



Year V, v.2 2025 | Submission: 10/11/2025 | Accepted: 12/11/2025 | Publication: 14/11/2025

Between green rhetoric and tax breaks: selective taxation as a paradox of tax reform.

Between green discourse and tax waiver: the selective tax as a paradox of the tax reform

Arthur Phillipe Morais Carvalho - Catholic University of Brasília (UCB)

Ewerton Vinicius Pereira da Silva - Federal University of Paraíba (UFPB)

Gustavo Carvalho Hamade, Federal University of Uberlândia (UFU)

SUMMARY

Environmental taxation in Brazil is not an innovation detached from the constitutional text, but a direct expression of the structuring commands of the Constitution of the Federative Republic of Brazil (CRFB), notably articles 225 and 170, VI, which enshrine environmental protection as a legal duty of the State and a vector of the economic order. The recent Constitutional Amendment (EC) No. 132/2023, by expressly introducing the defense of the environment as a principle of the National Tax System (STN), guarantees normative density to green extra-fiscality, imposing on the legislator and the tax administration the duty to use taxation as an instrument of ecological induction. In this context, the Selective Tax (IS), regulated by Complementary Law (LC) No. 214/2025, assumes centrality as a mechanism for correcting negative externalities, aligned with the logic of "Pigouvian" taxes. However, granting exemptions to highly emitting sectors, such as the energy sector, responsible for 19% of national greenhouse gas (GHG) emissions, raises questions about the compatibility between tax benefits and the new green paradigm of the National Treasury. This scenario gives rise to constitutional tensions between the legislator's freedom to set taxes and the material limits imposed by environmental principles, opening the way for the constitutional review of fiscal policies from the perspective of the polluter-pays principle and environmental fiscal justice.

Keywords: environmental taxation. Extrafiscality. Selective tax. Tax reform.

ABSTRACT

Environmental taxation in Brazil does not represent an innovation detached from the constitutional text but is a direct expression of the structural commands of the Constitution of the Federative Republic of Brazil (CRFB), notably Articles 225 and 170, VI, which enshrine environmental protection as a legal duty of the State and as a guiding vector of the economic order. The recent Constitutional Amendment (EC) No. 132/2023, by expressly introducing the defense of the environment as a principle of the National Tax System (STN), provides normative substance to green extrafiscality, imposing upon the legislature and the tax administration the duty to use taxation as an instrument of ecological induction. In this context, the Selective Tax (IS), regulated by Complementary Law (LC) No. 214/2025, assumes centrality as a mechanism for correcting negative externalities, aligned with the logic of "Pigouvian" taxes. However, the granting of exemptions to highly polluting sectors, such as the energy sector—which accounts for 19% of national greenhouse gas (GHG) emissions—raises questions about the compatibility between tax benefits and the new green paradigm of the STN. From this scenario arise constitutional tensions between the legislator's freedom of tax design and the material limits imposed by environmental principles, opening space for the constitutional review of fiscal policies under the lens of the polluter-pays principle and environmental tax justice.

Keywords: environmental taxation. Extrafiscality. Selective Tax. Tax reform.

1. INTRODUCTION

The contemporary structure of the Brazilian National Treasury System reveals a process of re-signification. of the functions of taxation, which goes beyond the mere revenue-raising aspect to incorporate dimensions regulatory and incentive measures aimed at realizing fundamental rights. In this context, taxation Environmental issues emerge as a theoretical and legal axis of increasing relevance, not only as



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recent doctrinal construction, but as a direct projection of the constitutional commands inscribed in CRFB.

Article 225 of the Federal Constitution (Brazil, 1988) establishes an essential normative framework. by recognizing the right to an ecologically balanced environment as a fundamental right of diffuse ownership, assigning to the State and the community the positive legal duty to protect it and to promote it. This constitutional guideline is not exhausted in a principled proclamation; rather, authorizes and mandates the use of fiscal instruments as a form of active environmental protection, legitimizing a taxation system guided by the green extra-fiscal function (Costa, 2005, p. 3).

