

Chapter 2

Taxation

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The New Excise Tax in Brazil – an Example for Germany?

Abbreviations

BRASIL:

ABC:	Low Carbon Agriculture Plan
ANNEL:	National Electric Energy Agency
BNDES:	National Bank for Economic and Social Development
CBS:	Contribution on Goods and Services: Goods and Services Tax (GST) and Harmonized Sales Tax (HST)
CG-IBS:	National Committee for the Tax on Goods and Services
CIDE:	Contribution on Intervention in the Economic Domain
CNBA:	National Basic Food Basket
COFINS:	Contribution to Social Security Financing
DETER:	Real-Time Deforestation Detection System
EC:	Constitutional Amendment
GST:	Goods and Services Tax and Harmonized Sales Tax (HST)
HST:	Harmonized Sales Tax
IBAMA:	Brazilian Institute of the Environment and Renewable Natural Resources
IBS:	Goods and Services Tax
ICMBio:	Chico Mendes Institute for Biodiversity Conservation

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ICMS:	Tax on the Circulation of Goods and Services
INPE:	National Institute for Spatial Research
INSS:	National Social Security Institute
IOF:	Tax on financial transactions
IPI :	Tax on industrialized products
IPTU:	Urban Property Tax
IPVA:	Motor Vehicle Ownership Tax
IR:	Income Tax
IS:	Excise Tax
ISS:	Tax on Services
ITBI:	Real Estate Transfer Tax
ITCMD:	Tax on Causa Mortis Transmissions and Donations of Any Goods or Rights
IVA:	Value Added Tax
LC:	Complementary Law
PASEP:	Public Servant Asset Formation Program
PIS:	Social Integration Program
PLP:	Complementary Bill
PNMC:	National Policy on Climate Change
PRODES:	Project to Monitor Deforestation in the Legal Amazon by Satellite
SECINT:	Special Secretariat for Foreign Trade and International Affairs
SNUC:	Conservation Units
STN:	National Tax System
UNFCCC:	United Nations Framework Convention on Climate Change
ZFM:	Manaus Free Trade Zone
GERMANY:	
BEHG:	Fuel Emissions Trading Act
BGBI:	Federal Law Register
BVerfGE:	Federal Constitutional Court
CDU:	Christian Democratic Union of Germany

CO₂:	Carbon dioxide
CSU:	Christian Social Union in Bavaria
DSTR:	Deutsches Steuerrecht, Journal
EnergieStG:	Energy Tax Act
ff:	following
GG:	Basic Law, German Constitution
p:	page
Rn:	Margin number
SPD:	Social Democratic Party of Germany
STROMSTG:	Electricity Tax Act
UStG:	Value Added Tax Act
VAT:	Value added tax
WWF:	World Wide Fund For Nature

Abstract

As a country with enormous biological diversity and important resources such as the Amazon rainforest, Brazil plays a key role in the ecological transition. This article examines the new consumption tax reform in Brazil and its potential impact on sustainability and social justice.

Particular attention is paid to the newly introduced excise tax (IS) and its function as an instrument for steering environmentally harmful behavior. In addition, existing environmental taxes such as the ecological ICMS, Green IPTU, Green ISS, etc. are analyzed, as well as reform proposals to include environmental variables in the national tax system (STN).

The differences and similarities between the Brazilian and German approaches to ecological transformation are also considered in the context of German tax legislation. The extent to which the German tax system can learn from the Brazilian experience is examined. To what extent the Brazilian approach can provide valuable insights for Germany, particularly with regard to the changed perception of the financing and steering function of tax laws and the need for an interdisciplinary approach to promote sustainable behavior, will be discussed. The role of incentive taxes and the importance of integrating environmental values into the legal system to promote a profound social transformation towards more sustainability, will also be emphasized.

1. Introduction

The simplification of the environment to an object or resource destined exclusively for economic purposes, without considering its complexity, intrinsic value or essential role in maintaining the balance on this planet, has sparked a real environmental crisis. This instrumental view sees nature only as a means to meet the demands of production and consumption, ignoring its ecological and cultural importance. This negligence of society to recognize the limits of the environment has been observed.

Environmental degradation includes problems such as deforestation, pollution, loss of biodiversity and climate change, which are the direct result of unsustainable production and consumption practices. The unbridled exploitation of natural resources exceeds the limits of nature's regenerative capacity, creating severe imbalances. Nature has a limited capacity to regenerate and withstand impacts, and its vulnerability increases as those limits are exceeded, resulting in damages that can often be irreversible.

An economic model which encourages excessive consumption and continuous production, often disconnected from society's real needs, must be curbed. This system, fueled by economic growth at any cost, contributes to the intensive exploitation of natural resources, often without planning or concern for sustainability. The impact of this predatory view of the environment not only affects nature, but also the quality of life of human beings.

Problems such as climate change, scarcity of resources and ecological disasters have led society and the State to reflect on their practices. The "environmental issue" has become a central theme in global discussions, leading to questions about the behavior adopted and the need for a new attitude towards the environment. It is a reflection on the need for society and the State to change their behavior in order to build a more balanced and sustainable relationship with nature, respecting its limits and vulnerabilities.

From this perspective, the law, in an interdisciplinary approach, must use economic instruments to guide practices that will impact the environment, promoting sustainable activities and discouraging those that are detrimental to the environmental balance.

It is essential to connect environmental protection, legal values and social transformation as pillars for achieving both sustainability and the realization of fundamental rights. Achieving a balanced environment, recognized as a fundamental right, and promoting sustainable development will only be possible if there is effective integration of the legal system. This means that all areas of law need to incorporate environmental values into their basis, as a way of stimulating profound social change.

These changes include re-educating society about more sustainable practices and transforming behavior so that human actions are linked to the preservation of the environment. This joint effort is essential to ensure sustainability, which presents itself as an indispensable condition to guarantee a healthy quality of life and preserve human dignity.

Tax law plays a fundamental role in environmental protection and promoting sustainability, by using taxes with an extra-fiscal function to encourage environmentally conscious practices that are compatible with economic development. In Brazil, environmental taxation is applied both through existing taxes with environmental components, as for example, the Ecological ICMS, Green ISS, Green IPTU, etc. as well as through reform proposals which incorporate environmental variables into the National Tax System (STN).

Constitutional Amendment 132, enacted on December 20, 2023, has as its main objective the reform of consumption taxation in Brazil. This reform seeks to replace current taxes with new ones, to establish the distribution of the new revenues among the federal entities and to define the transition to the new tax system.

Among the changes introduced, the following stand out:

- The creation of the Tax on Goods and Services (IBS): this unifies state and municipal taxes, like ICMS and ISS, with the aim of simplifying tax collection and harmonizing taxation on the consumption of goods and services throughout the country.
- The implementation of the Contribution on Goods and Services (CBS): replaces federal taxes such as PIS, COFINS and IPI, with the aim of simplifying the tax system and increasing its efficiency.
- The introduction of the Excise Tax (IS), which will be discussed in the next section, is levied on products and processes that are harmful to the environment or public health, such as cigarettes and alcoholic beverages, promoting environmental sustainability and encouraging healthier practices.
- The establishment of cashback mechanisms, which return part of the taxes collected to low-income families, with the aim of reducing social inequalities and correcting the regressive nature of the Brazilian tax model.

The reform also anticipates the simplification and digitalization of the tax system, allowing companies to direct their efforts towards innovation and wealth generation, rather than dealing with complex tax regulations.

In summary, Constitutional Amendment 132/2023 seeks to modernize the Brazilian tax system, making it fairer, more efficient and in line with the goals of environmental sustainability and reducing social inequalities.

The Brazilian approach can also provide valuable insights for Germany, with its altered perception of the financing and the steering functions of tax laws. The interdisciplinary approach of using economic incentives in the fiscal sector deserves to be reconsidered in order to steer environmentally relevant behavior. The Brazilian approach promotes sustainable activities and discourages those that harm the ecological balance. Considerations such as those in Brazil could inspire the German discussion of a German or European ecological financial reform to protect the natural foundations of life.

