
COUNTERCYCLICAL FISCAL PUBLIC POLICIES: ANALYSIS OF THE BRAZILIAN CONTEXT IN THE COVID-19 GENERATED CRISIS***POLÍTICAS PÚBLICAS TRIBUTÁRIAS ANTICÍCLICAS: ANÁLISE DO CONTEXTO BRASILEIRO NA CRISE DECORRENTE DA COVID-19*****ANTÔNIO MOURA BORGES**

Postdoctoral in Law from Georgetown University Law Center; Post-Doctorate in Law from the Universidad Complutense de Madrid; Doctorate in Law from the University of São Paulo; Master of Laws from Southern Methodist University School of Law; Graduated in Law from the Federal University of Pernambuco; National Treasury Attorney and Adjunct Professor at UNB.

JEFERSON TEODOROVICZ

Postdoctoral internship in Law in progress at the University of Brasília – UNB; Doctorate in Economic and Financial Law from USP; Master Degree in Economic and Social and Environmental Law from PUCPR; Specialization in Accounting and Tax Management by UFPR; Bachelor of Laws from PUCPR; and Member of the First Judgment Section of- CARF.

VICTOR GUILHERME ESTECHE FILHO

Member of the Research Group at the Federal University of Paraná; Scientific Initiation Scholarship Researcher (PIBIC) (2020/2021) linked to the extension and research group LABÁ - Law, Space and Politics; and Researcher in the field of Tax Law.

DANIEL LUIZ SIMIONI FILHO

Member of the Research Group at the Federal University of Paraná and Researcher in the field of Tax Law.



ABSTRACT

Objectives: this article aims to expose perspectives regarding the function of taxation utilized by public policies towards the confrontation of structural crisis, such as the one generated by COVID-19 pandemic, besides outlining a brief overview of how, in Brazil, the three branches have acted in taxation regards during the crisis, federal, state and municipal-wise.

Methodology: to do it, the article's first part focus on a few doctrinal contributions regarding the role of taxation in crisis, with special collaboration of the ideas of Keynes about Countercyclical Fiscal Policies, while the second part presents some norms concerning crisis-related fiscal measures adopted in Brazil and a few considerations about the role adopted by Judiciary, from a jurisprudential research.

Results: by applying such methodology, it could be verified how, in practice, the ideas regarding fiscal norms with extrafiscal and simplifier functions have been applied, and the way the Judiciary has been analyzing the demands made by taxpayers concerning pandemics taxation.

Contribution: Therefore, it is intended to contribute to the debate about the measures regarding, in greater or lesser measure, the state's position on tax collecting during the crisis generated from the current pandemic.

Keywords: Keynesian Countercyclical Fiscal Policies; COVID-19; Taxation in Brazil.

RESUMO

Objetivo: o presente artigo tem o objetivo de expor perspectivas quanto à função da tributação utilizada por políticas públicas para o enfrentamento de crises estruturais, tal como a originada pela pandemia da COVID-19, além de traçar um breve panorama de como, no Brasil, os três poderes têm atuado na esfera tributária em relação à crise, em esfera federal, estadual e municipal.

Metodologia: Para tanto, a primeira parte do artigo foca em algumas colocações doutrinárias acerca do papel da tributação nas crises, com especial colaboração das ideias de Políticas Fiscais Anticíclicas de Keynes, enquanto a segunda parte apresenta um levantamento normativo das medidas tributárias adotadas no Brasil relativas à crise, além de considerações acerca do papel adotado pelo Judiciário, a partir de levantamento jurisprudencial.

Resultados: Com a metodologia aplicada, pôde verificar-se como vêm sendo aplicadas na prática as ideias referentes às normas tributárias com função extrafiscal e simplificadora, bem como o modo pelo qual vem se comportando o Judiciário ao analisar os pleitos formulados pelos contribuintes relacionados à tributação na pandemia.



Contribuição: Assim, pretende-se contribuir para o debate acerca das medidas que envolvam, em maior ou menor medida, a postura estatal no tocante à exigência de tributos no cenário de crise decorrente da atual pandemia.

Palavras-chave: Política Fiscal Anticíclica Keynesiana; COVID-19; Tributação no Brasil.

1 INTRODUCTION

This article aims to expose perspectives related to the function of the taxation applied by public policies facing structural crisis.

Both of these fields, Taxation Public Policy (which in the approached context will be called Taxation Policy) and Tax Law present several intersection points for analysis, especially on an economic bias, in the normative or prospective field regarding taxes.

In this sense, we expose the necessary reflection on the extrafiscal role of taxes, which comes from the direction given by Fiscal Policy, mainly on the actual time course of COVID-19 (SARS-CoV-2) originated pandemic combat.

This analysis aims to present a few preliminary notions and basis relations between both field studies. It does not intend, therefore, to deepen the theoretical foundations of Fiscal Policy – *lato sensu* – or Financial Science.

Likewise, it intends to summarize a brief historical context regarding extrafiscality's acknowledgement and performance. Thus, it will not get in the scope of studying and exploring the semantic analysis, the normative structure of the inductive fiscal norm, neither the theoretical discussion regarding extrafiscality effects, goals or functions.

The usage of fiscal measures to counter structural crisis and its socioeconomics and political effects is a recurring practice in the history of Fiscal Policy. There is a protagonist space for taxation as a measure towards the contention and overcoming of social, political, economic and structural crisis, both nationally and internationally.



This protagonism is claimed again by society at this moment of fight against Pandemic and its multifactorial effects. This way, it's shown the necessity for an analysis of taxation measures facing the diminishing and solving of the COVID-19 generated crisis aspects.

In this sense, the article directs itself towards the analysis of normative acts that regulate pandemic related fiscal measures, proliferated by Legislative and Executive in Brazil, also the jurisprudence position sustained by Brazilian courts in this matter.

Specially, the authors will analyze what they consider being the main measures, coming from the states and cities, as well as the more recent and important measures brought by the federal government. This analysis also includes decisions from the Brazilian supreme court, federal and state courts.

