

THE GLOBAL FINANCIAL CRISIS FROM THE PERSPECTIVE OF INTERNATIONAL TAX COMPETITION

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ABSTRACT

THIS ARTICLE AIMS TO EXAMINE THE GLOBAL FINANCIAL CRISIS FROM THE PERSPECTIVE OF INTERNATIONAL TAX COMPETITION, SEEKING TO DEMONSTRATE THE DIFFICULTY OF THE REGULATORY POLICIES OF NATIONAL STATES IN THE FACE OF THEIR OWN LIMITATIONS CAUSED BY THE MOBILITY OF FINANCIAL CAPITAL AND ECONOMIC ACTIVITIES.

KEYWORDS

CRISIS; DEREGULATION; INTERNACIONAL TAX COMPETITION

It is often repeated in our times that, more than an economic crisis, we are facing a crisis of economics. If we are unable to understand the world in which we live, how to act rationally about it?

(Celso Furtado¹)

PURPOSE

The purpose of this paper is to examine the global financial crisis from the perspective of international tax competition. Therefore, we will discuss the format of the current tax systems in most countries vis-à-vis the intense competition for international capital and for economic activities, affecting the tax base of national states and endangering their own sovereignty. We will try to evaluate the competition between countries as a result of globalization and as one of the causes of the crisis under examination. Thus, this paper will analyze the possible impoverishment of modern states as a result of economic integration, with repercussions for the provision of public services and social security of citizens.² It should be noted that in the midst

of the global crisis, especially in financial and real estate markets, José Eduardo Faria stated that it was important to maintain the current model of regulatory state, that is, “The current model of regulatory regimes that operate within different spatial boundaries, where none of them is dominant, or incompatible with the legal state order.”³

According to the author, after a brief comparison between the theories of Keynes and Schumpeter, with the former being in favor of more intense state intervention and the latter being more attached to the idea of “free market”, the crisis under examination, “the greatest one since the Great Depression of the decade that started in 1920 and the collapse of the New York Stock Exchange in 1929, brought Keynes and Schumpeter back to the political and economic debate.”⁴

The crisis, according to Faria, “derives both from new factors, such as the uncontrolled growth of derivatives, multiplication of nonstandard operations outside of regulated markets, [...] and from problems already known in records of bank turmoil since the Great Depression.”⁵ In other words, some of the causes of the current global financial crisis are not new. They are indeed very old, as reported back in 1987 by Celso Furtado,⁶ who dedicated himself, in an undeniably current study, to examining the situation of capital mobility and the formation of an extremely complex global economic system.

What draws attention of Faria’s viewpoint is the assertion that one of the central problems of the world economy is precisely the integration of domestic systems, subjecting them “to the consequences of decisions made outside their respective territories,” i.e., demonstrating that “the spaces traditionally reserved for the law and politics no longer coincide with the territorial space” and that “national states have experienced increasing difficulty in counteracting the effects of external factors and act as a regulator”.⁷

In fact, Faria explains that, among the hypotheses raised in his work, only two of them are likely to be confirmed, with the others being ruled out due to the “excessive idealism and impracticality of a ‘global regulatory body’[...]”⁸ and because one should not expect economic agents to behave responsibly in their market activities.⁹

In the author’s opinion, the most viable hypotheses are the following ones: (i) the institutional strengthening of integration blocs, with regionalization processes, using the EU as a paradigm, and (ii) the possible proliferation of regulatory regimes of different orders, with a tendency towards the internationalization of regulatory mechanisms, where there is the expansion of “specific rules and regulations, with jurisdiction not over territories, but over markets and supply chains,” through “a body of practices, uses and customs, codes of self-conduct or good practices”,¹⁰ which is a model that is founded on supranational sources.

Another author to be examined is Manoel Gonçalves Ferreira Filho, who reached the following conclusion in a recent paper:

33. In light of the above, it becomes clear that the constitutionalism is evolving by the impact of globalization. Undoubtedly, the focus is not only on an internal rethink of modern states, but also on a profound transformation in the external

relationship of such states, with the announcement of the appearance of a new type of state, a 'super-state', or a state that is a 'community of states'.

