



# The (Un)Intrinsic Constitutionality of Tax Regressivity in Brazil<sup>1</sup>

The (Un)constitutionality Inherent in Tax Regressivity in Brazil

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## SUMMARY

The Federal Constitution in its art. 1 sets out the foundations of the Federative Republic of Brazil, specifically in inc. III in which he reports on the eradication of poverty, marginalization and reduction of social and regional inequalities. This principle is one of reflex effectiveness, which the State must observe in the production of its norms and public policies. The scenario of Brazilian society is recognized by persistent social inequality based on the concentration of income and wealth, racial and gender discrimination, lack of investment in health, education and infrastructure. Data *World Inequality Labs*<sup>1</sup>, that is, Laboratory of Global Inequalities, analyzing the years 2001 to 2021, point out Brazil among the members of the G20 as being the second most unequal in the world, in which around 59% of the total national income is concentrated in the hands of the 10 % richest, the poorest 50% earn an income around 29 times less than the richest 10%, and the latter hold almost 80% of the country's private wealth. Furthermore, the tycoons, represented by the wealthiest 1% of the population, control practically half (48.9%) of the national wealth in 2021. One of the most determining causes for these results is the tax burden, which collects more on the consumer's consumption. than on income and assets. The objective of this research is to answer: "Is the Brazilian Tax System in compliance with the constitutional foundation of reducing social and regional inequalities in the country?" The hypothesis presented is that only a tax reform that reverses unfair regressivity can align the tax system so that it is effectively constitutional. The research is based on studies and theories from bodies and experts on the subject.

**Key words:**Regressiveness of the National Tax System. Social and Regional Inequality. Extradisciplinary.

## ABSTRACT

The Federal Constitution in its art. 1 exposes the foundations of the Federative Republic of Brazil, specifically in inc. III, reports on eradicating poverty and marginalization and reducing social and regional inequalities.

1

This principle is of reflective effectiveness, which the State must observe in the production of its norms and public policies. The scenario of Brazilian society is recognized for its persistent social inequality based on the concentration of income and wealth, racial and gender, lack of investments in health, education and infrastructure. Data from the World Inequality Lab<sup>1</sup>, that is, the Laboratory of World Inequality, analyzing

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<sup>3</sup>Accessed on 05/12/23 and data available at <https://wid.world/country/brazil/>



the years 2001 to 2021, points Brazil among the members of the G20 as being the second most unequal in the world, in which around 59% of the total national income is concentrated in the hands of the richest 10%, the poorest 50% earn an income about 29 times less than the richest 10%, and the latter holds almost 80% of the country's private assets. In addition, tycoons, represented by the wealthiest 1% of the population, controlling practically half(48.9%) of national wealth in 2021. One of the most determining causes for these results is the tax burden, which taxes more on consumption, than on income and equity. The objective of this research is to answer whether the Brazilian Tax System has shown to follow the constitutional right to reduce social and regional inequalities in the country? The hypothesis is that only a tax reform that reverses unfair regressivity can regulate the tax system so that it is effectively constitutional. The research is based on studies and theories of bodies and specialists in the subject.

**Keywords:**Regressiveness of the National Tax System. Social and Regional Inequality. Extrafiscality.

## 1. INTRODUCTION

This article analyzes the constitutionality of the Brazilian tax system in light of the Republic's objective of "reducing social and regional inequalities", set out in article 3, III, second part, of the Federal Constitution. As a general objective, it questions how a recognized regressive tax system finds support in the national political system in the face of a rhetoric combating inequalities. The aim here is to propose ways so that the possible tax reform does not only address issues of tax simplification, but mainly combats inequalities, taxing more those who receive more, in accordance with the principle of contributory capacity.

The choice of the theme was based on scientific findings and practical examples from the Organization for Economic Co-operation and Development (OECD) countries, which demonstrate improvements in the population's quality of life when inequality is seriously combated. In this way, the reform of the Brazilian tax system can contribute to reducing socioeconomic inequalities in Brazil.

