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**SANITARY MEASURES OF NATIONAL PUBLIC FINANCES AND  
FEDERAL TAX IN TIMES OF PANDEMIC OUTBREAK: A PORTRAIT  
OF PUBLIC INDEBTEDNESS AMID THE NEED TO PRESERVE THE  
HEALTH SYSTEM AND ECONOMIC RECOVERY**

***PROVIDÊNCIAS SANITÁRIAS DE FINANÇAS PÚBLICAS E  
TRIBUTÁRIAS FEDERAIS PÁTRIAS EM TEMPOS DE  
DEFLAGRAÇÃO DE PANDEMIA: UM RETRATO DO  
ENDIVIDAMENTO PÚBLICO EM MEIO À NECESSIDADE DE  
PRESERVAÇÃO DO SISTEMA DE SAÚDE E RETOMADA  
ECONÔMICA***

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**ABSTRACT**

**Objective:** This study aims to approach the Brazilian public tax and public financial management, at the federal level, focusing on the economic crisis and the impacts of public indebtedness verified due to the pandemic resulting from COVID-19, considering mainly the declaration of public calamity and restrictive measures of social isolation/distancing and paralysis of economic activities in quarantine adopted throughout the Country to combat and contain the exponential spread of the disease.

**Methodology:** According to an appropriate methodology to deal with specific interdisciplinary themes, such as Tax Law, Financial Law, Administrative Law, Constitutional Law and Public Management, it is from a critical view of the exposed reality, taking as a theoretical framework the contemporary doctrine referred to, when adopting the deductive method, with the support of bibliographic and documentary



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exploration as an approach technique to prove the premises raised and to achieve the proposed objectives.

**Results:** Under such a context, the paper identifies the forms adopted, in the occasion of the pandemic by COVID-19 by the federal government to obtain a balance between the economic system and the social order, that is, in order to have, on the one hand, the preservation of the health system (public and private) from an immediate collapse in view of an abrupt excess of demand and, on the other hand, the protection of the national productive forces of the recession and public indebtedness caused by the forced paralysis of economic activities and social isolation/distancing imposed by quarantine.

**Contributions:** This paper notes, according to the adopted methodology, the need for a simultaneous and correlated state intervention of macroprudential regulation in the economic domain (with financial, tax and assistance determinations) for a rebalancing in sustainable development due to the lack of harmony arising from the intervention in the social system with the imposition of such austere sanitary measures (of social isolation/distancing and paralysis of economic activities in quarantine) to contain the pandemic that would remove recession and uncontrolled public indebtedness, in order to have, in conclusion, a sustainable state strategic planning for national developmental recovery and restructuring in light of a democratic concert with society.

**Keywords:** Pandemic public indebtedness; Public finances; Federal taxation; Health System; Sustainable development.

## RESUMO

**Objetivo:** *Este estudo tem como propósito a abordagem brasileira das gestões tributária e financeira pública em âmbito federal, tendo por foco a crise econômica e os impactos de endividamento público verificados em função da pandemia decorrente do COVID-19, considerando, principalmente, a declaração de calamidade pública e as medidas restritivas de isolamento/distanciamento social e paralização das atividades econômicas em quarentena adotadas em todo o País para combate e contenção à disseminação exponencial da doença.*

**Metodologia:** *Segundo uma metodologia própria para lidar com temas interdisciplinares específicos, como de Direito Tributário, Financeiro, Administrativo, Constitucional e Gestão Pública, parte-se de um recorte crítico da realidade exposta, tendo-se como marco teórico a doutrina contemporânea referida, ao adotar-se o método dedutivo, com apoio da exploração bibliográfica e documental enquanto técnica de abordagem, para se comprovarem as premissas levantadas e se alcançarem os objetivos propostos.*



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**Resultados:** *Divisa, sob tal contextura, as formas adotadas, no ensejo da pandemia por COVID-19 pelo governo federal, para obtenção de um equilíbrio entre a ordem econômica e a ordem social, isto é, de sorte a ter-se, de um lado, a preservação o sistema de saúde (público e privado) de um colapso imediato ante o excesso abrupto de demanda e, de outro lado, o resguardo das forças produtivas pátrias da recessão e endividamento público causados pela paralisação forçada das atividades econômicas e do isolamento social/distanciamento social imposto pela quarentena.*

**Contribuições:** *O estudo aponta, segundo a metodologia adotada, a necessidade de uma concomitante e correlata intervenção estatal de regulação macroprudencial no domínio econômico (com determinações financeiras, tributárias e assistenciais) para um reequilíbrio do desenvolvimento sustentável em função do desbalanceamento advindo da intervenção na ordem social com a imposição de medidas sanitárias tão austeras (de isolamento social/distanciamento social e paralisação de atividades econômicas ante a quarentena infligida) para contenção da pandemia que afastem recessão e endividamento público descontrolado, de maneira a ter-se, em conclusão, um sustentável planejamento estratégico estatal de recuperação e reestruturação desenvolvimentista pátrio à luz de um concerto democrático com a sociedade.*

**Palavras-chave:** *Endividamento público pandêmico; Finanças públicas; Tributação federal; Sistema de Saúde; Desenvolvimento sustentável.*

## 1 INTRODUCTION

The present study is an analysis of the tax and public financial management undertaken by the Brazilian State at the federal level, with a specific focus on the ways to mitigate the economic crisis and the impacts of public indebtedness as a result of costly measures of emergency sanitation to avoid the massive spread of contagion by COVID-19, mainly considering in this context the declaration of public calamity and the imposition of social isolation/distance, through the decree of quarantine adopted throughout the Country.

Corona virus (Sars-Cov-2) that is causing the pandemics deflagrated at the end of 2019 in China and from there to the world, in light of its danger to human health and the speed of its propagation, determined a high degree of austerity in 2020 as for the measures of prevention and precaution to its contagion, both in global scope and in the Member States, with severe determinations of isolation/social



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distance, the precedents of which in Brazil date from 1918, when occurred the so-called “Spanish flu” (GOULART, 2005 ).

Such sanitary restrictions restraining regular daily life not only nationally but also globally, led inevitably to the shrinkage of markets and the respective general decrease in tax collection, in view of not only the sharp and sudden drop in business turnover, but also due to the lack of liquidity by companies to fulfill their financial obligations which remain in normal times when related to fixed costs.

The mismatch between entrances and exits caused by the health intervention of Member States in different social sectors with repercussions in the business segment and, as a consequence, based in globalized economic domain (as it is severely affected by the sanitary determinations of social isolation/distance) in itself, implies a necessary simultaneous and correlated state intervention in this perspective, also to balance the effects of this economic crisis triggered not only in the national territory, but in a systemic way in the midst of the current society of risk and information.

Such an equalizing intervention in the economic and social domain to rebalance public finances and reestablish tax collections hampered by the health intervention that occurred, in turn, imposes the creation and differentiated application of financial, tax and even assistance rules that are able to circumvent the deepening of issues as significantly as inequality, unemployment and the consequent impoverishment of Brazilian society.

