Sustainable tax systems: the importance of the creation of a tax system based on corporate environmental and social performance*

Sistemas tributários sustentáveis: a importância da criação de um sistema tributário baseado no desempenho ambiental e social corporativo

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Abstract

The purpose of this article is to analyze and start the discussions around the topic involving ESG initiatives taken from private corporations and their respective long term longevity. A concern involving the appropriate approach regarding the possible result of such initiatives towards shaping future attendance to the common good is also under analysis. The proposal is to take the example of the financial market which is promoting ESG related investments and compare to a possible approach to be provided by taxation and promote the private understanding of the reason for taxation. Engaging the parties to the taxes into a concept of tax investors united rather than a "tax collector *versus* tax payer relationship".

Keywords: Taxes. ESG. Sustainability. Tax Investment.

Resumo

Este artigo faz uma análise inicial e propõe que se discuta o tópico envolvendo as iniciativas ESG (ou ASG – Ambiental Social Governança) tomadas pelas empresas privadas e a respectiva longevidade das mesmas. A preocupação envolvendo a análise dos possíveis resultados de tais iniciativas em favor da formatação do que futuramente se entenderá por bem comum está também sob análise. A proposta é tomar-se o exemplo do mercado financeiro, que está promovendo o apoio aos investimentos conectados a iniciativas ESG e compará-lo a uma possível alteração no tratamento da relação tributária, promovendo um entendimento privado acerca das razões para a ocorrência da tributação. A proposta é a de se promover o engajamento das partes relativas à tributação num conceito de união pelo investimento tributário ao contrário do que hoje se encontra na atual relação "cobrador dos impostos em oposição ao contribuinte dos impostos".

Palavras-chave: Impostos. ESG. Sustentabilidade. Investimento Tributário.

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1. Introduction

ESG (Environmental and Social Governance) is becoming, more and more a reality for corporations. Investing in areas that represent the true values of a corporation not only provides the protection for the brands they represent and ultimately engage consumers, but also means the protection against future risks of non concerning policies around sustainable programs that would reflect negatively in the market value of the corporation. Executives and companies are at the forefront of some of the most contentious and important social issues of our time.

Throughout pronouncements, policies, boycotts, sponsorships, lobbying, and fundraising, corporations are actively engaged in issues like immigration reform, gun regulation, racial justice, gender equality, and religious freedom. This is the new reality of business and social activism in America (Lin, 2018). Scandals involving certain brands have demonstrated stakeholders powers over the old belief that corporations sole purpose was to bring profit for its shareholders.

While corporations are more and more focused on attending all stakeholders demands, investing in diverse areas of public interest, they, at the same time, and in general, do not receive consistent tax incentive regarding such attitude. Acting in lieu of the government in certain areas of public intervention (such as education, health, security and environmental preservation) could lead, in the long term, to the lack of faith in public institutions to perform their roles and also in some entitlement by corporations towards the implementation of certain policies they would, individually, believe in.

This is one of the questions leading this study. Besides that and looking into the future, tax systems urge to be adapted to the reality to come. Taxes are neither a premium, nor a penalty – they are simply the way community is compulsorily led to collaborate with the common good. Brazilian tax system is formed by mostly 5 different types of taxes and for each of them a proper legal treatment guaranteeing the protection of the tax payers is in place, including constitutional guarantees.

The investigation of the purpose of the taxation and the feasibility of the use of the taxes oriented to the performance of Environmental and Social projects is one of the themes of this investigation, but not its main purpose. Among the mentioned types of taxes there is one particular example of taxation which aims to intervene in the economic domain (*Contribuição de Intervenção no Domínio Econômico - CIDE*). While the current system only allows its implementation for situations in which there is a clear need of intervention, to save, for example the national industry ("CIDE – Royalties" being an example) protecting the local market, by taxing imported technology, it can show us one possible path to be followed to protect public interest and perform sustainable policies, directly by the contribution of corporations.