From a legislative, doctrinal, jurisprudential and documental investigation, the article will then follow towards an exposition of the relation between Financial Policy and Financial Science, passing through an analysis of the effects that can be generated through taxation, and then unfold itself, with an historical bias, on extrafiscality and its relationship with Taxation Policy, mainly in a crisis context – in which it becomes highlighted the Keynesian Countercyclical Fiscal Policy.

Thus, supported in this theoretical and historical lifting, the national jurisprudence and the measures taken as taxation benefits in Brazil will be analyzed.

2 RELATIONS BETWEEN FISCAL POLICY AND PUBLIC FINANCES SCIENCE

There are several relations between Tax Law and Fiscal Policy. Both areas share the same object: taxation. However, in Tax Law, the legal operator works with positivated norms and, through hermeneutics, extracts the meaning of the norm in the legal system. The politics operator, on the other hand, aims the fiscal system enhancement towards its optimization under the parameter of determined objectives and values.



Therefore, considering the existence, in the field of Finances Science and Fiscal Policy, of the objective (or descriptive) aspect and the normative (which aims the optimization of the “ought”) aspect, the dialogue with Tax Law shows itself evident (TEODOROVICZ, 2020, p. 299).

Because of that, Fiscal Policy can be considered as a “normative science” which aims the enhancement, under given perspective, of taxation, reason for its attraction to Tax Law ought to be seen with good eyes, as it contains the potential for improving the fiscal system (FERREIRA LAPATZA, 2007, p. 130; MARINS, 2005, p. 49-52).

However, this exchange of knowledge between Fiscal Policy and Tax Law is still shy considering its potential.

One of the reasons for this disjunction resides in the understanding that Fiscal or Finances Policy – in which Fiscal Policy is inserted – approaches the normative aspect of Finances Science or Public Finances, as this would take charge of the principiological expressions, of ontological nature, related to the State financial activities (BALEIRO, 2000, p. 28-29).

However, the understanding that there is a differentiation between Finances or Fiscal Policy and Finances Science, being the latter the source of theoretical production in public finances and the former the field of practice for the knowledgement obtained in the Finances Science, is also a pertinent construction (BALEIRO, 2000, p. 28-29; BIELSA, 1951, p. 07-19; LAURÉ, 1957, p. 7; SOUSA, 1975, p. 31).

Either way, even approaching this theme without bigger pretentions, there is meaning in the distinction of Fiscal Policy in its theoretical aspect and its practical aspect. Finances Policy, in its theoretical aspect, coming from a pre-established goal, aims the study of practices that enable the optimization of financial activities, being identified, ordinarily, with the idea of “applied Finances Science”. This has motivated part of the doctrine to frame it as the section of Finances Science destined to practical problem solving. On the other hand, the practical aspect of Finances Policy is destined to enforcing activities, previously conjectured by Finances Science, towards reaching a pre-established goal (TEODOROVICZ, 2020, p. 300-303).



Despite the proliferation of those perspectives, there was the emergence of theorists who, stepping aside from those premises, have emphasized the normative character of Finances Science, starting with the investigation of economic events regarding state financial activities, with the intent of its polishing or bigger affluence to a determined pre-established end.

Such approach, which puts itself as Public Finances normative theory, was also named Finance or Fiscal Policy, it being the conception which bears the know how facing the search for the “ought” (BALEEIRO, 2000, p. 29).

For Rafael Bielsa (1951, p. 9), the studies regarding the principles public spending allocation, and the conditions of its application, would correspond to Finances Science. In contrast, Financial Policy would enclose the conception and planning of the goals set through the use of the knowledge obtained in Finances Science.

Seeing that Fiscal Legislative Policy can also be considered part of Fiscal Policy, the economic aspect of the latter means only part of the former field of performance.

Because of that, Fernando Sainz de Bujanda (1967, p. 22-26) lists the characteristics and distinctions between Financial Economy and Financial Policy. He grants the former the characteristic of descriptive analysis of financial activities, while the latter handles financial activities as an object of normative analysis. Despite that, the Spanish author (1962, p. 32) recognizes the movement of attributing a “fiscal policy theory”, with the objective of “(...) showing scientifically the possibilities that Fiscal Policy offers to assure a full occupation of the factors”.

Thus, it is important to highlight the point of relationship and dialogue between Tax or Finance Law and Fiscal or Finance Policy, stressed by the Spanish master, it being the teleological element of Finance Law, in which resides a verticalization space for the relations between those areas, what can generate mutual gains.

Specially, the grenadine author stresses (1962, p. 43) legal certainty, expressed through the adequate application of legal norms, a surgical development of the legal concepts and the construction of robust doctrine currents, is a very important



ally of Fiscal or Finance Policy in its exercise. As a whole, the Financial Economy guidelines are another source of enrichment for said area.

Therefore, the Fiscal Policy planner must look out for the innovation possibilities contained in the legal order when elaborating a Tax Law norm (BALEEIRO, 1995, p. 41; SOARES MARTÍNES, 1993, p. 03-05).

3 FISCAL POLICY AND TAXATION OBJECTIVES

From what has been shown, it can be seen that a reasoned end is essential for the acts conducted by Fiscal Policy. Said end is changeable according to the context – this being composed by geographic aspects, historical aspects, economics, environmental, etc. – surrounding the idealized plan by each State (DALTON, 1980, p. 59).

In this sense, the Fiscal Policy fiscal profile consists on the use of taxation for reaching certain goals, those being pre-determined or not (CASALTA NABAIS, 2007, p. 262; SOARES MARTÍNES, 1993, p. 22). Therefore, the tax does it through the employ of different functions, such as: a) allocative function (related to the allocation of the resources utilized by the government towards the promotion of public services); b) distributive function (regarding income and social needs) and; c) stabilizing function (aiming to make the economic growth feasible, for example) (MORI, 2009, p. 03-05).

Thus, such measures and functions are related with public spending policies, and Fiscal Policy, in turn, mirrors Financial Policy and the multifactorial context from each nation (TEODOROVICZ, 2020, p. 303-305).

Because of that, Fiscal Policy in economically developed countries has a tendency to tread the path of economical-financial structure maintenance and, on the other hand, developing countries get their inspirations regarding political practices on those made by countries with bigger economic potency, as teach Aliomar Baleeiro (1995, p. 102) and Ursula K. Hicks (1967, p. 75-76).