In effect, the energetic restrictions imposed as of the first quarter of 2020 on most of the face-to-face economic activities and the quarantine imposed on Brazilian citizens, seen as effective means of reducing the speed of the progression of the spread of the Coronavirus (Sars-Cov-2) as long as a cure was not found, their main objective was to avoid the imminent collapse of the health system (public and private) and sidelong to preserve the maintenance of some medical and hospital care, even though under questionable efficiency in light of the commands of good public administration and its benchmarks.

This is due to the declared and notorious general absence of conditions at the time for providing medical and hospital services that were capable of attending, at



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the same time, all those in need of a qualified emergency treatment and that was shown to be responsive to a satisfactory form to the geometric proportion in which this global disease spreads, according to standards of excellence as per global governance and national regulatory governance in the area of public health (TEIXEIRA, CALDAS, 2020), mainly for not existing any prospect of vaccination and / or medications that bring a safe immunization or cure at that moment.

However, the counterbalance to such austere and exceptional state sanitary orders, in turn, had the role of preventing their referred harmful effects to the Brazilian economy from being chronicled and extended for a long period, as this would certainly imply a possible chaos of recession unprecedented, resulting in an impoverishment of society due to the brutal decrease in consumption and the forced inertia of productive activities which, by default, would result in the nefarious lack of corporate financial liquidity, making it impossible to fulfill the pecuniary obligations (tax, labor, contractual, etc.) and causing unemployment with evident burden to the already affected tripod of Social Security - Public Health (for all), Social Prevention (to whom it contributes) and Social Assistance (to those who need it) - in an undesirable vicious circle that reduces people's quality of life.

Consequently, it is relevant also from a legal perspective the criticism, the systemic analysis of the constitutional and infra-constitutional normative framework (of rules and principles) that authorizes the taking of these decisions in the area of Public Health, with such significant negative economic and social externalities, in order to find the point of homeostasis between such decisions and the related sanitary, public finance and tax measures seen as necessary to allow the fight against the pandemic on the one hand, and, on the other, avoiding both the feared recession and uncontrolled public debt.

Therefore, in the brief study that is now being undertaken, the objective is to clarify the factual-legal limits of constitutional, legal and infra-legal commands in the relations between society and the State that allow the establishment of a Pareto optimum ( a state of maximum efficiency of the systems) between the private and public sectors in the health, financial and tax segments, especially when considered under the effects of the decree of public calamity at national level.



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In diffidence of reasoning, a research methodology is adopted that makes it possible to analyze such an interdisciplinary and current theme that involves issues of Constitutional, Administrative, Financial and Tax Law, as well as Public Management, and that is able to identify itself, in light of different legal instruments applied to combat and contain the exponential spread of the pandemic by COVID-19, according to the technique of bibliographic and documentary approach, the recessive macroeconomic impacts on public finances and the Brazilian federal exactions more specifically considered and consequently having a clearer picture of the context in which a balanced management of federal public indebtedness is inserted (given the flexibility of tax responsibility barriers), due to the necessary (and previously unpredictable) expenses carried out with the Social Security tripod (systems, repeating, Social Security, Social Assistance and Public Health) and the national economic restructuring, mainly by having into account the contemporary commitment of the private sector's capacity to produce wealth and comply with its obligations.

## **2 THE PANDEMIC AND THE EFFLUENT ECONOMIC, PUBLIC FINANCIAL AND FEDERAL TAX NATIONAL CRISES**

As evidenced by the Focus report of Central Bank of Brazil (2019) for 2020, economic analyzes focused on the Country showed favorable macroeconomic market expectations, with confidence in national growth, which was supported by the official exchange rate at the time of the par US dollar against the real of “US\$1.00 = R\$ 4.10”, according to data from December 6, 2019.

Such encouraging market projections, as observed by the Central Bank of Brazil (BACEN, 2019), it is worth mentioning, also found an echo in the analyzes developed at the time by the private sector, according to what was verified by the ICE - Business Confidence Index (FGV IBRE, 2019), which, however, already showed in April 2020 an absolutely different scenario due to the increasing intensification of impositions of social isolation (or even distance) and restrictions to the performance of face-to-face economic activities, and consequently to the operation of commercial



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and business establishments (CAMPELO JUNIOR; GOUVEIA, 2020), as set forth in opposition to the increasing spread of the pandemic by COVID-19 in the Country.

This negative impact on the Brazilian economy resulting from the negative externalities due to the measures to combat the spread of the pandemic by Coronavirus (Sars-Cov-2), in turn, did not escape the projection made by the IMF - International Monetary Fund, according to which the expected fall, in April 2020, was 5.3% in the GDP - Brazilian Gross Domestic Product, in parallel to a global retraction of the economy, according to IMF on such time greater than the Great Depression of 1929 (IMF, 2020).

In view of these findings, taxation is as strongly influenced as the economic crisis itself, reflecting a significant drop in revenue, either directly due to the reduction in the generation of wealth on which taxes are levied, or indirectly due to the loss of the financial capacity of the struggling taxpayers which fell seasonally in default.

If in the beginning of 2020 the Federal Revenue showed a real growth in relation to the beginning of 2019 corresponding to 4.65% , from the months of March and April of 2020, the result was not the same, showing an intense retraction (UF, 2020).

Such a framework for reducing tax revenues, it should be mentioned, was even more in depth due also to the fact that the federal tax collection is not sufficiently diversified, exposing a lack of strategic tax planning on the part of the Federal Revenue.

In effect, the federal tax collection is basically based on the income of individuals and legal entities, as well as on social contributions on the companies' revenue, based on sources of tax income with evident fragility (due to the great risk resulting from its volatility) and mediocrity (in view of the reduced amount in which they present themselves to face all public expenditures), which remained maximized during this economic crisis arising from the fight against the pandemic, which affected income and revenue. According to Mosquera

A more detailed analysis of the federal tax collection in recent years shows that our source of tax revenue is basically concentrated on the income of



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individuals and legal entities and on social contributions on corporate income. Something around 60% of our federal revenue is based on income taxation. [...] Therefore, income taxation in Brazil is in 1st place in the ranking of federal taxes and, also, there is no denying that individuals have a great repercussion in this number. That is, if we compute the taxes of legal entities compared to the taxes paid by individuals, we will see how important this last number is. The taxation of natural persons applies in particular to work. Secondly, there are taxes on income – “COFINS” and “PIS”. The total collection of these taxes in 2019 represents 20% of all the amount collected in the year. In short: around 80% of all Brazilian revenue depends on two variables: INCOME and REVENUE. In a simpler language, our sources of funds to cope with public expenditures are small. Our risk is concentrated on two variables subject to high volatility. And when these two indexes of wealth fall, obviously, the collection also falls. In the case of the current pandemic, the prospect of raising funds for the next quarter is extremely worrying, as there will be a need to supply public spending and that will be unfeasible. In addition, the government itself allowed some taxes to be deferred to allow companies to organize themselves with their cash in that period (2020, n. p.)<sup>1</sup>