This rationale is reinforced in article 170, VI, of the CRFB (Brazil, 1988) by including the defense. of the environment as a structuring parameter of the economic order, and productive activity should to be compatible with sustainable development. Along the same lines, the Constitution provides tax mechanisms with a clear environmental purpose, such as the Contribution for Intervention in the Economic Domain (CIDE) fuels, in light of articles 149 and 177, §4, of the CRFB (Brazil, 1988), designed to internalize environmental costs derived from the use of fossil fuels.

In addition to the economic and environmental axis, the Constitution also regulates instruments of Tax incentives in urban and rural areas, such as progressive property tax over time, in line with... Articles 182 and 183, regulated by the City Statute and the Property Tax. Rural Land Tax (ITR) with a differentiated rate for unproductive properties or properties that harm the environment. environment, under the terms of articles 184 and 186, II. These provisions reveal that environmental taxation It was already enshrined in a set of principles from the very origin of the constitutional text, even though its implementation has historically been fragmented.

The approval of Constitutional Amendment No. 132/2023 (Brazil, 2023) and Complementary Law No. 214/2025 (Brazil, 2025), to By establishing the IS (Stamp Duty) with a clear extra-fiscal environmental character, they place green taxation back at the center of... constitutional agenda, giving it unprecedented normative density. The selective tax, traditionally justified as a corrective tax in the "Pigouvian" vein, it now serves a function strategic in Brazil's ecological transition, especially in aligning the country with climate goals. international commitments and those of the Paris Agreement.

However, the concrete implementation of IS exposes normative tensions, especially in light of of the exemption granted to carbon-intensive sectors, such as the energy sector, which according to the Institute of Energy and Environment (2020) accounts for approximately 19% of national greenhouse gas emissions. greenhouse effect. This then gives rise to a sophisticated constitutional debate: can the legislator It is an infra-constitutional right, under the argument of freedom of fiscal policy, to establish benefits. Are these potentially contradictory tax provisions in relation to the environmental principle of the National Tax System? Or, in other words, Environmentally neutral taxation is permissible following the constitutionalization of the duty to induce consumption. Ecological?



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It is at this intersection between constitutional principles, green extra-fiscality, and control of

This study addresses the constitutionality of environmental fiscal policies.

2. Constitutional and Doctrinal Basis of Taxation ENVIRONMENTAL IN BRAZIL

The debate on taxation with an environmental focus is not simply a theoretical discussion.

An innovative measure introduced into the Brazilian legal system without a basis in constitutional validity.

On the contrary, it is a legal institution stemming from the fundamental principles of the Brazilian Federal Constitution.

In this sense, as a central element of the topic, Article 225 of the Constitution (Brazil, 1988) enshrines the right to an ecologically balanced environment as a fundamental right and a common right of the people, imposing on the State and the community the duty to defend and preserve it. It is

true that the aforementioned provision is not limited to stating the subjective right to the environment.

A balanced environment. In truth, this is an obligation that falls upon all legal subjects.

The normative aspect of the environment, as a fundamental right, therefore authorizes the use of fiscal instruments that protect and promote sustainability. This authorization is combined with the need to implement environmental taxes, aiming to encourage non-polluting behaviors.

(Costa, 2005, p. 1).

The environmental guideline is also reinforced by article 170, item VI, of the Constitution.

(Brazil, 1988), which includes the defense of the environment among the guiding principles of the order.

Brazilian economy. From this perspective, in parallel with free enterprise and the valorization of labor.

For human beings, environmental preservation is a parameter for shaping economic activity. Therefore,

In the field of interaction between Law and Economics, environmental protection legitimizes the use of tax in its extra-fiscal function to induce behaviors more compatible with the sustainable development.

From this perspective, the effectiveness of fiscal and tax policies is debated.

to environmental protection, considering the still uncertain scope of these instruments to promote significant changes in production and consumption patterns that perpetuate imbalances and global ecological constraints, as discussed by Leite et al. (2018, p. 616).