Timid or even impactful programs held by corporations alone could be enlarged by the engagement and the use of the taxes paid by these same companies which would prefer not to implement the programs related to sustainability and would contribute by collecting tax oriented models of taxation, such as CIDEs. No one is advocating the increase of taxes or the penalization of corporations that would invest and seriously implement sustainable practices. On the contrary, the new tax systems would provide such companies with tax incentives reflecting on other categories of taxes, such as the ones currently paid for the common good with no direct reflect on certain programs.

Private programs would be mirrored by public ones, increasing efficiency and attending a higher number of beneficiaries, the ultimate goal of any sustainable program. Financial markets are setting the example by imposing a new approach for investors, which is translated into presenting evidence of their long term thinking around environmental and social programs to receive the investments.

What seemed to be impossible and is still questioned by some is now the driving force on the investment and global markets; a great example to be followed by tax administrators. It is high time tax reformations in discussions included a look back to their origins, why taxes arose, the context of their implementation and change the rationale behind it, in order to stop taxes being considered as the mandatory problem people and companies have to live with. Current and future tax systems shall allow the partnership between public and private to be a reality, a common effort towards the implementation of the programs both parties are failing to provide alone.

2. How corporations are acting and the influence such acts are taking

Large corporations are now investing in programs related to ESG. Suzano has issued SLBs (Sustainability-linked bonds) of US$ 1 billion (Adachi, 2021); Larry Fink, Black Rock´s CEO addresses, on its 2021 letter to the CEOs the importance of long term solid goals around investments; as trustees of the funds that will support the retirement of millions of North American citizens such as teachers, firefighters, business people, doctors among others. Fink states

> It is their money we manage, not our own. The trust our clients place in us, and our role as the link between our clients and the companies they invest in, gives us a great

> responsibility to advocate on their behalf. This is why I write to you each year, seeking to highlight issues that are pivotal to creating durable value – issues such as capital management, long-term strategy, purpose, and climate change. We have long believed that our clients, as shareholders in your company, will benefit if you can create enduring, sustainable value for *all* of your stakeholders (Fink, 2021).

John Goldstein, from Goldman Sachs states similarly once the investment company has developed clear policies around the compliance with ESG policies for funds to receive their managed capital. ESG is no longer a choice[2]. It is a fact, recent research appoints that in the United States, ESG investing has grown to a US$ 40.5 trillion dollars market measured mid 2020 according to Pension & Investments report, and such numbers, according to specialists tend to grow three times faster than non-oriented ESG investments (Matson-Teig, 2020).

Companies with serious ESG programs have performed better than their counterparts and there is the obvious recognition of the society that reflects in their market position. ESG investing has proved to be effective providing investors and companies benefits in various ways, including receive tax credits by supporting ESG programs and initiatives or even investing in companies that state in their values, mission and vision ESG oriented practices and goals[3].

In the summer of 2019, the Business Roundtable (BRT) announced its 1997´s review of the Corporate Purpose by including stakeholders' interests as opposed to the previous one which was supportive to the shareholders' interests only. The statement, signed by the CEOs of 181 major public companies, committed to "lead their companies to the benefit of all stakeholders" delivering value, in their own expression, not just to shareholders but also to employees, customers, suppliers and communities[4].

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[2] Although some may say ESG investments are not as efficient and oriented as BlackRock may say, see Tariq Fancy studies on the matter, the majority of the studies point to a future of sustainable initiatives, even if the world would have to see some of these fail. See Tariq Fancy and Kenneth P. Pucker articles at https://impactentrepreneur.com/esg-the-fancy-ful-narrative/ and https://www.institutionalinvestor.com/article/b1tkr826880fy2/The-Trillion-Dollar-Fantasy

[3] There has been a growing demand for Leadership in Energy and Environmental Design (LEED)-certified office space. LEED-certified buildings attract top tenants and help increase commercial real estate tenants' bottom line. According to a CBRE report, about 4,700 buildings (41 percent of commercial space) across the 30 largest U.S. office markets have been certified as "green." Recent research also shows that real estate properties across the U.S. that are exposed to sea-level rise are selling at a 7 percent discount compared to similar properties with less exposure. In addition, negative impacts of the COVID-19 pandemic on the real estate industry are pronounced. As a result, some companies are taking steps to reinvest their businesses and build sustainability into the core of their operations. Building a sustainable and safe environment is just as important to investors as it is to tenants and all stakeholders.