2. The concept of taxes in the light of the current ecological transformation in Brazil and Germany

2.1 Short introduction to taxes, fees and improvement contribution

The theory of taxes, fees and contributions is based on the tax system, which seeks to finance the State and guarantee the provision of essential public services. Each of these categories has distinct characteristics and purposes, and understanding their differences is essential for a more informed debate on taxation and its role in society.

It is a branch of Tax Law and Public Finance that seeks to explain and regulate the different tax types and their objectives. In Brazil, the 1988 Federal Constitution establishes a threefold classification of taxes: taxes, fees and contributions. Each one has different characteristics and purposes.

Taxes are levied by the state without the need for a direct benefit to the taxpayer. In other words, the amount collected is not linked to a specific service, but rather to the financing of general public activities. Examples in Brazil include the Income Tax (IR), the Tax on the Circulation of Goods and Services (ICMS) and the Urban Property Tax (IPTU) and now, after the tax reform, the IBS, the CBS and the Excise Tax. Their function can be both revenue-raising and regulatory, as in the case of taxes on products that affect public health or the environment, with the aim of discouraging harmful behavior. The revenue is used to finance general government activities such as health, education and security. The tax base is normally based on economic facts such as income, assets and consumption.

Also in Germany, levies are divided into three categories: taxes, fees and contributions. Levies are unilaterally imposed, public-law payment obligations that accrue to an authority with sovereign power (e.g. federal, state, municipal) and at least also serve to generate income for the community. This means that citizens are obliged to pay levies if they fall under the scope of the

individual laws, e.g. the individual tax laws or the fee or contribution regulations.³

Fees, unlike taxes, are binding. They are charged in return for a specific public service or the exercise of administrative police power. For example, a garbage collection fee, an environmental inspection fee or a fee for issuing a passport. They reflect a more direct relation between the taxpayer and the service provided by the state. The calculation basis is related to the cost of the service or state activity.

Contributions, such as social or improvement contributions, have a more limited purpose, usually linked to specific actions of collective interest or to the development of certain economic sectors. For example, social security contributions (such as the National Social Security Institute – INSS) are intended to finance social security, social assistance and health. Improvement contributions, on the other hand, are related to public works that increase the value of private property. The calculation basis varies according to character and purpose.

Incentive taxes, on the other hand, are fiscal tools designed to stimulate behavior or investments that the state considers beneficial for society. They go beyond simple collection: they play a strategic role in inducing desirable behavior on the part of companies and citizens. They can play a crucial role in accelerating the transition to a more sustainable and resilient economy.

These taxes can be used to: a) promote economic development in less favored regions; b) stimulate technological innovation and; c) encourage sustainable and ecological practices. Examples in Brazil include IPI reductions or exemptions for the purchase of electric or hybrid vehicles; ICMS credits for companies that adopt circular economy practices; tax benefits for companies that invest in reforestation or environmental preservation projects, etc. It is important to assess how Brazil has positioned itself in relation to climate change, which will be dealt with in the following topic.

In contrast to the Brazilian constitution, in Germany, not all competencies arise directly from the Basic Law. Rather, only the tax legislative competencies are described; the other types of levies are not mentioned directly.⁴

The German constitution does not contain an exhaustive list of permissible types of tax, but it does set out a framework of fiscal principles, fundamental rights and budgetary law within which the legislature may levy taxes

3 Kirchhof in: Isensee/Kirchhof, *Handbuch des Staatsrechts*, § 119 Nichtsteuerliche Abgaben, Rz. 17.

4 Cf. Müller-Franken in: Höfling/Augsberg/Rixen, *Berliner Kommentar zum Grundgesetz*, 2024, Art. 105 GG Rn. 84.

or create new ones.⁵ According to Article 104a of the German Basic Law, the federal government and the states governments shall bear the expenditure resulting from the tasks respectively assigned to them.

However, Germany does not have what are known as “improvement contributions”. The entire tax code is part of the German general tax code, which also includes the law on fees and contributions.

2.2 Ecological transformation in Brazil – an overview

The ecological transformation in Brazil reflects the country’s efforts to balance economic development with environmental preservation and tackle climate change. Brazil has a strategic position in this debate, as it is home to most of the Amazon rainforest, vast water resources and one of the greatest biodiversity on the planet. However, it also faces significant challenges, such as deforestation, environmental degradation and pressure from agribusiness and mining.

The ecological transformation seeks to change economic, social and cultural practices, promoting a transition to a sustainable development model that is resilient to climate change. This transformation is based on principles like reducing greenhouse gas emissions, preserving natural resources and strengthening vulnerable communities.

Given the growing awareness of the climate crisis, tax incentives play a key role in the ecological transition, promoting a low-carbon and sustainable economy. In Brazil, the ecological transformation can be driven by the following initiatives:

Green Taxation (Green Taxes) refers to charges on activities or products that cause damage to the environment, such as the use of fossil fuels, carbon emissions or industrial pollution. The idea is to discourage harmful practices and encourage more sustainable alternatives by imposing higher taxes or rates on polluting activities, such as greenhouse gas emissions, and applying tax benefits to companies that adopt sustainable practices. Examples in Brazil include the Ecological ICMS, Green IPTU, Green ISS and Green IPVA.

Carbon taxes aim to introduce a levy on carbon emissions, with the proceeds going towards investments in green infrastructure and clean technologies. In Brazil, there is still no carbon tax implemented in a specific and comprehensive way, but there are tax instruments and initiatives that are moving in the direction of pricing carbon emissions or encouraging the reduction of

⁵ Kirchhof in: Isensee/Kirchhof, Handbuch des Staatsrechts, § 119 Nichtsteuerliche Abgaben, Rz. 18.

emissions. Here are some examples and related discussions: CIDE-Combustíveis (CIDE-Fuels), which is levied on the commercialization of fossil fuels such as gasoline, diesel and aviation kerosene. Although its collection is not directly linked to emissions mitigation, it is a tool that can be adjusted to encourage a reduction in fossil fuel consumption.

The Green ICMS on fuels, which in some states has a differentiated rate of ICMS in order to encourage the use of biofuels, like ethanol, which emit less carbon. Carbon Credits in the Tax Sector are instruments which companies participating in voluntary or compulsory carbon markets can use to offset taxes or as part of strategies to reduce tax costs. There are also discussions about carbon emission taxes through bills currently before the National Congress, such as PL 528/2021, which proposes a carbon tax system associated with a regulated carbon market.

Tax Incentives for Renewable Energies (exemptions or tax benefits) aim to provide tax reductions or exemptions for companies that invest in clean technologies, circular economy, renewable energy or environmental conservation projects. For example, tax incentives for buying electric vehicles or installing solar panels. Or the reduction of taxes on solar, wind and biomass energy equipment and tax benefits for energy transition projects in rural communities. In Brazil, there are various tax incentives aimed at promoting the development and use of renewable energies. They include exemptions, rate reductions and special regimes applicable to equipment, projects and clean energy sources such as solar, wind and biomass.

Examples in Brazil include: a) ICMS Agreement 101/1997, which reduces or exempts ICMS on the purchase of equipment and components used to generate wind, solar, biomass and hydroelectric power. Some Brazilian states, such as São Paulo, Minas Gerais and Rio de Janeiro, exempt or reduce ICMS on solar panels, inverters and batteries. There is also Distributed Generation (which is covered by ICMS Agreement 16/2015, exempting ICMS on electricity generated by solar systems installed on buildings, provided that the energy generated is offset against consumption by the electricity grid, as regulated by ANEEL Normative Resolution 482/2012.

Regarding the IPI, there is a reduction or exemption for equipment used to generate renewable energy, such as: photovoltaic modules; wind generators or solar thermal system components. The benefit is provided for in decrees issued by the federal government which place these products under reduced or exempted tax rates. Products used to generate renewable energy, like photovoltaic modules and inverters, can have a zero rate for PIS/Pasep and Cofins, with the aim of making it cheaper to import and sell these products on the domestic market. Equipment for generating renewable energy, as solar panels and wind turbines, can be imported with exemption or reduction in the im-

port tax rate, depending on the classification and type of project. SECINT Ordinance No. 220/2019 offers a reduced rate for products destined for clean energy projects.