In fact, the need for a restructuring of the entire federal tax collection has long been present in the national developing scenario, exposing the lack of a participatory strategic planning of a financial nature, capable of identifying in which economic segments there are profitable sources that allow the promotion of an increase in inflows in the desired diversification of tax revenues (with a more intense impact, e.g., on rural territorial property or agribusiness) and from there verify the mitigation of the effects arising from crises, as currently experienced, of which such incomes may suffer, discovering what their reflexes and their extension are for the

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<sup>1</sup> In original: “Uma análise mais detalhada da arrecadação federal nos últimos anos demonstra que nossa fonte de receita tributária basicamente está concentrada na renda das pessoas físicas e jurídicas e em contribuições sociais sobre receita das empresas. Algo em torno de 60% de a nossa arrecadação federal está calcada na tributação sobre a renda. [...] Portanto, a tributação sobre a renda no Brasil está em 1º lugar no *ranking* dos tributos federais e, também, não há como negar que as pessoas físicas têm uma grande repercussão nesse número. Ou seja, se computarmos os tributos das pessoas jurídicas frente aos tributos pagos pelas pessoas físicas veremos como é importante esse último número. A tributação das pessoas físicas incide, em especial, sobre o trabalho. Num segundo plano estão os tributos que incidem sobre receita – COFINS e PIS. O total da arrecadação desses tributos em 2019 representa 20% de todo o bolo arrecadado no ano. Em suma: algo em torno de 80% de toda a arrecadação brasileira depende de duas variáveis: RENDA e RECEITA. Numa linguagem mais simples, nossas fontes de recursos para fazer frente aos gastos públicos são em pequeno número. Nosso risco está concentrado em duas variáveis sujeitas a grande volatilidade. E quando esses dois índices de riqueza caem, obviamente, a arrecadação também cai. No caso da atual pandemia, a perspectiva de arrecadação para o próximo trimestre é extremamente preocupante, pois haverá a necessidade de suprir o gasto público é isso será inviável. Além disso, o próprio governo permitiu o diferimento de alguns tributos para permitir que as empresas se organizem com o seu caixa nesse período”.





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improvement and rationality of the exactions in a process that can be defined as the so-called “Tax Reform”.

Meanwhile, while the national consensus around this rationalization and improvement of federal exactions is not present in everyday life as the result of a participatory strategic planning process, it is necessary to deal with the contemporary and pressing need for immediate adjustments in public accounts; on the one hand, a higher level of state debt is allowed and, on the other, new and supplementary revenues are planned, all in order to meet the extraordinary expenses for the implementation of public health policies in combating the dissemination of Coronavirus (Sars-Cov-2).

This circumstance caused emergency measures to be debated in the National Congress in relation to the other federative units, so that part of the revenues from the federal public budget would remain in the benefit of the Member States, the Federal District and the Municipalities through voluntary transfers and/or the suspension for a certain period, the duty to pay part of its debts with the Federal Union and government financial institutions (Caixa Econômica Federal, Banco do Brasil S/A etc.), as explained below: “Federative Program for Confronting the Coronavirus SARS-CoV-2 (Covid-19)” instituted by Complementary Law No. 173/20.

Due to this flagrant weakness of the sources of revenue on which the federal revenue is based, given its little diversification, great vulnerability and intense volatility, the conclusion reached refers to the sanitary determinations of prevention and precaution for the spread of the Coronavirus (Sars-Cov -2) end up having a major impact on federal public finances (and, then, the Federal Union's capacity to assist the other federal entities), making government actions for the execution and allocation of budget resources difficult in this emergency period, imposing a higher level of public indebtedness, as shown below.



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### 3 THE PROSPECTS FOR PUBLIC CALAMITY UPON FLEXIBILIZING TAX RESPONSIBILITY BARRIERS FOR NATIONAL PUBLIC INDEBTEDNESS

The so-called Tax Responsibility Law (Complementary Law No. 101/2000), by providing general rules of an economic and public finance nature, as provided for in Article 163, items I to VII, and Article 165, § 9, items I to III, both of the Federal Constitution of 1988, under the Brazilian legal prism, is seen as a way to overcome the evident precariousness, concrete and modern vulnerability of the concerted creation and evaluation of public policies (and inherent expenses), even more when considered throughout its implementation process, as well as the related ways of institutional control and also in light of the incipient social control mechanisms (CALDAS, 2011) revealing as an important instrument of Economic Law, in which

[...] the study of legal instruments linked to credit discipline for the implementation of public policies in accordance with the constitutionally established economic system has a fundamental role, as it seeks to regulate the performance of agents [...] directly with monetary flows, with the functioning of the exchange or with financial credit (MORETTINI; NASCIMENTO, 2018, p. 375).

It is necessary to clarify what are the consequences of the decree of public calamity at the national level, mainly in light of Article 65, *caput* and item II of Complementary Law No. 101/2000 (Tax Responsibility Law), regarding the pandemic by COVID-19, declared in March 2020 by WHO - World Health Organization which, together with the Foundation United Nations and the Swiss Philanthropy Foundation created a new fund, the “Solidarity Response Fund to COVID-19” (WHO, 2020), forcing preventive and precautionary measures to be taken by States to combat and contain the spread of this disease caused by the new Coronavirus (Sars-Cov-2).

In fact, in the infra-constitutional scope, in light of Article 2, item IV, of Federal Decree No. 7,257/2010, public calamity, it is worth remembering, is characterized by being an “abnormal situation – in the case under study caused by COVID-19 –, causing damage and losses in significant and substantial impairment of capacity of



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the Federal Union to fulfill its duty to provide effective, efficient and effective public health services within the desired quality standards”<sup>2</sup>.

Its recognition by the National Congress through Legislative Decree No. 6, dated March 20, 2020, in response to the request made by the President of the Republic via Message No. 93, dated March 18, 2020, for the purposes of the Responsibility Law Tax, implied the exemption from reaching the tax results provided for in Article 2, of Law No.13,898/2019 (Budget Guidelines Law for 2020) and the limitation of commitment referred to in Article 9, of Complementary Law No. 101/2000, having its effects until December 31, 2020.

As explained in Presidential Message No. 93/2020, the expectation (subsequently confirmed) was that the impacts resulting from the COVID-19 pandemic would transcend public health and affect the entire national and global economy, and could even imply a fall to the estimated time of up to 2% in the Gross Domestic Product - world GDP of 2020.

