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ENVIRONMENTAL TAXATION: EXTRA-FISCALITY AND CONTRIBUTION TO THE ECOLOGICALLY BALANCED ENVIRONMENT

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Abstract: Man's relationship with nature, historically characterized by expropriation, began to be discussed when the finitude of the planet's resources became evident. The search for development at any cost and the way in which this was implemented caused profound consequences for the global ecosystem, pointing out that an inversion of values would be necessary and an ecologically balanced environment became a concern that takes more and more space in today's society. The idea of sustainability assumed a fundamental role in the attempt to develop mechanisms in defense of the environment. In the private sphere, economic growth conditioned to sustainability has become an objective to be pursued in order to break with the logic of private profits and social losses. The public power, in turn, began to play a key role in the definition of government public policies aimed at development associated with sustainability, in the search for an ecological balance. In this north, regulatory instruments such as the extrafiscal taxation, a product of the interaction between Tax Law and Environmental Law, began to play a central role in market regulation, promotion and changes in social behavior and effective action in defense of socio-environmental balance.
Keywords: Sustainable development. Extrafiscality. Environment. Environmental taxation.

INTRODUCTION

The yearning for a balanced environment has seriously worried humanity, but only recently, because for many centuries the relationship between men and nature was one of pure exploitation. Only when it became evident that the planet's natural resources are limited and that the regeneration of many did not occur as in the past, a conservationist thought began to populate the social imagination. The search for economic development at any cost played a disastrous role and the consequences were disastrous.

Increasing air and water pollution, the deterioration of the ozone layer, the increase in respiratory diseases and those caused by poor sanitation, the warming of the Earth's atmosphere, droughts, floods and other environmental disasters have become increasingly frequent events. and evidence the need for reflection on a change in their attitude towards the environment.

Soon, the concept of sustainability became widespread and became fundamental for the definition of programs and proposals to seek to condition economic growth and social development to environmental issues. It became evident that the public power must assume its role as a market regulator.

In this sense, as a collection tool, the public power used taxation as a regulatory instrument, through the extrafiscal issues, to promote desirable behavioral change and commit society to the pursuit of socio-environmental balance, sustainability and development.

This commitment is enshrined in the country's General Charter from article 225, with the affirmation that a balanced and sustainable environment is everyone's right and the State's obligation to promote it for preservation for present and future generations.

Such a prediction consists of a dramatic change to the development model in progress until then, a change that invokes new conditioning of its agents. Environmental taxation, therefore, is an important tool, a possible way to achieve this commitment.

Given the above, the problem of this research arises: How can environmental taxation act in defense of an ecologically balanced environment?

This article, through bibliographic research focused on specific doctrine on the subject and

the deductive scientific method, which will seek to identify the taxes in which possibilities of use reside as instruments to promote the defense of a balanced environment, as well as the ways in which these taxes can be used, seeking, by conclusion, to confirm if and how environmental taxation can act in defense of an ecologically balanced environment.

At the beginning, a brief report on constitutional principles and environmental taxation will be traced. Next, the principles of precaution, prevention and the polluter-pays will be explained, in order to deal with environmental taxation and the extrafiscal bias, as well as the taxes that can be used as instruments in the defense of the environment, ending with final considerations on the contributions of extrafiscality to an ecologically balanced environment.

THE CONSTITUTIONAL PRINCIPLES AND ENVIRONMENTAL TAXATION

The importance of studying ecology as a science for understanding the relationship between man and nature is undeniable. Ecology awakens the beings that inhabit the Earth to their relationship with each other, with the planet and with the environment, making the behavior of existing systems visible and the balance that maintains the perfect synchronism of the functioning of everything understandable.

This consciousness that is formed makes it possible to perceive man as a component of the ecosystem, dependent on the entire environment and directly responsible for its maintenance and, therefore, for its own survival.

The action of humanity, however, needs discipline. Law, as an applied social science that studies the rules and principles that shape human behavior, can offer instruments for this discipline, instruments that allow limiting the negative action of man on the environment and even its own extinction.

Based on this thought, the recognition of man's right/need for a balanced relationship with nature calls for a new legal arrangement regarding the right to property, for example, insofar as the environment is a good for the common use of the people.

From this, important considerations arise: a) The supremacy of the public interest in confrontation with the private one prevails; b) The public good becomes unavailable in environmental matters; c) Democratic participation plays a central role in the interaction of the public entity with the private sector and the people.