BNDES offers financing for renewable energy projects at subsidized rates, such as the Finem Energia Renovável (Renewable Energy) program, allowing easier conditions for purchasing equipment with tax exemptions. Some private banks offer credit lines for residential solar energy systems, and these projects can benefit from tax benefits already applied to the sector. And companies located in the Manaus Free Trade Zone (ZFM) that manufacture components for renewable energy systems (solar and wind) enjoy benefits such as IPI exemption, ICMS reduction and PIS/Cofins exemption, among others.

Promoting the Bioeconomy through tax incentives for sustainable economic activities in the Amazon and other biomes, such as sustainable forest management and the production of bioactive compounds. **Tax credits can be granted for environmental preservation**, which are instruments to reward rural or urban landowners for practices such as reforestation, preservation of areas of native vegetation or recovery of degraded ecosystems.

The role of Social and Environmental Justice is structuring fiscal policy to reduce inequalities and promote social inclusion, ensuring that the ecological transition benefits vulnerable communities and respects the rights of populations, especially indigenous peoples.

2.3 Ecological transformation in Germany – an overview

The ecological financial reform in Germany emerged from the ecological movement in the 1970s. Due to the social and ecological deficits, the Green Party was founded in 1980, and by 1983 it had 29 representatives in the Bundestag.⁶

In 1998, the Green Party, along with the Social Democratic Party of Germany (SPD), was part of the government after winning the election, and the first steps towards an ecological financial reform emerged. The introduction of an electricity tax as an excise duty of DM 20.00 per megawatt hour in 1999 was intended to mark the beginning of an ecological tax reform. The revenue

6 BÜNDNIS 90/DIE GRÜNEN, The founding of the Greens, self-portrayal, <https://www.gruene.de/unsere-gruene-geschichte> [access: 10.02.2025]. After German reunification, it merged with the civil rights movement in the GDR and was renamed BÜNDNIS 90/DIE GRÜNEN.

from the eco-tax is used primarily to reduce pension insurance contributions or to limit their increase.⁷

The electricity tax has been increased in several ways to date and has remained unchanged at 20.50 euros per megawatt hour since 2003.⁸ Furthermore, a decision was taken in 1999 to gradually increase the already existing mineral oil tax (also as an excise duty) on motor fuels, gas and heating oil.⁹

In addition to the mineral oil tax, a CO₂ tax has been levied since 2021 as the basis for pricing CO₂ emissions from fossil fuels, including natural gas, heating oil and petrol. It amounted to €45.00 per ton in 2024 (Section 10 (2) (Fuel Emissions Trading Act – BEHG) and will increase to €55.00 per ton from 2025. Companies that market fossil fuels (e.g. energy supply, mineral oil supply, production or disposal companies) or that have a permit under the Energy Tax Act¹⁰ are defined as tax debtors under Section 3 no. 3 BEHG. The tax rate is based on the CO₂ emissions, which are based on estimates according to scientifically recognized methods.¹¹

In the coalition agreements of the subsequent governments, reference is repeatedly made to ecological financial reform and the sustainable development of the society. The coalition agreement between the SPD and the Greens in 2002, for example, refers to ecological financial reform, but remains vague in its stipulations. It is to be examined, for example, whether and how taxation can be further developed from an ecological point of view. Incentive programs are to be created, sales tax is to be levied on flights within Europe, and

7 Knigge/Görlach, *Die Ökologische Steuerreform – Auswirkungen auf Umwelt, Beschäftigung und Innovation*, Forschungsprojekt im Auftrag des Umweltbundesamtes, Oktober 2005, Kap. 3.2.

8 § 3 StromStG 1999, the electricity tax was then gradually increased, from DM 25.00 on January 1, 2000, to DM 30.00 on January 1, 2001, to €17.90 on January 1, 2002, and has remained unchanged at €20.50 since March 1, 2003; cf. Art. 1 of the Act on the Introduction of an Ecological Tax Reform of March 24, 1999, BGBl. I, 1999 (No. 14), 378 et seq.; section 3 as amended by Art. 2 No. 2 of the Act on the Continuation of the Ecological Tax Reform of December 16, 1999, BGBl. I 1999, 2432 (2438); § 3 as amended by Art. 2 no. 2 of the Law for the Further Development of the Ecological Tax Reform of December 23, 2002, BGBl. I 2002, 4602 (4604).

9 Art. 2 des Gesetzes zum Einstieg in die ökologische Steuerreform vom 24. März 1999, BGBl. I, 1999 (Nr. 14), p. 378 (p. 380).

10 Energiesteuergesetz (EnergieStG) vom 15. Juli 2006, BGBl. I 2006, 1534; 2008 I, 660, 1007, zuletzt geändert durch Artikel 3 des Gesetzes vom 27. März 2024, BGBl. 2024 I Nr. 107.

11 Cf. Juhrich in Umweltbundesamt (Hrsg.), *CO₂ Emissionsfaktoren für fossile Brennstoffe*, Climate Change 27/2016, p.10.

the federal government wanted to advocate kerosene taxation at European level.¹²

In 2005, the government changed and the coalition agreement between the Christian Democratic Union of Germany (CDU), the Christian Social Union in Bavaria (CSU) and the Social Democratic Party of Germany (SPD) and as of November 11, 2005, no longer includes the continuation of the ecological financial reform. However, the ecologically and economically “sensible” expansion of renewable energies was agreed upon. To protect the domestic energy-intensive industry, eco-taxes should not be increased any further.¹³ At the same time, further measures were taken, such as the introduction of tax exemptions for combined heat and power plants and reduced tax rates for natural gas vehicles.

All in all, it can be said that in the years in which social democratic and green parties were in government, ecological financial reform was always given more weight than in the years in which Christian democratic and liberal parties were in government.¹⁴

In their 2019 study on the environmental impact of the eco-tax, Kemfert et al. assume that the current eco-tax has a limited effect. Emissions trading is considered to be more effective.¹⁵

2.4 Challenges and prospects for Brazil

Despite the potential, the adoption of taxes to encourage ecological transformation faces challenges, for example, political and economic resistance, the

12 SPD and Bündnis 90/Die Grünen, Coalition Agreement from SPD and Bündnis 90/Die Grünen from 16.10.2002, Erneuerung – Gerechtigkeit – Nachhaltigkeit. Für ein wirtschaftlich starkes, soziales und ökologisches Deutschland. Für eine lebendige Demokratie p. 21.

13 CDU, CSU and SPD, Gemeinsam für Deutschland – mit Mut und Menschlichkeit, Coalition agreement between the CDU, CSU and SPD of 11.11.2005, p. 41 ff.

14 For example Coalition agreement between the CDU, CSU and FDP of 26.10.2009, “Wachstum. Bildung. Zusammenhalt”, https://archiv.cdu.de/sites/default/files/media/dokumente/091215-koalitionsvertrag-2009–2013-englisch_0.pdf [Abruf 13.01.2025]; Coalition agreement between the CDU, CSU and SPD of 16.12.2013, Deutschlands Zukunft gestalten, <https://archiv.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf> [access: 13.01.2025]; Coalition agreement between the SPD, the Greens and the FDP of 24.11.2021, Mehr Fortschritt wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, <https://www.bundestagswahl-bw.de/koalitionsvertrag-2021> [access: 10.01.2025].

15 Kemfert/Schill/Wägner/Zaklan, Umweltwirkungen der Ökosteuer begrenzt, CO₂-Bepreisung der nächste Schritt, DIW Wochenbericht 2019, p. 216 (p. 218).

need for a wide-ranging tax reform that considers fiscal and environmental justice, besides weaknesses in the supervision and execution of environmental policies.

In Brazil, the establishment and expansion of incentive taxes in the context of the ecological transformation is fundamental, especially in light of international commitments, such as the Paris Agreement, and domestic challenges, like deforestation in the Amazon and the climate crisis. However, as mentioned above, this approach faces practical and political challenges, including institutional challenges, fiscal justice, education and awareness-raising, and multisectoral coordination.