However, this expansion of public spending on the health system (public and private) did not mean an authorization by the National Congress of unlimited expenditures to be made by the Executive, not implying spending without control; the federal Public Power could not comply with its duty to satisfy public interests responsibly, rendering accounts to the Federal Court of Accounts, to the National Congress itself and to society in exercise of its constant social control<sup>3</sup>, in an activity of accountability that legitimizes all of its actions and resources used for containment of the pandemic, as provided for in Legislative Decree No. 6, dated March 20, 2020, which established the state of public calamity. In this sense, Dantas *et al.* reach the same conclusion in asserting that

The specific legislation for the decree of the state of calamity was also described via Law No. 13,979, dated February 2020, which “Provides for measures to deal with the public health emergency of international importance resulting from the coronavirus responsible for the 2019 outbreak (BRASIL, 2020) and also those specific to the current global pandemic, such

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<sup>2</sup> In original: “situação anormal, causando danos e prejuízos em comprometimento significativo e substancial a capacidade da União Federal cumprir com seu dever de prestar serviços públicos de saúde eficazes, eficientes e efetivos dentro dos padrões de qualidade almejados”.

<sup>3</sup> This social control, said by some, vertical accountability (O’DONNELL, 1998; ROBL FILHO, 2013).



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as Legislative Decree No. 6/2020, establishing the recognition of the National Public Calamity and, also, Provisional Measure No. 921/2020, providing the granting of “Credits to combat the Coronavirus”. It was found that, in accordance with the existing legislation, there is a legal possibility for a response from state agents in view of the current COVID-19 pandemic that imposes large resources in the health area. These laws are important; in serious cases, the specific provisions of the Tax Responsibility Law are used, especially those that prescribe the suspension of deadlines and the widening of the possibility of using public resources, as pointed out in Article 65 of the Complementary Law No. 101/2000. However, it was considered that, with the joint use of resources from the Union, Member States, Municipalities and the Federal District, there is a need for action by the External Control bodies, mainly the Public Ministry and the Courts of Accounts that, in addition to their classic competences, must act purposefully (2020, p. 18)<sup>4</sup>.

Such recognition, it is worth mentioning, was given in the context of Law No. 13,979/2020, which provided for the determination for facing the public health emergency of international importance in light of the COVID-19 pandemic. Such law regulates which determinations are necessary to protect the community to prevent contamination or spread of the Coronavirus (Sars-Cov-2), these being more fully explained by Articles 2 to 3-J.

Among such measures, there is isolation/distancing with the separation of sick or contaminated people (including by decree of quarantine), as well as affected luggage, means of transport, goods or postal parcels, in addition to carrying out compulsory medical and laboratory exams, vaccination and specific treatments (Article 2, items I and II, interpreted with Article 3, items I to III, “a” to “e”, of Law No. 13,979/20), if necessary.

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<sup>4</sup> In original: “*Foram, ainda, descritas as legislações específicas para a decretação do estado de calamidade por meio da Lei nº 13.979 de fevereiro de 2020, que “Dispõe sobre as medidas para enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus responsável pelo surto de 2019” (BRASIL, 2020) e, também, as específicas para atual pandemia mundial como o Decreto Legislativo nº 6 de 2020, estabelecendo o reconhecimento da Calamidade Pública Nacional e, ainda, a Medida Provisória nº 921 de 2020, proporcionando a concessão de “Créditos para enfrentamento do Coronavírus”. Verificou-se que, por meio da legislação existente, há a possibilidade jurídica de uma resposta dos agentes estatais, frente à atual pandemia de COVID-19 que impõe vultosos recursos na área da saúde. Essas legislações são importantes para que, em casos graves, sejam utilizados os dispositivos específicos da Lei de Responsabilidade Fiscal, principalmente, aqueles que prescrevem a suspensão de prazos e o alargamento da possibilidade de utilização dos recursos públicos, tal como aponta o artigo 65 da Lei Complementar nº 101/2000. Ponderou-se, porém, que, com a utilização solidária de recursos da União, Estados, Municípios e do Distrito Federal, há a necessidade de atuação dos órgãos de Controle Externo, principalmente do Ministério Público e dos Tribunais de Contas que, para além das suas clássicas competências, devem atuar de forma propositiva”.*



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There is also a provision for the temporary waiver of tenders for the acquisition of goods and services provision, including engineering and inputs intended to deal with the pandemic (Article. 4, *caput* and § 1, of Law No. 13,979/2020), ensuring to affected people the right to be permanently informed about their health status, family assistance and free treatment with full respect for human dignity (Article 3, § 2, items I to III, of Law No. 13,979/2020).

In Brazil, the effects of spending to combat the spread and contain the infection by Coronavirus (Sars-Cov-2) only at the beginning imposed on the public accounts the opening of extraordinary credit in the Annual Budget Law in the amount of more than R\$ 5 Billion, according to Provisional Measure No. 924, dated March 13, 2020, representing a significant negative impact on federal public finances, being certain that such a budget determination was not enough to absorb other expenses arising from this event of unprecedented proportions in the current society of risk and information, clearly unprepared to deal with this situation.

In this scenario, the incidence of what was provided for in Article 65, *caput* and item II, of Complementary Law No. 101/2000 (Tax Responsibility Law) was the measure imposed; the compliance with the tax result provided for in Article 2, of Law No. 13,898/2019, or the setting of an alternative benchmark would prove to be somewhat reckless or even prohibitive when considering the proper execution of the Tax and Social Security Budgets, which would bring risks of stopping public policies in progress.

The uncertainties generated by the current pandemic, coupled with the decrease in revenues and increased expenses for the Federal Union indicated the separation from the contingency mechanisms, as required bimonthly by Article 9 of Tax Responsibility Law, in order to make possible, among others, the essential public policies themselves and, at this moment, necessary to the health system (public and private) and to the national economic development.

Notwithstanding the possibility given by the National Congress for federal public indebtedness beyond the previously established limits of tax responsibility, such permissive did not occur without the creation, as a control mechanism, of a parliamentary Joint Commission to monitor the management of the tax situation and



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budget and financial execution for emergency public health and economic development measures at the time of the Coronavirus pandemic (Sars-Cov-2) (Article 2 of Legislative Decree No. 06/2020). This collegiate body was expected to function until the end of the state of public calamity resulting from COVID-19, scheduled for December 31, 2020.

In such a way, upon the possibility of the jobs being developed through virtual means (§ 1 of Article 2 of Legislative Decree No. 06/2020), said Committee met in a monthly basis, including with the attendance of the Ministry of Economy to evaluate the tax situation and the budget-financial execution of emergency health tasks related to the pandemic (§ 2 of Article 2 of Legislative Decree No. 06/2020), in addition to promoting public hearings to discuss issues, such as the evolution of vaccines, deadlines, needs and immunization possibilities for Brazilians.

For the purposes of popular participation (in the sense of merely providing information to society), such public hearings took place over the months, and those that were attended by the Minister of Economy were bimonthly and for the presentation and evaluation of the results of detailed reports of the tax situation and the budget-financial execution of the aforementioned measures.

Such public hearings were preceded by the publication of their respective notices by the Executive Power so that the interested parties could participate (§ 3 of Article 2 of Legislative Decree No. 06/2020) and, *in casu*, to appreciate the process of formation and conformation of the decisions that would be taken in order to have more legitimate decisions and consequently better accepted by the population in general.

