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Regression Tributary, Arrecadative Efficiency and Fiscal Crisis in Brazil

Micheline Ramos de Oliveira[1], Eduardo Guerini[2], Marcelo Coelho Souza[3], Aline Perussolo[3]

[1]Professor at the Professional Master's Program in Public Policy Management. University of Itajaí Valley (Univali), SC, Brazil. E-mail: micheantr@hotmail.com

[2] Professor at the Professional Master's Program in Public Policy Management. University of Itajaí Valley (Univali), SC, Brazil

[3] Professional Master's Program in Public Policy Management. University of Itajaí Valley (Univali), SC, Brazil

***Abstract*— *The fiscal problem that plagues Brazil today is a feature visible in the various economic cycles faced more or less accentuated in several historical periods, with a tendency to prolong and deepen depending on the structural causes that potentiated the critical effect. In this article, the aim is to explore the actual situation of the tributary system in Brazil and analyze it by the perspective of the Federal Constitution of 1988. Considering the regressive tax burden in the Brazilian case, the distributive disproportionality points to the selective character in the execution of a fiscal policy that induces structural inequalities in the taxation of consumption, production, patrimony and income, affecting in an uneven and concentrated way in the classes with lower income and ability to pay. A paradox that contradicts the precepts of the 1988 Constitution, which aim to establish equality and social justice.*

Keywords*— Fiscal Crisis, Taxes, Tributary Structure

I. INTRODUCTION

The fiscal problem that plagues Brazil today is a feature visible in the various economic cycles faced more or less accentuated in several historical periods, with a tendency to prolong and deepen depending on the structural causes that potentiated the critical effect. The debate about who finances the State, its size and the distribution of the tax burden is broad, with primordial origin in the economy, whether in classical economics, neoclassical or Keynesian thought.

The 1988 Constitution defined tax competencies, conferring in Title VI an improved System Tributary National, with general principles that go from taxation and budget, that when completing 30 years of the current one Constitutional System Tributary Brazilian law, indicates the need to rethink this taxation model, the forms of tributary taxation, the contributory nature, its unique character in consonance with Constitutional Law.

Taxes are considered not only an obligation of the citizen, but a price to be paid to guarantee the activities of the State, which requires sources of financing to provide services to the population, satisfying the collective needs that cannot be left to the private sector. In this way, the public revenue, is composed mainly by taxes, being fundamental for the economic, social and cultural development of the country.

The System Tributary National is a set of hierarchically organized norms that deals with tributary matters, composed of taxes instituted in Brazil, by principles and norms that are registered in the Federal Constitution of 1988, regulated in articles 145 to 162. Such constitution of the System Tributary depends on the conception of the State of Democratic and Social Law, designed to ensure social rights and justice as values that were defined in the Constitution of 1988.

Thus, from the perspective of a growing fiscal crisis, the neoliberal economic reforms adopted in Brazil include the necessary action of the judiciary to order social relations between public and private entities and individuals in an attempt to solve distributive conflicts.

II. ECONOMIC BASES OF STATE REGULATION AND TAXATION

On the decade in 1930, Keynes pointed to the need for state regulation in the economy, mainly in the production of public goods / services to guarantee the process of capitalist accumulation, as well as a determinant in fiscal and monetary policy aimed at guaranteeing full

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employment, which strengthen the State of social welfare, with the aim of stabilizing policies and reducing inequality [1].

In the neoclassical conception, a tax system cannot break the market equilibrium, taxation will obey the principles of "neutrality" and "equity". In the first case, taxes can not affect the decisions of economic agents in the allocation of resources, which would affect efficiency in the universe of economic rationality. On the other hand, taxes should be distributed evenly among members of society, not altering the distributive structure of income, since market automatism produces an optimal allocation, and the tax system cannot break such equilibrium [2].

From the 1920, especially in the face of the crisis of 1929 and the great Depression of 1930 in the USA, the State added to the functions of justice and security, to be a supplier of public goods of electricity, sanitation, infrastructure, among other goods and services. The new economic functions of the state expanded from the Keynesian matrix, in practically all capitalist countries, with a significant increase in public spending, a growing participation of the state in national production, and a wide range of laws regulating economic activity [3].

Such a need for economic performance of the public sector, since the market cannot provide public goods, the presence of the State would fulfill the allocative function – by definition the allocative function of the State is characterized by the supply of goods and services not adequately offered by the market system – as a rule, because the price system does not lead to a fair distribution of income, hence the distributive function of the public sector, elements that are financed by the fiscal policy that will be adopted to meet the needs of a government. Finally, state intervention changes the behavior of prices and employment, highlighting that there is no market automatism, leading to a stabilizing function.

