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The Feasibility of Implementing Drawback on Services in Brazil

A Viabilidade de Implementação de Drawback em Serviços no Brasil

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RESUMO

O presente artigo analisa a possibilidade e os problemas envolvidos na implantação do regime *drawback* à tributação de serviços no Brasil. O *drawback* é um regime aduaneiro com ampla aplicação no Brasil, com grande impacto nas exportações. Contudo, atualmente o *drawback* se restringe à tributação de mercadorias, embora o peso econômico dos serviços na agregação de valores no produto brasileiro seja crescente. Este artigo discute um dos maiores óbices para a extensão do *drawback* sobre serviços no Brasil cuja atual estrutura da tributação indireta sobre serviços brasileira, que é assistemática, gera altos custos de conformidade aos contribuintes e é altamente cumulativa.

Palavras-chave: drawback. Exportação. Serviços. tributação indireta. economia digital.

JEL: K34; K22.

ABSTRACT

This article analyzes the possibility and problems involved in the implementation of the drawback regime for the taxation of services in Brazil. The drawback is a customs regime with wide application in Brazil, with a great impact on exports. However, currently the drawback is restricted to the taxation of goods, although the economic weight of services in the aggregation of values in the Brazilian product is increasing. This paper discusses one of the biggest obstacles to the extension of the services drawback in Brazil, whose current structure of the Brazilian indirect taxation on services, which is unsystematic, generates high compliance costs for taxpayers and is highly cumulative.

Keywords: Drawback. Export. Services. Indirect taxation. Digital economy.

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1. Introduction

Currently, according to 2021 data from the Ministry of Economy of Brazil, exports supported by the drawback system reached US$ 62 billion, which represents 21.9% of the total exported. In the same year, imports under the drawback were US$ 7 billion, corresponding to 3.2% of the total imported.[6] The mentioned values point to the impact of the drawback on Brazilian exports, being traditionally consecrated as the most important incentive in Brazilian legislation.

However, the universe of goods reached by the exemption in the drawback consists of tangibles, with the exception of the "Additional Freight for Merchant Marine Renewal" (AFRMM, in Portuguese "Adicional ao Frete para Renovação da Marinha Mercante")[7], which is levied on the maritime freight service.

Currently, in the environment of the digital economy and the great weight acquired by services in the world economy, there is a growing discussion in Brazil about the need to exempt taxes on services of products aimed at export. The inclusion of services in the scope of the drawback, therefore, is a condition for the regime to remain a relevant instrument to encourage exports.

Through the deductive method, this article will initially approach the current stage of the drawback regime in Brazilian law; next, discussion focuses in indirect taxation on services in Brazil, its problems and bad functionalities; and finally, the possibility of applying the drawback on services in Brazil considering its tax structure and the indirect taxation models of other countries, such as the "Value-Added Tax" (VAT)[8]. These other countries VAT have a broad incidence base that includes goods and services and are equipped with residual cumulativeness reduction techniques, as it is with India, after the tax reform of 2017.

2. Drawback in Brazil

Special customs regimes are those that differ from the common import and export regime as a result of: tax incentives relating to taxes on foreign trade (total or partial exemption from taxes); customs control in relation to the goods object of the operation; and chronological aspect, term (imports or exports are temporary, unlike the common regime).

In the drawback, the acquisition of imported inputs for industrialization or improvement in Brazil and exportation of the final product are allowed[9]. There are tax exemptions which affect imports - import tax, IPI (tax on industrialized products), PIS (social contribution to the Social Integration Program), COFINS (social contribution to the Financing of Social Security), AFRMM (contribution of intervention in the economic domain for the Merchant Marine Renovation), ICMS (state tax on the Circulation of Goods and Provision of Interstate and Inter-Municipal Transport and Communication Services), provided that the product is exported.

[6] Available at: < https://www.gov.br/siscomex/pt-br/informacoes/drawback/paineis-drawback#entendendo>. Access: 13 may, 2022.
[7] Available at: < https://ri.loginlogistica.com.br/en/faq/o-que-e/ >. Access: 13 May, 2022.
[8] Available at: < https://www.business-standard.com/about/what-is-value-added-tax-vat >. Access: 13 May, 2022.
[9] Ordinance of the Special Secretariat for Foreign Trade and International Affairs No. 44/2020 (Portaria da Secretaria Especial de Comércio Exterior e Assuntos Internacionais nº 44/2020) lists the operations that can generally be carried out under the regime: transformation, processing, assembly, renovation or reconditioning, packaging or repackaging, packaging for transport.