Brazil is an unequal country with a historical legacy of marked ethnic, racial, gender, income and wealth differences, but awareness of tax obstacles can be the beginning of the end of such inequality. Since the advent of the Magna Carta of 1988, the exuberance of fundamental rights and guarantees still continues without support in public policies due to the imbalances generated by a tax system that concentrates revenue in the Union, while the main entities promoting these public policies are States and Municipalities, as a rule. , without sufficient resources to promote them.

The current structure of the Brazilian tax system has had a direct impact on these inequalities, as it favors indirect taxation, especially on consumption, destroying the purchasing power of the poorest families, at the same time that it feeds back on income concentration by taxing income and income poorly. patrimony.

two The research question is: Does the Brazilian Tax System comply with the constitutional foundation of reducing social and regional inequalities in the country? There are countless contradictions in our political-tax system, but the main objective is to really question whether, given so much data on tax regressiveness, the tax system still has legitimacy within such an unequal country.

As a hypothesis, the tentative answer is "no", because the national tax system has been a factor in concentrating income and promoting social inequality. This is confirmed through the data collected.

The approach is justified by the need to take advantage of the government transition, influenced by greater relevance in the discussion on the tax system, in the search for proposals that can give rise to a

future change, even if incipient.

The topic will be covered nationally, but incursions will be made on countries with more balanced tax systems, mainly OECD countries, for comparison purposes.

The methodology is based on qualitative research, using the secondary bibliographic review method, through the intersection of the perspectives of different researchers specialized in the topic, through sources such as academic works, scientific articles and other bibliographic references. The study is conducted from a basic perspective, based on the content analysis technique, with the purpose of promoting legal knowledge.

Chapter 1 will analyze the principles that govern taxation vis-à-vis the objective of building a fairer society, which combats social and regional inequalities, comparing the tax burden on consumption versus income and assets.

Chapter 2 provides an analysis of how indirect taxes on consumption influence the behavior treatment of the less favored classes, in addition to addressing how the behavior of the richest is also influenced by low taxes on income and wealth, presenting the setbacks and consequences of tax inequality, which causes an undue normalization of situations that are unacceptable for the dignity of the person human.

Chapter 3 comprehensively presents the tax reform proposals being processed in the National Congress, which focus mainly on simplifying the tax system, without addressing progressivity with the aim of analyzing the arguments underlying possible tax changes.

Finally, the work concludes with the thematic organization of the research problem and checking whether the hypothesis can be refuted or proven, through the elements brought to light in the debate.

## 2 THEORETICAL FRAMEWORK

### 2.1 PRINCIPLES THAT IMPACT THE DISTRIBUTION OF THE TAX BURDEN

Constitutional tax principles provide support for fundamental rights and guarantees, in addition to establishing limits on the State's own actions regarding the collection of taxes. The principle of isonomy is one of the pillars of Constitutional and Tax Law, which establishes the equality of all before the law, without any type of discrimination. Therefore, the State cannot treat those who find themselves in similar situations differently.

This principle is provided for in article 5 of the 1988 Federal Constitution, which guarantees all citizens the right to equality before the law, without distinction of any kind. The same idea is expressed in the Prayer of the Young Men by Rui Barbosa<sup>4</sup>, which states: "Everyone has the right to equal protection of the law, without distinction of any kind".

In the tax sphere, the principle of equality translates into the requirement that all taxpayers be treated equally, without there being any privileges or advantages in relation to others. This means that the

3

Tax rules must be applied uniformly, without creating exceptions or tax benefits that favor certain sectors or groups to the detriment of others.

During the analysis of Extraordinary Appeal 640.905/SP<sup>5</sup>, Minister Luiz Fux describes that:

The principle of equality, reflected in the constitutional tax system (art. 5 c/c art. 150, II, CRFB/88) is not limited to equal treatment in any and all legal situations, but also in the implementation of measures such as scope to alleviate existing discriminatory factors, sometimes imposing unequal treatment in specific circumstances that advocate equality.

<sup>4</sup>Accessed on 05/12/2023: "<https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=14274788>" 5

Extraordinary Appeal No. 640.905/SP, rapporteur Minister Luís Fux, Brasília, December 2016.

