

SOCIAL RIGHTS THROUGH TAX EXPENDITURES: CONTROL, EFFICIENCY AND EQUALITY ISSUES

*OS DIREITOS SOCIAIS POR MEIO DE GASTOS TRIBUTÁRIOS: QUESTÕES SOBRE
 EFICIÊNCIA, IGUALDADE E CONTROLE.*

*DERECHOS SOCIALES A TRAVÉS DEL GASTO TRIBUTARIO: CUESTIONES DE
 CONTROL, EFICIENCIA E IGUALDAD*

Frederico Menezes Breyner¹

Abstract: The main topic of this paper is the use of tax law as a tool to promote social rights by way of tax expenditures rules. The method of the tax expenditure analysis allows to link tax law and social rights by relating tax breaks and public expenditures. Considering that the main dimension of social rights corresponds to a positive duty to provide goods and services to guarantee social welfare, the use of tax expenditures to fulfill this duty poses challenges in terms of efficiency, control, and equality. The objective is to analyze, through doctrinal and institutional legal research, whether these issues imply disapproval or recommendation of the use of tax law for this purpose. The result is that that these challenges do not always point at tax expenditures as a poor tool to promote social rights. The argument of this paper is that the merits of tax expenditures depend on its design by legislators considering the adopted tax base (direct taxation on income or indirect taxation on consumption) and on the presence of other mechanisms to ensure tax equality.

Keywords: tax expenditures, social rights, equality, control, efficiency.

Resumo:

O objeto do artigo é o uso do direito tributário como um instrumento para a promoção de direitos sociais por meio dos gastos tributários. O método da teoria da análise dos gastos tributários permite conectar o direito tributário e os direitos sociais, pois relaciona normas tributárias exonerativas com as despesas públicas. Considerando que a dimensão principal dos direitos sociais corresponde a um dever positivo de prover bens e serviços para garantir o bem-estar social, o uso dos gastos tributários para cumprir esse dever apresenta desafios em termos de eficiência, controle e igualdade. O objetivo é analisar, por meio de pesquisa jurídica doutrinária e institucional, se essas questões implicam reprovação ou recomendação do uso do direito tributário para esse fim. O resultado é

¹ Mestre e Doutor em Direito Tributário pela Faculdade de Direito da Universidade Federal de Minas Gerais. Estágio pós-doutoral em Direito Tributário na Faculdade de Direito da Universidade Federal de Minas Gerais. Professor de Direito Tributário e Coordenador do Departamento de Direito Público na Faculdade de Direito Milton Campos.

Licença CC BY:

Artigo distribuído sob os termos Creative Commons, permite uso e distribuição irrestrita em qualquer meio desde que o autor credite a fonte original.



que esses desafios nem sempre apontam os gastos tributários como uma ferramenta pobre para promover direitos sociais. O argumento central é que o mérito do uso dos gastos tributários depende de sua estruturação legislativa em consideração à base tributária a ser considerada (tributação direta sobre a renda ou indireta sobre o consumo) e à existência de outros mecanismos que assegurem a igualdade tributária.

Palavras-chave: gastos tributários, direitos sociais, igualdade, controle, eficiência.

Resumen: El objeto del artículo es el uso de la ley tributaria como instrumento para la promoción de los derechos sociales a través del gasto tributario. El método de la teoría del análisis del gasto tributario permite conectar la ley tributaria y los derechos sociales, ya que relaciona las reglas tributarias exonerativas con el gasto público. Considerando que la dimensión principal de los derechos sociales corresponde al deber positivo de proveer bienes y servicios para asegurar el bienestar social, el uso del gasto tributario para cumplir con este deber presenta desafíos en términos de eficiencia, control e igualdad. El objetivo es analizar, a través de la investigación jurídica doctrinal e institucional, si estas cuestiones implican desaprobación o recomendación del uso de la ley tributaria para tal fin. El resultado es que estos desafíos no siempre apuntan al gasto tributario como una pobre herramienta para promover los derechos sociales. El argumento de este trabajo es que los méritos del gasto tributario dependen de su diseño por parte de los legisladores considerando la base imponible adoptada (tributación directa a la renta o tributación indirecta al consumo) y de la presencia de otros mecanismos para asegurar la equidad tributaria.

Palabras clave: gasto tributario, derechos sociales, igualdad, control, eficiencia.

INTRODUCTION

It is a widespread conception that social rights have in their main dimension a corresponding obligation on the part of the State to perform a positive material welfare benefit for the citizens, directly providing access to social goods and services.

Considering this premise, the relation between social rights and tax law would be very narrow. Tax law would have the sole task of raising funds to finance the welfare state. There would not be a direct link between tax law and public expenditure, which would ultimately remove tax law itself from the direct fulfillment of social rights.

However, one can find an opposed opinion that approximate tax law and public expenditures through the tax expenditures analysis, whose method provides grounds to sustain and evaluate the use of tax law to accomplish the main dimension of social rights.

This doctrine leads to a new connection between taxation and the fulfillment of social rights, which goes beyond the aspect of tax collection. It justifies that the the use of tax law as a tool related

to the main dimension of social rights, that is, the State's performance of positive material welfare actions. Nevertheless, the use of taxation to achieve objectives traditionally pursued by means of public expenditure places additional difficulties on the public policy makers and for tax laws interpreters.

The changes placed in the tax law by the introduction of exonerative rules, characterized as tax expenditures, interfere not only with the principles underlying the fulfillment of social rights, but also with the rules guiding the tax system. On the other hand, tax law may prove itself deficient as an instrument to fulfill social rights. This use of tax law increases tax system's complexity, given the fact that the tax system brings with it its corresponding legal regime and the necessary compliance for its rules, as well as its limitations as a "substitute" for public expenditure mechanisms.

This article analyzes the development of the tax expenditures literature and the controversies regarding the use of tax rules as expenditure rules introduced in the tax system to perform social rights corresponding obligations.

Parts I and II addresses the tax expenditure concept and its consolidation as a public finance tool to develop expenditures programs through tax rules. Part III addresses social rights as structured internationally by the International Covenant on Economic, Social and Cultural Rights (ICESCR). At this point, the article aims to pinpoint the duties deriving from these rights and the possibility of its accomplishment through tax expenditures.

Furthermore, Part IV analyzes tax expenditures as a possible mechanism for the implementation and pursuance of social rights. Yet, it will address specific doctrine in this regard. To expand the analysis and with the objective to go beyond the peculiarities of a single legal system it approaches the studies of three authors that have dealt with the linkage of tax rules and social rights. They are Howard, in the matter of North American Law, Von Arnim, about German Law and Adema, concerning the scope of the OECD.