One can consider State, as a set of organs, among them, legislative, courts and others that make possible the action of the government, being this action, a set of projects and programs in which part of the society proposes them through a government that performs the function of State in a determined period [4].

In the many definitions of "public policy," the idea that policymakers are embedded in a technical-political process that aims to define and reconcile objectives and means among social actor’s subject to restrictions. It is argued that policies are intentional actions by governments that contain some or some articulated objectives, which are justified and formulated [5].

The most well-known definition in public policy studies is Thomas Dye, who succinctly describes public policy as "everything a government decides to do or fails to do," describing a treatment of public policy as any and all governmental behavior, making decisions sustained by sanctions against those who transgress them, which refers to initiatives sanctioned by governments [5].

Economic and public policy theories tend to give an organicity of the chained actions of the economic policies that guide the governmental actions of a certain State. Thus, economic policy in capitalism deals with processes through which the state intervenes in the market, correcting it, guiding it to certain formulated plans, projects and programs.

Concerning the congruence between law and economics, in the significant variants of modern capitalism, there is surpassing one over another, depending on the stimuli considered in these systems, generating a continuous process of interrelationship or structural coupling, so that the right is produced by the economic structure, but also, interacts with it, producing changes, in a reciprocal condition [6].

In the case of federalism, especially the Brazilian, the federation can be defined, above all, as a pact between territorial units and different policies, by building agreements and negotiating different policies. In this sense, the Federal Constitution of 1988, establishing the federative form of State as the fundamental principle that governs the Brazilian nation, also established the obligatory federative decentralization, municipalizing numerous public activities [7].

There is a complex institutional design in Brazilian federalism, composed of several arenas of negotiation, coordination and production of public policies and services, stimulated by diverse interests, ranging from competition to cooperation. Budgetary and financial constraints and increasing social demand for public goods and services require broader federal articulations that address the diversification of citizens' preferences and constant technological development. This dynamic pressures for the adoption of public institutions that provide the new social relations established by the federative pact [8].

In the same direction of federalism, he emphasizes that the central government must provide public goods and services for the entire population of the country. Decentralized levels provide goods and services in a

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limited way to the extent of their respective territories. By tailoring the outputs of such goods and services to the particular preferences and circumstances of citizens, decentralized delivery increases economic welfare above the results of the more uniform levels of these services at the national level.

The Federation means alliance, pact, union between States, with the purpose of forming a single sovereign unit, through the Constitution Federative Republic of Brazil of 1988 (CRFB / 88). The main idea that falls on federalism is the decentralization of power, through the distribution of parcels of political administration among the federated entities. Such entities are treated in an isonomic manner and there is no disparity between them (Member States). Thus, the member states do not have sovereignty, so they do not have the freedom to separate from the federation, and must subordinate themselves to the central power, even if motivated by non-unanimous decisions. Moreover, they confer full sovereignty on a central entity, maintaining only autonomy. In this way, the member states of the federation are autonomous, but are not sovereign [9].

The principle enshrined in CRFB / 88 is that of the contributory capacity, which is essential for the social justice criterion, which is associated with the principles of progressiveness and selectivity, tending to determine the sustainability of public finances, which advocates taxes, pointing to which pays the bill and finances the State, in the various federative entities, in the context of the fiscal crisis of the recent period.

III. FISCAL CRISIS AND TAX BURDEN IN THE BRAZILIAN CONTEXT

In the recent decade, fiscal problems in Brazilian public accounts have sharply increased due to the high level of public indebtedness, an increasing budget deficit resulting from imbalances between revenues and expenditures of the Federal Government, States and Municipalities. The public sector deficit represents a structural node because of the difficulties it creates for public administration, as a result of the accumulation of imbalances over the years, largely financed by the increase in public indebtedness. To a certain extent, the decision to increase revenue or reduce expenditure is a technical-political decision, taking as imminent solution to the fiscal crisis of the State, increasing the tax burden [10].

The Federal Constitution is the guarantor of fiscal federalism, ensuring the financial autonomy of the federation entities: Union, States and Municipalities. Although the Tax System in the Constitution is a controversial issue, security for citizens is a positive fact, given that the federative system creates difficulties in promoting changes or fiscal restructuring, feasible only through constitutional amendments [11].