The institutional challenges stem from the need to reformulate the Brazilian tax system to better integrate environmental objectives, reducing bureaucracy and promoting greater efficiency. Along these lines, Brazil's tax reform approved in 2024 created the Excise Tax (IS), also known as the "Sin Tax", which is included in the calculation base for consumption taxes. The tax seeks to reduce the consumption of products that have a negative impact on health, like cigarettes and alcoholic beverages, or that cause damage to the environment. The next chapter will be dedicated to explaining the composition, functioning and scope of the IS in Brazil.

We cannot abstain from fiscal justice, which aims to ensure that the resulting tax burden is socially fair, avoiding overburdening vulnerable populations and promoting equity. Education and awareness-raising are essential because seeking a greater understanding in society of the importance of green taxes and incentives can increase acceptance of those measures.

Finally, there is the need for multi-sectoral coordination, which is no easy task and involves aligning governments, the private sector and civil society organizations, and is essential if ecological taxation is to produce the expected results.

Taxation, far from being just a collection mechanism, can become a powerful lever for shaping behavior and catalyzing structural change. In the Brazilian case, with its rich biodiversity and central role on the global environmental stage, the integration of incentive taxes into an ecological agenda is not only desirable, but essential for a more sustainable and just future.

2.5 Challenges and prospects for Germany

In Germany, the current development is very similar to that in Brazil; there is also political and economic resistance in Germany, especially since Donald Trump took over the presidency in the USA on January 20, 2025.

As a result, there is currently little progress in ecological financial reform in Germany as well. Agreement between politics, business and society is also a lengthy process that will need to be coordinated further in the future.

A new Bundestag will be elected in Germany on February 23, 2025. According to the World Wide Fund For Nature (WWF), most parties fall short of the necessary climate protection measures when comparing the election manifestos for the 2025 Bundestag elections.¹⁶

The WWF's analysis shows that the major parties CDU, CSU and SPD have significantly scaled back their ambitions compared to the last general election.

Bündnis 90/Die Grünen have presented the most ambitious program, which includes a comprehensive concept for the energy, building and transport transition as well as the establishment of a circular economy. However, they have been the subject of sustained criticism due to a poorly designed heating law from 2023, which many felt was unfair. The CDU/CSU is mainly focusing on the CO₂ price and wants to abolish the Building Energy Act, while the SPD is committed to climate targets, but remains vague on specific measures.

For a successful climate and environmental policy, it is crucial that it is socially just. A poorly designed environmental policy can lead to an overburdening of vulnerable population groups and reduce the acceptance of the measures. The WWF emphasizes that a government that promotes the phase-out of fossil fuels and invests heavily in renewable energies is necessary. The integration of social justice into climate policy is crucial to increase the acceptance and effectiveness of the measures. This requires a comprehensive reform of tax and social policies to ensure that the costs of the transformation are distributed fairly.

3. Constitutional basis for the introduction of new excise taxes

3.1 Brazil

The coexistence of federal and state taxes in Brazil is structured by the principles and provisions established in the 1988 Federal Constitution. The Brazil-

16 WWF, WWF Zukunftswahl-Check analysiert Wahlprogramme zur Bundestagswahl <https://www.wwf.de/2025/januar/wie-zukunftsfit-sind-die-parteien-in-deutschland>; WWF Zukunftswahl-Check zur Bundestagswahl 2025 <https://www.wwf.de/themen-projekte/politische-arbeit/bundestagswahl-2025/wwf-zukunftswahl-check-2025>, published 30.01.2025 [access: 05.02.2025]

ian tax organization, based on the federative model, seeks to harmonize the financial autonomy of the federative entities (Union, States, Municipalities and Federal District) with the exercise of their constitutional powers. The constitutional foundations that support this coexistence are highlighted below.

Federative Principle and Financial Autonomy: The 1988 Constitution organizes Brazil as a federation, according to article 1, main section, article 18. This federative structure recognizes the political, administrative and financial autonomy of the federative entities. Financial autonomy is guaranteed by the power to institute taxes of their own, according to the tax powers established in Article 145 of the Constitution. The states have their own competence to institute state taxes, regardless of prior authorization from the Union or the municipalities, guaranteeing their independence.

Allocation of Tax Responsibility: Article 153 of the Constitution lists the taxes that the Union can institute, while article 155 defines those of state responsibility, article 156 deals with municipal taxes and article 156-A creates a new tax of shared responsibility between states and municipalities. This separation seeks to avoid tax overlap and conflict between federal entities, ensuring balance in the federative pact. Examples of state taxes include: the Tax on the Circulation of Goods and Services (ICMS); the Tax on the Causa Mortis Transmission and Donation of Any Goods or Rights (ITCMD); and the Motor Vehicle Ownership Tax (IPVA). Regarding federal taxes, we can mention, for example: Income Tax (IR); Tax on Industrialized Products (IPI); Social Contributions, such as Cofins and PIS/Pasep, etc. and in relation to municipal taxes, the Tax on Services of Any Nature (ISS), Urban Property Tax (IPTU) and Real Estate Transfer Tax (ITBI), are some examples.

The Constitution ensures that part of the revenue collected by the Union and the states is to be shared between the federated entities, according to articles 157, 158 and 159. This mechanism guarantees the redistribution of resources, especially to entities with lower tax collection capacity, promoting federative balance. The tax reform approved in Brazil brought significant changes to federal, state and municipal taxes. Implementing this new model will require a great deal of cooperation and coordination from the federated entities. Below we will discuss some of the main aspects of this reform.

3.1.1 The recent Tax Reform approved in Brazil

Constitutional Amendment 132/2024 promoted a significant reform of the Brazilian tax system, with its focus on simplifying and modernizing the tax

on goods and services. This amendment created a dual VAT: the IBS and the CBS and also created a tax of an extra-fiscal nature called the Selective Tax. The IBS (Goods and Services Tax) replaces state and municipal taxes related to consumption. The taxes replaced by the IBS are: ICMS (Tax on the Circulation of Goods and Services) – a state tax, and ISS (Tax on Services of Any Nature) – a municipal tax.

The IBS tax base operates on the IVA (VAT-Value Added Tax) model, taxing goods and services at all stages of the production chain with the right to tax credits. The tax will be shared between states and municipalities, with a gradual transition by 2033.

The other tax created by the amendment was the CBS (Contribution on Goods and Services), which is levied on companies' gross revenue, calculated using the credit and debit model (similar to the IBS, but restricted to the federal level). It will be implemented before the IBS and will be levied from 2027, while the taxes it replaces are being gradually phased out. It replaces PIS (Social Integration Program) and Cofins (Contribution to Social Security Financing), two exclusively federal taxes.

The following taxes were also abolished: IOF/Insurance: discontinued for financial transactions and insurance, and IPI, which will remain only for the Manaus Free Trade Zone and specific industrialized products. The transition from the old system to the new tax model will take place progressively between 2026 and 2033, to ensure that the federal entities adapt to the new revenue distribution. These new taxes reflect an attempt to simplify the tax system, reducing cumulativeness and promoting greater collection efficiency. The proposal is inspired by international VAT models, adjusted to the characteristics of the Brazilian federative pact.

The Excise Tax, which we will deal with in a specific section, aims to act on certain goods and services, especially those considered harmful to health or the environment, or whose production or consumption has a negative social impact. The tax seeks to discourage the consumption of those goods and services.

On January 16, 2025, the Congress approved Complementary Law 214, the first regulation of the tax reform. The new law simplifies the co-billing of taxes on consumption (goods and services). The text originates from the Complementary Bill (PLP) 68/2024, approved in December by the National Congress. Twenty-eight sections were vetoed, including those that benefited certain financial and information security services.

The main change brought about by the new law are the rules for implementing Value Added Tax (IVA/VAT), which is levied only on the value added at each stage of production, discounting what has already been taxed at pre-

vious stages. This avoids the cumulative collection of taxes along production chains.

The implementation of the new system will be gradual. In 2026, CBS and IBS will be tested nationally but will not actually be collected. For these tests, companies will have to issue an invoice with a value that corresponds to the new taxes. This will be the time for the public administration to check the viability of the new model and make the necessary adaptations. The transition to the new system will not be completed until 2033. Every five years, parliamentarians will make a new assessment of the effects of the reform.

