INTERNATIONAL COMPARISON OF TAX SYSTEMS

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Abstract. THE ARTICLE STARTS BY GIVING A GENERAL OVERVIEW OF THE BRAZILIAN TAX SYSTEM. THEREAFTER, AN ANALYSIS IS MADE OF THE CZECH REPUBLIC COUNTERPART. CONCLUDING, THE DIFFERENCES AND SIMILARITIES BETWEEN THE TAXATION APPLICABLE IN BOTH COUNTRIES ARE DISCUSSED, WITH THE DISCOVERY THAT THE BASIC FRAMEWORK OF BOTH SYSTEMS IS VERY SIMILAR, THOUGH THERE ARE MANY DISPARITIES BETWEEN WHAT ACTIVITES ARE TAXED.

Keywords. TAX, INVESTMENT, CAPITAL MARKET, TAX EXEMPTION, INCOME TAX, BRAZIL, CZECH REPUBLIC.

1. Introduction

In broad terms, there is very little in common between Brazil and the Czech Republic. These two nations are located in different continents, are part of different economic blocs (being Mercosur and the European Union, respectively), don't speak the same language, have never been in war with each other. That is not to say that there are no bonds between these two countries. In fact, their relations throughout history have been most positive.

Brazil was the first country of Latin America to recognise Czechoslovakia's independence and remains as Czech Republic's primary economic partner in the region. One of Brazil's most famous presidents, Juscelino Kubitchek, is of Czech origins[1]. Several events and programs are supported by the nations' embassies, aiming to improve the exchange of culture and knowledge between the people of both countries (such as the Institute of Czech-Brazilian Academic Cooperation – INCBAC).

However, these diplomatic relationships notwithstanding, they present a good sample for comparing law systems, given their different history and geolocation. It is entirely possible that these differences could produce an entirely disparate body of law. Or perhaps the shared values and principles of the European and American continents will have bred a similar legal treatment.

This article aims at finding a piece of the answer to the question of how similar their legislations are. The focus here will be on their tax systems. To illustrate the comparison, the taxation of the profits reaped from investment operations will be more attentively analysed.

2. METHODOLOGY

The research methodology consisted of literature and law review. Legal doctrine, laws, decrees, and government guidelines of both countries were consulted. These are listed at the end of the article, labelled as "sources". In addition, both authors met on a weekly basis, by means of video calls, to discuss the research and compare their findings and experiences on the subject.

3. BRAZILIAN TAX SYSTEM

The Brazilian administration is divided in three spheres: the union (representing the country as a whole), the states (26 of them + the Federal District, where the capital, Brasília, is located) and the municipalities (over 5500 of them). Each of these entities, in their jurisdiction, may edit its own tax code. This means that the country may have, at any given time, over five thousand tax codes.

Thankfully, the liberty to edit these laws is subject to many restrictions, avoiding a chaotic tax system with many contradicting codes. In short, the municipalities have less legislative freedom than the

states, who have less freedom than the union. Also, all of them must respect the rules set forth by the National Tax Code (a federal law) and the Brazilian Constitution (from 1988) [2].

Article 145 of the Constitution defines that all three spheres may:

"Art. 145. The Union, the states, the federal district and the municipalities may institute the following tributes: I-Taxes; II-Fees; III-Embetterment contributions, derived from public reforms;"[3]

Article 148 and 149 allow the Union to institute compulsory loans (to meet needs in case of war, public calamities, urgent investments) and social contributions (for financing social security, cases of intervention in the economy, among others). Lastly, article 149-A allows states and municipalities to institute contributions to finance public illumination [4].

As seen, there are many types of tributes under Brazilian law. Taxes are only one of the forms of tributes, albeit arguably compromising the most important and well-known part of the tributary system. Its defining characteristic is that they are not due in exchange for a service from the government, unlike fees [2]. Taxes are, in fact, known as "unbound" or "unilateral" tributes. The distribution of revenue collected from taxes cannot be bound to any specific organisation, fund or expense, by command of article 167, IV, of the Brazilian constitution [5].

Let's see the different taxes. To become clearer, they shall be presented on their respective spheres.

Union Sphere

- II: Imposto de Importação/ Import Tax: on imported goods.
- IE: Imposto de Exportação/ Export Tax: on exported goods.
- IR: Imposto de Renda/ Income Tax: there two types of income tax, named IRPF (for private persons) and IRPJ (for legal entities)
- ITR: Imposto sobre Propriedade Territorial Rural/ Rural Property Tax
- IPI:Imposto sobre Produtos Industrializados/ Industrialized Products Tax
- IOF:Imposto sobre Operações Financeiras/Financial Operations Tax
- IGF:Imposto sobre Grandes Fortunas/Great Fortunes Tax – This tax has never been instituted

State Sphere

- ITCMD: Imposto de Transmissão Causa Mortis e Doação/ Donation and Inheritance Tax
- ICMS:Imposto sobre Circulação de Mercadorias e Serviços/ Circulation of Goods and Services Tax
- IPVA: Imposto sobre Propriedade de Veículo Automotor/ Vehicle Property Tax

Municipality Sphere

- IPTU: Imposto Predial e Territorial Urbano/ Urban Property tax
- ITBI: Imposto sobre Transmissão de Bens Imóveis/ Real Estate Transmission Tax
- ISSQN: Imposto Sobre Serviços de Qualquer Natureza / Services of Any Nature Tax

As seen, there are many different taxes. Though some taxes are self-explanatory (such as Vehicle Property tax), others are not. For instance, both ICMS and ISSQN indicate they are due for "services". But how to know which one should be paid?