The principle of contributory capacity, provided for in art. 145, §1, of the Federal Constitution is the tool to promote equality, as it recommends that each person must contribute according to their financial capacity. Machado understands that the adequacy of justice criteria can affect the application of the principle of equality, while the principle of contributory capacity presupposes that tax justice must be proportional to the taxpayer's economic capacity (MACHADO, 2006).

The State has a strong regressive bias due to the fact that the majority of tax revenue comes from indirect taxes, which leads to the expansion of social inequalities. This occurs because low- and middle-income people bear a higher tax burden on basic consumption items and essential services, while higher-income people are able to consume and save a portion of their earnings.

Using the graph below, made available by the National Treasury, it is possible to see the disproportionality between the collection of products and services in relation to assets in 2021 and 2022:

Carga Tributária Bruta Total	R\$ Milhões		% do PIB	
	2021	2022	2021	2022
<b>Carga Tributária Bruta Total - Governos Estaduais <sup>5/</sup></b>	<b>794.328</b>	<b>851.408</b>	<b>8,93%</b>	<b>8,59%</b>
<b>Impostos</b>	<b>748.887</b>	<b>801.043</b>	<b>8,42%</b>	<b>8,08%</b>
<b>Impostos sobre a propriedade</b>	<b>65.963</b>	<b>78.542</b>	<b>0,74%</b>	<b>0,79%</b>
Imposto sobre a propriedade predial e territorial urbana - IPTU	1.221	1.218	0,01%	0,01%
Imposto sobre Trans. "Inter Vivos" de Bens e de Dir. Reais sobre Imóveis - ITBI	651	521	0,01%	0,01%
Imposto sobre Transmissão "Causa Mortis" e Doação de Bens e Direitos - ITCD	12.330	12.874	0,14%	0,13%
Imposto sobre a propriedade de veículos automotores - IPVA	51.762	63.928	0,58%	0,64%
<b>Impostos sobre bens e serviços</b>	<b>682.924</b>	<b>722.502</b>	<b>7,67%</b>	<b>7,29%</b>
Imposto sobre Circulação de Mercadorias e Serviços - ICMS	657.928	692.147	7,39%	6,98%
Imposto sobre serviços de qualquer natureza - ISS	2.206	2.639	0,02%	0,03%
Contribuição para o Custeio do Serviço de Iluminação Pública	232	226	0,00%	0,00%
Taxas administrativas	22.553	27.486	0,25%	0,28%
Outros impostos sobre bens e serviços	4	4	0,00%	0,00%
<b>Contribuições sociais</b>	<b>45.441</b>	<b>50.364</b>	<b>0,51%</b>	<b>0,51%</b>
Contribuições para o RPPS	45.441	50.364	0,51%	0,51%
<b>Carga Tributária Bruta Total - Governos Municipais <sup>6/</sup></b>	<b>195.928</b>	<b>232.134</b>	<b>2,20%</b>	<b>2,34%</b>
<b>Impostos</b>	<b>178.178</b>	<b>210.008</b>	<b>2,00%</b>	<b>2,12%</b>
<b>Impostos sobre a propriedade</b>	<b>75.254</b>	<b>84.218</b>	<b>0,85%</b>	<b>0,85%</b>
Imposto sobre a propriedade predial e territorial urbana - IPTU	54.678	63.109	0,61%	0,64%
Imposto sobre Trans. "Inter Vivos" de Bens e de Dir. Reais sobre Imóveis - ITBI	20.207	20.739	0,23%	0,21%
Outros impostos sobre a propriedade	369	370	0,00%	0,00%
<b>Impostos sobre bens e serviços</b>	<b>102.924</b>	<b>125.789</b>	<b>1,16%</b>	<b>1,27%</b>
Imposto sobre serviços de qualquer natureza - ISS	86.488	107.218	0,97%	1,08%
Contribuição para o Custeio do Serviço de Iluminação Pública	11.672	12.555	0,13%	0,13%
Taxas administrativas	4.764	6.016	0,05%	0,06%
Outros impostos sobre bens e serviços	0	0	0,00%	0,00%
<b>Contribuições sociais</b>	<b>17.750</b>	<b>22.126</b>	<b>0,20%</b>	<b>0,22%</b>
Contribuições para o RPPS	17.750	22.126	0,20%	0,22%