Fiscal policy plays a central role in the evaluation of recent economic policy, the adjustments considered necessary are the basis for a resumption of growth, the debate focused on fiscal policy is complex with several shades, varying in time, occupies importance in the Brazilian economic policy regime [12].

In a recent study, the evolution of general government gross debt (GGGD) [13], is the main indicator of public indebtedness, whose rapid growth in recent years - from 2013 to 2016, has jumped from 51.3% to 72.5% of gross domestic product (GDP). If the recent trend is maintained, the result according to the monetary authority, would be an explosive trajectory, compromising the capacity of the Federal Government and its federative entities. The Constitutional Amendment (EC) no. 95 [14], approved in 2016, aims to prevent this trajectory from materializing, establishing a limit for the growth of public spending in the long-term horizon, reversing the upward trajectory of public debt, essential to regain confidence in the economy by market agents, and a reduction in the cost of capital and a reversal of the downward trend in investments [15].

In fact, the problems of the public deficit are derived from the fiscal crisis of the Brazilian State and its federated entities (Union, States and Municipalities), being considered by the scholars in the area of economics and law, as fundamental cause, in the domestic plane, a good part of the current problems that afflict the country. The strong budget imbalance resulted from the need to finance expenditures higher than public revenues. When the state increases its expenditures (or reduces taxes), there is an increase in aggregate expenditure, causing an imbalance in the general price level, an increase in the demand for money, causing a rise in the interest rate, which will result in a fall in investment and increase of the need to finance the increase in State expenditures, in view of the percentage increase in the commitment of public debt services – such an effect is known in economists' lexicon, such as crowding out.

When the government is in a deficit situation, traditional fiscal policy measures - tax increases and cuts in spending, denote a central political problem, how such a deficit should be financed by the government. As a general rule, financing may be carried out by extra-fiscal resources, whose main source is: a) issue of currency, with a loan made by the National Treasury with the

Central Bank; b) sale of public debt securities to the domestic and foreign private sector [16].

Fiscal reforms, due to an urgent need due to the crisis in public finances, have been trailing since the 1980s, gaining a symbolic character in the Real Plan in 1994, when the economy stabilized, admitting a new regime fiscal, marked by the renegotiation of state debts, pension reform and privatizations. The process of changing economic policy sought to regain confidence, the result of a currency collapse in the late 1990s [16].

In this way, the strictness of the fiscal policy was a mechanism adopted to demonstrate a control of the public accounts, with clear demonstration of the sustainability of the public debt. However, there was a discontinuity resulting from the macroeconomic conditions of the Brazilian economy in the late 1990s, and, at the beginning of the 21st century, indicating a reversal in stabilizing patterns, providing greater budgetary rigidity, making necessary, norms to meet the goals of primary surplus, which made it compulsory in Law Budget Guidelines [15].

In the commitment to control public debt in budget execution, with public expenditure contingent on the amount required for the primary surplus target to be reached, the surplus became compulsory expenditure and discretionary expenses, residual paper, always conditioned to the fiscal target adjustments. In 2001, the Brazilian government approved the Fiscal Responsibility Law (LRF) [17], reinforcing the control of the accounts of states and municipalities, defining the legal limits of consolidated debt and specific expenses, norms for contracting credit operations and criteria for eliminating excess indebtedness, this was the new conception of the fiscal regime in defense of stability and minimization of risks, with the use of fiscal instruments to ensure the intertemporal adjustment of public accounts [15].

Such an agenda that was based on a rigid fiscal policy had to reconcile another conflicting agenda, the increase of the tax burden and the problems derived from the federative pact, managing the increasing public debt, adopting development policies and the relationship between the governmental spheres. According to the Brazilian Federal Revenue Studies (SRFB), the distribution of the tax burden among the three levels of the Federation indicates a trend of concentration of resources collected in the Union (68%), with state participation (25%), finally the municipalities (7%), maintaining a trend of increasing the tax burden in the order of 32.66% of GDP - Gross Domestic Product [18].

In the recent context, the central issues of fiscal policy are linked to the tax burden, which since the promulgation of the Fiscal Responsibility Law in 2000, has significantly advanced as a solid driver of the credibility of fiscal accounts, which was questioned by international organizations, avoiding that the surplus positive impact on public debt, since, for the first time in 2014, the Federal Government presented a primary deficit. Such changes in legal definitions and unusual accounting measures ensured poor performance in budgetary standards and rules, with measures considered incompatible with FRL and CRFB / 1988, as well as by the Court of Audit of the Union (TCU).