From this understanding emerge important principles of Environmental Law that guide the way for the application of taxation aimed at the preservation of nature and life.

THE PRINCIPLES OF PRECAUTION AND PREVENTION

History is full of reports of disasters caused by the forces of nature, but also of those caused by human interference in the environment. These increasingly frequent disasters allowed us to see the planet as a living organism, which is maintained by a fragile ecological balance between all the creatures that inhabit it.

It has become evident over time that the planet's natural resources are not inexhaustible and their availability for current and future generations depends deeply on how their use and preservation will be planned. The Stockholm Conference in 1972 probably planted the first seed at the international level for awareness of the need to change the way in which human beings interact with nature.

The exponential growth in the production of goods and their consequent consumption puts pressure on natural resources that is directly reflected in a dramatic drop in the quality of life, represented by poor housing

conditions, lack of sanitation and the precarious health of peoples, an increase in of pollution, deforestation, increase in the temperature of the atmosphere and countless other environmental disasters related to the unbridled exploitation of natural resources.

It is well known that the degradation of the environment is largely irreversible. In view of this, the public power has a duty to act, mainly in a preventive way, to prevent this degradation. However, scientific and technological development advances very quickly and in such a complex way that preventively measuring the risks to which the environment may be exposed is an impossible task. Thus, in the scientific impossibility of foreseeing risk issues, the ethical dimension of care for the environment is based on a legal regulation to act in a preventive way.

It comes from International Law, through the Charter of Rio, Declaration of the United Nations Conference on Environment and Development (Rio de Janeiro, 1992), the first lights that established the following principle:

> Principle 15: In order to protect the environment, the precautionary principle must be widely observed by States according to their capacity. Where there is a threat of serious or irreversible damage, the absence of absolute scientific certainty must not be used as a reason for postponing effective and economically viable measures to prevent environmental degradation.

The principles of prevention and precaution impose on the public power the need to intervene in private activity so that the public interest always prevails. Therefore, the public dimension of environmental protection is directly linked to the public control of potentially polluting economic activity and works by promoting public policies in order to condition behaviors and attitudes in the relationship between human beings and nature.

THE POLLUTER PAYS PRINCIPLE

One of the main objectives of the public power as a regulatory body for the economy and potentially polluting private activities must be to correct the perverse consequences of the public/private relationship, a relationship represented by the privatization of benefits and the socialization of socio-environmental costs/losses. Based on the cost/benefit ratio, the market always works with the intention of socializing the costs or losses of the operations it carries out, but in relation to profits, it always tries to make them private, as it strives to maintain a strong and permanent competitiveness in pursuit of economic development. In this *modus operandi*, there is no place to assume environmental or social costs, much less to share positive results in the defense of the environment.

The polluter pays principle takes place precisely when it is necessary that the cost resulting from the degradation resulting from private economic activity be borne by the person who caused it.

The legal recognition of the duty to internalize socio-environmental costs is precisely linked to the legal institute of responsibility, so that "conducts and activities considered harmful to the environment will subject offenders, individuals and legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused" (article 225, § 3, Federal Constitution /1988).

Objectively, the polluter pays principle obliges the polluter to assume the risk of his enterprise, adopting preventive measures or mitigating negative impacts, under supervision and coercion by the public authorities.

From this principle comes the possibility of the creation, by the public authorities, of a set of measures to impose on potentially polluting entrepreneurs, or on those who use nature to

extract resources for their profitable activity, sanctions capable of promoting accountability for the environmental costs.

AN ENVIRONMENTAL POLICY

The performance of the public power as an economic regulatory body is directly linked to the transformations of Law since the beginning of the 20th century.

The necessary preservation of the human species and nature as a whole, as well as the promotion of ethical and humanitarian values, became evident especially after 1945, with the end of the Second World War. In turn, the repeated ecological catastrophes made the concern for the environment more real. On the other hand, the dawn of the 21st century pointed to the importance of the interaction between social issues, particularly in the world of work, with environmental issues focused on natural conservation. Thus, it became mandatory to change government policies to make a commitment to sustainable development, based on criteria that not just economic development at any price.

Public authorities must recognize the importance of investing in the defense of a balanced environment, including when managing their own activity.