The complexity inherent to the use of tax law for this purpose is the object of Part V. This item approaches the arguments for and against the use of tax expenditures as a means of implementation of social rights on the grounds of the legal tax regime and taking into consideration its limitations for this specific purpose.

Subsequently, after addressing these arguments, the conclusion is that all opposing arguments are surmountable, depending on the tax expenditures design. The potential conflict between the use of tax law as a means of safeguarding social rights, through tax expenditures, and the principle

of tax equality deserves special attention. The use of tax law for this purpose has a great tendency to exacerbate the regressive feature of the tax system and to, therefore, benefit taxpayers who already have greater economic capacity. This potential conflict demands legislators to draw up tax expenditures rules in order to avoid the upside-down effect and achieve efficiency in delivering social benefits through the tax system. Otherwise, the validity and constitutionality of tax expenditures rules can be challenged.

1. ORIGINS OF THE TAX EXPENDITURE ANALYSIS

The origin of the tax expenditures analysis took place in the United States, through the studies of Stanley Surrey, during the context of the North American tax reform of the 1960s and 1970s.

The subject developed almost simultaneously in Europe, especially in Germany. Despite the fact that the European and the North American doctrines have concluded by a similar concept of tax expenditures, the two analyses took place in different contexts. In the United States, this subject development occurred in the context of a criticism regarding the tax system and the consequent necessity of its reform, whereas in Germany this criticism was not essentially present. In Germany, the analysis of tax expenditures occurred in a context in which taxation was acknowledged as a means of implementing economic and social policies. Germany literature concluded that the effects generated by using taxation for non-tax collecting purposes would be the same as those effects achieved by means of direct subsidies made by the State². Thus, this recognition improved the budgetary process. As Shaviro asserts, budgetary analysis improvement was the motivation for the subject introduction in the German law³.

On the grounds of this particular difference, Shaviro states that the analysis of tax expenditures was invented twice⁴. In the United States, the important role played by Stanley Surrey, as an academic and Secretary of the North American National Treasury, gave a bigger political feature over the subject. The United States, at the time, was undergoing through a delicate financial situation, characterized by an unwanted government budget deficit, increased by the Vietnam War and by the growth of the public spending. According to Surrey⁵, the government's proposal to increase taxes (with an overall raise of 10% on income taxation) suffered resistance in the Congress. Many of the Congressmen

2 SHAVIRO, Daniel. Rethinking tax expenditures and fiscal language. *Tax Law Review*, New York, v. 57, p. 187-255, 2003.

3 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 213.

4 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 213.

5 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. Cambridge: Harvard University Press, 1973, p. 1.

were against the tax increase, however, a reasonable portion of the members of the Congress would indeed support the cutting of the State's expenses, or a combination of the latter with an increase on taxation. It was in this context that the members of the North American Treasury directed their attention to legal tax provisions causing the reduction of tax collection. In Surrey's words, the effort to reduce the public deficit called the attention to tax exemptions⁶. The members of the Treasury were aware of its existence, however, it never occurred to the body to relate them to the loss of revenue and, consequently, to the public deficit⁷.

In order to make this analysis feasible, it was necessary to classify tax breaks as expenditures through taxation. The attempt to identify these exemptions followed the same rationale of the German doctrine, where they were seen as indirect expenses, on the grounds of which the term "tax expenditure" originated. According to Shaviro, the introduction of this term occurred in a speech of Surrey, on November 15th, 1967⁸.

Surrey quoted his own speech in his book "Pathways to tax reform", in which he proposed a tax expenditure budget. The tax expenditure budget would be composed of norms representing a "deliberate deviation from the concept of net income", through what the "tax system operates in order to affect the private economy in a way usually achieved by means of expenditures – with the effect of producing a system of expenditures as described in the tax language"⁹.

Hence, the tax expenditure concept, as originally formulated, consists of two elements. The first element is the deviation from a standard of what would be the ideal or normative tax base. The second element is the equivalence to the expenditure system, which has become a "commonplace" in the analysis of public finances¹⁰.

Hence, after considering the two elements of the tax expenditure concept, one might come to the conclusion that the grounds of which the tax expenditure was analyzed by the North American doctrine is similar to the approach adopted, in its origin, by the German doctrine. The latter consisted in improving the budgetary process by identifying tax norms that have similar effects as expenditures.

Nonetheless, Shaviro states that this was not Surrey's personal or academic conviction, shared in an article published before his speech.

6 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. p. 3.

7 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. p. 3.

8 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 211.

9 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. p. 3.

10 BRADFORD. David. Reforming budgetary language. In: CNOSEN, Sijbren; SINN, Hans-Werner (Org.). **Public Finance and Public Policy in the New Century**. Cambridge: MIT Press, p. 102.

In the article, entitled “Our Schizophrenic Income Tax”, which according to Shaviro was apparently not published, Surrey criticized legal rules that led to a loss in revenue collection and, consequently, favored the already privileged part of the population, through tax escape routes. Surrey, when back to its activities at Harvard Law School, made explicit his arguments against tax expenditures. Surrey’s arguments consisted in the fact that tax expenditures favored the richest part of the population more than the poorest, because the value of the expenditure depended on the marginal rate to which the beneficiary was subject under the progressive income tax¹¹.

Nonetheless, this does not invalidate the purpose, previously expressed by Surrey, of improving the budgetary process and making tax exemptions more transparent. However, Surrey’s personal motivation indicate that the tax expenditure analysis is surrounded by disputes and controversies, that will be further addressed.

2. DISPUTES ABOUT THE IDENTIFICATION OF TAX EXPENDITURES AND THE CONSOLIDATION OF ITS ANALYSIS.

It is important to mention that the two elements of the tax expenditure concept are object of a considerable controversy.

According to Surrey, in order to perceive a deviation from the ideal or normative tax base, one must first have a concept of income that defines an ideal standard, which he indicated as being the Haig-Simons concept of income.

Nevertheless, this proposal shall be contextualized in the North American tax system, which is primarily based on a progressive personal income taxation, rather than on a supposedly coherent system of diversified tax bases. Hence, it would be inappropriate to adopt an ideal concept of a taxable base in countries with a variety of taxable bases such as income, property and consumption.

Moreover, the issue is controversial even in the United States. As Burman states, “given that the actual income tax is a hybrid system containing many elements of income and consumption taxation, there is no objective way to resolve this dispute”¹². Surrey itself recognized a limitation to its proposal on a worldwide scale, due to the fact that countries have sovereignty to define its tax structure¹³.