In this sense, the main objectives from fiscal policies adopted by developing countries, save the peculiarities in each case, according to John F. Due (1974, p. 45-



46, p. 16-17), are: (a) progress acceleration, aiming, from economic development, the increase of real *per capita* income to the level of developed countries; (b) income sharing model which preserves, keeps or turn into effective, reasonably, the distribution of revenue coming from development; (c) resources allocation, with the goal of answering the needs from society, or its dominant group; (d) prices stability, although a secondary objective compared to the others, is a beneficial and sought objective by those countries.

Accordingly, the reason is evident for such aforementioned financial goals resonate in the study of fiscal law, which also has correlated objectives, such as tax collection, related to the capture of resources for the state activities; redistribution, made aiming to diminish social inequalities; and regulation, which consists in shifting the direction of economical activities from the private sector towards the State concerns (AVI YONAH, 2008, p. 07-30).

4 FISCAL PUBLIC POLICY AND EXTRAFISCAL FUNCTIONS

The tax functions establish a clear relation with Fiscal Policy, seeing as taxes are used as instruments for determined goals. The fiscal function is directed, as such, only towards the collection of resources. However, extrafiscality has in itself several different functions, mainly towards the production of effects that are not proprietarily related to tax collection (TEODOROVICZ, 2020, p. 305-309).

The study of extrafiscality under a legal normative bias is one that grasps with higher detail the investigation on the legal aspects of the matter, and not exactly the finance matters. In the doctrine, the inductor fiscal norm as an object of study grew, which generates distancing from the term “extrafiscality”, terminology historically linked to other fields of knowledge, such as Finances Science (MARINS; TEODOROVICZ, 2020, p. 73-123).

The contribution from Luís Eduardo Schoueri on this theme must be highlighted, mainly regarding the studies of the inductor fiscal norm and the economic intervention guided by the methodology of the pragmatic vision of the fiscal norm,



inspired by the functional perspective of the legal norm, from Tercio Sampaio Ferraz Júnior (1998, p. 14-15, p. 194-195), contribution who refers to the works of Norberto Bobbio (2007, p. 81-115).

This way, according to Schoueri, the different functions of the fiscal norm are: (a) fiscal function (related to tax collection); (b) simplifier function (related to the principle of practicality, aiming to simplify the fiscal system); (c) extrafiscal function (in broad sense)

At this point, Schoueri (2005, p. 32-34), positions extrafiscality as gender and includes as species, for example, the inductor function norms – extrafiscality in restricted sense – and norms of social policy, which have social motivation and have the effect of bettering the recipient, but there isn't incentive for the unfortunate situation to get better.

Thus, taxation, used as a financial instrument, has the potential to cause an impact in social, cultural, economic and environmental life, in different ways. It is included in this field, the form of taxation that aims the disincentive of conducts, overtaxing determined operations intending to discourage them (TEODOROVICZ, 2020, p. 305-309).

Therefore, Fiscal Policy can produce effects which are related to tax collection, redistribution, regulation, simplification, stabilization, and also intervene in the social order, the economic order, environmental order, among others, reason why Fiscal Policy, through the extrafiscal function of taxes, reaches a certain economic, social or environmental direction, and may, even so, reach the efficacy of determined ideals related to fiscal system, such as fiscal justice (DALTON, 1980, p. 126-127), the regional economic integration, economic development (DUE, 1974, p. 83-85), and structural crisis combat.



5 COUNTERCYCLICAL FISCAL POLICY REVISITED AND EXTRAFISCALITY

The Countercyclical Fiscal Policy is aimed towards confronting crisis, be those of economic, social or environmental nature, having great contributions from John Maynard Keynes for its development.

The Fiscal Policy, until the beginning of the 20th century, went through the understanding, inspired on Classic Liberalism, in which reigned the tendency of proposing the so-called “Neutral Public Finances”, dedicated to keeping or obtaining balance between State’s revenues and expenses (TEODOROVICZ, 2020, p. 309-312).

However, the historical events in the first decades of the 20th century, such as World War I (1914-1918), the Constitutions in Mexico (1917) and Weimar (1919), the Russian Revolution, besides other later events, led to the creation of a new social, economic and political ambient, which permitted the realignment of the form in which the State, the individual and the society related to each other in this period, adding to those, as a determinant changing factor, the “Wall Street Crash of 1929”.

In this context, new studies in economics were emerging, dedicated to the election of new courses for the substitution of the ruling paradigm with the intent of ending the crisis. In this space, Keynes’ contribution (1971, p. 07-49) is the leading figure, by proposing a interventional economic policy, in which the importance given to taxes is stressed, his studies having contributed in substantial matter towards de recognition of the propelling potential of economic and social politics of taxes.

That is, only in the 1930s the expression “Fiscal Policy” (KEYNES, 1992, p. 23) starts being aired as its own concept, referring to the use of financial mechanisms towards the application of certain economic theories, although it was already by then an old expression in finance doctrine.

The intervention created by Keynes had evident external influence, seeing as it was headed towards combating the socio-economic crisis generated by World War I and the “Wall Street Crash of 1929”. In this sense, his theory was seen as an alternative to the paradigm represented by classical economic liberalism, which principles and practices were insufficient to overcoming the crisis.



The main constructions in his works talk about jobs, production and the possibility of work relations being oriented by the market. This could be attained through a new appearance in the state performance, with public investments being conjugated with private spendings (KEYNES, 1992, p. 24-27), through a position that is not restrictive and “neutral” anymore, but interventionist in society and economy.

Although the role of taxes is not in the first order of treatment in its theoretical construction, the importance of taxation is highlighted “in the conclusions and final notes redacted by Keynes on the General Theory’s social philosophy” (PAJISTE, s/d, p. 26).

The instrumentalization of taxation in the Keynesian theory has, therefore, two main objectives: reach full employment and income distribution. Thus, it is configured, seeing that Keynes’ conception begins with the acknowledgement of inefficiency in the search for full employment in a bias of dignity, lack of equality in the distribution of fortunes and income (PAJISTE, s/d, p. 24).

