tax on online financial transactions proposal (e-tax) was added to the debate. Tax experts are divided on the issue: for some, the e-tax represents a disguised return of the old “CPMF”, a tax previously imposed on financial transactions; for others, it will be a new tax, specifically imposed on e-commerce transactions. Nonetheless, some aspects demand further and deeper analysis. For example, the e-tax is a consumption tax, and the tax burden will be borne by final consumers, the so-called ‘de facto’ taxpayers. Such reality, characteristic of indirect taxes, does not allow for an indiscriminate imposition on all forms of e-commerce business.

On the contrary, once the tax burden is transferred to consumers, they will choose those companies that can bear the e-tax burden without excessive increases in their prices. In such a scenario, companies that already make millions with e-commerce will undoubtedly end up in a more satisfactory position that may be inconsistent with Article 170, IX, of the Brazilian Constitution and Complementary Law n. 123/2006 itself: small business have the right to be favored, not harmed, including in tax matters. An indiscriminate e-tax is also unacceptable.

Besides those practical, constitutional, and legal issues, the e-tax alternative to the outdated consumption tax system, that does not contemplate the entire digital world and economy, will have to overcome the same old economic power contests too. Like the struggles faced by the French Digital Tax - “GAFAM” (with the initials of the tech giants Google, Amazon, Facebook, Apple, and Microsoft). Trump’s tariff threats over French wines made President Macron postpone that new tax imposition. (Gotev 2020). It shows that the entire world will have to change, to adapt, to finally turn the free/low tax digital economy into an equitably taxable digital economy.

View online: The Brazilian Tax System and Post-Covid Pandemic Challenges

Provided by Afronomicslaw