Initially, it can be highlighted that the Constitution itself (Brazil, 1988), in its articles 149 and

Article 177, § 4, established the CIDE (Contribution for Intervention in the Economic Domain) as a mechanism for environmental taxation, whose scope is... To discourage the consumption of fossil fuels and internalize their environmental costs.

Along these lines, the understanding of environmental taxation can also be analyzed through the articles.

Articles 182 and 183 of the CRFB (Brazil, 1988), regulated by the City Statute – Law No. 10.257/2001 (Brazil, 2001), which is consolidated as the general norm of Brazilian urban law.

Although predominantly focused on the debate surrounding urban policy, this law reveals how...



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The constitutional regulations themselves authorize the use of legal-tax instruments for

For the purposes of environmental protection and addressing serious social problems, such as rights.

fundamental to housing and basic sanitation. According to José Afonso da Silva (2008, p.

67), the formatting of the constitutional text allows us to conclude that tax and urban planning mechanisms

They go hand in hand, such as the progressive property tax over time, applicable to cases of non-building.

underutilization or non-utilization of urban land, in accordance with the provisions of article 182, paragraph 4, of

CRFB (Brazil, 1988).

In the field of agrarian policy, articles 184 and 186, item II, of the Constitution (Brazil, 1988)

They bring the environmental issue into the debate, as they ensure that taxation, in addition to its revenue-raising function, also...

Implementation of sustainable practices. The constitutional mandate confers legitimacy to the intervention.

The state, through the extra-fiscal application of the ITR (Rural Land Tax), progressively burdens properties.

unproductive or failing to comply with environmental obligations.

Therefore, constitutional dictates lead to the idea of environmental taxation, while

an extra-fiscal tool, linked to correcting conduct harmful to the environment, and not only

as a mechanism for financing public spending, as is traditionally explained.

3. Selective Taxation as a Driver of Tax Reform

3.1 Theoretical understanding and legal justification of IS

In the debate concerning taxation as an instrument for protecting the environment, the following wins.

I emphasize the selective tax, a tax levied on the production, marketing or consumption of goods and

specific services. Recognizing their theoretical foundations, as well as their legal rationale, is the

first step in assessing how the Brazilian legal system addresses the perspective of taxation.

green.

Selective taxation fits into the tradition of so-called extra-fiscal or corrective taxes.

whose primary objective is not revenue collection, but rather to intervene in the economic sphere, guiding

productive and consumer behaviors directed towards socially desirable externalities, such as

Reducing pollution or promoting public health.

The concept of taxation as an instrument to promote sustainability and preservation.

Ecological change is gaining increasing importance in public policy, particularly in relation to

climate emergencies and transnational commitments, such as the Paris Agreement.

In the study of taxation and environmental protection, the use of taxes with

The study of non-fiscal purposes is not a recent field of research. It can be said that one of the first...

Systematic studies on this subject were developed by Arthur Cecil Pigou, which is why...

which instrument received the name "Pigouvian" tribute (Holanda; Freire Filho, 2024, p.

19-20). The purpose is to correct or mitigate the negative externalities resulting from



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economic activity, with environmental pollution being its main expression.

Selective taxation is legally justified as an extra-fiscal instrument of intervention.

in the economic domain, based on the principles of selectivity, material equality, and the polluter-pays principle, social function of taxation and protection of collective legal assets such as health, environment and competitive equilibrium.

Thus, within the Brazilian legal-constitutional framework, IS presents itself as a tool of an eminently extra-fiscal nature, intended to promote qualified state intervention in economic domain. Its normative legitimacy stems from a set of structuring principles.

of the constitutional tax and economic order, among which the following stand out: selectivity and equality. taxation in its material dimension, the polluter-pays principle, the social function of taxation and the protection of legal rights of a collective nature, such as public health and the environment. ecologically balanced and free competition.

In this sense, it is a fiscal mechanism that transcends the purpose of raising revenue. classic and assumes a role of behavioral guidance and correction of market distortions, adjusting the relative prices of goods whose production or consumption generates negative externalities.