However, as this process is still in its infancy, it carries no decisive weight in the face of the crisis that currently affects the world economy. Without doubt, the aggregative trend that was highly emphasized is likely to gather speed.

34. On the other hand, it seems inescapable that this crisis occasioned and leveraged by globalization will interfere in domestic public policies, in degrees that will certainly vary from state to state. They are the price and consequence of the interdependence brought on by globalization.”¹¹

Thus, it is noted that, due to the constant integration of economic relations, there is the natural strengthening of international bodies and policies, which affects the sovereignty of all states. On the other hand, it becomes evident that there is not actually only one cause for the financial crisis formally announced in 2008. In fact, there are several causes.¹² And they are part of the contemporary economic history, which is marked mainly by strong economic integration and intensification of competition in both directions, that is, business competition in the market and competition between economic environments, driven by tax policies and economic-financial policies aimed at attracting investments. And, in this context, there is the relationship between the crisis and the institutional competition for capital and economic activities, requiring that states adopt financial and tax incentives that may, if not properly controlled and planned, degrade public finances and undermine the level of public services provided to citizens. So, it is extremely common to see the use of the so-called “stimulative tax rules”, which have a regulatory purpose, driving economic agents to desirable behaviors.¹³

In Brazil, the use of “stimulative tax rules” aimed at “reducing” the harmful effects of the global crisis was adopted with incentives, mainly of IPI (tax on industrial products) and IOF (tax on financial transactions), with a reduction in the taxation of economic activities considered a priority for the market and the economic system. With respect to this topic, it is worth highlighting the incentives for the auto industry and retail sector, which ultimately characterizes a strong state intervention in the economic order, stimulating consumption to maintain jobs and to strengthen the economic process a whole.

1 THE CRISIS AND THE PROBLEM OF INTERNATIONAL TAX COMPETITION

It is said that international tax competition is a phenomenon of great economic importance, with major implications for taxation, given the ongoing integration of economies, which ends up being emphasized by numerous factors that affect the movement of capital, goods and services, production factors and technology factors.¹⁴ That is, the key elements of this complex relationship between global economic integration and taxation are the competition, coordination and

harmonization, because, in some cases, there will be unilateral practices of governments that will ultimately affect the economic activities outside of their territories, and, in other cases, there will be the establishment of common fiscal policies.

In recent decades, the economic globalization has produced a series of positive results, such as: (i) more efficient allocation of production factors; (ii) increased availability of goods in the market to consumers; (iii) reduction in capital costs; (iv) reduction in transport costs; and (v) greater exchange of information, knowledge and technology.¹⁵ There has also been the inclusion of many poor countries in this new supranational market, as is the case of Latin American countries, which ended up increasing their competitiveness.¹⁶ In this sense, Baum argues that the economic integration offers undeniable benefits for the development of nations.¹⁷

However, the economic integration process also produces numerous negative effects, especially the increased mobility of economic activities, which ultimately results in impacts that cannot be easily controlled and which internationalizes problems that before were only related to domestic issues.¹⁸ This has led to the further impoverishment of many underdeveloped countries and has hindered the financial balance, which is a prerequisite for any developed economic system, because without such value, investments are unlikely to be made by economic agents.

As Miguel Poiães Maduro argues, although the economic integration process presents itself as inevitable, it eventually produces harmful effects that must be overcome. According to the Portuguese professor, in this context, it is important to adopt public policies that are in accordance with constitutional provisions.¹⁹

Due to the mobility of economic activities, doubt is cast on the taxation of some economic bases, such as capital.²⁰ In other words, the mobility of capital and economic activities in general ends up pressuring countries to reduce their taxes and/or to grant economic and financial advantages.²¹ The international mobility of capital and economic activities restricts tax autonomy and pressures governments to reduce taxes.²²

As Michael Rodi argues:

*Globalization has led to a considerable increase in the mobility of economic production factors (except for the labor factor). Consequently, there has been an increase in investment flows, especially direct investments, as well as portfolio investments.*²³