[4] And this is not an isolate initiative. In 2006, the UN-backed Principles for Responsible Investment (PRI) was launched, 63 investment companies (asset owners, asset managers, and service providers) with $6.5 trillion in assets under management (AUM) signed a commitment to incorporate ESG issues into their investment decisions. By April 2018, the number of signatories had grown to 1,715 and represented $81.7 trillion in AUM. According to a 2018

What is behind these policies and initiatives? Large corporations have demanding shareholders, who are in fact entitled to their share of the profits, which, in a superficial analysis could be reduced by the investment provided in ESG programs and policies. Why would shareholders support such initiatives? Why would companies which together represent market capitalization exceeding US$ 13 trillion move in this direction? And having done such movement, profiting from it, in the end will they be entitled by these same stakeholders to dictate their own policies in favor of their own consumers?[5]

In the end, there is no longer a choice. Movements such as black lives matter, and boycotting a brand are realities. One can easily choose buying or not from a brand by simply visiting https://www.ethicalconsumer.org/ a very well organized website claiming to help conscious consumers to make the right choice.

Long term investors and shareholders committed to the longevity of the companies have no choice but to add to their agendas the need to comply with ESG. If not, the investment not provided will be translated and reflected into losses and future decrease in companies value and eventually in less profit to be distributed.

Therefore, big corporations are investing in ESG programs. Such investments include programs related to health and education among others which should be charged to public policies and programs and its costs supported by taxes; but public policies and programs are failing to provide attendance to the population needs, hence the private intervention. Corporations will not simply stay silently doing that. There is, in the end, a cost that is supported ultimately by the corporation itself and its shareholders. It is time to call the attention of public authorities and commissions dealing non-stop with tax reformation that there is a potential problem in the future regarding the acts of private corporations in areas previously reserved to the public domain.

Once corporations are even forced by the market to effectively perform on what they promise to invest, the obvious consequence of such investment will be the lack of trust from the general public that public institutions could be trusted to do the same causing a polarization between public and private[6]. By approaching both parties and establishing their common

global survey by FTSE Russell, more than half of global asset owners are currently implementing or evaluating ESG considerations in their investment strategy.

[5] It is valid to mention that some are skeptical about the long term effect of stakeholders interests, even creating the concept of "stakeholderism" as can be read in The Illusory Promise of Stakeholder Governance (Bebchuk & Tallarita, 2020).

[6] It is worth reading the Edelman trust barometer showing the lack of trust in institutions and the increase of trust in public entities as they started to show amidst pandemic they were the path for the health and safety of their

ground on the taxes that support such programs there is an exponential gain on the implementation of sustainable programs. While private corporations can act limitedly in certain communities, public institutions receiving resources labeled as “designated to sustainable programs” can be more effective in terms of reach and goals.

If large corporations and the Global Financial Market can shift to consider ESG oriented practices or investments, what should public institutions do to collect and apply the resources coming from non direct business performed by public companies, such as taxes in ESG programs? What is the belief behind taxes that should change to accept the successful approach to the subject taken by private entities?

3. The main purpose of tax collection – the common good

Initially, taxes were paid by the defeated in war. They would lose territory, their assets and at a certain point in history even their freedom. This is the backlight that settled taxes. No one wants to be in such a situation. The systems have developed throughout the years and guarantees were settled – but taxes are still a way to deprive the tax payer from part of its income, from part of the product of its effort or inherited assets, etc. Expropriation is of the essence in terms of taxation.

Taxes are collected by the public entity to support the acts towards the preservation of the common good. Public health, security, transportation, access to education, among others, are common goals performed by public entities in benefit of their people in several countries. Tax systems are diverse with taxation being more or less transparent, being directly or indirectly supported by the consumer, the ultimate beneficiary of the public goals and supporter of these same programs. Corporations are also an important part of this chain and represent the direct and ultimately the reliable support to financing public policies.