There is no clear answer. And both sides (state and municipalities) will often claim that it is due to them (this is often called a "fiscal war"). These disputes often end up in the Brazilian Supreme Court (STF). One such case was the location of cranes for civil construction companies - ruled in favour of ICMS [6].

For the operation analyzed in this case (investing), taxpayers may be subject to two taxes: IR and IOF. However, in order to be taxable by income tax, it is necessary that the operation has resulted in net gain for the shareholder (meaning that the difference between the sale and buying price must be positive). The Income Tax Regulation (Decree 9.580/2018) establishes that:

Art. 839: The net gains earned by any beneficiary, including exempt legal entities, in operationson the stock market, goods market […], will be tributed by a 15% rate.

The investor, by means of a form called DARF (Documento de Arrecadação de Receitas Federais/Federal Revenue Collection Document), pays every month income tax on his net gains. At the end of the financial year, he is permitted to deduct the costs and compensate for the losses of his investments throughout the year. Thus, he may have paid more than the amount owed, generating tax credits or tax devolutions [7].

Regarding the IOF, it is only due if the invested capital is retrieved before 30 days have elapsed since the investment [8].

Unlike IR, IOF has an extra fiscal purpose. Its main function is not to gather revenue, but to be an instrument to regulate the economy swiftly. To this purpose, it is not necessary to edit a law approved by the Congress to alter its tax rates; the federal

government need only expedite a decree (article 153, §1º, of the Brazilian Constitution). It also does not have to obey the principle of anteriority - this principle means that, as a rule, new tax rates cannot be applied in the same financial year nor before 90 days have elapsed since the announcement of the new aliquots [7].

4. CZECH TAX SYSTEM

Unlike Brazil, there is no federal level of regulation in the Czech Republic. As an EU Member State, the Czech legal system has to comply with EU law. In the area of taxation, there are differences in treatment of direct taxes and indirect taxes. Indirect taxes are harmonised by EU directives that are implemented into national legal systems (Art. 110-113 of the Treaty of the Functioning of the European Union, hereinafter referred to as TFEU)[9].

As to direct taxes, there is more autonomy on national level, but basic freedoms and principles of EU law have to be followed. Among them, the most important are:

- Taxes cannot distort the EU single market. Member States may not restrict the free movement of capital within the EU - Art. 63-66 of the TFEU, and other basic EU freedoms, especially free movement of persons (Art. 45 of the TFEU), free movement of services and establishment (art. 49-63 of the TFEU); in the areas of the environment protection (Articles 191-192 TFEU) and business competition (Articles 107-109 TFEU), taxes cannot deform the single market.
- It is not possible to discriminate between taxpayers on the basis of nationality (but it is possible to treat tax residents and tax non residents differently).
- Taxes cannot serve as measures having effect equivalent to that of quantitative restrictions of trade (similar to custom duties) - art. 34-35 of the TFEU.

Although direct taxation still remains "the realm" of national governments, there are individual areas that are harmonised through EU directives. They are connected especially with free movement of capital, fighting with money laundering or tax avoidance.

If the source and destination of a payment is in different countries, it is necessary to assure that double taxation is avoided (at present, 93 bilateral double tax treaties between the Czech Republic and other countries, including EU member states, are in force). On the other hand, it is important to guarantee that "double non-taxation" (a hybrid mismatch) will not appear either (Anti-Tax-Avoidance Directive, dir. (EU) 2016/116, substantially amended by a directive (EU) 2017/952, as to hybrid mismatches) [10].

The Constitution of the Czech Republic (act No. 1/1993 Coll., adopted on 16 December 1992) does not explicitly speak about taxes. An important part of Czech constitutional order, the Charter of Fundamental Rights and Freedoms, Constitutional act No. 2/1993 Coll., sees levying taxes as a possible restriction of property rights. In its Article 11, it states that "Everyone has the right to own property. Each owner's property right shall have the same content and enjoy the same protection"[11], and, most importantly, as a paragraph 5 of the Article 11 states: "Taxes and fees shall be levied only on the basis of law"[11].

The basic rule is thus defined in the Charter of fundamental rights and freedoms. For each tax, a separate legal act exists. These acts might be in some cases specified by governmental decrees, that have lower legal strength.