The current Brazilian fiscal crisis with growing public deficit translates into negative risks that unfold in the non-implementation of reforms by the international multilateral organizations (IMF - World Bank), and, if they were substantiated by the growing loss of market confidence , in view of the political divisions between the Executive and Legislative branches, with additional declines in the contraction of the gross domestic product, essentially after the re-election of President Dilma Rousseff in 2014. The negative impacts unfolded due to the successive corruption scandals, involving Petrobrás, with the cancellation of investments, investigations that caused more bankruptcies in upstream activities, including the construction sector, in fact provoking a deep recession in the years 2015 and 2016, with a contraction of the GDP in the order of 3, 8% and 3.6%, respectively [19].

With the difficulties faced for the balance of public accounts, as a result of the fall in economic activity in almost all sectors, with an increase in unemployment and in the collection of the three federative spheres, and a rise in current expenses, a deterioration of the Brazilian fiscal situation occurred.

To get out of this situation and create fiscal space for investments, Federal, State, District and Municipal Public Administrations will have to adopt measures to increase revenue, reduce expenses and improve the quality and efficiency of public spending, increase or create taxes and contributions or cut public programs of great social impact through the linking of public revenues and expenditures in the establishment of "constitutional minimums", as a result of the increase in the State of its compulsory expenses [20].

The issues of fiscal policy refer to the problem of the Brazilian tax structure, the degree of regressivity and progressivity, to meet the dynamics of national economic

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policies, with effects of strong interpretation between the social phenomena of law and economics.

IV. REGRESSIVENESS AND PROGRESSIVITY IN THE BRAZIL TRIBUTARY STRUCTURE

In the first half of the twentieth century, from the Keynesian premises, social economic phenomena went through a strong interdependence between market and state, in different economies of the capitalist world, the inevitable action of the State to meet the needs of reconstruction of the European economies in post 2 Which expanded to the peripheral countries of the system. Such intervention favored the national development, in the process of import substitution, financing strategies for industrial infrastructure, in the regulation of the relations between capital and labor, and, in the coordination of economic policies, essentially the exchange, fiscal and monetary policies [21].

Public spending was no longer understood as a simple means of serving essential public services, but as a preponderant factor for the promotion and targeting of economic growth and as a tool for redistribution. Thus, the greater the volume of goods and services offered by the State, the greater will be the need for expenses to cover the costs of direct investments, subsidy expenses and the maintenance of state-owned and public enterprises.

The expansion of public spending ends up generating imbalances and difficulties that can be financed by: a) indebtedness - growth of the expenses of loans with the financial market; b) inflation - growth of monetary expansion expenses, which by increasing demand generates a process of raising the general level of prices; c) increase of the tax burden - when the growth of expenses entails the creation of new taxes or increase of the rates, and, respectively, bases of incidence of the respective taxes.

The latest changes, especially at the state and municipal levels, have increased expenses with active staff and costs for restructuring. They were discharged and had an economic slowdown, mainly from 2011, affecting a tax collection, including a set of measures to contain the scenario of fiscal deterioration of Brazilian public finances.

V. TAX POLICY AND TAX BURDEN IN BRAZIL

Fiscal policy reflects the set of measures by which the government collects revenues by spending to meet the three basic functions: macroeconomic stabilization, income redistribution, and resource allocation. In this way, public finances follow the principles and processes through which the federal, state and municipal governments carry out their functions, that through the public budget, governments pursue goals to satisfy social needs, inducing the efficient use of resources, correcting the income distribution of a society [22].

The stabilizing function refers to the allocation of resources from the state activity to promote sustained economic growth, with low unemployment and price stability. The redistributive function aims to ensure an improvement in the distribution of income using, for this, all the legal instruments that it has. This means using direct and indirect taxes, subsidies, incentives and exemptions. Finally, the allocative function consists of the efficient supply of public goods and services, compensating for market failures. The results of fiscal policy can be evaluated from different angles, which can focus on measuring the quality of public expenditure as well as identifying the impacts of such a policy on the well-being of citizens [23].

In the Brazilian case, fiscal policy seeks a high degree of responsibility, with a balanced use of public resources, aiming at gradually reducing net debt as a percentage of GDP, contributing to stability, growth and economic development in the country. Specifically, fiscal policy seeks to create jobs, increase public investment, and expand the social security network, with a focus on poverty reduction and inequality.