That is where one will find the practice of international tax competition, which, for the specialized doctrine, is referred to as the reduction in the tax burden and/or the granting of direct aid to promote the economy of a country, with an increase in the competitiveness of domestic businesses, and/or to attract international investments.²⁴

However, it should be noted that the "tax competition" expression had been used in the U.S. doctrine for decades to define the tax dispute between the states of that federation, calling attention to possible competitive distortions and imbalances in regional fiscal policies and attracting severe criticism.²⁵ In fact, Jagdish Bhagwati explains that Bill Clinton, before being elected U.S. president, was named winner of the internal tax war (between federal units) in favor of his state, Arkansas.²⁶

At the international level, the debate over tax competition has intensified as a result of economic integration policies, as in the case of the European Union, and the perspectives of globalization and consequent internationalization of markets. And the basis of this phenomenon is the search for lower tax costs on the part of international economic subjects, explained by the idea that tax is one of the burdens of the economic activity and by the interest in wealth maximization.²⁷

In other words, companies, especially multinationals, are taking advantage of this international dispute to increase their production and ensure greater participation in global markets, even negotiating, through international bodies, guarantees for their investments, which have been increasingly free and sovereign.²⁸

Here, it is worth mentioning the example of tax havens, which, in face of their natural economic hardship, eventually adopt measures to attract investments and capital, being severely criticized by developed countries. And the use of such “tax-favored jurisdictions,” previously restricted to large investments, has grown steadily due to the liberalization of capital movement. And now, it is estimated that: (i) about 3 to 3.5% of all the global wealth is in tax havens; (ii) between one third and half of all international financial transactions move through the so-called offshore economy, since “all the major financial institutions are present in an offshore world”.²⁹ Moreover, tax havens are defined as places where there is not too much inspection and where the information of account holders is kept secret, and this ends up boosting the demand from agents that have a large amount of financial capital for the implementation of tax plans or for the actual tax evasion. It is important to remember that, among the measures adopted by tax havens, the most famous one is the non-taxation of the residents’ income, and it is extremely easy to obtain residence in such territories.

In this respect, it is worth highlighting the accurate lesson of Reuven S. Avi-Yonah, when he said that there has been tremendous growth in the practice of international tax competition for capital and international investment - foreign direct investment - since 1980, now representing the possibility of multinationals avoiding paying tax on their incomes,³⁰ as shown in the example of Intel Corporation, which establishes different stages of its activities in various countries, taking advantage of tax systems that are more attractive from the viewpoint of final cost.³¹

The fiscal policies of the three countries described in the example of Reuven S. Avi-Yonah end up generating competitive imbalances in the market, and, ultimately, affecting the tax revenues of the countries in general and, mainly, of the developing ones,³² which are the ones most in need of investments to achieve their macroeconomic goals.

However, it is important to emphasize that it is not only the granting of tax incentives that draws attention in this competition between countries. The granting of direct subventions (labeled as grants), which is a common practice, for example, in the U.S.,³³ also affects the corporate and institutional competition, being severely criticized by several experts, who even suggest the possible bankruptcy of the U.S. State.³⁴

In all cases, tax competition is observed by a logical explanation: in both countries where there is the exercise of economic activities, with establishments, including the production and the

actual circulation of industrial products, when the same practical case is considered, the states are concerned, because if they levy taxes, they may be replaced by others.³⁵ This demonstrates the mobility of economic activities, which started to analyze countries on the basis of numbers.

The fact is that the maintenance of the tax advantages ends up being one of the reasons for the granting of additional incentives, with an allusion, in the doctrine, to the “race to the bottom.” Thus, tax competition ultimately denotes international pressures exerted on a national government during the establishment of its tax policy. The expression is linked to the pressure to reduce the level of taxation based on other countries, since individuals and corporations see taxes as elements that determine their profits.