It is also worth noting that, in light of the recognition of the pandemic by COVID-19 (from WHO - World Health Organization, at the international level) and the decree of public calamity through Legislative Decree No. 06/2020 (at the national level) following the events, there was also on the part of the National Congress, on April 2, 2020 (in remote session) the approval of the project that regulated the so-called "imposing budget", changing the LBG - Law of Budgetary Guidelines for 2020 (Law No. 13,898/2019) in order to resolve the existing dispute between the Executive and the Legislative for R\$ 30.8 Billion belonging to the federal Public Budget,



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allocating part of this amount for the adoption of the determinations to combat and contain the spread of the referred pandemic, as well as to strengthen the public health system in addition to fostering the economy already weakened as a result of such sanitary measures.

The changes in the LBG - Budget Guidelines Law for 2020 also established that measures aimed at tackling the pandemic, and that were adopted throughout the state of public calamity caused by the COVID-19 crisis, would not need to point to sources to compensate for increased expenses in such a confrontation which, on the other hand, brought the high danger of extinguishing a ruinous management for the national economy regarding the public expenditures of this period, in addition to the easing of the limits established in the Tax Responsibility Law.

Despite this reality, as a way of getting away from, or, at least, minimizing such danger, it is important to recognize the poignant need not only for a more intense, effective and simultaneous social control to such expenses, but mainly of a greater consultation (other than mere technical information) regarding the taking of legislative and executive decisions related to what has been and will be done, so that the choices regarding expenditures remain as a result of a deliberative consensus with society, which is expected to be aware of the economic and financial risks assumed for a not-too-far future.

In order to precisely rationalize the spending of this unusual and exceptional period of public calamity, the National Congress started to debate a PAC - Proposed Amendment to the Constitution, nicknamed “War Budget” (PAC No. 10/20), subsequently sanctioned as Constitutional Amendment No. 106, dated May 7, 2020.

This Proposed Amendment to the Constitution (PAC No. 10/2020) aimed to include a new Article 115 to the Transitional Constitutional Provisions Act to create a federal budget that would be more flexible, to better respond to the needs of this extraordinary period and distinct from the general budget of the Federal Union to remain in effect until December 31, 2020, allowing more easier allocation of budget funds of an emergency nature to combat COVID-19 without the traditional constraints of ABL - Annual Budgetary Law.



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PAC No. 10/2020 was sanctioned by the National Congress adding the amendments resulting from the debates that took place in the Chamber of Deputies and in the Federal Senate, being convoluted in Constitutional Amendment No. 106 that transmits its own provisions in 11 Articles.

PAC No. 10/2020 aimed to create a “Crisis Management Committee”, as the centralizing body of the actions, in addition to an “instrument to prevent the emergency expenses generated due to the state of public calamity from being mixed with the Union budget, facilitating, for example, government contracts and purchases during the crisis”(AGÊNCIA SENADO, 2020).

The prediction of such a “Crisis Management Committee”, however, did not remain in the final text of Constitutional Amendment No. 106, whereby it was preferred that the actions with budget impact related to coping with COVID-19 remained taken by the Executive Power without prior approval of such Committee, or any other body, remaining just the *a posteriori* control of the National Congress by means of an eventual and future legislative Decree (Article 9).

As a result, Constitutional Amendment No. 106 made it possible that during the period of confrontation of the national public calamity, public contracts were carried out by simplified processes for temporary and emergency personnel, as well as for jobs, services and purchases related exclusively to such a desideratum (Article 2, *caput*), in addition to the fact that there were no legal limitations on the creation and expansion of expenses; in the same period, the acts of the Executive Power and legislative proposals that did not imply permanent expenses (Article 3. *caput*), limiting negative economic externalities to this context only.

Constitutional Amendment No. 106 also incorporated the provision in PAC No. 10/2020 regarding the possibility for Central Bank of Brazil to acquire and dispose of public and private securities (Article 7, items I and II, and §§ 1 to 4, and Article 8, items I and II, and sole paragraph) which, on the one hand, increases the liquidity of companies by encouraging the productive sector to maintain the proper and efficient functioning of the financial, capital and payment markets; on the other hand, imply the assumption of a high risk of default to be borne by the National Treasury, which is not even advisable, as there are also other ways of fostering the





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national economy in light, e. g., of credit lines subsidized by the National Bank for Economic and Social Development (nicknamed “BNDES”) or, still, by “CEF - Caixa Econômica Federal” (a Federal State Bank) and “Banco do Brasil S/A” (as a mixed institution under state control), whereby the referred risk is better equalized.

It is also worth mentioning that it was confirmed in Constitutional Amendment no. 106 the worrying possibility that there was in PAC nº 10/2020 an increase in the level of federal public debt by the Executive Power, through the issuance of public bonds (credit operations) without authorization from the National Congress, in amounts that exceeded capital expenditures (investments and amortizations) due to the period of validity of the public calamity.

Indeed, Article 6, of Constitutional Amendment No. 106 provided that during this period of national public calamity, the resources obtained from the issuance of bonds (credit operations) in these conditions for the refinancing of the public securities debt can even be used for the payment of interest and charges.

It must also be clear that the financing of this increase in the federal public debt in order to cope with the new expenses and the drop in revenue due to the national public calamity will be granted by Central Bank of Brazil, when acquiring the public bonds issued by the National Treasury, in light of the permissive contained in Article 7, item I, of Constitutional Amendment No. 106, which makes it possible to bypass the prohibition contained in Article 164, § 1, of the Federal Constitution of 1988.

In view of this federal public financial and budget reality, in which the respective public policies for the national combat against the pandemic are inserted in light of the public calamity decreed, it should be mentioned that the Supreme Federal Court, on March 30, 2020, as a precautionary measure in records of the Direct Unconstitutionality Action No. 6,357-DF, as granted through the monocratic decision of his Excellency Minister Rapporteur, emphasizing the indispensable obedience to tax responsibility by the federal entities in times of normality, clarifies that the dissemination of COVID- 19 characterizes an unpredictable situation, which represent very serious consequences for Brazilian society to impose poignant decisions that appear to be diligent and that endure in a harmonious way before all



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federal, state and municipal authorities in favor of the defense of each one's life, public health and economic and financial subsistence of the Country, as well as to remove from the plan certain primacy of said tax responsibility (in line with Complementary Law No. 101/2000), as well as the Budget Guidelines Law of 2020.