The tax burden in Brazil corresponds to the ratio of total taxes collected in Brazil by the three spheres of government (Union, States and Municipalities), as entities of the S system (SESI, SENAI, SEBRAE, SENAC, etc.) and by the Fund (FGTS), and the Gross Domestic Product (GDP). Fig. 1 shows the tax burden updated by the new methodology, according to the international standard required in the Manual of Statistics of Public Finances of the National Monetary Fund (IMF).

		R$ billion
Components	**2014**	**2015**
Product Internal Gross	R$ 5.687,31	R$ 5.904,33
Tax revenues Gross	R$ 1.843,86	R$ 1.928,18
Gross Tax Charge	**32,42%**	**32,66%**

Fig. 1: Gross Tributary Burden - 2014 and 2015

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The taxation studies show an evolution of the Brazilian tax burden in the last decades, but the series presented in Fig. 1 shows that growth is maintained, however, it is not the highest tax burden in the world, as many publications tend to affirm. As a matter of fact, starting in 2013, there is a downward trend in tax revenue, reversing a series that has been increasing since 2010 (Brazilian Federal Revenue Service SRFB). In the States, the reality is no different. In spite of the slowdown in economic activity and the lack of control of public accounts, in every country observed in recent years, they are not alone responsible for the current fiscal crisis of the Brazilian State - although they have contributed significantly to this picture.

Fig. 2: Tax Burden by Federative Entity 2002 to 2015

According to Technical Standard no. 7, of the National Treasury Secretariat, the detailed updating of the tax revenues of all states and municipalities, using estimation techniques, allowed for a breakdown that demonstrates the Brazilian federalism crisis, given the concentration of revenues in the Union, but this fact will not be the guiding focus of this study [24].

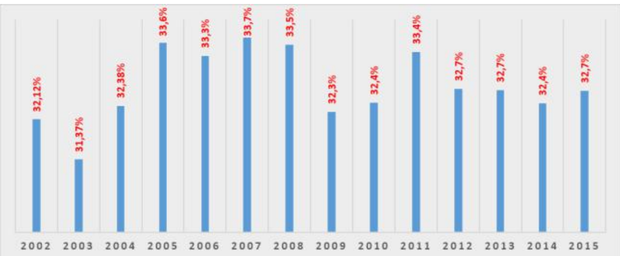

Fig. 3: Total treasury charge 2002-2015

In this context, the Total Tax Burden can be observed in Fig. 3, according to the variations in total tax revenue, considering the variations in GDP growth - Gross Domestic Product in the period 2002-2015, demystifying the current aspects on the weight of taxes in the Brazilian economic and social order in the recent period.

VI. REGRESSIVENESS AND PROGRESSIVITY IN BRAZILIAN TAX POLICY

The components of fiscal policy are geared towards collecting revenues and executing expenditures, determining how the government makes significant market interventions, promoting impacts in the various sectors of the economy. Therefore, fiscal policy may be expansive - when measures expand aggregate demand by increasing public expenditures; reduction of the tax burden; stimulus to consumption and investment; stimulating exports, inhibiting imports through the imposition of tariffs and barriers, in order to favor domestic production and employment. At another pole, fiscal policy is restrictive, when measures are adopted to reduce public spending, increase the tax burden, reduce production and employment levels.

Considering that the economic base of the society suffers a compulsory imposition, with the taxpayer's State being required, given the legitimacy of the taxation oriented to the good of a determined community, taxation is added a sense, which must be fair among the citizens, the principle of fiscal justice is based on two different approaches: the tax benefit and the ability to contribute [25].

It is understood that each individual must bear the tax burden equivalent to the benefits he would enjoy with the government, and his ability to pay can be measured by the income (flow of wealth) that he obtains in a given period, by the wealth he holds (stock) , and finally, by the individual sacrifice quota that will bear the tax burden.

Under the criterion of an individual's ability to contribute, the distribution of the tax burden should be carried out equally among all citizens, recognizing that certain individuals have a greater capacity to pay taxes than others. If the claim is for tax justice, whenever possible, the value of taxes should be calibrated progressively, that is, those who have higher income should contribute the greater part of the taxes. On the other hand, a tax burden will be regressive when individuals with lower incomes suffer a greater burden on the paid portion of taxes [25].

Whereas, the National Tax Code - CTN, established by Law no. 5,172, dated October 25, 1966, defined as tribute as entered:

> Art. 3 Tributo is any compulsory monetary payment, in money, or whose value can be expressed in it, which does not constitute sanction of an unlawful act, instituted by law and charged through a fully bound administrative activity [26].