The standard rate, which will be established in a future law, should be around 28%¹⁷ of the price of the product or service consumed. The text stipulates that the Executive Power will adopt measures to bring the rate below 26.5% by 2030. As a rule, the standard rate will be charged equally for any product or service, which simplifies the current system. In addition, the effective tax rate should only be applied to final consumption, and not to the production sector.

The regulation provides for a tax reduction, a reduced list, for example, of services and products related to national security and information, with 40 items that will have a 60% tax reduction. Exemption for the basic food basket, where food from the National Basic Food Basket (CNBA) will not pay CBS or IBS. The list includes essential foods such as rice, beans, milk, bread and meat. Cashback is a form of tax refund that will be given to families with an income of up to half the minimum wage per capita – which currently amounts to R\$706 per family member.

A regulation will define the method of calculation and refund, but the text already defines that for expenses with internet and telephone, gas, electricity, water and sewage, 20% of the IBS and the entire amount paid in CBS will be refunded.

Regarding the tax benefit for the Manaus Free Trade Zone (ZFM), it was vetoed by the Executive Power on the grounds that it would create favorable treatment that does not exist today. It involves presumed credits – a mechanism that allows a “discount” on tax debts – for certain products from the region which, according to the government, currently “no longer have a competitive advantage over the rest of the country”. The decision was based on the constitutional provision that the tax reform will maintain the ZFM current competitive advantages. The Free Trade Areas, which offer tax benefits to other cities in the Northern Region, will also receive incentives

17 Conjunturaonline, <https://www.conjunturaonline.com.br/noticia/economia/brasil-tera-nova-tributacao-sobre-consumo-a-partir-do-proximo-ano> [access: 10.02.2025].

under the reform. The same goes for special customs regimes. Some parliamentarians claim that if it were not for maintaining the advantages of the Manaus Free Trade Zone and the free trade areas established in Roraima, Amapá, Rondônia and Acre, a large part of this population would be destined for hunger and poverty. Or worse: to drug trafficking and criminal gangs.

Another important approval was the creation of the temporary and independent Management Committee, which will last until the end of 2025, for the sole regulation of the IBS during its time of existence. The idea is that the procedures needed to implement the initial tests, starting in 2026, could be delayed, since Bill 108/2024, which effectively creates the Committee, is still being analyzed.

PLP 108 proposes the creation of the Goods and Services Tax Management Committee (CG-IBS), the body responsible for coordinating the collection, inspection, charging and distribution of the IBS among Brazilian states and municipalities. The CG-IBS will be made up of representatives from all federal entities, ensuring shared and harmonious management of the new tax. The structure of the CG-IBS includes a Superior Council, made up of 54 members: 27 appointed by the state governments and the Federal District, and 27 elected to represent the municipalities and the Federal District. This council will be the highest decision-making body within the committee.

Internationally, there are similar structures aimed at coordinating the administration of value-added taxes (VAT) in federal systems. For example, in the European Union, the VAT Committee acts as a consultative forum made up of representatives of the member states and the European Commission. This committee discusses the uniform application of VAT guidelines and promotes cooperation between member countries to ensure harmonized implementation of the tax.

Another example is the VAT Harmonization Council in Canada, which coordinates the administration of the Goods and Services Tax (GST) and the Harmonized Sales Tax (HST) between the federal government and the participating provinces. This council facilitates collaboration between the different jurisdictions to ensure consistent application of VAT-related tax policies. These international examples demonstrate the importance of management committees in the efficient administration of consumption taxes in federal systems, promoting cooperation between different levels of government and ensuring uniformity in the application of tax laws.

3.1.2 *The Excise Tax*

A federal tax, the IS is extra fiscal in nature, i.e. its main function is to discourage the consumption of products considered harmful to health or the environment, as well as correcting negative externalities associated with these goods. The tax will replace part of the collection of the Tax on Industrialized Products (IPI) and will be levied only once on each product, without the possibility of using tax credits from previous or future transactions.

Complementary Law 214/2025 indicates general categories of products that should be taxed by IS, including: cigarettes and other tobacco derivatives; alcoholic beverages; sugar-sweetened beverages; motor vehicles; mineral goods, i.e. products that cause significant environmental impact. These items should receive this additional tax, which will be levied only once on the penalized product. The rates still need to be defined in the future, in specific ordinary laws. But the new rule already stipulates that the maximum rate for minerals will be 0.25 %.

According to the text, the IS tax will apply to the following items: vehicles, except trucks; boats and aircraft; smoking products; alcoholic beverages; sugary drinks, such as industrialized juices and soft drinks; mineral goods; and online betting (prediction contests and fantasy sport). However, there will be no tax on vehicles with specific technical characteristics for operational use by the Armed Forces or Law Enforcement agencies. The tax is not levied on transactions involving electricity and telecommunications and on goods and services whose rates are reduced under the terms of § 1 of art. 9 of Constitutional Amendment no. 132, of December 20, 2023.¹⁸

The rate bands will be progressive, varying according to the product's impact on health or the environment. For example: Products such as cigarettes or fossil fuels may have higher tax rates, while other harmful goods may be in lower bands. The law allows for the adoption of specific rates, differentiated by product category, providing flexibility in taxation.

IS does not form its own calculation base and neither does it include IBS and CBS, nor ICMS and ISS during the transition until 2032. On the other hand, the reciprocal is not true, as IBS and CBS will have IS in their calculation base.¹⁹

Article 414 of LC 214/2025 establishes the different calculation bases for the IS, which vary according to the time criterion established in article 412.

18 Presidência da República, https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc132.htm [access: 10.02.2025].

19 Source: CF/1988 – Complementary Law 214/2025.

We would like to point out that according to Article 414(III)(b), the basis for calculating the IS will be “the reference value for extracting the mineral asset.

The legislation provides for two main ways of defining the tax base, depending on the type of good or service being taxed:

3.1.2.1 Ad Valorem Calculation Basis – art. 415

The tax base is the monetary value of the transaction, i.e. the sale price of the good or service. The tax rate is applied as a percentage of this value. Generally used for goods and services whose impact varies in proportion to the value of the item. For example: for luxury products with environmental impacts (such as highly polluting vehicles), the tax is applied as a percentage of the final price. Alcoholic drinks or cigarettes can have the tax calculated in this manner, based on the sales price. The advantage of using this calculation basis is that it adapts to price variations in the market and makes it easier to adjust the tax on products with higher or lower prices. However, there is the challenge that products with artificially low prices can be under-taxed, reducing tax efficiency.

3.1.2.2 Specific Calculation Basis

It is defined by the physical quantity traded, such as volume, weight or unit of the good, regardless of its monetary value. Indicated for goods whose environmental, social or health impact is proportional to the quantity consumed, not the price. Examples include fossil fuels, which could be taxed based on the volume consumed (in liters). Cigarette tax could be levied per pack or unit. The advantage of this type of calculation basis is that it guarantees taxation proportional to the physical consumption of the good, regardless of price variations, and it also directly encourages the reduction in the consumption of taxed items. However, it can disregard differences in quality and environmental impact between similar products.

Collections arising from the Excise Tax will be allocated to specific funds and programs, with the aim of: a) financing public health policies – for example: public health funds and initiatives aimed at reducing the impact of tobacco, alcoholic beverages and sugary drinks; b) promoting environmental preservation actions in the case of products with a significant environmental impact, such as fossil fuels and combustion-powered cars; and c) mitigating the negative effects caused by the consumption of taxed products.

According to the Federal Constitution, the Excise Tax (IS) is not levied on exports. Complementary Law (LC) No. 214/2025 – reflecting constitutional immunity, listed in item I of article 413 the non-incidence of IS on exports, alongside immunities on transactions with electricity and telecommunications and transactions with goods and services whose IBS and CBS rates are reduced. However, when the bill was sanctioned, the Executive Power vetoed item I of article 413, which provided for the complete exemption of exports from the Selective Tax on the sale of mineral goods. This means that such operations will be able to charge the aforementioned tax levied on extraction, regardless of the destination of the mineral product. According to § 2 of art. 422 of LC 214/2025, the rate cannot exceed 0.25%, calculated on the market value of the product. Had the Executive Power not vetoed the bill, the export of minerals would have resulted in the return of credits from the Selective Tax levied on extraction.