Taxes, fees and custom duties are not really explicitly defined in Czech legislation. The tax code defines the term tax for its purposes (taxes, fees and custom duties are all covered by a general term "tax" in the Code). More exact definitions can be found in theoretical works and textbooks of financial law. Taxes are understood to be compulsory unrequited payments to the government. Fees are understood as reciprocal payments, often on a local level (regions, municipalities) [12].

Following taxes are currently part of the tax system of the Czech Republic: Direct taxes:

- INCOME TAXES (Daně z příjmů, Act No. 586/1992 Coll. as subsequently amended, hereinafter referred to as ITA) [13] – income tax is dealt with in one comprehensive act that covers all different kinds of income. It is divided into two parts:
    - natural persons - daň z příjmů fyzických osob), including payroll tax, gifts, inheritance
    - corporate income tax (legal entities - daň z příjmů právnických osob), capital gains tax, withholding tax
- REAL ESTATE TAX (Daň z nemovitých věcí, Act No. 338/1992 Coll. as subsequently amended)[14] – levied on land and constructions, charged annually based on the value of the real estate as computed by the special valuation rules (depending on the use of the real estate, the area, etc.)
- ROAD TAX (Silniční daň, Act No. 16/1993 Coll. as subsequently amended)[15] – use of roads and motorways for business activities.
- GAMBLING TAX (Daň z hazardních her, Act No. 187/2016 Coll.) [16] for providers of gambling games (winnings exceeding 1 mil. CZK are subject to 15% income tax,

depending on the type of the game)

Indirect taxes:

- VALUE-ADDED TAX (Daň z přidané hodnoty, DPH, Act No. 234/2004 Coll. as subsequently amended)[17]
- EXCISE TAXES (Spotřební daně, Act No. 353/2003 Coll. as subsequently amended) [18] - levied on hydrocarbon fuels and lubricants, alcoholic beverages (spirits, beer, wine), and tobacco products (harmonised on EU level: cigarettes, cigars and cigarillos, tobacco for smoking; not harmonised on EU level: rough tobacco, heated tobacco products).
- ECOLOGICAL TAXES (gas, solid fuels, electricity; Daň ze zemního plynu a některých dalších plynů, Daň z pevných paliv, Daň z elektřiny; Parts 45-47 of Act No. 261/2007 Sb. on the stabilization of the public finances)[19].

Tax proceeds become an income of public budgets. A special act specifies which part of which tax goes to the state budget, regional budgets, and municipal budgets.

As the Czech Republic is a member state of the European Union, European legislation in the area of taxation affects its tax system. Indirect taxes (VAT, excise taxes) are harmonized on EU level (articles 110-113 of the Treaty of the Functioning the European Union, EU directives on individual taxes).

In what concerns taxing investments, the dividends paid to shareholders, as a result of ownership interest, is subject to income tax. It is usually done by means of tax withholding (Radvan, 2020). The taxation of income from securities (i.e. dividends and interest) paid to individuals is not harmonised at EU-level, and the European Commission does not plan to harmonise it in near future.

If people invest as **private persons**, the incomes (dividends, interests) are part of their capital income (§8 and 10 ITA), and typically are subject to withholding tax (usually 15%) paid by the company they invest into.

If the income is tax exempted or subject to withholding tax, the investor does not fill a tax return. Other capital gains have to be listed on an income tax return and taxed (usually 15 %). In such a case, costs to generate and maintain the income can be deducted from the tax base (typically a price the security was bought for, fees connected with holding the securities).

There are also special tax rates that could apply. For example, a dividend paid to a resident of a non-treaty country is subject to 35% tax.

5. CONCLUSIONS

As seen, the Brazilian and Czech tax systems have both differences and similitudes. The basic framework of both systems share similarities. For instance, taxes sensu largo can only be imposed by legal acts. Taxes are unrequited payments, while fees are paid in exchange for a service from the government.

Meanwhile, they tax different economic activities. For instance, taxing vehicle ownership is only applicable to enterprises in the Czech Republic, whereas it is generalised in Brazil – every person who owns a car must pay a tax on this property. Brazil does not tax "gambling" (the activity is a misdemeanour in the country, by force of Decree 3.688/41) [20], The Czech Republic does. The clearest intersection between both systems appears to be income tax.

The case studied in this article, the taxing of investment, constitutes a surprisingly similar treatment in both jurisdictions. Though an additional tax may be imposed on Brazil – the Czech Republic having no counterpart to the IOF – it is only enforceable if the investment lasts a shorter period than 30 days. Assuming a middle to long-term investment plan, the investor would be, as a rule, subject to equal taxation on both nations.

In both, income tax is due on the equivalent capital increase – that is, the net gains from the operation. The tax rate is, also, standardly 15 %. Both differentiate income tax of private persons and legal entities.

It is interesting that the situation chosen is to be analysed in this article is precisely where both systems converge. It would be interesting to see further comparisons in areas where they diverge.

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