The exemption is conditioned to the export of the product with added value, therefore, the legislation refers to the drawback as an export incentive[10]. Although there is no exact determination in the legislation of how much value should be added in the operation, at the moment of the approval of the regime the potential beneficiary must demonstrate what conditions support its production process and therefore what will be the added value and exchange rate gain for Brazil.

The Brazilian drawback is subdivided into modalities that do not necessarily coincide with the regime at the international level. Normally, the drawback is restricted to the subsequent refund of taxes collected on imports of inputs used in exported products.

In Brazil, the import tax refund mechanism corresponds to one of the drawback modalities, which is rarely used, especially due to bureaucratic obstacles. In the other modalities, which are effectively used, "drawback suspension" and "drawback exemption", the taxes levied on imports are no longer collected.

In the "drawback suspension" the input is imported exempt from import taxes, provided that the resulting products are subsequently exported.

In the "drawback exemption" input is imported for use in a product to be exported; Once the export operation is completed, an input similar in quality and quantity can be imported to replace the first, without paying import tax, IPI, PIS and COFINS.[11]

In the "drawback restitution", input is also imported to be used in the production of the good to be exported; for which, after exportation, the taxpayer is entitled to offset the amounts collected as import tax and IPI, with federal taxes on future imports (not necessarily of products similar to the foreign input used).

In the evolution of the regime in Brazil, its scope was expanded to allow the industrialist to also acquire internal inputs, without paying the internal taxes levied on this acquisition, to produce the goods to be exported. This consisting of the "integrated drawback". [12]

This extension of the tax treatment granted to imported inputs to nationals allows for the suspension of taxes on products purchased in the domestic market for the industrialization of the product to be exported, with suspension of taxes levied on domestic consumption operations (IPI, PIS, PASEP and COFINS).

There is also the possibility of acquisition in the domestic market or importation by companies called "manufacturers-intermediaries", for the industrialization of an intermediate product to be supplied to "industrial-exporting companies", for use or consumption in the industrialization of the final product to be exported, a regime known as "intermediate drawback".

Throughout the life of the regime in the Brazilian law, there was a legislative evolution that aimed to adapt it to the new economic scenarios that were unfolding.

Considering the legislator's concern to adapt the drawback legislation to the economic conjunctures that followed over time so that the regime could remain as an export incentive instrument, two considerations are made in the context of the drawback on services theme. First consideration: the inclusion of taxes levied on services in the system of the drawback regime is an

[10] According to article 383 of the Customs Regulations of Brazil (Decreto nº 6.759/2009).

[11] Taxes acronyms definition available at <https://www.bpc-partners.com/fact-sheets/pis-cofins-taxes-brazilian-vat/ >. Access: June 13, 2022.

[12] The legal basis for the integrated drawback is article 12 of Law No. 11,945/2009.

unavoidable reality in the digital economy environment, a topic to be discussed below. Second consideration: the implementation of the drawback on services coming up against a broader reality, which is the structural inefficiency and obsolescence of the Brazilian tax system that affects all Brazilian economy, including a potential implementation of drawback on services.

The export tax exemption process in Brazil does not reach the level of efficiency of other simpler tax systems. In the vast majority of the countries in the world, it is customary to exempt export taxes and burden imports with taxes levied on production/consumption (in many countries, through the incidence of taxes such as VAT - value added tax).

In Brazil, the dynamics are similar, however, the Brazilian tax system is much more complex, there is a greater number of taxes levied in the productive cycle, which are demanded by different entities of the Federation. Therefore, it is not possible to exempt some of these taxes from the production chain of export-oriented goods and others; however later it is possible through the use of credit or cash refund. In other words, the traditional Brazilian system, the taxes levied on the production chain of the product to be exported are first collected and then the exporter takes steps to recover part of the values, through credit, or, what is usually more time-consuming and bureaucratic[13], through cash refund. [14]

Despite the drawback system being very important from an economic perspective, it has very complex legislation – it involves several modalities, sub-modalities, atypical situations, rules and requirements – which makes it difficult to systematize and understand it. This includes challenges for several essential aspects of the applicability of the Brazilian drawback for which an adequate legislative solution hasn't been found yet. This is the case, for example, of the limits of the supervisory competence of federal agencies and the legal effects of non-compliance with the regime.