Considered from the point of view of the legal reserve, only the law can institute tribute. The collection, besides being compulsory, cannot be due to the sanction of an unlawful act, otherwise it would be a fine, and, not tribute.

When considering the economic basis on which they occur, taxes can be classified into three broad categories: those that affect wealth, taxation of income and the burden of consumption. As collected, taxes are classified as rights and indirect. In direct taxation, it is commonly said in the economic corollary that there is fiscal progressivity, given that the taxpayer pays or is burdened, according to the taxpayer's capacity and proportionally to his income or equity. In indirect taxation, the value of the tax is usually embedded in the prices of goods and services purchased by consumers, and there is no parameter for proportionality and maintenance of the principle of proportional contribution to income, that is, indirect taxation is from the economic- fiscal, more unjust [27].

In the Brazilian tax structure, what is observed in the recent context, is an extremely regressive tax base, considering that, the greater part of taxes collected has its tax base that relies mostly on circulation and consumption, indicating a regressive burden on individuals and / or consumers.

VII. RETIRING EFFICIENCY, EVICTION, EVASION AND FISCAL ELISION

Considering that tax jurisdiction is a private ability constitutionally attributed to the political entity so that, based on the law, the tax exoneration is instituted, in other words, it is the ability to create taxes, distributed among the various political entities, with competence to impose tax benefits, as set forth by the Constitution, producing legal norms on taxes and forms of taxation, according to the ability to contribute, graduating taxes according to income of each taxpayer, the State will seek to maintain the efficiency base, normalized in the legal framework [28].

This attribution of jurisdiction lies with the National Tax Code (TNC), which defines taxes as "(...) any pecuniary benefit, in money or whose value can be expressed in it", which is a compulsory, monetary benefit that does not constitute a sanction of not establishing a punishment for the practice of infractions, is established by law and charged through administrative activity linked. Although there are doctrinal divergences about the division of taxes, for the purpose of our theme, the classification is adopted quinquipartite offered by the Federal Constitution of 1988, where taxes are divided into five categories: tax, rate, improvement contribution, compulsory loans and special contributions [29].

In the Brazilian context, the size of the tax burden and its comparison with the adequacy of the national socioeconomic profile, especially in relation to the productive structure, is a recurring subject, since the tax complexity, positive and negative effects, are pressing issues of the economic viewpoint, since the distortions generate choices by the economic agents that results in losses of efficiency. The Brazilian tax system, post-1988 Constitution, favored increasing the amount of revenue to the detriment of distributive issues and efficiency. In this process, the increase in state assistance and transfers of resources to the states and municipalities generated pressure on expenses, reducing the Union's revenues. The government option was to opt for a system of higher collection with lower cost [30].

The problems of tax efficiency, therefore, collected in the Brazilian reality, are conditioned by the exits of the federated entities for increasing the terms of revenue generation. The Union sought as an exit, the increasing use of social contributions, highly productive in the generation of revenue, and legally not shared with states and municipalities.

On the other hand, if the low cost of collecting such contributions allows a safeguard for non-allocation, it generates distortions in cumulative taxes. The tax and federative problem resulting from the decentralization provided by CRFB / 88, demanded from the states and municipalities an increasing need to increase revenues, such as raising taxes on specific items such as: energy, fuel, telecommunications and transportation.

The distribution of the tax burden, as well as its evolution presented previously in Tables 1 and 2, show that on the basis of incidence, mainly in indirect taxes on circulation / consumption, regressive character and low tax legislation are evident, contributing to a "fiscal war" resulting from the need for a constant increase in tax revenues, and, consequently, a concentration of taxes in the Union, since the form of distribution perpetuates the increase of the tax burden, conspiring against the allocative efficiency of the economy, as described in Fig. 4 [30].

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Federal Entity	2014			2015		
	R$ millions	% of PIB	% of tax reven.	R$ millions	% of PIB	% of tax reven.
Union	1.260.983,20	22,17 %	68,39%	1.316.190,50	22,29 %	68,26 %
States	468.319,34	8,23 %	25,40%	489.103,22	8,28 %	25,37 %
Counties	114.557,95	2,01 %	6,21 %	122.889,13	2,08 %	6,37 %
Total Tax Revenue:	1.843.860,49	32,42 %	100,00%	1.928.182,85	32,66 %	100,00%
Source: STN - Secretariat of the National Treasury, 2017						

Fig. 4: Tax Burden by Federal Entity

The Brazilian Institute of Planning and Taxation (IBPT) pointed out that the fall in economic activity and the increase in unemployment led to an increase in the stock of Brazilian taxpayers' debt, which surpassed the revenues of the Union, States and Municipalities.