Available at: (12/05/23); [https://sisweb.tesouro.gov.br/apex/f?p=2501:9:::9:P9\\_ID\\_PUBLICACAO:46589](https://sisweb.tesouro.gov.br/apex/f?p=2501:9:::9:P9_ID_PUBLICACAO:46589)

4

From data analysis, it is clear that excessive collection of taxes on goods and services, such as ICMS and ISS, burdens consumption. According to Zockun (2017), income concentration in the country leads to very different consumption propensities between families, which demonstrates the cruel consequence of the regressivity of taxes on consumption and services in Brazil.

The State can intervene in the economy to meet the planning of economic activity, which is decisive for the public sector and indicative for the private sector, to regulate the market in accordance with the foundations of the Social and Democratic State of Law.

Article 165, § 3, of the Federal Constitution provides for the regulation of extra-fiscal policy practices

and the creation of control formulas in relation to state intervention through tax incentives and benefits. This technique consists of the use of tax instruments, such as differentiated rates based on essentiality, exemptions, tax incentives and other measures, which aim to regulate the market.

In the Brazilian tax system, the principle of extra-fiscality operates in several areas to inhibit or encourage a certain practice. For example, the lower tax rate on essential products, such as those in the basic food basket, to facilitate access for people with low income. In addition, higher taxes can be applied to luxury and superfluous consumer products, while taxes on essential goods such as food and medicine can be reduced.

Thus, this method can be used to promote income redistribution, as taxes on luxury products tend to affect high-income individuals more, while reducing taxes on essential goods mainly benefits poorer families.

Another important principle to highlight is the principle of non-confiscation, provided for in article 150, item IV, of the 1988 Federal Constitution, which prohibits federative entities from using taxes with confiscatory effects. Dr. Ives Gandra Martins (1994, p.141), explains:

If the sum of several levied taxes represents a burden that prevents the tax payer from living and developing, it will be a general confiscatory burden, which is why the entire system will have to be reviewed, but especially that tax that, when created, exceeds the limit of the citizen's ability to contribute. There is, therefore, a resulting confiscatory tax.

Excessive taxation on consumption and services is confiscatory for low- and middle-income classes, as they end up unable to save, spending all their money on essential items, such as food, hygiene, health, housing.

The government, through social policies such as the “Minha Casa Minha Vida” Program, seeks to mitigate inequality and promote social equity. It should be noted, however, that this program is financed through resources from the general budget of the Union and the Service Time Guarantee Fund (FGTS), which is supported by monthly contributions made by companies in favor of workers working under contract. employment, corresponding to 8% of the gross salary, which shows that the burden falls on the needy sector itself.

The Bolsa Família Program, which consists of an income transfer that aims to reduce poverty and social inequality in the country, is financed with resources from the general budget of the Union and taxes such as the Tax on Industrialized Products (IPI) and the Tax on Financial Operations (IOF), which affect consumption. National School Meal Program (PNAE) which aims to guarantee healthy and adequate food for students in the country's public basic education network and the National School Transport Support Program (PNATE) which seeks to guarantee access for students in the public school network basic education to school, both are financed with resources from the National Education Development Fund (FNDE), which is supported by part of the proceeds from the collection of the Tax on the Circulation of Goods and Services (ICMS) and the Tax on Industrialized Products (IPI), that is, it comes from the collection of indirect taxes.

5

It is necessary to implement public policies that aim to reduce social inequality. However, it is essential to check in advance whether the aforementioned program will be financed by individuals who have the economic capacity compatible with such a burden, otherwise the social program has no basis.

Although the objective was not achieved, the principles of equality before the law, financial capacity and prohibition against confiscation, aim to balance and limit the relationship between the Tax Authorities and the taxpayer, so as to



to avoid excessive collection that could compromise the economy and the freedom of taxpayers, harming their basic guarantees for a dignified life. However, in practice, these principles lose their value in the face of a regressive system that masks a sad reality in the country: the detachment of political representation in the Legislative Branch.