In the absence of clear and objective rules, these and other issues are dependent on inconstant administrative interpretations, in a climate of legal uncertainty, aggravated by the lack of doctrinal interest in the study of the subject. Therefore, the drawback finds obstacles to fully comply with its purpose, which would demand, in itself, a review of the related legislation and its operationalization.

The introduction of the exemption of services in the regime in this equation, therefore, points to a horizon that seems distant from the current reality, which, nevertheless, is imperative, under penalty of emptying its purpose of stimulating exports and competitiveness of the national product, in the face of an economic reality in which the economic weight of services cannot be neglected. These topics are summarized below, under the premise of the object of the present study that is the drawback on services.

3. Taxation of foreign trade in services in Brazil.

In recent years, the effectiveness of traditional tax systems has been tested with the emergence of new technologies. A significant portion of the revenue of large international companies has still been left out of the field of taxation, amidst the difficulties faced by tax

[13] This second form must be adopted if the taxpayer is mostly an exporter or, for another reason, does not have internal taxes to compensate.

[14] According to MEIRA, Liziane Angelotti. Regime Aduaneiro Especial de drawback. In: Gisele Barra Bossa. (Org.). *Eficiência Probatória e a Atual Jurisprudência do CARF*, 2020, p. 724/726.

authorities to face cloud computing operations, SaaS (software as service)[15] and, more recently, over-the-air software updates that, for a fee, add functionality to conventional products (e.g. vehicles).

These "invisible" and borderless operations, estimated at more than USD 4 trillion, have generated imbalances in the isonomic distribution of the tax burden among economic agents. This cascades into concerns about the distribution of revenue between the countries of origin and consumption of these intangibles. Faced with these and other issues, the issue of the import of services has been gaining more and more prominence in the agenda of international organizations, which ripple effect impacts on trade attractiveness.[16]

In Brazil, the tax costs in the importation of services are high which impacts the conditions of competitiveness, with seven charges that burden our foreign trade structured with their own rationalities, making up an almost unintelligible legal regime of taxation, extremely expensive, aggravated by the sharing of tax competences in which the three federative entities compete.[17] As a rule, the IRRF (withholding income tax), the CIDE (contribution of intervention in the economic domain on services and technology), PIS and COFINS (social contributions), the IOF (exchange tax), the ISSQN (municipal tax on services), and in the case of communication and international transport services, the ICMS within the competence of the states, are charged on imports of services.

Internal taxes levied on imports generate high compliance costs for taxpayers, since, in addition to being administered and collected by different federal entities, they are based on goods and services taxed separately and use different taxation techniques. In these taxes, single-phase and multi-phase taxes are mixed, which are almost cumulative, insofar as there are several restrictions on taking credits; as well as taxes with direct characteristics, but which are levied on the gross revenue.

Taxation on the importation of services, levied by different types of taxes, involving the taxing competence of all federative entities generates complexities that result in violations of taxpayers' rights, invasion of competences, in addition to, at the international level, giving space to situations of multiple taxation or no taxation.

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[15] SaaS taxes additional details available at < https://www.internationaltaxreview.com/article/b1r9dqs06mxsj2/brazilian-federal-supreme-court-unravels-the-levy-of-taxes-on-software-licensing#:~:text=On%20February%2024%202021%2C%20the,from%202%25%20to%205%25. >. Access: June 13, 2022.

[16] On the subject, it is recommended to refer MASUKO, Ana Clarissa. *Princípio do destino no comércio exterior de serviços*. Rio de Janeiro: Lumen Juris, 2021; SEHN, Solon. Tributação da importação de serviços no direito brasileiro. *In*: OLIVO, Luiz Carlos Cancellier; MACHADO, Carlos Henrique; MOTA, Sergio Ricardo Ferreira. (Org.). *Direito tributário: homenagem ao Professor Ubaldo Cesar Balthazar*. Florianópolis: Insular, 2017, p. 305-321; SEHN, Solon . Tributação da importação de serviços no direito brasileiro. In: Cláudio Augusto Gonçalves Pereira; Raquel Segala Reis. (Org.). *Ensaios de direito aduaneiro*, São Paulo: Intelecto, 2015, p. 266-286. SEHN, Solon. *Importação de serviços*. Available at: http://genjuridico.com.br/2021/09/01/importacao-de-servicos/>. Access in:05/16/2022.

[17] In Brazil, there are 26 States and the Federal District, with different tax legislation related to ICMS. Regarding the Municipalities, there are 5570, with different legislation on ISSQN. Although there are complementary laws in Brazilian law, which establish the basic characteristics of these taxes, there are still differences between the laws of each federative entity.