Public revenue arising from resource management can be classified into two groups: originating revenue and derived revenue. The original revenue, also known as revenue from the private economy or from private law, is that derived from the direct exploitation of the State's own patrimony. On the other hand, derived revenue, known as revenue from the public economy or public law, is earned by the State from the patrimony of individuals. These are revenues "characterized by the legal constraint on their collection; taxes and pecuniary penalties are counted, in short, income that the public power collects in the private sector, by act of authority". (BALEEIRO, 1984, p. 117).

In this group of derived revenue, along with pecuniary penalties, the most expressive revenue is represented by taxes. Of the state's total public revenue, the largest share, around 90%, is from taxes.

The collection of taxes as public revenue characterizes the fiscal function focused on the collection of resources for the development of legal attributions.

On the other hand, the exercise of the power to tax can provide the use of a tax in its extra-fiscal version, this extra-fiscal version being understood as a way of inducing behaviors of the taxable person of the tax obligation. Extrafiscality would consist "in the use of legal-constitutional formulas to obtain goals that prevail over the purposes of simply collecting monetary resources, the regime that will direct such activity could not be that of tax exactions". (CARVALHO, 199, p. 149)

A TAXATION FOCUSED ON THE EXTRAFISCALITY OF TAXES

The possibility of using a tax as an instrument for protecting the environment is directly related to the application of tax extrafiscality as a technique:

> The contemporary tax system has its own functions, based on the conception of the State within a capitalist and market society. Generally speaking, there is talk of fiscal functions, which mean the collection for the maintenance of universal and general public services. There is also talk of extra-fiscal functions, of general economic orientation (patrimonial function); of stimulus and disincentive to the market. (LOPES, 2000, p. 245).

The importance of the extrafiscal character of the tax is perceived when fiscal interventionism works effectively as an instrument for defense, reform or environmental education. The Brazilian Constitution, in turn, acting as a regulatory

diploma for economic activity, as can be seen from its article 170, ensures that, alongside free enterprise and the valorization of human work, the defense of the environment must be one of the presuppositions to be pursued in the development of productive activities. It can be said that the presence of norms that enable an ecological balance finds in the constitutional norms, of an extrafiscal nature, the possibility of consolidating sustainable development.

It must be noted that environmental taxation is not intended to add to the already excruciating tax burden. The north of environmental taxation must be the reduction or replacement of current taxes. "The internalization of the social cost, whether for the producer, the trader or the consumer, must mean the reduction or suppression of other taxes, seeking an increasingly finalistic application of taxation". (ROSEMBUJ, 1995, p. 265).

Research conducted in the United States and the European Union indicates that the GDP (Gross Domestic Product) can increase when the revenues from environmental taxation are well applied, or when there is a decrease in taxation on capital gains or even in the reduction of contributions from the social insurance paid by employees. This phenomenon is called the double dividend mechanism, where through environmental taxation, desired social behaviors are achieved. Ultimately, it is about the application of extrafiscality.

An example in this sense can be seen in the creation of an environmental tax levied on the emission of carbon dioxide. As this tax must be paid by owners of motor vehicles, among others, and with the revenue earned from the incidence of this tax type reversed to pay for social security, as a result workers have reduced their contribution percentages. In turn, economic agents are induced, given the increase applied to emissions, to adopt behaviors that are less harmful to the environment.

A study carried out on the main types of environmental taxes that are used in countries that are part of the Organization for Economic Cooperation and Development (OECD), revealed that environmental taxation is based on two fundamentals: a) negative taxes, taxes and special contributions are used as tools to correct environmental damage; b) the tax practice of applying tax exemptions conditions the taxpayer to seek more ecologically adequate ways to carry out their activities.

THE BRAZILIAN ENVIRONMENTAL EXTRAFISCAL POLICY

In Brazil, environmental preservation based on tax incentives is still quite incipient, although isolated initiatives demonstrate that the issue is not unknown to legislators.

The tax types existing in the national tax system have in the tax the most used modality in view of environmental protection.

The Income Tax, the Tax on Industrialized Products, the Tax on Rural Property, the Tax on the Circulation of Goods and Services and the Tax on Urban Territorial Property showed real possibilities of use of extrafiscal taxation instruments.