In fact, the precautionary measure had been granted *ad referendum* of the Plenary of the Supreme Federal Court, remaining leaked in the Electronic Journal of Justice dated March 31, 2020, *ipsis litteris*

[...] grant interpretation according to the Federal Constitution to Articles 14, 16, 17 and 24 of the Tax Responsibility Law and 114, *caput, in fine* and § 14, of the Budget Guidelines Law/2020, for, during the emergency in Public Health of national importance and the state of the public calamity resulting from Covid-19, remove the requirement to demonstrate budget adequacy and compensation in relation to the creation/expansion of public programs aimed at coping with the context of calamity generated by the spread of Covid-19. I emphasize that this PRECAUTIONARY MEASURE applies to all federal entities that, under constitutional and legal terms, have decreed a state of public calamity resulting from the COVID-19 pandemic (STF, 2020, n. p.)<sup>5</sup>.

Based on such a decision, the “Federative Program for Confronting the Coronavirus SARS-CoV-2 (Covid-19)” emerges on the national scenario, as sanctioned by Complementary Law No. 173, dated May 27, 2020, which brought among other measures the provision of the transfer of financial resources to subnational federative entities (Member States, Federal District and Municipalities), with the payment in arrears of their debts vis-à-vis the Federal Union and financial institutions, provided that the imposition that such resources remain employed to face and fight the pandemic, in addition to implementing measures that guarantee transparency to highlight this circumstance. Caymmi describes the measures resulting from such Complementary Law No. 173/2020 as follows

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<sup>5</sup> In original: “[...] *conceder interpretação conforme à Constituição Federal aos artigos 14, 16, 17 e 24 da Lei de Responsabilidade Fiscal e 114, caput, in fine e § 14, da Lei de Diretrizes Orçamentárias/2020, para, durante a emergência em Saúde Pública de importância nacional e o estado de calamidade pública decorrente de Covid-19, afastar a exigência de demonstração de adequação e compensação orçamentárias em relação à criação/expansão de programas públicos destinados ao enfrentamento do contexto de calamidade gerado pela disseminação de Covid-19. Ressalto que a presente MEDIDA CAUTELAR se aplica a todos os entes federativos que, nos termos constitucionais e legais, tenham decretado estado de calamidade pública decorrente da pandemia de COVID-19*”.



The new Complementary law, in this perspective, is divided into four sets of measures, (1) the suspension of the payment of the debts of Member States and Municipalities with the Union; (2) the restructuring of credit operations with financial institutions and multilateral credit entities; (3) the institution of legal transfers of resources to the subnational federated entities in an attempt to address the drop in revenues; and (4) temporary and permanent changes to the regime established by Complementary Law 101/2000, the Tax Responsibility Law (LRF). [...] The first axis, which deals with the suspension of payments to the Union during year 2020 contemplates both the installments of the refinancing of state and municipal debts that occurred in the late 90s and, in the case of Municipalities, the installments of social security debts occurred in 2017, the Program for the Regularization of Social Security Debts of the Member States, Federal District and Municipalities (PREM) [...] The suspension of the payment of the installments, which is effective immediately and does not even require the previous execution of additives involves, as said, two types of debt. First, the debt contracted with the Union by Member States and Municipalities that in 1997 were in a situation of serious imbalance in their finances due to a huge liability accumulated during the period of hyperinflation and successive reckless management [...] Seeking to avoid this situation and, at the same time, imposing a standard for the regulation of public finances that would allow an environment of tax responsibility in Brazil, the Union, seeking to help subnational entities, instituted a Program of Support to the Structuring and Fiscal Adjustment, first for the Member States ( RSF 99/96, MP 1560-8 / 1997 and Federal Law 9,496/1997), and then for Municipalities (MP 1891-5/1999, reissued until it becomes MP 2185-35 / 2001, RSF 37/99 and Decree 3,099/99) [...] In addition, installments overdue in the same period (March to December 2020) of the refinancing of social security debts carried out by municipalities under Federal Law 13,485/2017 [9] are also suspended, the aforementioned PREM [...] amounts here with postponed payment must, in accordance with Article 2, § 1, item II of LC 173/2020, be applied “preferentially in actions to deal with public calamity resulting from the Covid-19 pandemic”, whereby should, in accordance with § 5, “demonstrate and publicize the application of the resources referred to in item II of § 1 of this Article, showing the correlation between the actions developed and the resources not paid to the Union, without prejudice to the supervision of the supervisory. competent control bodies (2020, p. 559-562)<sup>6</sup>.

<sup>6</sup> In original: ‘A nova lei complementar, nesta perspectiva, se divide em quatro conjuntos de medidas, (1) a suspensão do pagamento das dívidas de Estados e Municípios com a União; (2) a reestruturação de operações de crédito com instituições financeiras e entidades multilaterais de crédito; (3) a instituição de transferências legais de recursos para os entes federados subnacionais, na tentativa de equacionar a queda de receitas; e (4) alterações temporárias e permanentes no regime instituído pela lei complementar 101, de 2000, a Lei de Responsabilidade Fiscal (LRF). (...) O primeiro eixo, que trata da suspensão dos pagamentos à União durante o exercício de 2020, contempla tanto as parcelas do refinanciamento das dívidas estaduais e municipais ocorrido no final da década de 90 quanto, no caso dos Municípios, os parcelamentos de débitos previdenciários efetuados em 2017, o Programa de Regularização dos Débitos Previdenciários dos Estados, Distrito Federal e Municípios (PREM)... A suspensão do pagamento das parcelas, que tem eficácia imediata e dispensa, inclusive, a prévia celebração de aditivos, envolve, como dito, dois tipos de dívidas. Primeiro, a dívida contraída junto a União por Estados e Municípios que, em 1997, se encontravam em situação de grave desequilíbrio de suas finanças por força de um enorme passivo acumulado durante o período de hiperinflação e sucessivas gestões temerárias... Buscando evitar essa situação, e, ao mesmo tempo, impor um padrão de regularização das finanças públicas que permitisse um ambiente de



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Based on this, given the main effects resulting from the decree of public calamity in easing the barriers of tax responsibility for the federal public debt, and purposefully abstracting from the sample field of this study the prescriptions regarding the transfer of funds from the Federal Union to the other federal entities, it is necessary that, subsequently, the federal decisions taken in the tax scope are analyzed in order to observe how, at the same moment, the exceptions were managed so that the significant drop in tax collection had its economic consequences mitigated, with the least compromise possible and, at the same time, enabling the private sector to recover from the pandemic crisis.

#### 4 WAYS OF POSSIBLE MITIGATION OF THE ECONOMIC CONSEQUENCES RESULTING FROM THE FALL IN FEDERAL REVENUE CAUSED BY THE PANDEMIC

In the international scenario, the United Nations releases its report (2020b) in an effort to provide the States with a structural paradigm of urgent socio-economic support due to COVID-19, with a view to putting into practice the previous report of its General Secretariat on shared accountability and global solidarity (2020a) to save more lives and protect a greater number of people according to a better restructuring of state actions.