By graduating the tax burden according to the degree of social or environmental harm of products, the selective tax achieves substantial tax equality, as it treats them unequally. economic agents and the goods that, in fact, find themselves in unequal situations, in accordance guided by the principles of fiscal justice and the state's duty to promote the public interest.

3.2 Overview of IS in light of the guidelines of EC No. 132/2003

In the Brazilian legal system, the enactment of the tax reform and LC No. Law 214/2025, which established the IS, reflects a change that calls for the consolidation of the principle. environmental guidelines are being implemented by the National Treasury. This new perspective aligns the nation with the global scenario. Green tax breaks.

The essential nature of this discussion deserves emphasis. The selective tax represents the The central instrument of the green taxation reform, so that its conception and regulation... Effective alignment between fiscal policy and the achievement of climate goals is indispensable.

Also known as the sin tax, the IS was instituted to discourage consumption. of goods and services that are harmful to health and the environment. In terms of constitutional competence, This tax is levied by the Federal Government in order to replace the tax on products. Industrialized Products (IPI) in part of its function. According to article 410 of the LC (Brazil, 2025), the IS It will be levied only once on the good or service, and any other form of taxation is prohibited. utilization of tax credits from previous transactions or generation of credits for subsequent operations.

Given the focus on IS (Social Security) by Constitutional Amendment No. 132 (Brazil, 2023), one might ask what...



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How does this tax impact the socio-environmental objectives pursued by the Brazilian State?

Furthermore, how is this legal-tax institution useful for achieving republican goals?

disseminated throughout the Constitution?

The ecological potential of the Selective Tax is evident in its inductive logic.

Behavioral taxation based on extra-fiscality. Unlike purely revenue-raising taxes,

Environmental selectivity allows for adjusting tax rates according to the degree of ecological impact of the products or services, operating as an instrument of economic regulation. The increase in the tax burden

Taxes on polluting goods, such as fossil fuels and disposable plastics,

high toxicity pesticides or high carbon industrial processes, creates a disincentive

Direct economic benefits for its continued presence in the market.

By assigning an additional fiscal cost to negative externalities, the State internalizes, in final price, the environmental burden that usually falls diffusely on the community and the ecosystems, thus materializing the polluter-pays principle in its fiscal dimension.

With this mechanism, a reorientation of production chains and patterns is expected.

consumption. The surtax on environmentally harmful activities and products encourages displacement.

from the demand for cleaner and more technologically efficient alternatives, such as renewable energy sources of energy, biodegradable materials, or low-emission production processes.

This is, therefore, a fiscal policy with a normative effect: the tax ceases to be merely...

a source of public revenue to become a driver of ecological transition, fostering innovation.

green and promoting environmental competitiveness in the market. In this sense, IS can become a

A vector of structural transformation, aligning the Brazilian tax system with commitments.

international climate measures and the constitutional mandate to protect the environment as provided for in Article 225 of the Federal Constitution (Brazil, 1988).

However, alongside this potential, a landscape of challenges emerges. It is worth highlighting, in this context...

However, effective implementation faces considerable challenges that could compromise its effectiveness.

purpose. Indeed, questions arise regarding the topic. Only those that can be considered

Are the scenarios listed by the legislator harmful to health and the environment? Would it be permitted to...

The Judiciary will extend the list of goods and services covered by article 409 of Complementary Law No. 214 (Brazil, 2025). listed.

In line with the new complementary legislation, they are considered harmful to health or the environment.

environment goods classified under the codes of the Mercosur Common Nomenclature based on

Harmonized System (NCM/SH), coal and services relating to vehicles; vessels

and aircraft; tobacco products; alcoholic beverages; sugary drinks; mineral resources; competitions

predictions and *fantasy sports*.

The lack of clearer and more direct parameters to characterize what would be harmful to the environment.