Yes, we are stating here, the State does not give anything for free, you pay for it, as a citizen, as a corporation, you are the ultimate payer of what you receive back. The State collects, organizes, supports in terms of structure, and provides the best efforts towards applying your money into your own benefit.

people. With the politicization of the pandemic, private entities, employers in general regained the confidence of their employees. A good part of the research shows that without the partnership of public and private crisis would have been even worse. https://www.edelman.com/research/trust-2020-spring

In that reality, as safe as one can be by paying and collecting its own taxes, it is the collective effort that makes the policies possible. Bearing in mind, and knowing the more one can include higher tax payers such as corporations in that effort, the more robust and stronger programs can be performed.

4. Tax Benefits and Engagement

While in Brazil the initiatives towards the creation of tax incentives in a system that would engage more and more tax payers and corporations in the implementation of ESG programs are still timid, in the United States, for example, there is several tax incentives related to the implementation of these programs.

Investment Tax Credits (ITC) is an important initiative regarding the development of the renewable energy industry, such as solar systems; the program is in place since 2006 and has helped the industry (solar) grow by more than 10,000 percent[7]; the already consolidated Federal housing program called LIHTC – Low Income Housing Tax Credit is in place for more than 30 years[8]; Renewable Electricity Production Tax Program (PTC) and the Investment Tax Credit (ITC) are other examples of concrete and direct initiatives towards achieving inclusion, sustainability, environmental preservation supporting renewable sources of energy.[9]

The results of these programs have collectively increased the participation of industries and effectively created and implemented long term initiatives aiming at the common good. Another important aspect brought by public initiatives engaging private tax payers is this: long-term sustainable programs. If a corporation is creating a program towards inclusive education for example, and such program works beautifully for 3 years and then there are no more funds,

[7] Since 2006, it has helped the U.S. solar industry grow by more than 10,000 percent, with an average annual growth rate of 52 percent over the last decade.https://www.monarchprivate.com/esg-investment-types/federal-tax-credits/

[8] As part of the Community Renewal Tax Relief Act of 2000: NMTC provides tax credits as an incentive to stimulate business and real estate investment in low income communities. NMTC investors provide capital to community development entities, and in exchange are awarded credits against their federal tax obligations. Investors can claim their allotted tax credits in seven years as 5 percent of the investment for each of the first three years and 6 percent of the investment for the remaining four years, for a total of 39 percent of the NMTC project.

[9] Renewable Electricity Production Tax Credit Program (PTC) and the Investment Tax Credit (ITC) under IRC Section 45: PTC is a per-kilowatt-hour tax credit for electricity generated by qualified energy resources and sold by the taxpayer to an unrelated person during the taxable year. PTC is available for the first 10 years of production at a qualified facility. The ITC allows investors to deduct 26 percent of the cost of installing a solar energy system from federal taxes. The ITC applies to both residential and commercial systems, and there is no cap on its value. https://www.wealthmanagement.com/investment/esg-investing-outlook-and-benefits-tax-credits

the sudden interruption of the program may cause more damages than the good generated by its implementation.

The same can be said on what concerns initiatives towards the preservation of forests for example. As great as they are, their results and benefit come from its longevity and that is where ESG programs should work hand in hand with public institutions and one important link for this long term is the taxation, being represented either by tax incentives or by tax orientation. Robust programs, supporting long-term initiatives.

But to be able to get there, tax systems must be revisited, the approach has to be changed and a partnership has to be established between the parties (tax payer x tax collector moves to a relationship between tax investors present in both parties of the relationship); the concept of tax investment is key for both sides in the relationship and for the communities. When I pay my taxes, I really trust someone to invest them, and this perception changes everything. The same rationale can be used when one understands that by receiving a tax incentive connected to the investment in certain policies, corporations are also worth of the same trust, now to be provided by the tax collector.

5. Tax systems urge to accept the changes towards the reality of what is considered common good

Considering the example of the Financial Market, how can we move forward towards the implementation of a more dynamic and ESG oriented tax system? Engaging public and private initiatives in the same common goal seems to be one important step. What seems necessarily apart should not still be treated as such. It is not a great initiative or a heresy to connect public and private entities, openly on what is, and has been for years and years, their point of contact – taxes. Any maintenance of the necessary separation of public and private on what concerns taxation serves only to disguise the real supporters of the public programs. In countries where such awareness is already a reality, this may not be considered as a new issue, but not all systems are that transparent and intelligible; the Brazilian System, being one sad example of that lack of: transparence, information and simplicity.