The various studies show that, although the tax burden has increased in the last 36 years, in the order of 70% in the historical series, the current tax burden in relation to GDP in 2014, shows that Brazil does not present the highest taxation compared to others according to Fig. 5.

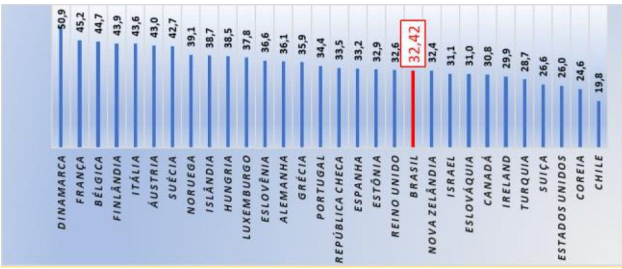

Fig. 5: Total Tax Charge 2014

The recessionary picture that began in the second quarter of 2014, which is present in recent GDP data, shows that fiscal stimuli - tax relief and increased spending - were not effective in reversing the downward trend in economic activity, but the high cost of public debt, the imbalances between revenues and expenditures, raising the perception of inefficiency in collecting the Brazilian State. This situation was aggravated by the lack of transparency of the government's accounting results, and the true size of the fiscal problem (public deficit) [31].

In fact, there is an ambiguous relationship between increase of taxes and increases in revenue, considering the central idea that a tax rate equal to zero, will provide a zero collection, and if the rate is 100%, there will also be zero collection because no one would work if the government were to earn all income, hence the idea of seeking an optimal rate, where the government will raise as much as possible without distorting incentives for economic agents, whether they are producers or consumers.

The increase in the tax burden and evasion are reciprocally fed, since the multiplicity of taxes and contributions, the increase in tax rates and tax bases generate a defensive reaction of the economic agents, who, in moments of crisis or economic retraction, seek means to escape from taxation. In every move to raise the legal burden, taxpayers are redoubling efforts to avoid tax evasion, noting that in addition to the tax burden and the myriad of existing taxes, the central problem in pursuing fiscal policy is the lack of enforcement [32].

In Brazil, conduct that leads to tax evasion is not framed as common crimes, with special laws, implemented from the mid-sixties. In broad sense, tax evasion is the procedure or the atypical or abnormal legal form, when the taxpayer seeks means and ways to avoid, delay or reduce the occurrence of a taxable event resulting from an original tax liability, failing to pay the tax, or paying less than due, and further, postponing such obligation [33].

In tax crimes, the norms that are effectively prejudiced are those established in the National Tax Code, where the offending behavior that describes the transgressions of a tax fund, such as tax evasion, cannot be applied without the support of the Tax Law, since fiscal crimes depend on the fraudulent and fraudulent violation of the material and formal obligations described in the tax legislation, classified according to the infractions of a purely administrative nature, labeled in the Criminal Tax Law.

Finally, it should be pointed out that the incentive to fiscal control of all spheres of public administration, demanded a greater rationalization of tax collection procedures, in search of tax efficiency and enforcement effectiveness, always putting in question the issue of tax evasion, which refers to the economic dictates. This

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practice is widely disseminated, where both the efficiency of tax collection and the mechanisms of taxation are precarious, being one of the obvious structural problems to improve Brazilian tax capacity.

VIII. FINAL CONSIDERATIONS

The analysis in the constitutional framework from the point of view of the Brazilian tax legislation, describes and considers the sanctioning powers in the Brazilian legal-tax field in the face of noncompliance with the tax obligations towards the Brazilian State, in the various federal entities, be it the Union, the States or the Municipalities. Thus, by constitutional force and administrative responsibility, as an active subject, the State uses all coercive means to comply with the economic order, the premises of a tax and fiscal policy. It is the duty of the State to establish mechanisms for collection and distribution of taxes, following the provisions of the National Tax Code and corresponding legislations.

The current Brazilian fiscal problem, characterized by cyclical dilemmas, linked to the structural nature that deepens the fiscal policy weaknesses under the juridical-institutional arrangement, in summary demonstrates that the tax burden is extremely regressive and disproportionate to individuals / families / companies according to the economic.