The option of the Brazilian constitutional legislator was to adopt the principle of destiny which, from the Constituent Power, took on more defined contours, through the edition of several constitutional amendments, which were reflected in the infra-constitutional legislation.

The constitutional legislator has over time improved the principle of destination both in the foreign trade of services and goods. In the case of ICMS, for example, Constitutional Amendment 33/2001 and 42/2003 introduced relevant changes to implement the destination principle, implementing techniques applicable to indirect taxes and principles such as neutrality.

The incidence of ICMS deserves attention because, despite the Federal Constitution establishing the tax jurisdiction for the States to tax only some services, notably those of communication and international transport, it appears that with the edition of the Convênio[18] ICMS 106/2017, the issue has become sensitive for the taxation of digital business models in Brazil. In this context, there are currently disputes between States and Municipalities over these revenues.

In relation to the IRRF, which heavily burdens the import of services, it is classified as a direct tax, subject to the related legal regime in the law. It is not ignored, however, that its technique of taxation at source has always generated many controversies, among which the question of having characteristics of an indirect tax. Thus, the IRRF when levied on the gross revenue from the operation and, although there is provision for deductions and exemptions in the country of residence it appears as a hybrid tax.

In this context, note that the CIDE, contribution of intervention in the economic domain, although classified as an indirect tax, historically, it is a "detachment" from the IRRF.[19] With the Constitutional Amendment nº 33/2001, which amended art. 149 of the Federal Constitution, the competence for the so-called "CIDE-Remittances" was established. The tax is levied on the amounts paid, credited, delivered, employed or remitted, each month, to residents or domiciled abroad, as royalties or remuneration, provided for in the respective contracts, which have as their object a license to use or acquire knowledge, technological contracts that imply technology transfer, signed with residents or those with domicile abroad. Subsequently, changes in the legislation determined that the CIDE would also be payable by legal entities that signed contracts for technical services, administrative assistance and the like, provided by residents or domiciled abroad. This issue broadening the cascading tax impact to a possible escalating impact of government geopolitical boundaries business-imposed rupture needs a completely separate discussion beyond this service taxes drawback discussion.

However, reviewing the IOF-exchange that has a very specific tax base: services for the purchase and sale of foreign currencies, it provides additional insight into the tax on foreign trade. Such trade of foreign currencies is a relevant component of the tax burden imposed on the export of services, in addition to its cost, based on the value, in national currency, corresponding to the transfer abroad, at a rate of 0.38%. Note that the IOF tax on foreign exchange transactions on tangible goods is exempt.[20]

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[18] Agreement between the Treasuries of the States and Federal District on matters related to ICMS.

[19] On the subject, it is recommended: MASUKO, Ana Clarissa e MEIRA, Liziane Angelotti. *Cide-remessas: referibilidade, extrafiscalidade e fomento à inovação tecnológica*. Revista Nomos v. 39 n. 2 (2019). Fortaleza: Universidade Federal do Ceará, 2019. Available at: http://periodicos.ufc.br/nomos/article/view/41090 Access in: 05/26/2022

[20] A presidential decree was published in March 2022, which establishes the gradual reduction of the IOF tax, until it reaches 0% in 2029, as a measure for Brazil's negotiations for accession to the OECD. The reduction takes effect from 2023.

Also, within the scope of the States and the Federal District, there is competence for the institution of ICMS on the provision of interstate, intercity, communication services by any means, provided abroad or whose provision has begun abroad.

The normative framework for foreign trade in services in Brazil, as in the rest of the world, is young, therefore, understandings on the subject are still being consolidated and there are still scarce jurisprudential manifestations especially from the higher courts, to prepare the ground to guide law enforcers.

The National Confederation of Industry – CNI estimated the tax burden on services at around 58.60% (also considering IRRF, CIDE, ISSQN, PIS, COFINS, IOF); also raised that, between 2014-2019, services represented up to BRL 196 billion in sales abroad, out of a total of BRL 4.3 trillion, and that the value of the share of services in the value of production in the manufacturing industry jumped from 9.2% in 2005 to 23.7% in 2015[21].

Globally, trade in services grew 60% faster than trade in goods over the past decade, especially as telecommunications and information technology services, corporate services, and intellectual property charges outpaced trade growth. The digital economy emerged in the midst of the great transformations promoted by information and communication technologies (ICT), which became more accessible and widely standardized, improving business processes and reinforcing innovation in all economic segments.