11 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 214.

12 BURMAN, Leonard. Is the Tax Expenditure Concept Still Relevant?. **National Tax Journal**, Chicago, v. 56, n. 3, pp. 613-627, 2003, p. 616.

13 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. p.18.

Another criticism directed at the analysis of tax expenditures, based on an ideal or normative basis, is that a pretension to consider a given structure as normal, ideal or normative implies a moral claim is that this structure is absolutely better compared to other existing concepts. This is not compatible with a democratic society, because it disqualifies the positive norms in which a democratic legislative process entails¹⁴.

Kraan¹⁵ intends to overcome this controversy, at least for legitimizing tax expenditures analysis, by abstracting from the idea of an ideal or normative tax base, focusing on the standard structure of the tax or benchmark tax. Although this does not eliminate the controversies over what is a standard structure or benchmark tax, this scope does not demand ideal agreements over what the correct tax base should be and turns to the structure of the various taxes existing in a country. It also allows for a comparison between similar tax incidences in other countries.

Following this line of reasoning, some countries identify different benchmarks for each tax category. For instance, Canada adopts distinct criteria to identify standard norms regarding the income tax on the one hand, and the goods and services tax – GST on the other hand¹⁶.

Considering the above considerations and referring to the initial elaborations made by Surrey, generality is an adequate criteria to identify the standard taxation structure. In other words, deviations would be those rules that are not part of the general legal regime of taxation. Subsequently, in co-authorship, Surrey was even more specific in stating that such deviations from the standard structure would consist of rules designed to favor particular industries, activities, classes, or even persons¹⁷.

The second element of the originally formulated concept of tax expenditures is its equivalence to public expenditures. The first disparity that arises around the subject concerns the public or private ownership of the taxpayer's income. A specific criticism regarding this matter is that it would only make sense to refer to tax expenditures if all the taxpayer's income belonged to the State. Thereupon, through tax exemptions, expenditures would be incurred in such a way that it would attribute the ownership of the corresponding state resource to the taxpayer¹⁸.

14 KAHN, Douglas; LEHMANN, Jeffrey. Tax Expenditure Budgets: A Critical View. **Tax Notes**, Michigan, v. 54, pp. 1661-1665, March 1992, p. 1662.

15 KRAAN, Dirk-Jan Kraan. Off-budget and tax expenditures. **OECD Journal on Budgeting**, Paris, v. 4, n. 1, pp. 121-142, 2004, p. 131.

16 SEGUIN, Marc; GURR, Simon. Federal tax expenditures in Canada. In: BRIXI, Hanna Polackova; VALENDUC, Christian; SWIFT, Zhicheng Li (Org.). **Tax expenditures: shedding light on government spending through the tax system: lessons from developed and transition economies**. Wasghinton: World Bank, 2004, p. 97-125.

17 SURREY, Stanley; MCDANIEL, Paul R. **Tax expenditures**. Cambridge: Harvard University Press, 1985, p. 3.

18 BURMAN, Leonard. **Is the Tax Expenditure Concept Still Relevant?**. p. 617.

However, the argument cannot be disassociated from the first element of the tax expenditure concept. It would only make sense to criticize the concept of tax expenditure under this interpretation if one would admit a normative or ideal taxation, in which the tax rate would be equivalent to 100% of the taxpayer's income¹⁹. Accordingly, any exemption would be an expense²⁰. Yet, this normative standard does not encounter reception under legal orders that protect, minimally, the taxpayers against a tax intervention that might lead to the complete absorption of its income, which is not the case for countries that adopt a tax structure compatible with the rule of law and private property.

Another criticism regarding the adoption of tax expenditures as tax rules that holds correlation to public expenditures is based on the impossibility of estimating the amount of tax collection increase in the absence of the exemption. The argument depends on an analysis of the hypothetical behavioral response²¹ of taxpayers to perform an activity in the face of a standard taxation.

The abovementioned criticism is pertinent if one considers the quantitative estimate of tax expenditures, but not their characterization. If one compares the taxpayer's reaction in view of a tax exemption and in view of a standard taxation, simultaneously to an expenditure rule that would allocate resources, one might conclude that the taxpayer's behavior tends to be the same. Reason being that in both situations the taxpayer would have the money at his disposal. Therefore, there would be an equivalence of effects and only a formal distinction between tax expenditures and direct expenditures.

As stated by Shaviro, the equivalence between tax and direct expenditures depends on the tax system's purposes: distribution or allocation. If one considers that the purpose of the tax system is the income distribution among society, the equivalence to the expenses lacks relevance, because the main interest is the distribution of the tax burden among the taxpayers. However, considering the allocative purpose, tax expenditures are norms that reshape the allocation of resources in the society, and its analysis is relevant to provide more information concerning fiscal policy²².

A more restricted analysis, which is generally officially adopted by several countries, is in line with the original idea of diverting the normative base or standard taxation. Hence, not requiring the

19 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 218.

20 Nagel and Murphy hold opposite view with regards to the abovementioned criticism. According to them, the system of private property is maintained and protected by the State, and taxation is one of the elements of this system, if not its main financial support. Therefore, the income before tax may not be used as a transcendental criterion of opposition to the tax activities of the State (MURPHY, Liam; NAGEL, Thomas. *The myth of ownership: Taxes and justice*. Oxford: Oxford University Press, 2002).

21 BURMAN, Leonard. **Is the Tax Expenditure Concept Still Relevant?**. p.615.

22 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 219.

deviation from the distributive function, and at the same time providing information concerning the cash flow between the taxpayers and the State, for budgetary policy purposes. Concerning this point, the equivalence to expenditures is relevant, because tax expenditures would be norms that could be reshaped by a standard tax norm added by an expenditure norm, leading to the identification of State programs that could be undertaken outside the scope of the tax system²³.

Moreover, the equivalence between a tax expenditure and the combination of a standard tax rule and a direct expenditure is mainly formal. Its use in the analysis of tax expenditures should demonstrate proper motivation. Otherwise, the analysis could be tautological, given the possibility of the rule being unfolded into several other rules.

Anyhow, since it is not possible to exclude, from the purposes of the analysis of tax expenditures, the improvement of the budgetary process, the equivalence to expenditures remains as an important element of the concept. The analysis of tax expenditures, although controversial, is still a solid and persistent matter, even if one considers the circumstances and deviations of every country. This demonstrates that tax law acts, through the various exemptions techniques, as an equivalent means of realizing public expenditures.