We must investigate foreign systems and bring their reality to ours, while promoting discussion towards tax reformation that will not only touch the result of the collection of taxes itself but mostly engage participants in the same common goal. Openly and consciously doing that.

Starting with law projects that will bring tax oriented models of taxation is a good start but it cannot work as an increase in the taxation, causing the opposite result, generating a greater tax burden on the already heavy one.[10]

While tax reformation programs do not include private entities, corporations, tax payers in their discussions, the results will remain the same. The imposition of a tax system which is alien and not comprehensible to the majority – and initiatives – scattered ones – will remain and while effective – may not either grow as much as expected and desired and also end abruptly – causing, potentially, more harm than good.

6. Tax reformation discussions must include the rethinking of the grounds of the system

The never-ending discussions around tax reformation, especially in Brazil, but not only here, shall consider an approach that goes beyond the mere amendment to the current system, with increases or decreases of tax rates or even with the amalgamation of taxes in the attempt to reduce the number of taxes (quite high for sure in certain countries – Brazil with its more than ninety different taxes being a great example of tax inefficiency)[11].

The discussions around tax reformation shall go deeper into the concepts and into the grounds of the tax system – taking into consideration the "whys" rather than the "hows" only. The question is not, how I can increase the taxes without causing more and more suffering to the tax payer, which will lead to tax evasion. The question is – how I promote taxation as a means to the proper achievement of the common good, creating a new relationship between public and private with the real knowledge of where and how the collection is invested. Tax payer must be enlightened, understanding the "price" paid for education, health and security is really high and the consideration should be equivalent to that burden.

A connection between public and private must happen now, while we are discussing tax reformation, aiming at a healthier relationship regarding taxation. The power private and individual initiatives hold, grows exponentially when added to the approach one project can have if supported by the structure that only public entities can put in place. While one company

[10] Although valid and great inclusive initiatives, projects of tax laws such as PL 640/21, which aims to help better Brazilian public schools infrastructure do not consider the increase of tax burden for example and do not create long term engagement between public and private initiatives.

[11] Considering income tax, in Brazil they represent 7,26% of the Gross Internal Product in 2019, while OCDE countries medium is 11,5%. Individually, it is worth mention certain countries such as Turkey (5,8%), Hungary (6,8%), Mexico (7,1%), Slovakia (7,1%), Poland (7,4%) and Chile (7,5%). But the media is increased by countries with more aggressive taxation such as Sweden (15,8%), Norway (16,5%), Australia (17,3%), Iceland (18,4%), New Zealand (18,5%), and Denmark (27,6%).

can act in limited communities, public entities can enlarge these same programs only by using their existing structure. The addition to the text of the Tax Reformation in Brazil of the Sustainable Approach is one path to be followed; spreading the discussion in several communities and countries aiming at the shift of the look into taxation for a more sustainable one, another important step. Encouraging corporations to invest in sustainable programs seeing as such, not only as the implementation of their purpose but also as a means of compromising with the long term cost of the programs based on the taxation that would compensate such investments is also key.

For years the Brazilian "Lei de Informática" provided tax incentives to these companies; more recently WTO (World Trade Organization) issued a recommendation to Brazilian tax authorities requesting an adaptation to this incentive in a manner to proper contemplate the benefit of research and development of an important area – Information Technology (IT). Law 13.969/2019[12] provides tax incentives for companies that invest in research of new technologies of information and communication. This is innovative in terms of tax incentives in Brazil, once it is not considering the tangible item produced to receive the tax incentive, but is considering the investment in research itself.

This is the example to be followed. Advocacy programs present in diverse institutions around the world shall advocate worldwide incentives connected to the key issue for present and future generations: sustainability. A new approach to tax systems only makes sense if urgent matters such as climate changes, inclusion and diversity are also taken into consideration; if the financial market was able to start reinventing its purpose, it is not difficult to image that taxation, which surged, as seen, for the promotion of the common good, can go even further.