The revolution in telecommunications and the creation of new technologies allowed not only the emergence of new services, but also the phenomenon of "servicification", understood as the growing interconnection between the service sector and other economic sectors. Services are important inputs for production, they add value within the internal processes of companies and are added to goods. The growing increase in the consumption of services can also be justified because the greater technological intensity of the industries demands more sophisticated services, which take up space from the more traditional ones in international trade, such as production and assembly.

It is questioned whether the current state of Brazilian law is sufficient to apprehend these new incidences and what are the new directions that it must follow. In Brazil, how will it be possible to accept these new incidence hypotheses, in the face of a complex tax system, whose matrix is still based on the bases of the 1965 Tax Reform?

Likewise, it is clear that reform debates in Brazil gravitate towards issues that are at an earlier stage in relation to many other countries in the world. The necessary "leap of modernity" involves, firstly, the systematization of indirect taxation, the better equalization of revenues from direct and indirect taxation, the reduction of charges on the payroll, among others.

In the words used in a report by the Federal Senate, "while the world is concerned with the laws necessary to create a favorable environment for the development of 'Industry 4.0', as the current trend of automation and data exchange in manufacturing technologies has been called, Brazil is still organizing the house". [22]

[21] OTTA, Lu Aiko e Mariana Ribeiro. Tributação de serviços na produção mobiliza a indústria. Jornal Valor Econômico, São Paulo, 22/02/2021. Available at: https://valor.globo.com/brasil/noticia/2021/02/22/tributacao-sobre-servicos-na-producao-mobiliza-a-industria.ghtml . Access: 05/26/2022.

[22] SENADO FEDERAL. *Relatório do Grupo de Trabalho Destinado a Avaliar a Funcionalidade do Sistema Tributário Nacional,* 2017, p. 39. Available at: < https://legis.senado.leg.br/sdleg-getter/documento?dm=7229607&disposition=inline >. Acess in: 05/16/ 2022.

In this context, the discussion on the implementation of special regimes such as the drawback on services, is greatly hampered by the general environment in which the Brazilian taxation of services is inserted, which did not receive due attention. Such ramifications can also dive into the world of cybersecurity, cybersecurity insurance, and this additional tax structure that is part of the international trade digital world, such as the U.S. has organized.[23].

4. Drawback on Services.

The scope of services under the drawback system must be based on the ways in which they are incorporated into production. Services may be incorporated into the production of goods, especially the most sophisticated and with greater added value, in addition to being linked around these products, in the form of marketing, design, and logistics services.

In view of the current situation and challenges of the digital economy, as well as the tax burden on imported services, several countries are developing measures to relieve taxation on services. It was not only a general measure in its legal systems, but also inclusion in special customs regimes of inward processing procedure, as is the case of drawback, always in accordance with the same rationality that already exists in relation to the goods.

In the wake of this global trend, in Brazil, according to a survey carried out by the Secretariat of Foreign Trade, for every dollar exported in the manufacturing sector, 40 cents refer to services, of which 31 are contracted in the domestic market and abroad; domestic taxation is 20%, while imported taxation reaches 45%. However, in general, the service provided in Brazil is of low added value, while the imported ones, with high added value, are being used below their potential.[24]

In view of this economic reality, the Brazilian government suggests the creation of a drawback on services in which the existing rationality for tangible goods used in export-oriented products would be applied to services.

In a study by the Ministry of Economy, conducted by the Foreign Trade Operations Sub secretariat - SUEXT, with the aim of benchmarking international practice on the application of drawback on services in international law, it was analyzed its form of implementation and extension in ten G-20 countries and the European Union[25].

Some relevant findings of the study were that all the countries analyzed tax consumption under a VAT model, which would be more compatible with special regimes to stimulate exports, with exemptions for services.

Furthermore, it was found that these special regimes are invariably used in conjunction with relief measures for services within the scope of general legislation, aiming to the services provided

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In the original words: "*enquanto o mundo se preocupa com as leis necessárias para criar um ambiente favorável para o desenvolvimento da ´Indústria 4.0´, como vem sendo chamada a tendência atual de automação e troca de dados nas tecnologias de fabricação, o Brasil ainda está organizando a casa"*.

[23] Cyber insurance taxes discussions example is available at < https://www.irs.gov/pub/irs-utl/2018ntf-cybersecurity-for-tax-professionals.pdf >. Access: June 13, 2022.