3. THE NORMATIVE STRUCTURE OF SOCIAL RIGHTS

At the International level, social rights have been enacted by the International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.

All human rights, including social rights, demands a corresponding range of obligations that the States shall comply with. Such obligations may be of different natures in a "continuum of variety of duties"²⁴.

In this continuous spectrum of obligations existing between two extreme points, consisting of the duty to respect (negative) and to perform (positive), the civil and political rights tend to be interpreted as requiring less State intervention (obligations that are similar to the negative component). On the other hand, social rights tend to be interpreted as imposing positive obligations²⁵.

23 SHAVIRO, Daniel. **Rethinking tax expenditures and fiscal language**. p. 220.

24 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. Antwerp: Intersentia, 2003, p. 422-423.

25 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. p. 156.

With regards to the scope of social rights, in particularly, the duties that fulfill the abovementioned spectrum were developed by Eide²⁶ in a widely accepted classification, which divides duties into obligations of respect, protection and fulfillment (*obligation to fulfil*). The latter was unfolded into obligations to provide and facilitate²⁷ (General Comments Nos. 12 e 13 of the United Nations Committee on Economic, Social and Cultural Rights - CESCR), to which the obligation to promote was further added.

The first tier of obligations consists in an abstention duty. Thus, the State may not interfere to prevent the exercise of social rights by the individual who uses its own resources, or not even interfere in the individual's freedom to exercise its rights (this freedom is very clear if one considers the right to education and the right to choose and engage in a job, for instance).

The obligation of protection includes legislative measures, in order to regulate the behavior of individuals, groups or entities with powers that may impact the exercise of social rights by other individuals. Given the fact that the existence of legal provisions is not sufficient to regulate such behaviors, the obligation of protection also requires the creation of public agencies and bodies, as well as mechanisms and procedures to ensure the enforcement of rights and to curb particular practices that violate the rights of third parties²⁸.

The obligation to fulfill and realize social rights is directly related to the positive actions that States are required to perform. Regarding the obligation to facilitate, the CESCR understands that the State shall adopt measures in order to make the access to the exercise of social rights easier and less burdensome²⁹, including benefits and advantages to the individuals, as to improve the conditions of distribution, supply and acquisition of goods and services related to social rights (such as enrolling in a school or hiring healthcare)³⁰.

The obligation to provide, under the CESCR's understanding, refers to situations in which individuals cannot exercise social rights using the means they dispose, especially due to external

26 EIDE, Asbjorn. Economic, social and cultural rights as human rights. In: EIDE, A.;KRAUSE, C., *et al* (Org). **Economic, social and cultural rights: a textbook**. 2 ed. Dordrecht: Kluwe Law International, 2001, p. 23-24.

27 CESCR, United Nations Committee on Economic Social and Cultural Rights. **General Comment No. 12: The Right to adequate Food (Art. 11 of the Covenant)**. 12 mai., p.1-5. 1999; CESCR, United Nations Committee on Economic Social and Cultural Rights. **General Comment No. 13: The Right to Education (Art. 13 of the Covenant)**. 1999.

28 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. p. 223.

29 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. p. 240.

30 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. p. 241.

factors that are beyond their control³¹. Therefore, it would be the State's responsibility to provide extra means to the individuals to exercise their social rights.

Nonetheless, the CESCR adds to the doctrine classification another aspect linked to the obligation to fulfill, which is the promotion. The obligation of promotion consists in the duty of the State to proceed with measures aiming to spread the rights established by the PIDESC, thus helping individuals to raise awareness of the State's obligations.

In face of a social right, for instance, the right to health, the State has a negative duty (that is, not to harm the health of individuals), and positive duties, such as: a) protect its citizens against third-party harm to their health (for example, when establishing bodies and procedures to assess the inexistence of health risks caused by products such as medications and comestible/fodder items); b) promote the right, in order to ensure that the population has sufficient knowledge over the mechanisms of prevention, risk factors and the most effective means of pursuing appropriate health care treatments; and c) ensure the proper delivery of health care treatments, within the limits established by the ICSECR. As demonstrated above, in this *continuum*, positive obligations are highlighted, given the fact that it is the main aspect concerning the fulfillment of social rights.

The variety of duties justifies the identification of tax expenditures rules as a means for the fulfillment of social rights³². The obligation of fulfillment, that constitutes the main dimension of social rights, and can also be realized indirectly through the obligation to facilitate access to these rights with the resources of the individual. Despite the differences in the structures of these two obligations (to provide and to facilitate), there is a connection and an equivalence between them, in the sense that both obligations reveal a budgetary effort by the State, either by realizing an expense or by not levying a revenue that is tax originated³³, which is the case of the tax expenditures.

31 SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. p. 241.

32 BARCELLONA, Pietro. **Le passioni negate: globalismo e diritti umani**. Troina: Città Aperta Edizioni, 2001, p. 139.

33 ANTONINI, Luca. **Dovere tributario, interesse fiscale e diritti costituzionali**. Milan: Giuffrè, 1996, p. 248.

4. TAX EXPENDITURES AND SOCIAL RIGHTS

In the United States of America

Howard³⁴ undertook an interesting study relating tax law and the welfare state in the United States. It is well known that the US Federal Constitution does not contemplate social rights³⁵, such as in the European constitutionalism. Even in the absence of a constitutional provision, the US has a Social State at an infra-constitutional level, in which Howard identifies two Social States: one that is visible, composed of social policy expenditures (direct expenditures), and another that is invisible, composed of tax exemptions (tax expenditures), defined as indirect tools in the service of the welfare state.

According to Howard's view, reducing the welfare state to the universe of direct tax expenditures is a purely academic convention that does not find support in the reality, because the State also uses indirect tools to achieve welfare goals. The focus of his study is to add the indirect expenditures, achieved by means of tax exemptions, to the direct expenditures, comparing how the two Social States (visible and invisible) were constituted and developed. Moreover, he appoints the common features of both Social States, as well as its differences, with the aim of better understanding the social policy in the United States.