This distinct position related to the fiscal activity, preexistent in Keynes’ studies (1971, p. 92) and assured by the author in the crisis context at the time, was then observed as a measure of structural aspect in the combat of crises. Because of that, there is a terminological approximation between Fiscal Policy and the so-called “Countercyclical Fiscal Policy”, which dedicates itself to fighting great depressions (TEODOROVICZ, 2020, p. 309-312).

In addition, this perspective highlights the formation of Interventionist States or Welfare States, seeing as it assumes the state intervention for the overcoming of social and economic crisis (KEYNES, 1984, p. 170). Soon after that, the expression “Fiscal Policy” or “Countercyclical Fiscal Policy” starts being used to show, mainly, the adoption of financial and fiscal public policies towards the combat of crisis moments (BALEEIRO, 2000, p. 28-29).

Indubitably, such contributions were very enriching for the fiscal aspect, especially regarding extrafiscality related researches, being that the financial activities goals are more than only the collection function.

The Rome Congress, in 1948, event which featured the majority of the great financiers at that time, is an evidence that the extrafiscal function of taxes has also



yielded, on the other side, a major impulse in the Finances Science and Fiscal Policy studies after World War II.

The position of economists Fritz Neumark and Henry Laufenburger was, with certain intensity, mentioned in said Congress (DEODATO, 1949, p. 49), and as well, in the following years by the specialized literature (TEODOROVICZ, 2020, p. 309-312).

Neumark (1970, p. 46) supported the use of extrafiscality towards socio-economic goals, and also for demographic policies. Laufenberger, on the other hand (1951, p. 252) defended the appreciation of the financier function of State, which through taxation can finance the state's performance headed to fulfilling social or economic goals.

In this context, it is placed the contribution of Aliomar Baleeiro (2000, p. 28-29) by recognizing in the fiscal aspect of Countercyclical Fiscal Policy the new conception of the application of the extrafiscal function dedicated to crisis combat.

It is worth mentioning that there is no way of upholding a pretentious tax neutrality in any perspective. The social and economic impact of taxes is a permanent element with reflects on the political improvement intra-state and inter-state, both in an individualist liberal perspective and in a flattened or socialist economy (DEODATO, 1949, p. 20; LAUFENBURGER, 1951, p. 268; TEODOROVICZ, 2020, p. 309-312).

Having exposed the roots of Fiscal Policy faced towards the overcoming of malevolent effects to the society and the economy, coming from structural crises, we can see that said practice, supported through the use of fiscal and extrafiscal mechanisms, comes from a long date.

Therefore, the crisis generated by the COVID-19 pandemic fits in the acting field of Public Policies, which evokes, as an overcoming tool of the crisis' harmful effects, the use of taxes.



6 BRIEF ANALYSIS OF FISCAL POLICIES ADOPTED BY EXECUTIVE AND LEGISLATIVE BRANCHES

The global pandemics caused by Covid-19 calls the acting of Countercyclical Tax Policies, found within Countercyclical Fiscal Policies, towards the mitigation, prevention or overcoming of the harming effects towards society and economics caused by the pandemic generated crisis.

It is possible to detect, in Brazilian tax system, measures that point to the developing of extrafiscal functions towards opposing pandemic related matters. Notably, there is the use of infralegal normative measures for the concession of fiscal benefits, for the dilation of payment terms or quantitative criteria reduction, extrafiscality is mitigated in its function of encouraging certain sectors of society with the main function of tax – collecting (TEODOROVICZ, 2020, p. 314).

Under the scope chosen for analysis, measures established by Executive and Legislative branches, it is possible to realize that there are tax norms with extrafiscal and simplifier functions, being possible to categorize them (only aiming didactic goals) in three general groups: (a) measures which delay payment terms and postpone expiration date of certificates; (b) measures of fiscal simplification, which comprise facilitating tax payments and the complying of tax obligations; and (c) measures which alter the quantitative criteria of taxes.

This way, regarding measures which delay payment terms, among the various measures adopted, federal-wise it can be stood out: Ordinance ME nº 245/20, which has delayed the payment term of social security contributions payed by the employer and the PIS/COFINS contributions in the month of may 2020, in its articles 1st and 2nd (BRAZIL, 2020), and also the Resolution CGSN nº 158/21, which has delayed the payment terms of taxes registered in Simples Nacional in its article 1st (BRAZIL, 2021).

State-wise, the Decree nº 46.982/20 can be stood out, granted by Rio de Janeiro's governor, determining the delay of payment terms related to taxes that are object of installments in active debt, due to the pandemics (RIO DE JANEIRO (STATE), 2020).



And, still in Rio de Janeiro, the Law nº 8.766/20 was published, authorizing the Executive branch to postpone the collecting of ICMS in the electrical energy and telecommunication services bills, while the public health emergency situation is sustained (RIO DE JANEIRO (STATE), 2020). The delaying of ICMS payment terms was a tendency followed by other states, such as Paraná – Decree nº 4.386/20 (PARANÁ, 2020).

Municipal-wise, the Decree nº 524/20, from Curitiba, Paraná, is highlighted, delaying the ISS payment terms for the months of May, June and July in 2020 (CURITIBA, 2020). Also, the Legislative branch of the Paraná's capital has published the Complementary Law 123/20, which modifies the payment terms of expired monthly quotas and delays the payment terms of pending monthly quotas related to ISS-Fixo, IPTU and garbage collecting taxes in 2020 (CURITIBA, 2020).

Also in this category, are included resolutions and decrees that determine the postponing of the expiration date of tax clearance certificates (CPD-EN). In this sense, is highlighted the Joint Resolution SFP/PGE 02/20, in the state of São Paulo, which postponed for 90 days the expiration date of CPD-EN that were expired in the period comprising April 30th and may 30th of 2020 (SÃO PAULO (STATE), 2020). This measure was also adopted municipal-wise, having as example of application São Paulo (Ordinance SF 225/20), Curitiba (Decree 471/20) and Rio de Janeiro (Ordinance PGM 1002/20) (SÃO PAULO (CITY), 2020; CURITIBA, 2020; RIO DE JANEIRO (CITY), 2020).