## 2.2 THE REGRESSIVITY OF THE BRAZILIAN TAX SYSTEM

The tax system in force in Brazil is notably marked by its regressive nature, that is, taxes These costs are applied more burdensomely to those with lower purchasing power. This situation ends up significantly affecting the poorest people in the country, as they have to bear a very high tax burden in relation to what they earn.

One of the taxes that most affect the poorest is the Tax on Industrialized Products (IPI), which is levied on consumer goods. As the majority of these families' budgets are allocated to these goods, such as food, medicines and hygiene products, they end up paying proportionally more taxes than the richer classes.

There is still another tax that negatively impacts the poorest sections of the population, this is the Tax on Circulation of Goods and Services (ICMS), which is a state responsibility and affects a wide variety of products and services. Even without being cumulative, this Tax is considered indirect, which means that the tax burden falls entirely on the final consumer.

Furthermore, income taxation also ends up being regressive, since taxes on the income of the poorest classes are equivalent to or even higher than the taxes paid by the richest classes. This is because most of the income of the poorest classes comes from work, while the income of the richest classes is made up of investments, which are taxed differently.

With the regressive nature of the tax system, the poorest end up being even more disadvantaged in a scenario already marked by social inequality. This can generate a vicious cycle of poverty, as these families are unable to save and invest in their own social advancement.

One hypothesis to mitigate the regressive structure of the Brazilian tax system is to concentrate collection on direct taxes and reduce the rates of indirect taxes according to the growth of direct taxation.

Tax progressivity can be considered as a mechanism for redistributing income and wealth by the State, with the aim of preventing their concentration in the hands of a minority and reducing socioeconomic disparities.

Progressive income tax is based on the premise that the higher the taxpayer's income, the higher the tax rate he must pay. Countries belonging to the Organization for Economic Cooperation and Development (OECD) have progressive tax systems, where taxes are applied in proportion to the contributory capacity of citizens, with those with higher income and assets pay a higher rate compared to those with less financial capacity.

6

This progressive characteristic of taxation is one of the main factors that enable these countries to offer better quality public services, such as health, education, security, social assistance, as well as efficient infrastructure and transport services.

Progressive taxation, by enabling greater resource collection by the State, allows investments in public policies that benefit society as a whole, especially the most vulnerable layers. Furthermore, it contributes to the reduction of socioeconomic inequalities, as it promotes a



more equitable distribution of income and wealth among different segments of the population.

However, it appears that the maximum Personal Income Tax rate in 2021 is 27.5%, which is insufficient to resolve the regressive nature of the Brazilian tax system.

Therefore, it is essential that measures are implemented to make the tax system more progressive, ensuring that the richest pay a higher percentage of their income in taxes and easing the tax burden on the poorest classes. This could include increased collection on assets and income, the taxation of large fortunes and a review of taxes on essential goods in order to make them less regressive.

## 2.3 TAX REFORM

Tax reform is a topic that has been discussed for many years in Brazil, but the central point of divergence is just one: the wealthier sectors of society do not want tax justice, and the poor, as a rule, maintain their votes for representatives who they mask defending their interests, when, in fact, they hide their terrible intentions wrapped in inflammatory speeches on topics that do nothing to change the lives of the poorest citizens.

The Brazilian tax system is known for its complexity and high burden of taxes on consumption, which generates social inequality and consequently burdens those who have the least. Therefore, the need for a reform that makes the tax system simpler, fairer and more efficient is urgent and has been debated for decades. In recent years, the debate on tax reform has gained visibility, especially due to the economic and fiscal crises that the country has faced. Several reform proposals were presented by different sectors of society, however, what can be noted is that none of these proposals effectively carry out a fair tax reform, they only simplify the form of collection, but mostly maintain high consumption taxes, through of indirect taxes. This is done precisely to avoid touching the need to increase taxation on income and assets.

Talking about tax reform is talking about social justice. There is no possibility of social justice without fair and effective taxation. The tax system is capable of promoting inequality, simply by taxing consumption predominantly, consequently taxing the poorest.

There is no social justice when a citizen who earns a minimum wage pays the same tax burden on a kilo of beans as a person who earns 10 minimum wages. Consequently, those who earn less are paying more, proportionally. According to the table below, it is possible to note that countries that have a high level of human development tax income and assets mostly.