The idea of a welfare state is to promote situations of material and economic well-being to its citizens, without the existence of a rigid stipulation of which means should be used to achieve such promotions. The inexistence of the aforesaid rigid stipulation makes it feasible for the welfare state to add tax exemptions to its overall measures. Reason being that most of these measures aim at facilitating the citizen's access to the necessary means to achieve and safeguard their health, pension and child protection, which does not exclude the aim to promote the access to other benefits inherent to social welfare, e.g. housing. Benefits of this kind are also granted based on the need to increase the income of the beneficiaries. The Earned Income Tax Credit could be used as an example, since it is a benefit that is not bound to any consumption, being related only to the taxpayer's personal financial situation. Howard identifies, next to the tax exemptions that directly reflect the welfare of its beneficiary, those in which the exempt objective depends on the behavior of another individual

34 HOWARD, Christopher. **The Hidden Welfare State: Tax Expenditures and Social Policy in the United States**. Princeton: Princeton University Press, 1997.

35 SUNSTEIN, Cass R. Why Does the American Constitution Lack Social and Economic Guarantees?. In: IGNATIEFF, Michael. **American Exceptionalism and Human Rights**. Princeton: Princeton University Press, 2009, p. 90-110.

also encouraged by it. On these grounds, Howard develops its concept of social tax expenditures, as covering the “tax expenditures with social welfare objectives, meaning those that parallel direct expenditures for income security, health care, employment and training, housing, social services, education, and veterans’ benefits”³⁶.

b) in Germany

In the scope of the German law, Von Arnim also recognizes the use of tax rules for the implementation of social policies. In Von Arnim’s view, the economic-political incentives induce the adoption of certain behaviors by its recipient. Whereas social policy measures are ultimately based on an immediate upgrade or improvement of the beneficiary’s economic situation, which is not intended to interfere with his future behavior, yet at the same time it is also not meant to encourage the beneficiary to remain in the situation of social disadvantage³⁷.

The author also affirms the existence of tax rules that serve to the support of the unfortunate classes. These rules, besides promoting the increase of the beneficiary’s income, are also justified on the grounds that it stimulates behavioral induction, such as, for instance, measures to overcome unemployment³⁸.

Moreover, Von Arnim sets out the ways in which the incentives are revealed, including tax measures, e.g: a) the adjustment to the recipient’s disposable income through tax-related benefits or tax deductions; b) the modification in the price-cost binomial of economic goods, aiming at inducing the beneficiary to present a greater or smaller demand, and c) imposition of special burdens as a means of offsetting the damages caused to the society (such as polluting activities and other harmful activities to the environment), which turns out to having an inductive effect of discouraging such behavior³⁹.

Therefore, it can be stated that in any of the above cases, the incentives always have, as a remarkable characteristic, the future behavior of the recipient, which is also the case for economic measures that result in having a social effect, such as the incentives to increase job vacancies and, consequently, to raise the employment level. On the other hand, the so-called social policy norms are identified by their immediate character, e.g. tax exemptions that simply provides a less burdensome access to social benefits, without indicating a further incentive behavior.

36 HOWARD, Christopher. **The Hidden Welfare State: Tax Expenditures and Social Policy in the United States**.
 37 ARNIM, Hans H. v. Alternativen wirtschaftspolitischer Steuerung: Anreize oder Gebote. In: HANSMEYER, Karl-Heinrich **Staatsfinanzierung im Wandel**. Berlin: Duncker & Humblot, 1983, p. 726.
 38 ARNIM, Hans H. v. **Alternativen wirtschaftspolitischer Steuerung: Anreize oder Gebote**. p. 728.
 39 ARNIM, Hans H. v. **Alternativen wirtschaftspolitischer Steuerung: Anreize oder Gebote**. p. 731.

c) at the Organization for Economic Cooperation and Development (OECD)

Finally, with the specific aim at better clarifying the State's effort in the achievement of the goals proposed by the welfare state, Adema *et al.* engaged in an analysis of the OECD's data on social expenditures incurred by the Organization's member countries, and also linked "tax expenditures" with social rights, albeit with the differences proposed by Howard.

The authors analyzed the data released through the Social Expenditure Data Base (SOCX) and concluded that it only reports the gross expenditure incurred to accomplish welfare goals. However, a remark is made that if a country imposes taxes on the benefits granted to their recipients through these expenditures, the country's "net" effort is minor⁴⁰. On the other hand, the country's effort also suffers modifications to the extent of which tax expenditures are used to pursue social objectives, rather than the use of cash transfers.

Both the taxation of income received in cash and the indirect taxation of goods and services consumed by the beneficiaries of social programs affect the State's performance in the promotion of social policies⁴¹.

In such a way, those tax exemption rules are called "social-fiscal measures". According to the authors, this term is more suitable to social policy if compared to the generic "tax expenditure", which would serve to designate any deviation from the standard tax structure. The social-fiscal measures are defined as "those reductions, exemptions, deductions or postponement of taxes, which (a) perform the same policy function as cash transfers which, were they to exist, would be classified as social expenditures; or (b) are aimed at stimulating private provision of benefits"⁴².

5. PROS AND CONS CONCERNING THE USE OF TAX EXPENDITURES

a) Transparency and Legislative Control

The first argument against the use of tax expenditures refers its control and indicates a disadvantage of tax measures instead of the equivalent public expenditure. While public expenditures

40 ADEMA, Willem; EINERHAND, Marcel; EKLIND, Bengt; LOTZ, Jorgen; PEARSON, Mark. Net Public Social Expenditure. **OECD Labour Market and Social Policy Occasional Papers**, Paris, v. 19, p. 9-52, 1996, p. 9.

41 ADEMA, Willem; EINERHAND, Marcel; EKLIND, Bengt; LOTZ, Jorgen; PEARSON, Mark. **Net Public Social Expenditure**. p. 15.

42 ADEMA, Willem; EINERHAND, Marcel; EKLIND, Bengt; LOTZ, Jorgen; PEARSON, Mark. **Net Public Social Expenditure**. p. 21.

must be periodically analyzed and incorporated in the public budget, the exemptions inserted in the tax law does not entail such a compulsory periodic scrutiny⁴³. Thus, there is a risk that the benefits will turn into indefinite aid or financing measure to the taxpayer or certain private activities⁴⁴.

According to some authors, the fact that some tax expenditures remain “hidden” in the tax system could even be seen as an advantage to the social rights. The reason for that is that these expenditures would be more difficult to be found by opponents of the welfare state, being less stigmatizing if linked to labor (due to the fact that they would not depend on the identification before the social welfare workers) and they would also be easier to persist through time, since they would not be subject to the periodic scrutiny of the budgetary law⁴⁵.

Nevertheless, this reasoning around transparency seems to have lost some credibility, due to the evolution of the tax expenditures, which have long been exposed in budgetary laws⁴⁶. On the occasion of its creation in the United States, they might have been seen as an “enlightenment” in the search for an approach to counter the public deficit. Nowadays it is difficult to ignore the impact of tax exemptions on the public budget.