Regarding fiscal simplification measures, the Decree nº 65.171/20 of the state of São Paulo must be highlighted, as it establishes conditions towards the reestablishment of installments which were disrupted between March 1st and July 30th of 2020 (SÃO PAULO (STATE), 2020). In this same sense is the Law nº 20.418/20 for the state of Paraná (PARANÁ, 2020). Those measures represent true advance by considering the possibilities of installments reinstatement, avoiding judicialization – and, consequently, implying the simplification of tax payments.

Still in this order, about tax payment facilitations, federal-wise there is a notable example in the Ordinance PGFN 2.381/20, which has reopened, for the year 2021, the



term for the accession of the several measures related to fiscal settlements edited in 2021 by PGFN (BRAZIL, 2021).

In states, there are examples such as Law nº 17.293/20, in the state of São Paulo, which brought the possibilities of state taxes fiscal settlements (SÃO PAULO (STATE), 2020). In Curitiba, the program REFIC-COVID-19 was implemented, towards the regularization of tax and non-tax debts, through the Complementary Law nº 125/20 (CURITIBA, 2020).

Finally, regarding measures which change the quantitative criteria of taxes, federal-wise it is highlighted (among many examples), the Decrees nº 10.318/20 e 10.352/20, which have reduced to zero, respectively, the tax rates of PIS/COFINS on chemicals utilized in medicines and IPI on digital thermometers (BRAZIL, 2020).

State-wise, through the Decree nº 4.412/20, the government of Paraná has reduced in 35% the basis for the ICMS calculation in operations made with similar medicine, 30% for those made with generic medicine and 16% for other medical-hospital products (PARANÁ, 2020).

Through the legislative, the state of Rio de Janeiro has published the Law nº 8771/20, which has included alcohol gel in the list of basic basket products (RIO DE JANEIRO (ESTADO), 2020). In addition, the Law nº 8.889/20 has authorized Rio de Janeiro's executive branch to concede ICMS tax exemption for products that compose the basic basket and the Law nº 8.884/20 has also authorized such measure for pandemic combat-related products (RIO DE JANEIRO (STATE), 2020).

From the norm justification of such measures, it is perceived that most of them utilize as reference acts that recognize the state of calamity in society, derived from the harmful effects installed by COVID-19 pandemics. Thus, those measures aim to combat the effects from the pandemic through the implementation of tax norms with extrafiscal and simplifier functions, tending to attenuate taxpayer encumbrance, financial and bureaucracy-wise, and to incentive (through tax exemptions, for example) operations containing products that are essential for the pandemic combat.



7 BRIEF ANALYSIS OF BRAZILIAN JURISPRUDENCE ON TAX THEMES DURING THE PANDEMIC

The socioeconomic issues brought by the COVID-19 pandemic has evoked, in Brazilian taxpayers, the need for help requests through the Judiciary branch, mainly with the intent of obtaining judicial rulings conceding the delay of payment terms and release of judicial deposits/substitution of guarantees in tax executions.

Notably, the Federal Supreme Court has manifested itself, when requested, on the subject of delaying the payment terms of some state and municipal taxes. The understanding that prevails is one that the Judiciary branch does not have the competence to analyze the form of tax paying conducted by public administration during the pandemic. Precisely due to the acknowledgement of the grave situation in pandemics, those measures should be executed coordinately by the government branches, due to the separation of powers and the principle of isonomy – seeing that the vast majority of economic segments find themselves in a crisis context. Therefore, the criteria adopted by public administration should be prioritized. An example of this understanding is the ruling made by the Court President in the Conservatory Measure of Summary Judgement Suspension nº 185, from Maranhão (BRAZIL (STF), 2020).

It is seen that this Supreme Court understanding reverberates in the lower courts, which leads to the dismissal of claims for delaying of payment terms through the judiciary.

There are, however, some rulings that are favorable to the taxpayers in other pandemic-related issues, such as the ruling from TJGO made in process nº 5068160-68.2020.8.09.0000, which determined the withdrawal of money garnishment made in a fiscal execution. Also, can be cited the ruling from TRF4, made in process nº 5034000-25.2019.4.04.0000, which granted the replacement of a judicial deposit for a secure contract, assuring the taxpayer company's more cash flow and payment of salaries (GOIÁS (TJGO), 2020; BRAZIL (TRF4), 2020).

The reasoning of those rulings is supported, usually, on the principle of less burden to the executed, taking in consideration the context of pandemic-generated



crisis – thus, a different perspective from that used in situations of judicial demand for delaying payment terms.

Therefore, the jurisprudence analysis leads to the finding of a consolidated position in the dismissal of payment terms delaying requests – including rulings from the Supreme Court. However, among the few rulings favorable to taxpayers during the pandemics, must be highlighted those pointing to the possibility of flexibilization of issues related to the withdrawal of judicial deposits/replacement of securities.

8 FINAL CONSIDERATIONS

The Countercyclical Fiscal Public Policies consists of utilizing taxes towards the confrontation of structural crisis. It is not a new phenomenon and it has its development attached to the contribution of Keynes regarding the function of public policies in crisis confrontations, being used in this context since its conception.

In this matter, the study of fiscal norms functions for the production of extrafiscal effects naturally presents relations that overcome Tax Law. That is, in Finance Sciences and Fiscal of Finance Policies doctrine, there is a great amount of literature regarding the prospective or normative function, aiming the betterment of the existing system. Therefore, there is a relation space between said areas, in which the prospective function in the Law Science aspect can be appropriated.

Therefore, from the knowledge developed in Political Economic or Public Finances, it is possible to understand with a bigger coverage the function performed by inductor fiscal norms, seeing as those are, usually, established with a predetermined goal of producing effects in society.

With the COVID-19 generated crisis, in Countercyclical Fiscal Public Policies, the fiscal norms, through extrafiscal functions, have reached again its recurrent protagonism.

In this sense, must be highlighted, in Brazil, the implementation of measures authorizing or determining the delaying of tax payment terms (and the expiration dates of clearance certificates), reduction or exemption in the quantitative criteria of taxes in



operations with basic basket products and pandemic control (such as alcohol gel), and also the possibility of reestablishing disrupted installments in a determined time course and the facilitation of tax paying through measures as, for example, settlement.