[24] OTTA, Lu Aiko e Mariana Ribeiro. Governo estuda estender regime de '*drawback*' para serviços importados. Valor Econômico, São Paulo, edição de 01/03/2021. Available at: https://valor.globo.com/brasil/noticia/2021/03/01/governo-estuda-estender-regime-de-drawback-para-servicos-importados.ghtml Access: 05/26/2022.

[25] SALLES, Luiz Eduardo *et. al. Análise Da Prática Internacional Relativa À Inserção De Serviços Em Regimes Aduaneiros Especiais De Industrialização Para Exportação*. Available at: <http://siscomex.gov.br/wp-content/uploads/2021/05/IND_SER.pdf>. Access in: 05/26/2022.

along the production chain of the exported good, in addition to establishing compensation and effective and speedy refund of taxes.

One of the main distinctions found between the countries analyzed by the study was the establishment of services that would be covered by special regimes and domestic legislation. Thus, in general, it is understood that the services used in processing and export would be equivalent to exports of services, but some countries make use of lists of services eligible for the regime[26].

India, one of the countries analyzed by the study, is a case of interesting exemplification, as in addition to being included in the BRICs group, it underwent a broad reform of its tax system, focused on indirect taxation in 2017.

The Indian Goods and Services Tax (GST) came to replace an extremely cumulative tax system, with about four taxes divided between federal and state federative entities, with overlapping legislation, inefficient and high compliance costs, high evasion rates, various incentives tributaries distributed in an unsystematic way; this directly resulted in the lack of competitiveness of the products exported by the country.[27]

As part of this broad Indian reform, regulations were established for special customs regimes, including the taxation of services in the drawback. The most notable peculiarity was a rather broad concept of services for eligibility purposes. A definition of "inputs-services" was used in the drawback legislation, which would comprise those used by a supplier in a resulting service, those used by a producer in manufactures, intermediate or final, services in relation to installation, modernization, renovation or repair manufacturing, advertising or sales promotion, market research, warehousing, business-related activities such as accounting, auditing, financing, recruitment and quality control, training and training, computer networks, transportation, brokerage, among others.

On the other hand, in other countries, such as Italy, it appears that the eligible services are predominantly related to transport, movement, agency, brokerage, handling of exported goods.[28]

A first observation that emerges from this scenario is that the wide variation of eligible services concerns the very definition of the semantic scope of "services", which is heterogeneous in legal systems.

This multiplicity of definitions stems from the economic nature of the services, classified in the tertiary sector, which will encompass intangible assets with very different characteristics, and their regulation is complex. Therefore, qualification problems are recurrent, which has repercussions on the respective legal regimes; within the scope of international agreements, classification criteria are also verified, which are not, properly speaking, a definition to serve as a safe reference.

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[26] Op. Citada, p. 25-26

[27] About the subject: GOUVEIA, Carlos Marcelo. A Reforma Da Tributação Sobre O Consumo Na Índia / *The India Tax Reform Of Consumption*. Revista de Finanças Públicas, Tributação e Desenvolvimento. v. 7, n. 9 (2019). Available at: https://www.e-publicacoes.uerj.br/index.php/rfptd/article/view/40011/30115 .Access in: 05/26/2022.

[28] SALLES, Luiz Eduardo *et. al. Análise Da Prática Internacional Relativa À Inserção De Serviços Em Regimes Aduaneiros Especiais De Industrialização Para Exportação*. Available at: <http://siscomex.gov.br/wp-content/uploads/2021/05/IND_SER.pdf >. Access in: 05/26/2022.

Bearing in mind the epistemological scope of this work, it is certain that when transporting this discrepancy in the standardization of services to the scope of customs regimes aimed at exports, one comes up against the additional challenge of the limits of tax-exempt measures, for the non-characterization of subsidy, in the international trade plan.

In addition to this challenge, there is the issue of the difficulty of implementing the inspection instruments in the taxation of services, considering characteristics of which some types of service are covered, such as the intangibility, the perishability of services that are consumed in the very act of production, the impossibility of stocking, difficulty in measuring efficiency due to its subjectivity, large price variation; characteristics that, moreover, are in full transformation with the technological advances.[29]

Resuming the information given according to which the countries that have implemented the drawback on services have adopted a VAT model in their indirect taxation it appears that this taxation environment gives them several favorable conditions for implementation.