José Casalta Nabais³⁶ explains that, for a long time, international tax competition was seen as beneficial, based on the model developed by Charles Tibeout, in 1956.³⁷ After the thesis of Tibeout, there was widespread criticism, most of which was based on the following grounds: (i) the possible need to respect the redistributive role of taxes; (ii) the evident crisis that would result from the granting of unrestricted incentives, with the consequent increase in public spending, with allusions being made to “sub-taxation,” since, as pointed out by Nabais, the states, “in an attempt to attract foreign investment, are led to levels of expenses and taxes that are below what is desirable, particularly for the maintenance of a social state, even if it is a lean one”³⁸; (iii) the model would completely disregard the different mobility of production factors, moving the “taxes on capital to labor and, within labor, the taxes on the income of qualified labor (and consequently more nomadic) to the taxes on less qualified labor (and consequently more sedentary).”³⁹

It should be noted that Tibeout, considered the “father of studies on tax competition between states in the U.S.,” as described by Carlo Pinto,⁴⁰ was criticized for not extending his thesis (the efficiency in the allocation of public and private resources) to firms and for not properly addressing the issues from an international viewpoint, referring only to individuals and efficiency issues in the purely domestic environment of the dispute between units of the U.S. Federation.

Among the main critics of Tibeout’s ideas, it is worth highlighting Peggy Musgrave, from the University of California, and Richard Musgrave, from Harvard University, for whom the model examined “breaks down when public goods are financed through general, rather than benefit taxation, and coordinating measures will be needed to protect diversity of preferences for social goods, while securing fiscal neutrality with respect to location of work, investment, residency and consumption.”⁴¹

According to the scholars in question, initially one can say that tax competition results, in some situations, in economic efficiency and accountability of governments with respect to public expenditure. However, in a more accurate analysis and taking into account the mobility of economic factors, including capital, investment, consumption and labor, this reality changes,⁴² thus creating a series of distortions, especially for the budgets of countries, including: (i) the migration of resources and capital to areas with advantageous tax treatments, distorting the regional allocation of resources and influencing private decisions; (ii) this migration, especially of capital, will eventually allow owners that reside in the country with higher

taxation to act as free riders, enjoying a high level of public services without contributing to the respective costs; (iii) economic agents will eventually change their choices vis-à-vis costs, tariffs and tax incentives granted by individual countries; and (iv) in the absence of coordination, there will be a decrease in the supply and/or quality of public services, distorting the relationship between residents and the state.⁴³

Also according to the thesis of the American authors cited, tax competition does not have the power to ensure the harmony of public finances vis-à-vis international issues, whether with respect to efficiency, or with respect to the notion of equity (justice). Therefore, it is impossible to apply the theoretical model of Adam Smith to the competition between governments.⁴⁴

In another study dedicated to a comparison between the positive and negative effects of tax competition, Peggy B. Musgrave said that the issue has been debated in the U.S. since 1986, with the development of economic theories that ultimately demonstrated that Tiebout's thesis was unsustainable, when international aspects are examined.⁴⁵

Thus, according to the majority doctrine, international tax competition is a harmful phenomenon when there are no criteria of legitimacy and economic efficiency (reduction in regional inequalities, development of poor areas, for example), since it ends up placing a large burden on states that give incentives, besides manipulating the economic process.⁴⁶ As explained by John Douglas Wilson, "tax competition may force changes in the way tax burdens are allocated within jurisdiction and the amount and nature of public goods provided there."⁴⁷

So, a large portion of the doctrine is critical of this dispute between countries, referred to by many as a non-cooperative game, which ultimately manipulates business decisions and distorts the economic process by creating inefficiencies in the long term.⁴⁸ Thus, international tax competition policies involve instituting policies of competition between different tax jurisdictions through tax incentives and concessions, to attract businesses and individuals, with the possibility of such policies being characterized as detrimental to international integration and competition in the free market, with an allusion, in this case, to harmful tax competition.⁴⁹