Thus, it is seen that, federal, state and municipal-wise, fiscal norms with extrafiscal and simplifier functions were (and are being) used. The extrafiscality in measures of delaying and tax quantitative criteria reduction is seen from its effects (taxpayer exemption) and the legal motivation exposed in laws and decrees that have instituted such measures: majorly, combating the harmful effects caused by COVID-19 pandemic.

Finally, it is noted that, in national jurisprudence, there are a few examples of rulings that, supported on the principle of less burden to the executed, were favorable to the taxpayers, specifically in the aspect of withdrawal or replacements of garnishments. However, there is a bigger volume of rulings related to the (im)possibility of delaying taxes payment terms through the judiciary. Those decisions, supported on the complying of separation of powers and isonomy principle (seeing that the vast majority of economic sectors are going through difficulties, but each judicial demand tends to contemplate only one sector) have consolidated that, as a rule, the judiciary must ponder and eventual interference in the decisions made by public administration tax-wise.



REFERENCES

AVI-YONAH, Reuven S. Os três objetivos da Tributação. In: **Revista Direito Tributário Atual** nº. 22. Alcides Jorge Costas, Luís Eduardo Schoueri e Paulo Celso Bergstrom Bonilha (Coord.). São Paulo: IBDT-Dialética, 2008, p. 07-30.

BALEEIRO, Aliomar. **Uma introdução à Ciência das Finanças**. 15. Ed. Atualizador: CAMPOS, Dejalma. Rio de Janeiro: Forense, 2000.

BALEEIRO, Aliomar. **Cinco aulas de finanças e política fiscal**. 2. Ed.. São Paulo: José Bushatsky. 1995.

BIELSA, Rafael. **Estudios de Derecho Público. II. Derecho Fiscal**. Buenos Aires: Depalma, 1951.

BOBBIO, Norberto. **Da Estrutura à Função. Novos Estudos de Teoria do Direito**. São Paulo: Manole, 2007.

BUJANDA, Fernando Sainz de. **Hacienda y Derecho. Estudios de Derecho Financiero. II. Estudios de administración**. Madrid: Instituto de Estudios Políticos, 1962.

BUJANDA, Fernando Sainz de. **Hacienda y Derecho. Estudios de Derecho Financiero. V**. Madrid: Instituto de Estudios Políticos, 1967.

BRAZIL. Ministério da Economia. **Portaria ME nº 245/20**. Prorroga o prazo para o recolhimento de tributos federais, na situação que especifica em decorrência da pandemia relacionada ao Coronavírus. D.O.U. seção 1, p. 43-44. 17 jun. 2020. Available at: <https://www.in.gov.br/en/web/dou/-/portaria-n-245-de-15-de-junho-de-2020-261921317> . Access on: 2 Mar. 2021.

BRAZIL. Comitê Gestor do Simples Nacional. **Resolução CGSN nº 158/21**. Dispõe sobre a prorrogação de prazos de pagamento de tributos no âmbito do Simples Nacional. D.O.U. seção 1, p. 44. 25 mar. 2021. Available at: <http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=116190#:~:text=CGSN%20N%C2%BA%20158%20%2D%202021&text=Disp%C3%B5e%20sobre%20a%20prorroga%C3%A7%C3%A3o%20de,no%20%C3%A2mbito%20do%20Simples%20Nacional.&text=III%20%2D%20o%20per%C3%ADodo%20de%20apura%C3%A7%C3%A3o,22%20de%20novembro%20de%202021>. Access on: 1 Mar. 2021.

BRAZIL. **Decreto nº 10.318/20**. Reduz temporariamente as alíquotas da Contribuição para o PIS/Pasep e da Contribuição para o Financiamento da Seguridade Social - Cofins incidentes sobre os produtos que menciona. D.O.U. p. 1. 09 abr. 2020. Available at:



<https://pesquisa.in.gov.br/imprensa/jsp/visualiza/index.jsp?jornal=601&pagina=1&data=09/04/2020&totalArquivos=1>. Access on: 7 Mar. 2021.

BRAZIL. **Decreto nº. 10.352/20**. *Reduz temporariamente a alíquota do Imposto sobre Produtos Industrializados incidente sobre o produto que menciona*. D.O.U. Ed. Extra. 19 mai. 2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10352.htm . Access on: 7 Mar. 2021.

BRAZIL. **Portaria PGFN/ME nº 2.381/20**. *Reabre os prazos para ingresso no Programa de Retomada Fiscal no âmbito da Procuradoria-Geral da Fazenda Nacional e dá outras providências*. D.O.U. seção 1, p. 29, 01 mar. 2021. Available at: <https://www.in.gov.br/en/web/dou/-/portaria-pgfn-me-n-2.381-26-de-fevereiro-de-2021-305673631> . Access on: 9 Mar. 2021.

BRAZIL. *Supremo Tribunal Federal*. **Medida Cautelar na Suspensão de Tutela Provisória nº 185-Maranhão**. Rel. Min. Dias Toffoli; j. 27 de abr. 2020. Available at: <http://portal.stf.jus.br/processos/downloadPeca.asp?id=15343017906&ext=.pdf>. Access on: 10 Mar. 2020.

BRAZIL. *Tribunal Regional Federal da 4ª Região*. **Agravo de Instrumento nº 5034000-25.2019.4.04.0000**. Rel. Des. Roger Raupp Rios; j. 8 jun. 2020. Available at: https://jurisprudencia.trf4.jus.br/pesquisa/inteiro_teor.php?orgao=1&numero_gproc=40001636489&versao_gproc=4&crc_gproc=b9581ab4. Access on: 10 Mar. 2020.



CASALTA NABAIS, José. **Política fiscal, desenvolvimento sustentável e luta contra a pobreza**. *Cadernos da Escola de Direito e Relações Internacionais da UniBrasil 7/ Curitiba*, jan.-dez.2007.