INCOME TAX

The Income Tax was the first tax in the country to be used with an environmental function. Law Number 5,106/1966 established the possibility of abatement or discount in the income statements of individuals or legal entities of resources used in afforestation and reforestation. The intention for the tax to function as an extrafiscal instrument inducing behavior is evident, strongly characterizing itself as an effective tool for State intervention in the economic domain.

In addition to Law nº 5.106/1966, the

Federal Constitution itself provides in its article 153, second paragraph, item I, that the IR must be informed by the criteria of generality, universality and progressivity. These criteria allow the extrafiscal use of the tax, which would recommend its use in environmental taxation.

TAXES OVER INDUSTRIALIZED PRODUCTS

Under the constitutional principle of selectivity (article 153, § 3, Federal Constitution), the Tax on Industrialized Products (IPI), provided for in article 46 of the National Tax Code, can also function as an extra-fiscal environmental tax. The principle of selectivity would act on the characteristic of the essentiality of the product. Therefore, a greater or lesser essentiality of the product would imply a lower or higher tax incidence:

> [Essentiality] refers to the suitability of the product for the life of the largest number of inhabitants in the country. The commodities essential to their civilized existence must be treated more gently, while the highest rates must be reserved for products of restricted consumption, that is, the superfluous of the classes with greater purchasing power. They are usually the rarest items and, therefore, more expensive, from an economic point of view, the norm is inspired by marginal utility. From a political point of view, it reflects the democratic and even socialist tendencies of the contemporary world in which civilized countries follow an identical orientation. (BALEEIRO, 1984, p. 347-348).

Decree Number 4,544 of 2002 is characterized, precisely, by a concern with environmental preservation. Industrial products, machinery, equipment and consumer goods used in the production process may have reduced taxation or even not be subject to the IPI levy when they are related to environmental protection.

RURAL LAND TAX

The extrafiscality of the Rural Land Tax would be in the progressiveness of its rates with a view to conditioning the behavior of rural landowners to exercise the social function of property (article 153, § 4°, Federal Constitution). A better use of rural properties, discouraging, through progressive rates, the maintenance of unproductive properties, strengthens the development of agriculture and livestock, so important for the national economy.

In addition to the progressiveness of the rates, calculated according to the degree of use of the rural property, Law Number 9,393/96 implies the defense of the environment, providing for specially protected territorial spaces, the Permanent Preservation Areas (APP) and the Private Reserves of the Natural Heritage (RPPN), which when instituted by the owner of the property, can revert tax benefits to him.

And also regarding the ITR, it is important to highlight the issue of the distribution of tax revenues, provided for in item II of article 158 of the constitution:

> Article 158. The following belong to the Municipalities:
>
> II - fifty percent of the proceeds from the collection of the tax of the Union on rural territorial property, in relation to the properties located therein, the entirety being in the case of the option referred to in article 153, § 4°, III; (Wording given by Constitutional Amendment Number 42, of 12.19.2003)

According to the constitutional text, the ITR can be used in its entirety when inspected and charged by the municipality where the property is located. For this, it is necessary for the municipality to maintain an agreement with the Federal Revenue Service for the delegation of inspection duties, credit launch and tax collection.

URBAN TERRITORIAL PROPERTY TAX

The Urban Territorial Property Tax (IPTU), of municipal competence, also admits progressive application of rates, but based on the value of the property, according to its location and use. It is used, in addition to its primary collection function, with the aim of promoting the social function of urban property, thus carrying out the extrafiscal mission.

The Regressive IPTU is the method of applying the tax to urban property owners who fulfill their socio-environmental function, so that they receive tax benefits, such as the reduction of the IPTU value.

A Regressive IPTU program can act both in the preservation of the environment and as a tool to raise awareness and sensitize the polis to environmental issues.

Roque Antonio Carrazza's lesson on the validity of tax incentives in protecting the environment is timely and always relevant:

> ... the IPI legislation would be fine if it taxed minimally (or even stopped doing so) on the commercialization of ecologically correct industrialized products (electric cars, gas-powered buses, trucks equipped with efficient catalytic converters, etc.). Likewise, legislation that would grant favorable treatment, in terms of IPTU, to the taxpayer who carried out the maintenance of parks and public gardens, would deserve praise. Or to exempt from ICMS the sale of agricultural products grown without the use of pesticides. (CARRAZZA, 1997, p.32)

Sharing this thought, some Brazilian municipalities have implemented environmental preservation plans based on the understanding that tax exemption, in this case the IPTU, would be the most effective way to do so. The experience of Vitória, capital of Espírito Santo, stands out, which, through the enactment of Municipal Law nº 4.476/97, regulated by Decree nº 1.4072/08, establishes that the owners of urban properties located partially or totally in permanent preservation areas can obtain an exemption of at least 50% of the IPTU value.