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This environment can create legal uncertainty and open the door to disputes. And, therefore, it is possible

It can be argued that the concept of Selective Taxation faces an intrinsic ethical dilemma, because, if from a

On the one hand, its stated goal is to discourage the consumption of harmful products; on the other hand, this tax has... significant revenue-generating potential.

So, does this mean that IS could usher in a paradoxical scenario? In other words, how to reconcile two distinct perceptions regarding selective taxation: whether the tax is successful in its If the extra-fiscal function is eliminated, tax revenue will fall, as consumption will be discouraged; on the other hand, if the If revenue collection becomes vital for financing public spending, the government will face a conflict of The interest lies in discouraging the consumption of taxed products. Therefore, how then to promote, in Pragmatic models, the effectiveness between the extra-fiscal and fiscal functions of the IS? It appears that the great The difficulty lies in understanding how this conflict between raising revenue and discouraging revenue can be mitigated.

Thus, it is recognized that the tax reform opened the doors to a new horizon for Green taxation, focused on IS (Social Security) through the usefulness of taxation for the protection of two rights. Fundamental and complementary aspects: health and the environment.

However, the regulation of the new tax structure is sufficient and contains all the What are the mechanisms for achieving the goals for which the selective tax was designed?

4 Possible Contradictions Between the IS Design Formulated by the Tax Reform and LC No. 214/2025

When conducting a teleological interpretative analysis of the effectiveness of protection

Regarding environmental issues stemming from the STN (National Treasury Secretariat), some questions emerge.

In advance, the fundamental nature of the derived constituent power is evident.

Through Constitutional Amendment No. 132/2023 (Brazil, 2023), environmental protection was expressly guaranteed. In this sense, the entire tax system will adhere to the defense of the environment, elevated to the category of The principle of the National Treasury through reform, as foreseen in article 145, §3, of the Federal Constitution (Brazil, 1988).

It can be inferred, firstly, that Brazilian taxation is not limited solely to the perspective of It is a revenue-raising instrument, but it also translates as a mandatory mechanism for ecological incentives. Therefore, from the moment that environmental protection becomes integrated into constitutional principles from the STN, the tax legislation of all federative spheres, as well as administrative acts. Tax laws must be interpreted in light of environmental law, otherwise they may be unconstitutional.

Furthermore, it is envisioned that Constitutional Amendment No. 132/2023 (Brazil, 2023) consolidates the green extra-fiscal role of the tax. It is certain, therefore, that the constitutional text reinforces the environmental extra-fiscal function of the various... Tax types, especially the Selective Tax. And also, with this new constitutional *status*, It is possible to perceive, in judicial or administrative review, that taxes that encourage practices Polluting laws are materially unconstitutional. Furthermore, it appears to constitute an omission.



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It is unconstitutional for the legislature not to formulate green tax incentives or disincentives to [benefit from environmental protection].
pollutants.

From another perspective, the constitutional treatment that the STN (National Treasury Secretariat) should give to environmental protection.
suggests a reinterpretation of contributory capacity, which also takes on a new form.
environmental. Thus, the agent that pollutes more should bear a greater tax burden, revealing that the
The polluter-pays principle has been absorbed into the Brazilian tax system. In other words, the
Selectivity takes on a mandatory dimension and confers a new obligation on the taxpayer.
Tax obligation, that is, to ensure the protection of the environment.

However, this hermeneutical reconstruction raises significant normative tensions. A
provision for exemption from the Selective Tax on electricity transactions, as stated in article
Article 413, II, of Complementary Law No. 214/2025 (Brazil, 2025), seems to contradict the very logic of
ecological induction, especially when confronted with empirical data on impact.
environmental impact on the energy sector.

According to the Energy and Environment Institute (2020), the energy sector was responsible
accounting for 19% of national GHG emissions, signaling a shift in climate pressure towards
industrial and energy activities.

This verification highlights a possible misalignment between the legislation.
The new constitutional framework and the new constitutional parameter, opening space for a qualified debate.
Regarding the constitutional adequacy of tax benefits granted to high-intensity sectors.
Energy and emissions. The question, therefore, is whether granting exemptions to the energy sector, without
environmental compensation would be compatible with the principle of environmental protection as an element.