The transformations in the Brazilian economy, brought new challenges in relation to the State's performance. Tax practices tend to prioritize the adjustments suggested by international institutions, seeking taxation that causes the least possible distortion in the economic sectors. Considering that the Brazilian tax system has a federative character, the excessive complexity of this model, combined with legislation in the state and municipal context, and the tax question related to regressively and progressivity aspects of the system, are remarkable in studies related to the capacity tax collection and tax evasion.

The aspects of the country's legislation, where tax laws were obtained, the connection with the principles of tax incidence, tax evasion, evasion, tax avoidance and tax evasion, which reach economic repercussions for economic agents and individuals, with the current criminalization of tax infractions, with current hermeneutical absurdity, observing that the Brazilian Tax Law is conforming the economic order, while the government does not fulfill its elementary prerogatives.

In particular, the various articles of the National Tax Code (CTN), dealing with the question of the destination of taxes, forms of tax incidence, and especially the perspective of execution of the sanctioning and judicial activity, through Administrative Law, provided for by law, the techniques adopted by the legislator that confer some discretion when applying the sanction, leading to a lack of legal certainty when taken into account the principle of reasonableness and observing the constitutional principle contained in art. 5 of the Federal Constitution of 1988.

Considering the Brazilian tax structure, regressive and unfair, the aspects adopted in the tax legislation are treated disproportionally in legal terms, considering that the sanctioning power applied in the Tax Law, does not meet the inclusion criteria of the productive sectors (entrepreneurs and workers) in order to reduce the negative impacts of taxation, inducing the economic agents to informality and illegality given the current complex structure in Brazil. As observed in the Tax Law and subsidiary legislation, there is a growing public deficit arising from the fiscal crisis of the Brazilian State, with a tendency to increase the tax burden due to the taxable capacity of legal entities or individuals.

It should be noted that, in the various cycles and fluctuations of the Brazilian economy, the repeated disproportionality in the distribution of the tax burden increases the levels of evasion, evasion, tax avoidance and tax avoidance, as a result of the inefficiency and inefficiency of the Brazilian State in informalization of the economy. In another aspect, the complex structure of tax legislation denotes mechanisms that require managers to impose sanctions or legal tools that indicate fiscal foreclosures by means of the police power of the State, correlating the aspects of eviction to criminal offenses.

The incorporation of an abusive sanctioning attitude that part of the legal-institutional apparatus, based on the worsening of the fiscal crisis, although, complying with the constitutional precepts, denote for the possibility of the tax debtors not to self-incriminate before the illegal or illegal. The procedural delays, with the various postponement mechanisms for fiscal execution, focused on the sanctioning powers, demonstrate that effectiveness is limited, reducing the collecting efficiency of the Brazilian State, in the different federative entities.

In the context of consecration of the three decades of the Brazilian Tax Constitutional System, considering the Tax Law and subsidiary legislation, legislators and managers find limits in the legal application, creating obstacles to make public administration feasible, implying in practices that do not contribute to the determination of tax irregularities.

Considering the regressive tax burden in the Brazilian case, the distributive disproportionality points to the selective character in the execution of a fiscal policy that induces structural inequalities in the taxation of consumption, production, patrimony and income, affecting in an uneven and concentrated way in the classes with lower income and ability to pay. A paradox that contradicts the precepts of the 1988 Constitution, which aim to establish equality and social justice.

Consequently, in addition to the difficulties of applying an adequate fiscal policy, as a result of the macroeconomic policy that concentrates its efforts on the collection of indirect taxes, on circulation / consumption, the tax legislation included in the National Tax Code, as well as the tax structure, contributions and fees must follow the path of the Tax Reform, to relieve and simplify the taxation process, seeking the efficiency and effectiveness of economic logic with fairer and more equitable legal mechanisms.

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[13] The DBGG "covers the total liabilities of the federal government, state governments and municipal governments with the private sector and the public financial sector. It should be noted that the liabilities of state-owned enterprises at the three levels of government are not covered by the concept of DBGG. Although the Central Bank is not an entity whose liabilities are included in this indicator, its repurchase operations with the financial sector are recorded as general government debt. The liabilities of an entity whose creditor is another entity covered by the DBGG are deducted from the gross debt. " Silva & Medeiros, 2009, p. 107-108

[14] The EC no. 95, was enacted on December 15, 2016, establishing a new tax regime, Art. 106. The New Fiscal Regime is established in the scope of the Fiscal and Social Security Budgets of the Union, which will be in force for twenty financial years. Also known as expense ceiling.

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