Furthermore, it is important to highlight that the OECD’s⁴⁷ regularly reports the use of tax expenditures in its member countries in order to demonstrate the diversity among the tax expenditures and the constant suggestion of good practices, primarily in the name of budgetary transparency.

Therefore, the absence of a periodic control regarding tax expenditures can only be justified by an intentional and deliberate inertia of the government and the congress. If one considers the ongoing stage of the tax expenditures rules and practices also currently in force in several countries, it becomes even more difficult to sustain that they are less visible and less re-valuable than direct

43 SURREY, Stanley; MCDANIEL, Paul R. **Tax expenditures**. p. 100; BRADFORD. David. **Reforming budgetary language**. p. 110.

44 SWIFT, Zhicheng Li. **Managing the effects of tax expenditures on national budgets**. Washington: World Bank Publications, 2006, p. 6.

45 “A fourth potential benefit of delivering social welfare through the tax system rather than through direct expenditure programs may involve our desire to hide these programs in the tax system. We might seek the cloak of the tax code for several reasons, including: (1) the hope that opponents of a generous social welfare state will not find out what we are doing, (2) to de-stigmatize and legitimize tax-transfer programs by tying them and their beneficiaries to the unassailable virtue of work, and (3) to prevent the programs from having to undergo the annual scrutiny of the general appropriations process.” (VENTRY JUNIOR, Dennis. Welfare by any other name: tax transfers and the EITC. **American University Law Review**, Washington, v. 56, n. 5, p. 1261-1280, 2007, p. 1269). It is importante to highlight that the author proposes a constant improvement of tax expenditures to benefit the wordt-off members of the society.

46 VENTRY JUNIOR, Dennis. The collision of tax and welfare politics: The political history of the Earned Income Tax Credit, 1969–99. **National Tax Journal**, v. 53, n. 4, p. 983-1026, December 2000.

47 OECD, Organisation for Economic Co-operation and Development. **Tax Expenditures in OECD Countries**. Paris: OECD Publishing, 2010.

expenditures, given the fact that this is no longer a result of their tax nature, unrelated to the budgetary process.

b) Attraction of private initiative (free rider effect)

An advantage of the use of tax expenditures is its ability to attract private initiative to the activities that the State deems as relevant to the enforcement of social rights. If attracted by a lower taxation level, private capital is more likely to be driven by the public interest.

With regards to the aforementioned attraction, it should be first analyzed that this attraction is only relevant in cases of indirect exemptions linked to intended objectives, by means of which the exemption is granted in the expectation that individuals will carry out the activities designated to benefit the ultimate recipient of the social right. Furthermore, this exemption is granted without expressly requiring a counterpart (unconditional exemptions).

This argument, however, should not be considered as an advantage for the adoption of tax expenditures. A law that defines in advance what are the preconditions that an individual shall comply with in order to be entitled to receive the resources in the form of expenditure is not less advantageous. This effect may also occur in programs related to direct expenditures. It is considered sufficient the existence of a legal rule that establishes preconditions for the receipt of resources, so that the taxpayer may plan himself to be in compliance with the norm.

On the contrary, a precondition of this kind, in the scope of expenditures, may even trigger more transparency, allowing an exact measure about the resources received by the taxpayer.

Moreover, with regards to this context, a disadvantage of using tax expenditures, if compared to direct expenditures, is the so-called free rider effect, which is characterized by the fact that taxpayers may adjust themselves to exemptions and, especially in the case of unconditional exemptions, they may not conduct their activities within the purpose of the exemption. Another matter that contributes to this disadvantage is that taxpayers who have the ability to adapt themselves are usually the ones with greater economic capacity, empowered with the necessary resources and mechanism to avoid taxation⁴⁸. As a consequence, tax expenditures turns out to be more beneficial to taxpayers with greater economic capacity.

48 SWIFT, Zhicheng Li. **Managing the effects of tax expenditures on national budgets**. p. 12.

Anyhow, the so-called free rider effect seems to overestimate taxation as the main element for individuals' decision-making. Indeed, taxation is not an irrelevant matter, however its relevance is not necessarily the main factor that is taken into consideration. In most of the cases, the process of decision-making involves many other factors, e.g., geographical location, access to inputs, labor law, wage levels, labor's qualification, production infrastructure, among others⁴⁹.

c) Administrative Control

It is argued that the use of tax expenditures would demand lower administrative effort. In other words, its use would not depend on the involvement of the whole administrative structure to provide social benefits and services, being sufficient the legal provision stating the exemption⁵⁰. Nonetheless, the fact that the taxpayer must be audited in order to verify its compliance with the exemption rule would also require an administrative effort. As highlighted by Surrey, the establishment of strong or weak control measures may be done both within the tax expenditure scope and the direct expenditure sphere⁵¹. The intensity of the control and effort engaged by the administration will depend on the administrative activity demanded by law in each case; tax expenditures or direct expenditures.

d) Equality and Ability to Pay principles (upside down effect)

Tax expenditures are mechanisms that, although considered as an instrument to ensure social rights, given that they allocate expenditure programs through the tax system, also may conflict with other constitutional tax principles, especially those related with equality and ability to pay.

Given this context, tax expenditures may be an ineffective means in achieving its ultimate goal, and the direct expenditures, when justified in the implementation of social rights, may reveal itself as a better mechanism to strike the less fortunate citizens. The fact is that tax exemptions may have a regressive feature if they tend to benefit citizens with greater ability to pay than the poor ones (upside-down effect). That is, tax exemptions may turn out to benefit citizens that already have enough resources to access goods and services related to social rights, such as housing, education and healthcare⁵².

49 ELSON, Diane; BALAKRISHNAN, Radhika; HEINTZ, James. Public finance, maximum available resources and human rights. In: NOLAN, Oaf; O'CONNELL, Rory; HARVEY, Colin (Org.). **Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights**. London: Hart Publishing, 2013. p. 13-40.

50 ANTONINI, Luca. **Dovere tributario, interesse fiscale e diritti costituzionali**. p 382.

51 SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. p. 18.

52 SURREY, Stanley; MCDANIEL, Paul R. **Tax expenditures**. p. 71.

Weisbach and Nussim⁵³ argue that such characteristics do not constitute the essence of tax expenditures, yet they depend on the way in which the exemptions are established.