**Tabela 1**  
 Imposto de Renda da Pessoa Física: características em Economias Avançadas da OCDE e na América Latina, países selecionados, 2020

País	Número Alíquotas	Crédito Tributário	Parcela Isenta <sup>a</sup>	Alíquota Mínima	Alíquota Máxima	Faixa Máxima <sup>b</sup>
Austrália	4		1,03	19,0	45,0	10,20
Bélgica	4		0,99	25,0	50,0	4,57
Canadá	5	x	0,93	15,0	33,0	15,13
França	4		1,14	11,0	45,0	17,94
Alemanha	3 <sup>c</sup>		1,06	14,0	45,0	30,48
Itália	5	x	1,01	23,0	43,0	9,47
Japão	7		0,39	5,0	45,0	32,42
Coréia	7		0,14	6,0	42,0	48,24
Holanda	3	x	2,94	9,7	49,5	7,20
Portugal	7		0	14,5	48,0	11,61
Espanha <sup>d</sup>	5		0,74	19,0	45,0	7,99
Suécia	1	x	4,85	52,0	52,0	4,85
Reino Unido	3		1,44	20,0	45,0	17,30
Estados Unidos <sup>e</sup>	7		0	10,0	37,0	43,20
Colômbia	6		2,39	19,0	39,0	68,04
Chile	6		1,61	4,0	35,0	14,33
México	19	x	0,03	1,9	35,0	30,93
Brasil	4		0,81	7,5	27,5	1,98
<b>Média OCDE-14</b>	<b>5</b>		<b>1,19</b>	<b>17,4</b>	<b>44,6</b>	<b>18,61</b>
<b>Média AL-4</b>	<b>9</b>		<b>1,21</b>	<b>8,1</b>	<b>34,1</b>	<b>28,82</b>

Fonte: OCDE (2021c), elaboração IPEA.

a- Parcela isenta mensal, em milhares de dólares internacionais (1 Int\$ = 2,36 BRL (2020))

b- Faixa mensal onde começa a ser aplicada a alíquota máxima, em milhares de dólares internacionais.

c- Alemanha: Na primeira faixa, entre 14% e 42% a alíquota aumenta linearmente a renda.

d- Espanha: Imposto de renda central e regional somados. Exemplo para Madri.

e- Estados Unidos: Apenas o imposto de renda federal.

Tax reform is essential for the country to move forward on the path to economic growth and the reduction of social inequalities. A successful tax reform can improve the business environment, increase the competitiveness of Brazilian companies and, consequently, generate jobs and better income distribution for the population.

Therefore, it is essential that Brazilian society, businesspeople, public finance specialists and parliamentarians work together to build a fairer, simpler and more efficient tax system that meets the country's needs and promotes social well-being, reducing ill-health. and promoting social justice.

## FINAL CONSIDERATIONS

The present work aimed to answer whether the Brazilian Tax System is in compliance with the constitutional foundation of reducing social and regional inequalities in the country. The hypothesis presented was that only a tax reform that reverses unfair regressivity can align the tax system so that it is effectively constitutional.

This research shows that the Brazilian tax system is not in accordance with the constitutional foundation of reducing social inequalities, as its regressive structure continues to undermine the economic power of the least favored. It's a reverse Robin Hood, that is, it takes from the poor to give to the rich. There is no forecast of change, since the contemporary proposals being processed in Congress, which could take advantage of the opportunity to restructure the method of taxation, are not on the agenda, with the State's priority being collection efficiency.

The hypothesis is confirmed, since, to make the structure of the tax system progressive, it is necessary to concentrate revenue on direct taxes focused on income and assets. A Reducing indirect tax rates as direct taxation grows would be a gradual way to achieve this objective. This can be done through greater collection on assets and income, with the taxation of large fortunes and a review of taxes on essential goods, in order to make them each

increasingly smaller.

Only collective awareness around this goal of transforming the national tax system from regressive to progressive will be the main point of the debate on inequality. This research was carried out precisely to provide technical support for this important political issue.



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