Structural aspects of the National Treasury?

In this respect, a sensitive issue of tax constitutionalism can be observed.
contemporary, namely, a possible clash between the freedom of tax structure of
legislator and the material limits imposed by constitutional principles of new density
normative, especially after the express inclusion of environmental protection in the axiological core of the National Tax System.

Furthermore, according to the Ember report (2025, p. 74), even with clean energy
Accounting for 41% of global electricity in 2024, CO₂ emissions reached record levels.
highlighting the mismatch between incentive policies and the effective transformation of the model.
productive.

It is well known that the regulatory legislator has ample leeway to structure
tax incidence scenarios, setting tax rates, establishing differentiated regimes, and granting benefits.
Fiscal rights are subject to constitutional dictates. However, this freedom is not absolute, being
subject to parameters that the constitutional text itself, expressly or implicitly, provides for, such as
rationality, proportionality, and public purpose. With Constitutional Amendment No. 132/2023 (Brazil, 2023), the



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The environmental principle falls within this set of material limits, assuming a binding function, among other things.

Regarding legislative action.

Thus, the legislator is not allowed to claim technical discretion at any cost or tax modeling freedom to justify granting tax incentives to highly competitive sectors. carbon emitters. This possibility of tax structuring becomes linked to a Environmental constitutional teleology, requiring that all fiscal policy be accompanied by empirical demonstration and rational justification of its compatibility with ecological objectives. constitutional. Otherwise, it could constitute a deviation from constitutional purpose, since Which legal instrument is formally valid, but materially oriented towards incompatible ends? with the constitutional project.

Along these lines, a tax exemption granted to the energy sector without any environmental compensation, Or, if not linked to emission reduction criteria, it might qualify as a tax incentive. This is unconstitutionally oriented, as it subsidizes polluting activities by waiving revenue. This publicly challenges the logic of internalizing environmental costs imposed by the polluter principle. payer.

Consequently, based on the new green taxation paradigm, fiscal policies that arguments that imply benefits for carbon-intensive activities require a significant amount of persuasive argumentation. qualified, under risk of material unconstitutionality due to direct violation of article 145, §3, of the CRFB. (Brazil, 1988), or, alternatively, unconstitutionality by omission, if the legislator fails to establish sufficient tax mechanisms for ecological incentives. In other words, taxation Environmentally neutrality is no longer constitutionally permissible, given the fiscal silence on the matter. The issuance of emissions becomes, in itself, a public act subject to constitutional scrutiny.

FINAL CONSIDERATIONS

The analysis undertaken shows that the STN, after Constitutional Amendment No. 132/2023, entered into a A new phase of ecological linkage, in which environmental taxation is no longer seen as a A simple normative possibility, going far beyond that once transformed into a constitutional duty. positive.

In this context, the IS (Social Security) represents the most explicit materialization of green extra-fiscality in the... Contemporary Brazilian law. However, its configuration, especially in light of exemptions... The taxes conferred on emission-intensive sectors, such as the energy sector, reveal a contradiction of a certain nature. structural gap between constitutionalized green discourse and the reality of strategically implemented tax breaks. oriented.

The paradox between taxing to discourage and exempting to stimulate translates to the model The current system still operates in a conflictive field between legislative capture by groups and the



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Environmental teleology imposed by the CRFB. In this context, more than debating the existence of instruments, it becomes essential to critically question systemic coherence and the normative integrity of fiscal policies.

To overcome this imbalance, identifying the problem is the starting point. to the idea that environmental tax policy should be redefined under the logic of linkage. final purpose, with mandatory allocation of revenues to ecological transition funds and criteria Transparent technical expertise that prevents the use of IS (Information System) as a mere source of revenue. Without this architecture. Consequently, the IS (Social Security Institute) risks becoming a rhetorical environmental institute, disguising its true purpose. Practices that maintain the polluting *status quo*.

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