Thus, indirect taxation due to its rationality, presupposes the existence of production and distribution chains with the option of implementing single-phase, cumulative multi-phase and non-cumulative multi-phase techniques. The VAT model, when falling into the last category, can be seen as a hybrid of cumulative single-phase and multi-phase consumption taxes, as it combines the generality of the taxable persons of the latter with the distribution of the tax pressure in a single phase of the process of production and distribution.[30]

Furthermore, as it provides for the deduction system, facilitates inspections and treats exports equitably, from the perspective of foreign trade and the adoption of the destination principle, it is possible to quantify the tax burden to which a good is subjected, for the purposes of reimbursement or compensation.

Despite the fact that the world experience shows that the VAT model still has high levels of cumulativeness, burdening the commercialization and distribution chains, which is mainly due to the existence of operations or agents that are not subject to the tax, as in the case of exemptions, or the difficulty in deducting credits, generating residual cumulativeness, such distorting effects are much smaller compared to other taxation structures.

Another noteworthy aspect of the VAT model is that it may only include the consumption of tangible goods or also cover services (broad based). For David Williams, the ideal VAT model should encompass all economic activity, generally identified in legislation as “supply of goods and services”, including transactions with immovable property and intellectual property rights.[31.]

Therefore, a broad-based VAT model, with ample possibility of crediting, would be compatible with the drawback system for services, insofar as it would allow the reduction of residual cumulativeness in the chain of a product. In this configuration of indirect taxation, the possibility of speedy techniques for the recovery of the aforementioned credits generated along the chain, in addition to accumulated credits for large exporters, is in line with a tax policy to stimulate exports, with the inclusion of services.

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[29] KON, Anita. Nova Economia Política dos Serviços, p.203 e s.s.. São Paulo, Perspectiva, CNPq, 2015.
[30] SAIZ, Ricardo Calle. Introdução ao livro “*El impuesto sobre el valor anãdido: Primer impuesto europeo*”, p.10-15. Madrid: Instituto de Estudios Fiscales, 1971.
[31] WILLIAMS, David. *Value –Added Tax*, *In Tax Law Design and Drawing.* Org. Victor Turongi. Holanda: *Kluwer Law International*, 2000, p. 184.

Turning to Brazilian law, the diversity of different taxation techniques levied on services represents, in itself, a major challenge for the implementation of a drawback regime for services. The guideline for implementing the drawback on services would be the destination principle, which governs indirect taxation in foreign trade. According to the principle, the tax burden is allocated in the country of final consumption of a good, that is, where there is importation, exempting exports; another pillar of the referred principle is the provision of exemption from the tax burden of the production chain of the exported good, so that they must be developed.[32]

In a succinct and non-exhaustive way, some difficulties are pointed out in implementing the drawback on services, in the current stage of Brazilian law. In imports, the first challenge would be to establish the list of services eligible for the regime, considering that the semantic scope of “service” is not yet established in doctrine and jurisprudence; this translates into the clash of the “economic” and “legal” or “civil” currents. According to the first, Tax Law appropriates the concept attributed by the Economy to services, while, in the second, this concept is constructed by Civil Law.

These old upheavals, but not yet overcome, affect the taxation of services and, consequently, the implementation of export stimulus policies aimed at the tertiary sector. Thus, in line with the system established by the Brazilian legal system, the determination of what is a "service" should be prescribed by a supplementary law, under the terms of art. 146, III, 'a', of the Federal Constitution.

The current National Tax Code, from 1966, only provided for the competence for the ISSQN and its provisions were sufficient for an economic and legal scenario of little expression of this item. After 1966, several taxes on services were created, as mentioned above.

The economic weight acquired by the services showed that the current legislation is insufficient to resolve the related conflicts of competence, in addition to pointing out that there is a gap in the federal legislation on the subject. In addition, there are several discussions about the connecting elements for the determination of the tax jurisdiction used in the complementary law that provoke discussions about the configuration of import and export of a service, for the purposes of the incidence of taxation on services.

The legislation on taxation of services is complex to understand, causing difficulties for the interpreter to delimit the incidence on imports and not incidence on exports, being relevant to carefully analyze the meaning of the terms that compose them. In view of the specificities of each of the taxes levied on services, which often have conflicting rationalities, within the scope of a tax system that does not even have sufficient normative framework to discipline the new realities that arise with the digitization of the economy, the implementation of a tax-exempt regime for services provided on goods destined for export seems almost like “putting the cart before the horse”.