In view of this global context, when verifying the tax determinations adopted in 43 States to combat COVID-19, it appears that in half of them these were related

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*responsabilidade fiscal no Brasil, a União, buscando auxiliar os entes subnacionais, instituiu um Programa de Apoio à Estruturação e Ajuste Fiscal, primeiro para os Estados (RSF 99/96, MP 1560-8/1997 e lei federal 9.496/1997), e, em seguida, para os Municípios (MP 1891-5/1999, reeditada até se converter na MP 2185-35/2001, RSF 37/99 e decreto 3.099/99)... Além disso, também ficam com vencimento suspenso as parcelas vencidas no mesmo período (março a dezembro de 2020) do refinanciamento de dívidas previdenciárias efetuado por municípios nos termos da lei federal 13.485/2017 [9], o citado PREM... Os valores aqui com pagamento postergado devem, de acordo com o art.2º, § 1º, II da LC 173/2020, ser aplicados “preferencialmente em ações de enfrentamento da calamidade pública decorrente da pandemia da Covid-19”, no que se deverá, de acordo com o § 5º, “demonstrar e dar publicidade à aplicação dos recursos de que trata o inciso II do § 1º deste artigo, evidenciando a correlação entre as ações desenvolvidas e os recursos não pagos à União, sem prejuízo da supervisão dos órgãos de controle competentes”.*

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to the postponement of the deadlines for the fulfillment of obligations and in 15.7% of the cases there was only a reduction in the tax burden, upon deferral of instrumental duties - as per Carvalho's (2019) terminology - in another 11.4%, reduction in arrears charges in 9.6%, as well as other unspecified determinations in a further 7.8% of situations, in addition to the return of taxes in a minority of 5.4% (INSPER, 2020).

In Brazil, the entities that represent the Federal Union's tax auditors, as well as the members of the Tax Authorities of the Member States, the Federal District and the Municipalities proposed 10 essential amendments for an increase in the estimated tax collection between R\$ 234 Billion and R\$ 267 Billion, which, although capable of being implemented by the National Congress through ordinary and complementary laws (SINDIFISCO NACIONAL *et al.*, 2020), from a tax policy point of view reveal a difficult concretization due to their low legitimacy and acceptance by different productive sectors of Brazilian society.

Among such suggested changes, in general, those of a collecting nature were: the creation of the Tax on Large Fortunes (TLF), on a permanent basis, with a compulsory loan on the same basis in 2020, as well as another compulsory loan of public calamity, created by law, focusing on the same tax base for effectiveness in the year 2020; a social contribution (on a temporary basis), established at a rate of 20%, levied on all financial income; and a temporary increase of 15% in Social Contribution on Net Income – nicknamed “CSLL” –, with another (temporary increase) of 4% in Contribution for the Financing of Social Security – nicknamed “COFINS” – due by the financial institutions (SINDIFISCO NACIONAL *et al.*, 2020).

As for such suggestions, although some are of a seasonal nature (such as compulsory loans), their implementation would imply an immense lack of sensitivity on the part of the federal government at a time of such national economic fragility, *maxime* because significant increase in the tax burden, in addition to the already high observed in times of normality which would certainly generate an extremely refractory posture on the part of society due to the history of the Brazilian government of not returning the amounts collected, related to the notorious compulsory loans.

In addition to these propositions listed above, there are still, as collections at the time indicated, the taxation of the extraordinary foreign exchange gain earned by



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the export sector in this period of crisis, with a rate of 10% levied on foreign exchange contracts celebrated in rates above the price of R\$ 4,45 per US dollar, regardless of the settlement date, as well as a compulsory loan, with a rate of 15% levied on the net profit earned in 2019 and distributed in 2020 from companies with annual sales exceeding R\$ 78 Million (billing limit of the presumed profit), and another with a rate of 25% levied on profits and dividends remitted abroad in 2020 to be increased to 50% if the recipient is located in a tax heaven, in addition to the change, by Senate Resolution of the maximum rate of the Tax on Death or Donation Transmission (nicknamed “ITCMD”) to 30%, allowing Member States and the Federal District a greater autonomy to print a more progressive application of this tax in alignment with the international experience (SINDIFISCO NACIONAL *et al.*, 2020).

In addition to the same criticisms made above to the other suggestions, also adjust to these ones, despite representing an effort towards the collimated diversification of the sources of tax revenue, they are currently an extremely simplistic, little creative solution and mainly without any legitimacy before society for problems of such deep economic consequences.

In spite of these proposals merely of collection of low social acceptability, others were also presented that were more popular and, consequently legitimate and democratic, namely those of an exoneratory nature, consisting of full tax exemption for small and micro companies opting for the legal regime of simplified payment of taxes (Simples Nacional), in the reduction or exemption from the compulsory collection for the “S” system (related to the so-called “autonomous social services”), in addition to being based on the tax exemption on the payroll and in the use of the exchange rate of December 31, 2019 for the calculation of taxes levied on imports (SINDIFISCO NACIONAL *et al.*, 2020), translating into a set of politically audacious and economically auspicious suggestions for state promotion of productive activities and generators of jobs and wealth clearly in favor of national development.

In fact, in light of this scenario of possible and eventual changes in the federal tax system, several tax measures took shape and, beforehand, started to be carried out by the Federal Union, which, using different normative vehicles to grant a new treatment to compliance federal tax obligations in Brazil, promoted several



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changes of an emergency nature in a spirit of collaboration with the private sector, according to a joint effort to overcome the difficulties experienced.

These changes occurred preferably with the deferral of the duty of performance by the institution, in general, of a moratorium (Article 152, item I, “a”, of the Brazilian Tax Code - BTC) with respect to certain federal taxes being left over the correlated liabilities by certain lapse (Article 153, items I and III, “a” and “b”, of BTC), with postponement of its payments, including the exactions under the simplified payment method of taxes (“Simples Nacional”).

In this sense, the Federal Government, by sanctioning Joint Ordinance No.555/2020 (issued by the Federal Revenue Service with the Attorney General of the National Treasury) on March 24, 2020, extended for 90 days the expiration of negative certificates and positive certificates, with negative effect, of their active debts and federal taxes in order to allow a seasonal capacity of capitalization by the legal entities (including with the Federal Tax Authorities); nevertheless, in a very short space of time, it must be recognized.

It is also worth mentioning the reduction in half provided by Provisional Measure No. 932, dated March 31, 2020, during the three months of April, May and June 2020, regarding the social contribution levied on billing, seeking a reduction in costs by companies and other employers in the “S” system, composed as mentioned above by the so-called “autonomous social services”, instituted by law, with legal personality under private law to perform assistance activities (social or technical), teaching or job training, in addition to consultancy and research aimed at certain social categories or professional groups, e. g., from areas of industry, commerce and transportation, among others, non-profit, maintained by budget allocations or by such parafiscal contributions (MEIRELLES, 2018).

In parallel, the Federal Revenue Service, individually within the scope of its duties (Normative Instruction No. 1,930, dated April 1, 2020), determined the deferral for a lapse of 2 months of the final term for compliance with the instrumental duty (more commonly “ancillary obligation”) for the submission of declarations of annual adjustment of the Income Tax by individuals (passing it from April 30 to June 30, 2020), as well as regarding the payment of the correlated tax debt referring to either



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its first installment, or to its single share, being unchanged at most the dates for the respective refunds, that is, from May to September of the same calendar year.