Therefore, the rejection of tax expenditures under these grounds is based on a previous statement, which is not under discussion: a remark which rejects that the tax system can be chosen as a means to implement positive objectives and that the bodies responsible for the administration of the system should not be engaged in any other task than the one to raise resources⁵⁴. But tax law does not claim exclusivity in the implementation of such state actions, serving only as an available mechanism, along with other public expenditure programs.

The attempt to generalize Surrey's rejection of tax expenditures based on the upside down effect is also hindered by the fact that his analysis was tied to a particular tax system, particularly based on the progressive income tax (North American system). In theory, it is possible that tax law establishes intern mechanisms to avoid this effect.

For example, the upside-down effect is generally discussed in the context of the deduction of the tax base of the progressive income tax⁵⁵, since the consequences of reducing the taxable income imply greater benefits to the taxpayers that have higher incomes.

For this reason, Tipke states, with especial reference to the subject here developed, that the deductions operated on the tax base are less appropriate for the promotion of social rights, since higher benefits flows to taxpayers with higher income, in contradiction with the principle that social benefits must benefit those who need social assistance due to financial difficulties⁵⁶.

However, this disadvantage can be overcome by mechanisms familiar to the income tax itself. The doctrine acknowledges that the deductions related to expenses incurred by the taxpayer of its tax base is somehow inadequate for implementing social policies and suggests, therefore, as a superior mechanism, the use of tax credits for achieving such aim.⁵⁷ The tax credits are legally established values and linked to various preconditions that serve to qualify an entitled taxpayer. The taxpayer that fulfills all the preconditions may then deduct the corresponding amount of tax credit from its tax bill.

53 WEISBACH, David; NUSSIM, Jacob. The integration of tax and spending programs. *Yale Law Journal*, New Haven, v. 113, n. 5, p. 955-1028, March 2003, p. 979..

54 WEISBACH, David; NUSSIM, Jacob. **The integration of tax and spending programs**. p. 982.

55 TODER, Eric; BANEMAN, Daniel. **Distributional effects of individual income tax expenditures: an update**. In 2011 National Tax Association Meeting Proceedings. New Orleans: Urban-Brookings Tax Policy Center, 2012.

56 TIPKE, Klaus; LANG, Joachim Lang. **Steuerrecht**. Köln: Ottoschmidt, 2005, p. §1.

57 VENTRY JUNIOR, Dennis. **Welfare by any other name: tax transfers and the EITC**. p. 1261.

As a result, the progressive tax rate will lead to a tax being levied on the accrued income, and the fulfillment of social rights will be achieved through the exemption of the tax due, without interference in the application of the progressive tax rate.

Another advantage highlighted is that fiscal tax credits may be even refunded, that is, once the offsetting leads to a zero-tax base, the tax credits would be then refundable. To the extent that these credits are directed to taxpayers with low economic capacity, in situations that entails the access to goods and services related to social rights, the refund can develop in a valid means the related social right. Thus, the refundable tax credits may become an instrument in favor of the implementation of social rights in the less favored sections of the population.⁵⁸

The upside-down effect also has different characteristics concerning other different taxes, e.g. the indirect taxation on consumption through the value added tax (VAT).

The debate concerning the efficiency of the tax law as a complementary means to the implementation of social policies is undertaken by the OECD on the distinction of the VAT's tax rates. The OECD defends a taxation on a broad tax base with uniform rates, which would then eliminate lower tax rates over goods and services related to social rights.

In analyzing the distributive effects of the VAT, the OECD states that exemptions on products that makes consumption more burdensome for the less favored part of the population have an individual progressive effect. Reason being that they exempt, in a higher proportion, the consumption costs, if compared to the post-tax income and, in the worst-case scenario, they benefit the richest part of the population in general terms⁵⁹. In the aforementioned study, the OECD argues that such measures represent a poor instrument of social policy implementation, with regards to the engagement of the less favored part of the population in the access to the consumption of such goods, which should be promoted through targeted expenditure programs⁶⁰.

Nonetheless, the OECD acknowledges that the withdraw of the reduced rates and exemptions that were once introduced with distributive purposes shall be followed by compensatory measures. The OECD even recommends that State's social, economic, cultural situation and administrative

58 TODER, Eric; BANEMAN, Daniel. **Distributional effects of individual income tax expenditures: an update.**

59 OECD, Organisation for Economic Co-operation and Development. **The Distributional Effects of Consumption Taxes in OECD Countries.** Paris: OECD Publishing, 2014, p. 56.

60 OECD, Organisation for Economic Co-operation and Development. **The Distributional Effects of Consumption Taxes in OECD Countries.** p. 69.

structure shall be assessed before these measures are abolished⁶¹. In the specific scenario of reduced tax rates and exemptions in indirect consumption taxation, there is a progressive effect at the individual level that safeguards the access to goods and services related to social rights. Moreover, problems are verified if one considers the aggregate analysis of wealth accumulation by the richest part of the population, when they consume the same goods and services that are subject to a lower or even to a zero-rated VAT . With regards to the direct and progressive tax levied on income, the choice of which means is to be used to assure that the access to the social goods and services is less burdensome (exemptions or tax credits) may demonstrate a greater or lesser tension towards equality and economic capacity.

This tension can be overcome with a targeted progressive income taxation, levied on higher post-tax incomes, which means that this income accumulated after the consumption of VAT exempt or lower rated goods and services will serve as a taxable base to dismiss the added benefit to the rich.

CONCLUSION

It is fully possible to connect tax law to the fulfillment of social rights. From the analysis of tax expenditures, it can be concluded that some tax rules, especially the various forms of exemptions, may be considered equivalent to public expenditures.

The goals to be achieved by social rights can be accomplished by the obligation to facilitate. In the majority of the cases, tax expenditures aim at relieving the tax burden from situations in which the taxpayers have access to goods and services that are part of the social rights scope. The allegations against the use of tax expenditures for social rights purposes concerning the legislative control and the unwanted free-rider effect does not proceed. At the current stage of the tax expenditure analysis, there is a widespread understanding that they should be disclosed, analyzed and controlled in the budgetary flow. With regards to the free-rider effect, it can be even verified in direct expenditures programs, given the fact that in both expenditures (tax rules or direct expenditures rules) the taxpayer may engage in such planning in order to purposely fit in a norm that leads him to resources (directly or indirectly).

The claims concerning the lower efficiency and the conflict with the tax-principles of equality and ability to pay are relevant. However, they depend on how tax expenditures are structured and

61 OECD, Organisation for Economic Co-operation and Development. **Consumption Tax Trends**. Paris: OECD Publishing, 2014, p. 51.

inserted in a tax system's context, as well as in the scope of the public expenditure programs. The last argument is still subject to deviations, due to the tax taken into consideration (direct, indirect, regressive, progressive taxation, etc.), since tax expenditures affect, in different ways, the direct taxes on income and indirect taxes on consumption.