CURITIBA. **Decreto nº 471/20**. *Dispõe sobre medidas temporárias devido ao novo Coronavírus (COVID-19), considerando a classificação de pandemia pela Organização Mundial de Saúde (OMS), no âmbito da Secretaria Municipal de Finanças e da Procuradoria-Geral do Município*. Prefeitura Municipal de Curitiba. 26 mar. 2020. Available at: <https://mid.curitiba.pr.gov.br/2020/00295982.pdf>. Access on: 6 Mar. 2021.

CURITIBA. **Decreto nº 524/20**. *Prorroga o prazo para o recolhimento do Imposto Sobre Serviços de Qualquer Natureza - ISS Fixo na situação que especifica, em decorrência da pandemia relacionada ao Coronavírus (COVID-19)*. Prefeitura Municipal de Curitiba. 09 abr. 2020. Available at: <https://mid.curitiba.pr.gov.br/2020/00296733.pdf>. Access on: 4 Mar. 2021.

CURITIBA. **Lei Complementar nº 123/20**. *Altera o vencimento das quotas mensais vencidas e prorroga o vencimento das quotas mensais vincendas do Imposto Sobre Serviços de Qualquer Natureza - ISS Fixo (Autônomos e Sociedade de Profissionais), Imposto Predial e Territorial Urbano - IPTU e Taxa de Coleta de Lixo - TCL, no exercício de 2020, em decorrência da situação de emergência de saúde pública em virtude do Coronavírus (COVID-19)*. Câmara Municipal de Curitiba. Prefeitura Municipal de Curitiba. 19 ago. 2020. Available at: <https://mid.curitiba.pr.gov.br/2020/00304421.pdf>. Access on: 4 Mar. 2021.

CURITIBA. **Lei Complementar nº 125/20**. *Institui o Programa COVID-19 de Recuperação Fiscal de Curitiba - REFI-COVID-19, e dá outras providências*. D.O.M. p. 34. 7 dez. 2020. Disponível em: <https://www.legisweb.com.br/legislacao/?id=405551>. Access on: 9 Mar 2021.

DALTON, Hugh. **Princípios de Finanças Públicas**. 4ª edição. Traduzido por Maria de Lourdes Modiano. Rio de Janeiro: Fundação Getúlio Vargas, 1980.



DEODATO, Alberto. **As Funções Extrafiscais do Imposto**. Belo Horizonte. Imprensa Oficial, 1949.

DUE, John F. **Tributação indireta nas economias em desenvolvimento**. Trad. Camila Perret. São Paulo: Perspectiva, 1974.

FERREIRO LAPATZA, José Juan. **Direito Tributário – Teoria Geral do Tributo**. Barueri – SP: Marcial Pons – Manole, 2007, p.130-132.

GOIÁS. Tribunal de Justiça do Estado de Goiás. **Agravo de Instrumento nº 5068160.68.2020.8.09.0000**. Rel. Des. Carlos Escher; j. 11 mai. 2020. Disponível em: https://jurisprudencia.trf4.jus.br/pesquisa/inteiro_teor.php?orgao=1&numero_gproc=40001636489&versao_gproc=4&crc_gproc=b9581ab4. Access on: 10 Mar. 2020.

MARINS, James. *O Desafio da Política Jurídico-Fiscal*. In: Marins, James (coord). **Tributação & Política**. Livro 6. Curitiba: Juruá, 2005.

HICKS, Ursula K. **Finanças Públicas. Manuais de Economia Cambridge**. Traduzido por Leopoldo Fontenele. Rio de Janeiro: Zahar Editores, 1961.

JUNIOR, Tércio Sampaio Ferraz. **Função Social da Dogmática Jurídica**. São Paulo: Max Limonad, 1998.

KEYNES, John Maynard. **A Teoria Geral do Emprego, do Juro e da Moeda**. Tradução de Mário R. da Cruz. São Paulo: Editora Atlas S.A., 1992.

KEYNES, John Maynard. **A teoria geral do emprego**. Tamás Szmrecsányi (org.). 2.ed. São Paulo: Ática, 1984.



KEYNES, John Maynard. **A Teoria Geral do Emprego, do Juro e da Moeda**. Tradução de Mário R. da Cruz. São Paulo: Editora Atlas S.A., 1992.

KEYNES, John Maynard. **A teoria geral do emprego**. Tamás Szmrecsányi (org.). 2.ed. São Paulo: Ática, 1984.

LAUFENBURGER, Henry. **Finanzas comparadas**. Estados Unidos – Francia – Inglaterra – México – URSS. México/Buenos Aires: Fondo de Cultura Económica, 1951.

LAURÉ, Maurice. **Traité de Politique Fiscale**. Paris, Presses Universitaire de France, 1957.

MARINS, James; TEODOROVICZ, Jeferson. *Extrafiscalidade socioambiental*. **Revista Tributária e de Finanças Públicas**, v. 18, n.90. São Paulo, 2020, p. 49 e ss.

MORI, Rogério. *Política Fiscal e Desempenho Macroeconômico*. In: **Direito Tributário. Política Fiscal**. Série GVlaw. Roberto França Vasconcellos (Coord.). São Paulo: Saraiva – FGV, 2009, p. 03-05.

NEUMARK, Fritz. **Principios de la imposición**. 1970. Instituto de Estudios Fiscales, 2.ed. española. Madrid.

PAJISTE, Bernard. **Introdução à Política Fiscal**. Rio de Janeiro: Edições Financeiras S.A. 19--.

PARANÁ. **Decreto nº 4.386/20**. Dispõe sobre a prorrogação do prazo de pagamento do Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação - ICMS, nas hipóteses que especifica. D.O.E. pág. 4. 3 abr. 2020. Available at: <https://www.legisweb.com.br/legislacao/?id=391894>. Acesso em: 03 mar. 2021.

PARANÁ. **Decreto nº 4.412/20**. Introduce alterações no Regulamento do Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação – RICMS. D.O.E. p. 4. 3 abr. 2020. Available at: <https://www.legisweb.com.br/legislacao/?id=392449>. Access on: 8 Mar. 2020.

PARANÁ. **Lei nº 20.418/20**. Dispõe sobre o restabelecimento de parcelamentos relativos ao Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação, cuja rescisão tenha decorrido de inadimplência no período de 1.º de março de 2020 a 30 de junho de 2020. D.O.E. 10831 de 14 dez. 2020. Available at: <https://www.sefanet.pr.gov.br/dados/SEFADOCUMENTOS/107202020418.pdf>. Acesso em 6 Mar. 2021.