In turn, the Federal Executive Power, in light of Decree No. 10,305, dated April 1, 2020, for a lapse of 90 days (between April 3, 2020 to July 3, 2020), promoted the suspension of the Tax on Financial Operations (nicknamed “IOF”), in this case, incident on credit and loan operations under any modality, regulating in a macroprudential way<sup>7</sup> the reduction with such seasonal provision, of part of the expenses with capital costs (consistent in the minimum return required by creditors), allowing for easier recovery, as well as a better return on investments, in addition to a greater incentive to attract funds from markets, that is, capital as a financial resource for development, bringing an increase widespread in its flows in view of the purposes of national economic and financial policies during the period of this public calamity, aiming the increase of a secondary market for private debt securities whereby Central Bank of Brazil is also present, which was previously prohibited as explained above.

Simultaneously with such tax breaks, Ordinance No. 139/2020 is issued by the Ministry of Economy, on April 3, 2020, postponing from the first semester to the second the payments of both the employer contribution levied on the payroll due to the National Institute of Social Security (“INSS”), as well as the contributions levied on companies' revenue (gross revenue) for the financing of Social Security (by the

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<sup>7</sup> As for macroprudential regulation, according to CAGNIN and FREITAS (2015, p. 150, note 14) there are “... those measures whose direct effect on the active and passive operations of banking institutions would help to avoid potential risks of financial instability associated with the pro-cyclical behavior of the banking system. Instruments of the various macroeconomic policies (monetary, fiscal, foreign exchange) can be used in order to limit excessive risk-taking that may result in illiquidity and/or insolvency problems of one or more financial institutions, thus resulting in the illiquidity of markets, the forced sale of assets, the deterioration of balance sheets and the abrupt contraction of credit. Likewise, macro-prudential measures can be auxiliary instruments in the pursuit of the objectives of other policies”. In original: “...aquelas medidas cujo efeito direto sobre as operações ativas e passivas das instituições bancárias ajudaria a evitar riscos potenciais de instabilidade financeira associada ao comportamento pró-cíclico do sistema bancário. Instrumentos das diversas políticas macroeconômicas (monetária, fiscal, cambial) podem ser utilizados com a finalidade de limitar a assunção excessiva de risco que possa resultar em problemas de iliquidez e/ou insolvência de uma ou mais instituições financeiras, resultando, assim, na iliquidez dos mercados, na venda forçada de ativos, na deterioração dos balanços e na contração abrupta do crédito. Do mesmo modo, medidas macroprudenciais podem ser instrumentos auxiliares na busca dos objetivos das demais políticas”.





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“COFINS”) and “PIS/PASEP”, in order to have a significant, but momentary increase in cash flow for the recovery of companies.

In addition, it was also determined the postponement for one semester of the payment related to the federal portion of the tax debts related to the Tax on the Circulation of Goods and Services (nicknamed “ICMS -”), owned by the Member States, and the Tax on Services (nicknamed “ISS”), belonging to the Municipalities, inserts in the tax regime of “Simples Nacional”, revealing the same intention to increase the cash flow of companies during this period of restrictions forced by the Brazilian State to combat the spread of COVID-19.

The companies - considering, in the hypothesis, also their other economically more modest modalities, namely those of individual microentrepreneur, microenterprise and small company, as treated by Complementary Law No. 13/2006 - subsumed to the regime of the simplified payment of taxes, in the months of April, May and June 2020 were able to meet the aforementioned federal, state and municipal taxes in the months of October, November and December of the same calendar year, as provided by the Resolution of the Management Council of “Simples Nacional” No. 154/2020, dated April 3, 2020.

Finally, it should be noted that Federal Decree No. 10,305, dated April 9, 2020, determined the temporary reduction of the rates to zero for the Contribution to “PIS/PASEP” and the Financing of Social Security by the “COFINS”, as well as “COFINS”-import’, incidents on the billing resulting from the domestic market and on the zinc sulphate import operation - mainly because components for the manufacture of chloroquine and hydroxychloroquine initially used in the treatment of COVID-19 - with immediate effect, the rates returning to its original level as of October 1, 2020.



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## 5 FINAL CONCLUSION

The crisis caused by the state intervention in the social domain due to the austere and exceptional health measures to stop the pandemic by COVID-19 in itself reveals the need for a simultaneous and correlated state intervention of macroprudential regulation in the economic domain for a rebalancing accord with the implementation, on the other hand, of so many other financial, tax and assistance determinations that avoid recession and uncontrolled public indebtedness to prevent a severe impoverishment of the national society in view of the forced inertia of productive activities.

These are exceptional and emergency determinations aimed at the imperious balance, so that, on the one hand, the public and private health systems remain preserved in view of an abrupt increase in demand, without there being a breakdown in the effective, efficient provision and effectiveness of the respective medical-hospital services and, on the other hand, the entrepreneurial capacity of the private sector is maintained despite the forced retraction of the markets.

However, such verified political and financial reflexes impose not only heterodox and emergency measures of a social (more specifically for public health and social assistance) and economic-financial nature, but which also imply planning for the recovery and restructuring of the private sector in support to the productive forces of the Country, with incentives and subsidies of all kinds to face the extraordinary event and consequent resumption of sustainable development, which, therefore, also translates into levels of public indebtedness according to duly weighed risks and discussed with society.

Consequently, the decree of the state of public calamity and the sanction of Constitutional Amendment No. 106, as well as the taking of several determinations by the federal Public Administration, although they allow an increase of the public indebtedness beyond the limits stipulated in the Law of Tax Responsibility, this circumstance should not imply the absence of control and consideration of the new risks involved, which, moreover, must occur on the part of the National Congress, the Court of Auditors and the Public Prosecutor's Office with the help of a simultaneous



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social control exercised by society and popular participation in making the aforementioned decisions.

It should be noted that, from another side, the crisis experienced due to the fight against the pandemic by COVID-19 made it evident the weakness and vulnerability of the sources of tax revenue on which the federal tax collection (income and revenue of companies) is based, which advises changes in order to have greater diversification and less volatility, starting to be grounded more on other bases (such as, for example, rural property).

The public sector replanning, therefore, must be directed towards promoting post-crisis sustainable development, which goes beyond the simple increase in the tax burden and perhaps the nefarious issue of unsupported currency to cover public expenditures (such as seen in a not-so-far past in national history), attracting investments from foreign and domestic capital idle, with a more simplified and less burdensome tax system for the productive sectors that, although affected, still show capacity for reaction and profitability which indirectly implies an increase in tax revenues, maximal if the Federal Government guarantees an environment for the resumption of economic growth that presents fiscal and financial public austerity (with not only restraint, but reduction of expenses), offering, therefore, security and economic, financial and regulatory certainty.



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