Whether in the exemption of imported services or in relation to services provided internally, the implementation of the drawback on services is faced with the complexity and unsystematic nature of Brazilian taxation, exacerbated by the division of competences between the three federative entities, by bureaucratic obstacles and administrative interpretations, restrictions related to special regimes and the structural difficulties in reducing the residual cumulativeness of the production.

32 About the subject: MASUKO, Ana Clarissa. *Princípio do destino no comércio exterior de serviços*. Rio de Janeiro: Lumen Juris, 2021.

Certainly, the possibility of applying palliative solutions should not be ruled out, considering the exemption of some federal taxes, due to the obstacle of heteronomous exemptions[33], such as PIS, COFINS, IOF, CIDE; shortlists of eligible services; circumscription of the regime to only a few categories of taxpayers, such as predominantly exporters, among other specific proposals.

However, the economic conditions that impose these changes in Brazilian law are moving at more and more accelerated steps and several countries have promoted the necessary changes in their legal systems, so that a turning point will be reached that will bring about the economic marginalization of economies that do not adapted to new social realities.

5. Conclusions.

Services are the center of attention of world economies and the study aimed at finding instruments that make them more competitive is on the agenda of States and international negotiations.

Brazil must pursue tax policies that allow greater added value to its products that rationalize and equalize the tax burden in the context of the tax system as a whole, but also, specifically, need to focus on the taxation of services, which are fundamental ingredients for the competitiveness of Brazilian exports.

It is true that the intangible nature of services, their instability and difficulty in standardization and heterogeneity, unlike tangible goods, bring obstacles to their measurement and analysis, inspection and standardization.

However, at the present time, when heated debates about a model of tax reform are constantly on the agenda of the legal and academic environment, the taxation of services and efficiency in foreign trade must reflect economic trends internally and abroad. It´s necessary to challenge our adversities and chronic problems, such as the design of tax powers, a system of very high administration costs, high tax burden, the absence of mechanisms to eliminate residual cumulativeness.

The Brazilian indirect taxation is so chaotic that it imposes a reform initiated by the base, as its demands are transversal to all economic segments. Brazil lags far behind in relation to these reforms, even when compared to countries in similar stages of development, such as the other BRIC countries, as seen in the broad reform in indirect taxation promoted by India, mentioned in this article.

The Indian tax reform unified and systematized all taxes levied on consumption, under a VAT model, with designs largely favorable to the elimination of cumulativeness and simplification, whose structure allowed the institution of a drawback on services, which provides vast possibilities for the exemption of services related to export-oriented goods.

In Brazil, the mechanisms and techniques for tax exemption on exports are inefficient in reducing residual cumulativeness and generate high compliance costs, even for production chains concerning goods.

[33] "Heteronomous exemptions" ("isenções heterônomas", in Portuguese) is the name given in the Brazilian tax legislation related to the prohibition of a federative entity from granting exemption from a tax within the jurisdiction of another federative entity. For example, the Union cannot grant exemptions related to the ISSQN, which is a municipal competence.

When importing services, contributions to PIS, PASEP, COFINS, CIDE, ISSQN, IRRF, ICMS and IOF are levied, without even having a univocal concept of "services" to precisely determine the incidence of each of the exceptions. Mechanisms for tax relief in the production chain are scarce; in export, exegetical difficulties and restrictive interpretations of the law cause significant obstacles to the realization of the destination principle.

The debates on tax reform in Brazil refer to issues that are at an earlier stage in relation to several other countries in the world as it is urgent to have the systematization of indirect taxation, in addition to other problems that affect Brazilian taxation, such as the best equalization between revenues from direct and indirect taxation, reduction of payroll charges, among others.

However, focusing on the object of this work, it is not possible to dissociate the idea of competitiveness of the Brazilian product abroad from the establishment of a tax policy that adequately contemplates the taxation of services, as a fundamental element of economic induction.

The introduction of services under the drawback is a tax policy item, specifically to encourage exports, and is very relevant, as can be seen from the implementation of this policy in several countries around the world. Still, countries that have adopted this model have a favorable tax environment to do so, especially as they adopt a VAT model compatible with the taxation of services and elimination of residual cumulativeness in chains.

In these terms, the adoption of the drawback on services in Brazil may face obstacles, both in terms of regulations and in terms of its operationalization. Nonetheless, even if this implementation is restricted in scope, it can be a step towards recognizing the relevance of services for the competitiveness of Brazilian exports.

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