3.2 *Germany*

3.2.1 *Justification of incentive taxes*

Each state refines the fulfillment of its tasks, e.g. public services, defense, social tasks, essentially by levying taxes on all those who live in that state or are otherwise connected to it.

However, like any imposed pecuniary charge, tax payments trigger avoidance behavior in citizens. They therefore always have a behavioral effect. With this knowledge, tax payments can also be associated with a behavioral purpose. Section 3 (1), 2nd half-sentence of the German Fiscal Code (AO) explicitly states that the generation of revenue can also be an ancillary purpose of tax collection, i.e. the main purpose can be another, e.g. rewarding desirable behavior through tax reductions or sanctioning undesirable behavior through tax increases.

The German legal system thus explicitly allows taxes to be waived for non-fiscal reasons, but the main purpose must still be to generate revenue.

This means that tax laws are allowed to create incentives that (may) have a behavior-guiding function. Insofar as such non-fiscal objectives are pursued by law, such promotion or guidance objectives must be clearly supported by legislative decisions. In this way, the generation of revenue takes a back seat to another purpose – usually behavior guidance. In addition to fiscal objectives, the focus of taxation can therefore also include distributional aspects, as

well as social, economic, fiscal or even ecological objectives. However, the fundamental principles of taxation must always be observed, such as the principle of equality (ability to pay principle), the principle of legality, the prohibition of excess or the principle of the social state.²⁰

The **ability-to-pay principle** concerns the effect of the tax burden and applies to all levies. It is derived from the principle of equality enshrined in Article 3, paragraph 1 of the German constitution. Tax payments must be based on the taxpayer's ability to pay, i.e. their financial means.²¹

One example of the application of the ability-to-pay principle is the progressive income tax rate, which means that taxpayers with higher incomes not only pay more taxes, but also pay a higher tax rate than taxpayers with lower incomes.²² It is well known that people with a higher income pay more tax. However, due to the increasing tax rate (from 14% to 42%), they also pay a higher proportion of their income than people with a lower income.

The **principle of legality**²³ The principle of legality means that taxation must be lawful and results from Article 20, paragraph 3 of the German Basic Law. Tax collection must strictly adhere to the requirements of the law and the Basic Law. The relevant laws must be clear and unambiguous, and they must not have a retroactive effect on closed cases (known as the prohibition of retroactivity). According to section 85 of the German Fiscal Code (AO), the tax authorities must assess and collect taxes uniformly in accordance with the law. Taxes may not be reduced, levied wrongly, and tax refunds and rebates may not be wrongly granted or denied. Furthermore, contracts between the state and citizens are prohibited under tax law. This principle ensures that state power is organized and exercised in accordance with the provisions and within the limits of the law, and does not occur arbitrarily, thus enabling the abuse of power.²⁴

The **prohibition of excess** is an expression of the principle of proportionality enshrined in Article 20, paragraph 3 of the German constitution. It is based on the idea that state measures may not, in principle, be unlimited and unfounded, and that tax obligations, too, may not be disproportionate.²⁵

20 Cf. Gersch in: Klein AO, § 3 Rn. 9.

21 Cf. Gersch in: Klein AO, § 3 Rn. 14. It also refers to the effect of a tax burden and includes the principle that it must be payable from disposable income, which varies according to financial possibilities.

22 Cf. the interesting article on the current political discussion of the efficiency principle by Eichfelder/Knaisch/Nicolai in: DStR 2021, S. 2168.

23 Vgl. Grzeszick in: Dürig/Herzog/Scholz, GG Kommentar, Rn. 1.

24 Vgl. Küpper/Booß in: Zugmaier/Nöcker, Abgabenordnung, § 227 AO, Rn. 58.

25 BVerfGE v. 8.7.2021 – 1 BvR 2237/ 14, 1 BvR 2422/ 17, Rn. 117; BVerfG v. 5.4.1978 – 1 BvR 117/ 73 –, BVerfGE 48, 102 juris Rn. 35 ff.

They must not be allowed to strangle the taxpayers; their property must be spared, and families must be protected. This applies to every tax, including ecologically motivated taxation.

The **welfare state principle** is enshrined in Article 20, Paragraph 1 of the German Constitution. The state is obliged to ensure a fair social order and bears fundamental responsibility for the protection of the socially weak by redistributing wealth from the financially strong to the financially weak.²⁶ The legislation implements the principle of the welfare state through tax exemptions for basic needs, progressive taxation in the income tax law and the deductibility of individual pension costs.

With regard to an ecological financial reform, this means that it can be further developed with a sense of proportion and that, like all other tax laws, it must be in line with the principles outlined.

3.2.2 Legislative competence

Germany also has a decentralized system, set out in the federal principle of Art. 20 of the German Basic Law.

The German federal state is a special manifestation of federalism. It is a principle of political organization in which political units are territorially divided into political subsystems that are linked politically and legally at different levels. Sovereignty and legislative powers are divided among regional authorities, and the Basic Law defines the respective powers, particularly in tax matters.²⁷

The basic rule for the distribution of legislative competence in the federal state between the federal government and the federal states is derived from Article 70, paragraph 1 of the Basic Law. In Germany, only the federal government and the federal states can be considered as legislative associations, but not the municipalities; the setting of standards by other associations, such as the enactment of municipal statutes, does not constitute “legislation” within the meaning of Article 70, paragraph 1 of the Basic Law.²⁸

In this respect, there is a significant difference between the German system and the Brazilian system, in which there are municipal taxes regulated by the constitution. In deviation from Article 70 of the Basic Law, Article 105

26 Grzeszick in: Dürig/Herzog/Scholz, GG Kommentar, Art. 20 Rn. 1.

27 Graf von Kielmansegg in: Höfling/Augsberg/Rixen, Berliner Kommentar zum Grundgesetz, 1. Ergänzungslieferung 2024, Art. 20 GG, Rn. 49 ff.

28 Herbst in: Höfling/Augsberg/Rixen, Berliner Kommentar zum Grundgesetz, 1. Ergänzungslieferung 2024, Art. 70 GG, Rn. 4.

of the Basic Law, as a *lex specialis*, regulates the distribution of legislative powers in the area of taxation between the federal government and the states.

According to Art. 105 of the German Basic Law (GG), the federal government has exclusive legislative authority over customs duties and financial monopolies. A state financial monopoly is to be understood as the state's exclusive right to offer a particular good or service on the market. Today, the only remaining monopoly is the spirits monopoly, which, however, has not generated any income for the federal government since the liberalization of the markets and the former import monopoly. It is even subsidized from tax revenues to protect small and medium-sized distilleries from foreign competition.²⁹

The Federation shall have concurrent legislative power over real property tax and other taxes if it is entitled to all or part of the revenue from these taxes. The rule of concurrent legislation means that the federal states have legislative competence as long as and to the extent that the federal government has not legislated. In other words, if the federal government regulates an issue by law, the federal states have no legislative competence for this issue and this scope or period. This is also known as the blocking effect.³⁰ By contrast, the states are responsible for legislation on local consumption and excise taxes. However, they may not levy any taxes if these are similar to the taxes regulated by federal law. In this respect, German tax legislation differs greatly from the Brazilian legal situation.

3.2.3 *Limits to tax creation*

Article 106 of the German Basic Law (GG) serves as the final regulation for the distribution of tax revenue between the federal government, the federal states and the municipalities. This means that Article 106 GG describes exactly what proportion of one of the types of tax mentioned there is due to the federal government, the federal states or the municipalities.

While Article 105 of the Basic Law regulates legislative sovereignty, Article 106 of the Basic Law provides precise instructions for the revenue sovereignty over various taxes and financial monopolies. It distinguishes between federal taxes, state taxes, municipal taxes and community taxes. In the case of

29 Cf. Müller-Franken, Sebastian in: Höfling/Augsberg/Rixen, *Berliner Kommentar zum Grundgesetz*, 2024, Art. 105 GG Rn. 196.