7. Conclusions

In 2018, a quantity around US$ 30 trillion dollars (Gadinis & Miazad, 2019) an amount representing more than one quarter of the investments in the world was already ESG related. Some corporations still resist seeing the advantages of the long term investment in ESG policies and programs basing their skepticism on the cost related amount that would reflect in their bottom lines. Public institutions, governments in general, still fail to perform certain public

[12] In this sense, Law 13.969/19, guarantees that industries, manufactures of goods and IT service providers which accomplish with their respective basic productive processes (PPB) to have financial tax credits calculated over the expense of the same industry incurred in the previous quarter with activities of research, innovation and development.

policies and duties such as in education and health to mention a few. With the common actions of public and private organizations through their common shared area (taxation) communities, society in general would profit from the exponential growth that such sustainable initiatives would take with the proper costs coming from an ESG oriented taxation, with reflections in common taxes that would, in the end, be extracted from the whole and directed to sustainable public programs.

Advocacy programs performed by several institutions around the globe shall include such discussion in their agendas. Without the proper tax incentives, some global programs related to ESG will not be performed globally due to some local lack of incentives[13]. The path is open to be implemented, there is no need of massive discussions and it can be started right away. Tax credits, tax incentives are due to companies that perform more than internal compliance with governance rules, but to the ones that go further developing environmental and social sustainable programs which go beyond the fences of the corporation, causing impact in the communities, the same way (or even in better ways) than the collected taxes, applied to the same programs would do.

The result of the implementation of the tax credit programs in the US is easy to see and numbers are there to constantly support its maintenance. Why a company should be penalized with the costs of the implementation of ESG programs, let´s say, with the inclusion of communities of a certain region into the company’s productive process? Should companies be altruist and understand their values and purpose only? ESG programs urge to be long term ones. Investors and shareholders cannot be penalized for trying to exercise their values through their business or investments. A reunion of these two extremely powerful forces will bring lifelong programs to reality.

Taxes are a powerful and ever existing tool; tax reformations must have an urgent approach outside the academy, the closed concepts of this and that format for taxes. It is time to rethink the whole system. It is past time to add forces instead of leaving the system to be evaded. Public and private can implement better programs if together. Tax credits are one

[13] In Brazil for example, there is no tax incentive for the development of electric cars for example. This leads to automobile industries present in several countries inability to comply with their global goals towards the reduction of use of fossil energy for example. There are though several tax incentives and programs, such as PADIS, created by Law 11.484, 2017 and REIDI, created by Law 11.488, 2017, both for solar energy equipment production; REPES, created by Law 11.196, 2015 a tax benefit for companies investing in IT innovation and some scattered benefits provided by states individually creating a reduction of the ICMS tax burden.

powerful way to put programs in place as showed herein, but much more can be done with the proposed new approach.

ESG oriented tax systems engage in the essence the participants towards an understandable goal that the community wants to: participate, pay for the costs and make it happen.

The connection between public and private should engage the parties into a more social and solidarity tax system. The current discussions, either on the minimal global tax or the long due tax reformation in Brazil, the origin, the reason for taxation is still despising the addition of forces with regards to the performance of the common good, the environmental preservation, either natural or even the healthy virtual one; the inclusion, on all its aspects, the implementation of better public educational programs, qualifying people to achieve their best and developing their maximum expression of freedom – which is achieving sense and having access to the sensed needs. All of these can be improved with the common effort and use of tax oriented programs, including tax credits; there is no more time for waiting for isolated initiatives or even for large corporations to dictate what should or not receive investments. The world has already proven its capacity of changing concepts faster than expected and science has proven its capacity to develop new technologies in record time – what then justifies the silence in terms of tax reformation and the maintenance of the same ancient practices around taxation where there is tax imposition, no conversation, no discussion and, as a result, no engagement? The midway and initial path for such changes could pass through the development of environmental and social oriented taxes, connected to specific programs, with no increase in taxation. On the contrary, by creating compensation, increasing engagement between public and private which will result in long-term and potentially more efficient programs reducing the tax burden of those already oriented to ESG practices.

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