RIO DE JANEIRO (State). **Decreto nº 46.982/20**. *Dispõe sobre a prorrogação do prazo para pagamento de créditos parcelados inscritos em dívida ativa em razão da pandemia decorrente do COVID-19 (coronavírus), e dá outras providências*. D.O.E. pág. 1. 20 mar. 2020. Available at: http://www.fazenda.rj.gov.br/sefaz/content/conn/UCMServer/path/Contribution%20Folders/site_fazenda/legislacao/tributaria/decretos/2020/DECRETO%20N%C2%BA%2046982%20DE%2020%20DE%20MAR%C3%87O%20DE%202020.htm. Access on: 2 Mar. 2021.

RIO DE JANEIRO (State). **Lei nº 8766/20**. *Autoriza o Poder Executivo a conceder isenção do imposto sobre operações relativas à circulação de mercadorias e serviços - ICMS nas contas de energia elétrica e dos serviços de telecomunicação pelo prazo de 180 dias, dos consumidores afetados pelos desastres naturais decorrentes das chuvas dos meses de janeiro e fevereiro de 2020 e pelo coronavírus, enquanto perdurarem os efeitos do Decreto nº 46.973, de 16 de março de 2020*. D.O.E. pág 1. 23 de mar. 2020. Available at: http://www.ioerj.com.br/portal/modules/conteudoonline/mostra_edicao.php?session=VGtSak5GRnFVWGxPUkdMFRVUm5ORTVUTURCU1JWRjZURiJuZUZGcVZYUIJhbXhDVfDwWk1VNTZhRWRTVkdNMVRWUlpIRTU2UVRCT1ZGbDRUbmM5UFE9PQ==. Access on: 2 Mar. 2021.

RIO DE JANEIRO (State). **Lei nº 8771/20**. *Altera a Lei nº 4.892, de 1º de novembro de 2006, para incluir na lista de produtos da cesta básica o álcool gel*. D.O.E. parte 1. 30 mar. 2020. Available at: <https://pge.rj.gov.br/comum/code/MostrarArquivo.php?C=MTAyMTM%2C>. Access on em: 8 Mar. 2021.

RIO DE JANEIRO (State). **Lei nº 8.889/20**. *Autoriza o Poder Executivo a conceder isenção do imposto sobre operações relativas à circulação de mercadorias e serviços - ICMS - nos produtos que compõem a cesta básica, no âmbito do estado do Rio de Janeiro*. D.O.E. parte 1. 10 de jun. 2020. Available at: <https://pge.rj.gov.br/comum/code/MostrarArquivo.php?C=MTEExMTQ%2C>. Access on: 8 Mar. 2021.

RIO DE JANEIRO (City). **Resolução PGM nº 1002/20**. *Prorroga o prazo de validade das certidões de dívida ativa e dá outras providências*. D.O.M. p. 39. 16 jun. 2020. Available at em: <https://www.bmalaw.com.br/docsmkt/informativos/COVID-19/COVID-19%20Normativo%2013/Tributario%20A.pdf>. Access on: 6 Mar. 2021.

SCHOUERI, Luís Eduardo. **Normas tributárias indutoras e intervenção econômica**. Rio de Janeiro: Forense, 2005.

SÃO PAULO (State). **Resolução Conjunta SFP/PGE 02**. *Dispõe sobre a prorrogação do prazo de validade das Certidões Positivas com Efeitos de Negativas emitidas pela SEFAZ/PGE*. D.O.E. vol. 130, nº 91, 13 mai. 2020. Available at



<https://legislacao.fazenda.sp.gov.br/Paginas/Resolu%C3%A7%C3%A3o-Conjunta-SFP-PGE-2-de-2020.aspx>. Access on: 5 Mar. 2021.

SÃO PAULO (State). **Decreto nº 65.171/20**. *Estabelece os requisitos para o restabelecimento dos parcelamentos rompidos em razão da inadimplência de parcelas com vencimento entre 1º de março de 2020 e 30 de julho de 2020 no âmbito dos Programas Especiais de Parcelamento - PEP que especifica*. D.O.E. p.1. 5. set. 2020. Available at: <https://www.al.sp.gov.br/repositorio/legislacao/decreto/2020/decreto-65171-04.09.2020.html>. Access on: 7 Mar. 2021.

SÃO PAULO (State). **Lei 17.293/20**. *Estabelece medidas voltadas ao ajuste fiscal e ao equilíbrio das contas públicas e dá providências correlatas*. D.O.E. p.1. 16 de out. 2020. Disponível em: <https://www.al.sp.gov.br/repositorio/legislacao/lei/2020/lei-17293-15.10.2020.html>. Access on: 9 Mar. 2021.

SÃO PAULO. (State). **Portaria SF nº 225/20**. *Prorroga os prazos previstos nos artigos 1º e 4º do Decreto nº 59.326/20*. 29 out. 2020. Available at: <http://legislacao.prefeitura.sp.gov.br/leis/portaria-secretaria-municipal-da-fazenda-sf-225-de-29-de-outubro-de-2020>. Access on: 6 Mar. 2021.

SOARES MARTÍNES, Pedro Mário. **Direito Fiscal**. 7. ed. *Revista e Atualizada*. Coimbra: Livraria Almedina, 1993.

SOUSA, Rubens Gomes de. **Compêndio de Legislação Tributária**. Edição Póstuma. IBET Resenha Tributária, 1975.

TEODOROVICZ, Jeferson. *Políticas Públicas Tributárias Anticíclicas, Extrafiscalidade e o Combate a Pandemias*. In: SEGUNDO, Hugo de Brito Machado; GODOI, Marciano Seabra; VALADÃO, Marcos Aurélio Pereira; BATISTA JÚNIOR, Onofre Alves; ROCHA, Sergio André (orgs.). **A pandemia da COVID-19 no Brasil em sua dimensão financeira e tributária**. Belo Horizonte, São Paulo: D' Plácido, p. 299-339, 2020.