30 Cf. Herbst in: Höfling/Augsberg/Rixen, *Berliner Kommentar zum Grundgesetz*, 2024, Art. 72 GG, Rn. 25.

joint taxes, the revenues are due jointly to the federal government and the federal states according to a percentage share. The exhaustive list in Article 106 of the Basic Law means that only the taxes listed there are recognized as such, and new taxes must be assigned to one of the types mentioned.

The federal and state governments have no legislative competence for taxes or types of tax that are not explicitly mentioned in Article 106 of the Basic Law (GG). However, the legislator has a great degree of freedom within the type concepts defined by Article 105 and Article 106 of the Basic Law. The ordinary legislature does not have a free right to introduce new taxes, which is also referred to as the blocking effect of the financial constitution. The taxes and types of tax listed in Article 105 and Article 106 of the Basic Law are type concepts; new taxes must therefore be examined to determine whether they correspond to the type of a conventional tax. The assignment of a tax to a competence title of Article 106 of the Basic Law is based on the essential structural characteristics of the tax. These include the debtor (subject), the object of taxation (object), the scale of assessment and the method of collection. The decisive factor is whether two taxes materially siphon off the same source of economic performance. The taxes listed in Article 106 of the Basic Law can be fundamentally restructured. New types of taxes can also be introduced, provided they can be assigned to one of the tax types listed in Article 106 of the Basic Law.

Furthermore, the legislator has no free right of tax invention. This therefore means that the introduction of a new type of tax, such as a selective tax based on the Brazilian model, requires an amendment to the Basic Law, for which a two-thirds majority of the German Bundestag is required.³¹

3.2.4 Excise Tax

The **Value Added Tax** is the most important excise tax in Germany, with the highest revenues, and plays a central role in the German tax system. It is levied on the sale of goods and services and is a transaction tax that targets the sales process itself and the consideration for the service.

The legislative power for value added tax lies with the federal government, Article 105, para. 2 of the Basic Law, because it is entitled to a portion of the revenue.

The revenue from value added tax is divided between the federal government and the states. Pursuant to Article 106, paragraph 3 of the Basic Law, the

31 Compare to all this Kempny in: Höfling/Augsberg/Rixen, *Berliner Kommentar zum Grundgesetz*, 2024, Art. 106 GG.

revenue from the VAT accrues jointly to the Federation and the states. The distribution of the value added (or turnover) tax revenue is based on a fixed scale, which is adjusted annually to ensure that the Federation and the Länder can cover their necessary expenditure (coverage ratio principle). This principle ensures a flexible distribution of revenues to meet the changing financial needs of the Federation and the federal states.

With the exception of the import turnover tax, the administrative competence for the turnover tax lies with the federal states. This means that the federal states collect and administer the turnover tax on behalf of the federal government. This division of administrative competence enables the tax to be collected efficiently, since the federal states have the necessary structures in place to carry out the tax collection.³²

German tax law is less complex than the Brazilian system. In Germany, the regulations of Articles 105 and 106 of the Basic Law, as described above, prohibit the federal states from levying a tax similar to the VAT, so called *Ban on similarity*.³³ The federal government has concurrent legislative authority over taxes, which means that it has the power to legislate on important taxes such as VAT (Article 105 paragraph 2a GG). VAT is a shared tax, which is split between the federal and state governments (Article 106 paragraph 3 GG). The taxable base for VAT in Germany is the consideration that an entrepreneur receives for his deliveries or services (Section 10 (1) UStG). This means that the VAT is calculated on the net price of the delivery or service, with the VAT itself not being part of the tax base. In Germany, there are two main tax rates: a standard tax rate of 19% and a reduced tax rate of 7% for certain goods and services.³⁴

4. Future granting of the new excise taxes in Brazil

Brazil has a good track record with green fiscal transfers. The Federal Constitution stipulates that states must transfer 25% of the revenues from the Tax on the Commercialization of Goods and Services (ICMS) to municipalities, but part of these transfers can be sent to municipalities according to criteria established by the state, which include environmental criteria. The tax has become known as the ecological ICMS.

32 Deutscher Bundestag, *Steuerkompetenzen von Bund und Ländern, Verfassungsrechtliche Regelungen der Gesetzgebungs-, Ertrags- und Verwaltungskompetenzen für Steuern* (2022), WD 4 – 3000 - 020/22, p. 13.

33 Jachmann-Michel/Vogel in: Huber/Voßkuhle, *Grundgesetz*, 8. Auflage 2024, Article 105 Rn. 66 ff.

34 Korn in: Bunjes, *Umsatzsteuer*, 23. Auflage 2024, R. 4 ff.

Currently, another 18 states³⁵ make transfers to their municipalities based on environmental criteria. This is a tool to reward/encourage municipalities with ecological assets or relevant environmental performance. The states have the autonomy to establish their transfer criteria, which change in terms of importance (from 1% to 13% of the total ICMS transfer) and criteria used to evaluate the municipalities, such as protected areas, sewage treatment, garbage, etc. However, as the ICMS will cease to exist with the tax reform, a solution was needed for the ecological transfers.

In this sense, the new Tax on Goods and Services (IBS), established by Constitutional Amendment 132 of 2024, stipulates that up to 5% of the IBS passed on to municipalities can be linked to environmental criteria. Some are already calling it Green IBS. This measure aims to continue encouraging sustainable practices in municipalities, like what already happens with the Ecological ICMS. The Green IBS creates an opportunity for states to review their transfers in order to adjust them to today's environmental realities.

However, IBS-Green will be even more effective if states also have incentives to seek results in the environmental area. In addition, states that have not yet adopted the ICMS transfer will need to implement this mechanism within the IBS. According to World Bank estimates, the new criteria will increase the volume of transfers linked to environmental criteria to municipalities by 60%.

The value of the environmental portion: up to 5% of the funds passed on to municipalities from the IBS can be distributed based on compliance with environmental indicators and targets. The aim is to encourage local initiatives for environmental preservation, conservation of natural resources and sustainability actions. The application criteria include: a) the existence of Conservation Units (UCs) or protected areas in the municipalities; b) effective environmental management, such as solid waste and basic sanitation policies; c) the recovery or maintenance of water sources and permanent preservation areas (APPs) and d) the promotion of renewable energy and climate change mitigation projects.

Although the IBS replaces the ICMS as a state and municipal tax, the logic of the Ecological ICMS will be adapted to ensure that environmental criteria remain relevant. This adaptation seeks to preserve the incentive for sustainable practices in municipalities, ensuring a smooth transition to the new tax

35 Mahdi, Shireen, *Reforma tributária e sustentabilidade: uma nova era para as transferências fiscais ecológicas* <https://www.worldbank.org/pt/news/opinion/2025/01/16/reforma-tributaria-e-sustentabilidade-uma-nova-era-para-as-transferencias-fiscais-ecologicas> [access: 10.02.2025].

regime. We emphasize that the ICMS will be completely abolished in 2033, when the Ecological ICMS will also be abolished.

The detailed regulation of the environmental portion of IBS transfers will be done through state and federal laws, which will define the indicators and mechanisms for monitoring environmental impacts and calculating the transfer to municipalities. The application is scheduled to take place gradually, as part of the transition to the new unified tax system. This mechanism reflects Brazil's commitment to sustainable development and the alignment of tax practices with environmental objectives.

One important aspect is that it is essential to align incentives between the three spheres of government. Alignment allows objectives to be achieved more efficiently and in an articulated manner between the federated entities. This is what is known as **climate federalism**: a concept that explores the role and responsibilities of the different levels of government in a federation (national, state and municipal) in tackling climate change. It seeks to articulate competencies to mitigate environmental impacts and promote effective climate adaptation policies in a coordinated manner, respecting the autonomy of the federative entities and taking advantage of their particularities.