Another example is the municipal legislation of the São Carlos municipality of São Carlos, Law nº 13.692/05, where the IPTU exemption can cover properties that maintain non-impermeable areas, an inherent concern with the increasing floods in large cities.

The municipality of São Leopoldo in Rio Grande do Sul grants landowners who have established a Private Natural Heritage Reserve a reduction in the IPTU value, reducing the area corresponding to the reserve from the calculation basis of this tax. This benefit was also extended to owners of Permanent Preservation Areas (APP).

However, in the institution of a tax incentive, compliance with the dictates of Complementary Law Number 101, of May 4, 2000, the so-called Fiscal Responsibility Law, whose article 14 recommends:

> The granting or expansion of incentives or benefits of a tax nature from which the waiver of revenue arises must be accompanied by an estimate of the budgetary-financial impact in the year in which it is to be in force and in the following two years, comply with the provisions of the budget guidelines law and the at least one of the following conditions:
>
> I- demonstration by the proponent that the waiver was considered in the estimate of the revenue of the budget law, in the form of article 12, and that it will not affect the fiscal results targets provided for in the annex to the budget guidelines law;
>
> II - be accompanied by compensation measures, in the period mentioned in the caput, through the increase in revenue, arising from the increase in rates, expansion of the calculation base, increase or creation of tribute or compensation".

It follows that the correct employment and targeting of the tax burden can be an

excellent contribution to the achievement of economically sustainable development, reducing the tax burden of those who invest in the care of the environment at the same time that those who pollute, degrades, are punished. or does nothing to eliminate or reduce environmental damage.

The City Statute (Law Number 10,257/01), when defining urban policy, established that property must assume its social, security and well-being function of citizens, as well as ecological balance through economic policy instruments., tax and financial, represented by the land tax, the improvement contribution and tax incentives. According to Elizabeth Carrazza "extrafiscal progressivity is, as can be seen, one of the instruments created by the Constitution to enforce the principle of the social function of property". (CARRAZZA, 2002, p. 97).

In turn, the same tax can be exercised from a progressive perspective, being called progressive IPTU, whose constitutional provision is set out in article 182 of the 1988 Letter:

> Article 182. The urban development policy, carried out by the municipal government, according to general guidelines established by law, aims to order the full development of the city's social functions and guarantee the well-being of its inhabitants.
>
> § 1 - The master plan, approved by the City Council, mandatory for cities with more than twenty thousand inhabitants, is the basic instrument of the urban development and expansion policy.
>
> § 2 - Urban property fulfills the social function when it meets the fundamental requirements of the city's order expressed in the master plan.
>
> § 3 - Expropriations of urban properties shall be carried out with prior and fair compensation in cash.
>
> § 4 - The municipal government may, by means of a specific law for the area included in the master plan, require, under the terms of federal law, the owner of unbuilt, underutilized or unused urban land to promote its adequate use, under penalty of successively from:
>
> I - compulsory subdivision or construction;
>
> II - progressive urban land and property tax over time;
>
> III - expropriation with payment through public debt securities issued previously by the Federal Senate, with a redemption term of up to ten years, in equal and successive annual installments, ensuring the real value of the indemnity and legal interest.

The greatest contribution of the Progressive Urban Land and Property Tax over time is to promote the socio-environmental function of urban property and the city, discouraging real estate speculation and favoring the orderly growth of the city when it avoids "urban voids" and growth in leaps.

For areas included in the Master Plan, the Municipal Public Power may require the adequate use of unbuilt urban land, by means of a specific law.

Failure to fulfill the socio-environmental function of the property may subject it to compulsory subdivision, construction and use, progressive IPTU over time and even expropriation.