In such cases, although designed to assure social rights, tax expenditures may be designed to not become an upside-down benefit and violate those tax principles. Moreover, the principle of administrative efficiency, as well as the principles of equality and ability to pay, inherent to the legal tax regime, act as a legal basis for its own review or, in cases admitted by the legal system of each country, even for its abolishment.

REFERENCES

- ADEMA, Willem; EINERHAND, Marcel; EKLIND, Bengt; LOTZ, Jorgen; PEARSON, Mark. Net Public Social Expenditure. **OECD Labour Market and Social Policy Occasional Papers**, Paris, v. 19, p. 9-52, 1996.
- ANTONINI, Luca. **Dovere tributario, interesse fiscale e diritti costituzionali**. Milan: Giuffrè, 1996.
- ARNIM, Hans H. v. Alternativen wirtschaftspolitischer Steuerung: Anreize oder Gebote. In: HANSMEYER, Karl-Heinrich **Staatsfinanzierung im Wandel**. Berlin: Duncker & Humblot, 1983, p. 725-740.
- BARCELLONA, Pietro. **Le passioni negate: globalismo e diritti umani**. Troina: Città Aperta Edizioni, 2001.
- BRADFORD, David. Reforming budgetary language. In: CNOSEN, Sijbren; SINN, Hans-Werner (Org.). **Public Finance and Public Policy in the New Century**. Cambridge: MIT Press. p. 93-117.
- BURMAN, Leonard. Is the Tax Expenditure Concept Still Relevant?. **National Tax Journal**, Chicago, v. 56, n. 3, pp. 613-627, 2003.
- CESCR, United Nations Committee on Economic Social and Cultural Rights. **General Comment No. 12: The Right to adequate Food (Art. 11 of the Covenant)**. 12 mai., p.1-5. 1999.
- CESCR, United Nations Committee on Economic Social and Cultural Rights. **General Comment No. 13: The Right to Education (Art. 13 of the Covenant)**. 1999.
- EIDE, Asbjorn. Economic, social and cultural rights as human rights. In: EIDE, A.; KRAUSE, C., *et al* (Org). **Economic, social and cultural rights: a textbook**. 2 ed. Dordrecht: Kluwe Law International, 2001.
- ELSON, Diane; BALAKRISHNAN, Radhika; HEINTZ, James. Public finance, maximum available resources and human rights. In: NOLAN, Oaf; O'CONNELL, Rory; HARVEY, Colin (Org.). **Human Rights and Public Finance: Budgets and the Promotion of Economic and Social Rights**. London: Hart Publishing, 2013. p. 13-40.
- HOWARD, Christopher. **The Hidden Welfare State: Tax Expenditures and Social Policy in the United States**. Princeton: Princeton University Press, 1997.
- KAHN, Douglas; LEHMANN, Jeffrey. Tax Expenditure Budgets: A Critical View. **Tax Notes**, Michigan, v. 54, pp. 1661-1665, março 1992.
- KRAAN, Dirk-Jan Kraan. Off-budget and tax expenditures. **OECD Journal on Budgeting**, Paris, v. 4, n. 1, pp. 121-142, 2004
- MURPHY, Liam; NAGEL, Thomas. **The myth of ownership: Taxes and justice**. Oxford: Oxford University Press, 2002.

OECD, Organisation for Economic Co-operation and Development. **Consumption Tax Trends**. Paris: OECD Publishing, 2014.

OECD, Organisation for Economic Co-operation and Development. **Tax Expenditures in OECD Countries**. Paris: OECD Publishing, 2010.

OECD, Organisation for Economic Co-operation and Development. **The Distributional Effects of Consumption Taxes in OECD Countries**. Paris: OECD Publishing, 2014.

SEGUIN, Marc; GURR, Simon. Federal tax expenditures in Canada. In: BRIXI, Hanna Polackova; VALENDUC, Christian; SWIFT, Zhicheng Li (Org.). **Tax expenditures: shedding light on government spending through the tax system: lessons from developed and transition economies**. Washington: World Bank Publications, 2004, p. 97-125.

SEPÚLVEDA, Magdalena. **The nature of the obligations under the International Covenant on Economic, Social, and Cultural Rights**. Antwerp: Intersentia, 2003.

SHAVIRO, Daniel. Rethinking tax expenditures and fiscal language. **Tax Law Review**, New York, v. 57, p. 187-255, 2003

SUNSTEIN, Cass R. Why Does the American Constitution Lack Social and Economic Guarantees?. In: IGNATIEFF, Michael. **American Exceptionalism and Human Rights**. Princeton: Princeton University Press, 2009, p. 90-110

SURREY, Stanley; MCDANIEL, Paul R. **Tax expenditures**. Cambridge: Harvard University Press, 1985

SURREY, Stanley. **Pathways to tax reform: the concept of tax expenditures**. Cambridge: Harvard University Press, 1973

SWIFT, Zhicheng Li. **Managing the effects of tax expenditures on national budgets**. Washington: World Bank Publications, 2006.

SWIFT, Zhicheng Li. **Managing the effects of tax expenditures on national budgets**. Washington: World Bank Publications, 2006.

TIPKE, Klaus; LANG, Joachim Lang. **Steuerrecht**. Köln: Ottoschmidt, 2005.

TODER, Eric; BANEMAN, Daniel. **Distributional effects of individual income tax expenditures: An update**. In 2011 National Tax Association Meeting Proceedings. New Orleans: Urban-Brookings Tax Policy Center, 2012.

VENTRY JUNIOR, Dennis. The collision of tax and welfare politics: The political history of the Earned Income Tax Credit, 1969-99. **National Tax Journal**, v. 53, n. 4, p. 983-1026, December 2000.

VENTRY JUNIOR, Dennis. Welfare by any other name: tax transfers and the EITC. **American University Law Review**, Washington, v. 56, n. 5, p. 1261-1280, 2007.

WEISBACH, David; NUSSIM, Jacob. The integration of tax and spending programs. **Yale Law Journal**, New Haven, v. 113, n. 5, p. 955-1028, March 2003.

WEISBACH, David; NUSSIM, Jacob. The integration of tax and spending programs. **Yale Law Journal**, New Haven, v. 113, n. 5, p. 955-1028, March 2003.

Recebido em: 10/09/2020

Aprovado em: 18/06/2021