Climate Federalism has several characteristics, among which we would like to highlight the following: Firstly, the division of competencies, where responsibilities for combating climate change are shared between federal entities, depending on their capacity to act and the local impact of the policies. Sub-national governments (state and municipal) are usually closer to local problems and can lead specific initiatives, such as clean energy programs or resilient infrastructure. Secondly, Intergovernmental Coordination, which involves the creation of coordination mechanisms between governments to guarantee integrated and coherent actions, avoiding conflicts between national, state and local climate policies. Thirdly, Climate Policy Instruments with the adoption of tools such as climate funds, tax incentives, emission targets, environmental regulation and intergovernmental agreements. And finally, Flexibility and Regionalization, which allow climate actions to be adjusted to regional characteristics, such as biomes and specific vulnerabilities.

Practical examples of Climate Federalism in some countries and in the EU include: In the Brazilian case, the Brazilian climate federalism is seen in the implementation of sub-national climate policies, such as the states of the Legal Amazon adopting strategies to combat deforestation, and cities joining the Global Covenant of Mayors for Climate and Energy; and instruments such as the Ecological ICMS also reflect federal initiatives focused on sustainability.

In the United States, states have taken a leading role in the fight against climate change, such as California, which has implemented stricter standards

for vehicle emissions and clean energy targets, even at times when national policies have been set back. In the European Union, although not a federation in the classic sense, the EU coordinates climate efforts between member states, combining national policies and continental targets, such as the commitment to reduce greenhouse gas emissions.

Finally, I must mention that Brazil has implemented a series of initiatives and public policies to make progress on climate change. Some of the main actions include participation in international agreements such as the Paris Agreement (2015), in which Brazil made international commitments to reduce greenhouse gas emissions, with targets of cutting emissions by 37% by 2025 and 43% by 2030 (compared to 2005 levels). Also, Brazil has been actively participating in The United Nations Framework Convention on Climate Change (UNFCCC), in its global climate conferences e.g. Cops, defending the importance of climate finance for developing countries. Below, we list a few examples.

- The development of National Plans and Climate Policies, such as the National Policy on Climate Change (PNMC), which establishes guidelines for mitigating the impacts of climate change and integrating sustainability into government planning. The Low Carbon Agriculture Plan (ABC), aiming to reduce agricultural emissions through sustainable practices such as the recovery of degraded pastures, no-till farming and crop-livestock-forest integration systems. The National Energy Plan promotes the transition to renewable sources like wind, solar and biomass energy.
- Regarding Environmental Protection and Conservation, the creation of the National System of Conservation Units (SNUC) guarantees the protection of natural areas and biodiversity through conservation units. Deforestation monitoring with programs as PRODES and DETER, operated by the National Institute for Space Research (INPE), monitor and provide data on deforestation.
- As for the promotion of Renewable Energies, the country is a leader in clean energies as it has a predominantly renewable energy matrix, especially hydroelectric, wind and solar energy. In recent years, the country has made progress in expanding photovoltaic solar energy and wind farms.
- Concerning the fight against deforestation, the country has the Amazon Fund, which is financed by international donations, such as those from Norway and Germany, which supports projects aiming to reduce deforestation and promote sustainable development in the Amazon. It also has environmental inspection efforts: operations carried out by agencies like IBAMA and ICMBio which are intended to combat illegal deforestation and other predatory practices.

5. Improvement

Brazil has the potential to lead the global ecological transformation due to its natural wealth and experience in renewable energies. Some measures that can strengthen progress include reforestation and recovery of degraded areas with ecosystem restoration projects, such as the commitments under the Bonn Challenge, which can capture carbon and recover biodiversity. Deforestation and fires are a particular challenge in the Amazon and the Cerrado, driven by agricultural expansion, illegal mining and land speculation.

Economic incentives through fiscal and tax policies, such as subsidies for clean technologies and green taxes, can encourage sustainable practices. Even with political and economic pressures given that the tension between economic development and environmental preservation is an ongoing obstacle.

Empowering local (indigenous and traditional) communities to conserve forests and ecosystems is an essential strategy for combating socio-environmental inequality. Indigenous and traditional populations face constant threats to their land and culture. Technology and innovation that correspond to investments in research, development and low-carbon technologies can transform sectors such as agriculture, transportation and energy.

A fundamental aspect is meeting climate objectives. There are gaps in the monitoring and implementation of public policies that guarantee the fulfillment of climate commitments. All the actions mentioned above are necessary for both the Excise Tax and the green IBS to be successfully implemented.

Although the Excise Tax is an important mechanism to promote sustainability, public health and social justice, its implementation can be improved in several aspects to achieve better results. Below we list some suggestions for improvement.

- It is essential to clearly define which products are taxed. The challenge lies in the lack of clear criteria for determining which goods and services should be taxed and which can lead to doubts and legal disputes. The ideal would be to create a detailed and updatable list of products subject to the tax, with objective criteria such as environmental impact, public health or negative externalities.
- Improve transparency in the allocation of resources, because without a clear destination, the funds collected can be used for purposes that do not meet the objectives of the tax. In this sense, it is important to ensure that the revenues are compulsorily applied to specific public policies, such as investments in health, environmental education and green infrastructure.
- Establish criteria to mitigate regressive effects because taxed products, such as fuels, can disproportionately affect low-income families. One solution

would be to implement compensation mechanisms, such as cashback or targeted subsidies, to protect vulnerable populations from excessive impacts.

- Seek technological evolution and make regular adjustments because the impact of certain products can change over time, like advances in less polluting technologies. To this end, it is important to periodically review the scope of the tax, considering new scientific information, changes in the market and technological innovations.
- Integrate with education and sustainability policies, as the tax alone may not be enough to change consumption habits. The ideal is to complement the excise tax with awareness campaigns about the benefits of sustainable practices and the impacts of taxed products.
- Seek Regional Equity, i.e. states or municipalities that depend on the production of taxed items, such as fossil fuels, may suffer disproportionate economic impacts. It is therefore essential to create revenue redistribution mechanisms or incentives to support economic transition in the most affected regions.
- Promote efficient inspection, as the absence of an effective system for monitoring and enforcing tax can lead to fraud or tax evasion. In this sense, investment should be made in monitoring technology, such as digital systems, to ensure that taxation is applied fairly and efficiently.
- Alignment with global policies: the excise tax needs to be aligned with international commitments on sustainability and trade. Seek to harmonize tax rates and regulations with global practices, avoiding friction in trade agreements and promoting international cooperation.
- Encourage climate federalism, which strengthens environmental governance by combining the actions of all tiers of government, taking advantage of both the scope of national policies and the local focus of sub-national actions. This is essential for tackling a challenge as complex and interconnected as climate change.

The success of the excise tax depends not only on its technical implementation, but also on its integration with social, economic and environmental policies. Improving aspects such as transparency, fairness and enforcement can maximize its positive impact and minimize unwanted side effects.

The ecological transformation in Brazil is currently a multifaceted process that requires political commitment, social engagement and economic investment. Despite the progress made, it is important to intensify efforts to tackle climate change and consolidate Brazil as a leader in sustainability and environmental preservation. This transition is crucial not only for the well-being of the Brazilian population, but also for global climate balance.

6. Conclusion

The instrumental view of the environment as a mere resource for economic purposes has led to an environmental crisis. Environmental degradation, climate change and scarcity of resources require a rethink and a reorientation towards more sustainable development. Law, in particular tax law, can play a significant role in guiding behavior and promoting environmentally friendly conduct.

Brazil has introduced a new special consumption tax, the so-called selective tax (IS). This tax is levied on products and processes that are harmful to the environment and/or public health, such as cigarettes and alcoholic beverages, as well as other products. The aim is to promote environmental sustainability and more environmentally friendly behavior.

Although the tax systems in Brazil and Germany are very different, the taxation of fossil fuels, the levies on CO₂ emissions and tax incentives for investment in environmentally friendly technologies are comparable.

The interdisciplinary use of economic incentives in the tax area deserves to be reconsidered in Germany as a way of influencing environmentally relevant behavior. Brazilian ideas such as these could stimulate the German discussion on a German or European ecological financial reform for the protection of the natural environment. Greater consideration of environmental aspects in the entire tax code could provide a major incentive for a sustainable change in behavior. Brazilian experiences should also be incorporated into the German and European discussion on the further development of ecological financial reform.

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