In the words of Professor João Telmo de Oliveira Filho:

> The progressive urban land and property tax, with an extrafiscal nature, is characterized as a sanction to the owner who has not destined his property to a social function. The purpose of the municipality in using the progressive IPTU over time is not collection, but to force the owner to comply with the obligations provided for in the master plan, to divide or build. In case of failure to comply with the conditions and deadlines, the Municipality must apply the tax with

> an increase in the rate for a period of five consecutive years. With respect to the value of the rate, the amount applied will exceed twice the amount referring to the previous year, respecting the maximum rate of fifteen percent. In the event that the owner's obligation is not met within five years, the Municipality may maintain the collection at the maximum rate until the obligation is fulfilled, guaranteeing the prerogative to expropriate the property for urban reform purposes under the terms of § 2 of article 7. of EC. Also, by § 3° of this article, the granting of amnesty or exemptions is prohibited. (OLIVEIRA FILHO, 2004)

The Progressive IPTU proves to be an effective tool when applied to improve the urban environment, hindering and burdening the maintenance of unoccupied areas in urban centers, such as the real estate speculation in central urban lands, which remain for long periods, decades until, taken over by vegetation and garbage while their owners wait for a good offer. Another common example is the maintenance of urban areas of reasonable extension, wedged in the middle of the city, creating urban voids, waiting for the opportune moment to launch a subdivision and provoke a disorderly occupation.

The City Statute, Law nº 10.257/2001, regulates articles 182 and 183 of the Federal Constitution, through the provisions of article 5º until the 8º, with regard to the subdivision, construction or compulsory use of unbuilt, underused or unused urban land, with a view to making better use of the urban environment, providing for the application of progressive rates of IPTU levied on properties that fail to fulfill their social purpose, including providing for the expropriation of the property.

The great novelty brought by this law is precisely in the creation of instruments that allow a more concrete and effective intervention of the public power in urban development. With this, it is expected to achieve at least two objectives: to mitigate real estate speculation and to ensure that urban real estate fulfills the social function.

However, it is in the sole paragraph of the first article of the City Statute that a clear intention carried by the norm is perceived: the defense of the environment:

> Article 1° In the execution of urban policy, dealt with in arts. 182 and 183 of the Federal Constitution, the provisions of this Law will be applied.
>
> Single paragraph. For all intents and purposes, this Law, called the City Statute, establishes rules of public order and social interest that regulate the use of urban property in favor of the collective good, safety and well-being of citizens, as well as environmental balance.

Even more explicit is the environmentalist intention carried by the norm when analyzing the second article and its sections, which bring as objectives of the law topics such as guaranteeing the right to sustainable cities, planning the development of cities, ordering and controlling land use and the protection, preservation and recovery of the natural and built environment, cultural, historical, artistic, landscape and archaeological heritage, among others.

Finishing off the considerations about the City Statute and its interaction in the defense of the environment, it can be highlighted that although it has in its text mechanisms that could effectively work in defense of the environment, the legislator stumbled when he delegated prerogatively and not necessarily these powers to the Municipalities, because if the municipal public power does not manifest or act, the City Statute does not happen. On the other hand, exclusively delegated to the municipality, without financial support or support from the States or the Union, the defense of the environment contained in the Statute is doomed to death due to starvation

of resources.

On the other hand, there is nothing in the City Statute regarding tax incentives for property owners that promote the preservation of natural resources and environmental assets. But it would be possible in relation to foreseen legal instruments, such as, in this case, the onerous grant of the right to build (article 30 and 36), in consortium urban operations, in the transfer of the right to build (article 35, II) and, especially, in the right of preemption, when the Municipal Government wanted to have preference in the acquisition of private property, according to article 26, VI and VII, not to mention the neighborhood impact study, provided for in article 37, VI and VII and article 38, all of the City Statute.

These environmental protections provided for by the City Statute today do not establish a relationship with the exemptions and immunities of Tax Law, but may be subject to tax exemptions, with municipal legislation regulating the matter.

TAX ON THE CIRCULATION OF GOODS AND SERVICES

The Tax on the Circulation of Goods and Services (ICMS) is a tax whose collection is entirely directed to the coffers of the federated state.

Based on the way in which the tax division to which ICMS is subject is foreseen, specifically with regard to the sole paragraph, item II, article 158, of the Federal Constitution, which gives States the possibility of having a certain amount of ICMS available. according to the free disposition of state or federal law in the case of Territories, the figure of the Ecological ICMS emerged. Its main feature is in the form of its destination, where Fiorillo gives us a quick overview of the implementation of the Ecological ICMS:

> The Municipalities saw their economies weakened by the restrictions of use caused by the need to monitor the sources of supply to adjacent Municipalities and by the existence of a conservation unit; on the one hand, the State Public Power increasingly perceived the real need to modernize its policy instruments in this sense. The so-called ecological ICMS was born, as can be seen, in the first form of "compensation", evolving some time later to the format of the tax benefit, linked directly and indirectly to environmental conservation, which is currently its most striking feature. (FIORILLO, 2010, p. 152)

In this sense, the Ecological ICMS brings a new criterion for the redistribution of tax revenue, an environmental criterion. Thus, the Federal Constitution of 1988 provides, in its article 158, IV, that 25% of ICMS must be transferred to the municipalities; 75% of these 25% constitute a portion determined through rigid measurement resulting from the participation of the municipalities themselves in the collection of ICMS. The remaining 25% may be distributed in accordance with state law. Therein lies the possibility of employing the environmental criterion, with the need for the existence of a specific state law to delimit the issue.

If at first the Ecological ICMS emerged with compensatory purposes, in a second moment it became an incentive instrument, as the municipalities were stimulated to adopt measures of environmental conservation and sustainable development, in an evident induction to the creation of Conservation Units or to maintenance of existing ones.

When similar measures are adopted by other states of the federation, it is verified that in addition to the presence of the criteria that initially supported the Ecological ICMS, new environmental criteria were implemented, such as the creation of waste treatment systems, sanitary sewage and its treatment, control of fires, conservation of soil use and management, environmental education programs, among others.

It can be concluded that the Ecological ICMS performs, in a very satisfactory way, an extrafiscal function of the tax, because, by its form of action, it induces municipalities to adopt measures in view of environmental sustainability and the federal state to legislate in defense of the environment. environment.

FINAL CONSIDERATIONS

Humanity's relationship with nature, with the planet, was characterized for a long time as merely exploratory, serving natural resources as goods intended to foster the material or economic development of peoples. The awareness of the need to defend nature, the search for an ecologically balanced environment is very recent. The path of the human species has always been marked by the lack of necessary care with the protection and preservation of the environment in which it developed and, consequently, of its own preservation. Thus, the consequences arising from such conduct emerged: air and water pollution, soil damage, formation of deserts, increase in diseases caused by the lack of adequate sanitation, hunger, increase in the temperature of the atmosphere, thawing of the polar ice caps, among others., are emerging examples of the lack of care for nature.

In relation to the environment, man has always behaved as if natural resources were unlimited and always available. The indiscriminate use of these resources was exploited to the point where it started to affect human survival itself. The Brundtland report (1987) brought the concept of sustainable development, which is presented as one of the indispensable tools for the implementation of an ecologically balanced environmental policy.

The idea that development must meet the needs of the present and not compromise the ability of future generations to also meet their own needs underpins the concept of sustainable development, being a form that, although historically recent, is already adopted by several countries in the world. pursuit of environmental protection and preservation.

The final observation is also in the sense that the public power cannot exempt itself from its role in protecting the environment, because through normative instruments and regulation of economic activities it can, with proven effectiveness, condition the behavior of people and institutions. beneficial to environmental preservation.

The tax, a political/legal device that the public power has and which constitutes the main source of derived public revenue used by the State in carrying out its constitutional missions, presents itself as an excellent instrument for inducing the behavior of taxable persons, thus fulfilling a extrafiscal function.

The relationship between Environmental Law and Tax Law, until recently considered unproductive, finds in the extrafiscality of environmental taxation the possibility of conditioning behaviors in favor of sustainable economic development, the result of society's awareness and its necessary active participation in this process capable of to ensure the present and future quality of life.

The experiences about environmental taxation existing in different nations around the world, mainly in Europe, but also local experiences, prove to be very effective in preserving the environment.

In Brazil, it appears that environmental taxation is in the implementation/development phase. It is important to point out that, based on the analysis of the current national tax system, the application of the environmental tax is perfectly viable, especially through the tax species that have a greater relationship with extrafiscality, as in the case of IPTU and ITR, IR and ICMS.

State and society, united by ties of solidarity

in search of sustainable development, have the conditions to, being protagonists of their history, write a new page where, as the foundations of existence, a dignified and quality life for those who live today and for those who will live tomorrow, in an ecologically balanced and satisfactorily developed environment.

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