So, it is observed that tax competition ends up being understood, by a large portion of the doctrine and governments, as a phenomenon that is contrary to market competition, since it distorts the allocation of financial resources and is detrimental to the countries' tax systems. For this reason, today much of the literature ends up differentiating between tax competition and tax harmonization,⁵⁰ which is the process of adaptation of national tax systems, to bring them into line with the common economic directions.⁵¹

One conclusion seems to be obvious: as a result of tax competition, tax systems have become increasingly similar, in order to be competitive in attracting economic activities.⁵² As a consequence, there is the possible tax degradation of a large portion of countries that grant incentives in search of international investments, since the most evident consequence of this process is the impoverishment of such states, except for some countries that rely on investment, and on "nomadic international taxpayers".⁵³ As explained by Franz Philipp Sutter, in a different way, the issue may end up leading countries to a conflict that has no end and no winners, because the only consequence will be the increasing migration of taxation from capital to labor, as it has occurred in the European Union,

where there have been successive increases in the last fifteen years, in addition to a drop in the level of public services.⁵⁴

So, as a result, tax competition acts as a game in which firms manipulate “the jurisdictions against each other,” choosing, at the end, the best offer to carry out their economic activities.⁵⁵

In this sense, it is worth highlighting the fundamental lesson of Reuven Avi-Yonah, for whom the result of international tax competition will eventually be dramatic. According to Avi-Yonah, the dispute between countries started with two historic movements: (i) suspension of withholding tax on gains on investments made by non-residents, as occurred in the U.S. in 1984, with its tax reform; (ii) tax benefits were established by developing countries, and some of them even created tax havens.⁵⁶

The first fact is linked to three different aspects of the U.S. economy:⁵⁷ (i) the tax reform adopted by the government of Ronald Reagan, in the movement to reduce the size of the government, with a reduction in the tax burden to attract investments, mainly from Japan; (ii) the tax treaty between the U.S. and Japan levied a withholding tax of 10% (ten percent) on gains on investments, while treaties with other countries did not levy any taxes; (iii) the U.S. terminated the treaty with the Netherlands to avoid paying tax on interest, solving both the government’s problem and the multinationals’ problem, also encouraging foreign investment in the country and facilitating access to funding without tax cost.⁵⁸

This practice of the U.S. government eventually led to this dispute that is nowadays labeled as tax competition, inaugurating the so-called “race to the bottom,” because soon after these U.S. measures, virtually all developed countries adopted the same practice, that is, “most developed countries levy no withholding tax on interest paid to non-resident on bank deposits, government and corporate bonds.”⁵⁹

Germany, for example, between 1988 and 1991 ended up being harmed by the taxation of gains on capital investments, incurring huge losses with the migration of funds to Luxembourg. As a consequence, Germany was forced to adopt a mechanism to solve the problem, keeping said taxes, but not on its residents, and allowing investors in Luxembourg to receive the same treatment as German residents.

The fact is that the reduction of taxes, directly or indirectly, leads to what the doctrine calls financial flows or capital flows, with tax systems being considered a structural data of the global market, although its influence on economic activities is limited.⁶⁰ This tax dispute, which, in a comparison to the market’s operation, involves the reduction in the “prices” that represent taxes and tax systems of countries, eventually benefits taxpayers, by reducing their obligations in countries with high taxation and good structure of public services, enabling tax planning and the adoption of evasive measures.⁶¹

Therefore, the issue ends up involving the so-called international tax planning, since major investors almost always create tax arrangements to reduce their tax burden, to the detriment of tax revenues of the countries in which they reside. Take, for example, an investor from a country that, through a company located in a tax haven, transfers his resources to the U.S. Even if there is treaty between the U.S. and his or her country of residence, it will be impossible, without the

help of the tax haven, with the issuance of financial information, to identify the operation and levy taxes. In this line of thought, studies have shown that, in the 1980s alone, Latin American countries transferred to developed countries between \$15 and \$60 billion a year, about \$300 billion of which entered as investment in the U.S. only.⁶² Developed countries, such as Germany and Japan, also ended up being involved in this capital mobility by virtue the measures aimed at granting preferential regimes, with the operation of resources in other countries and without taxation in their residences.⁶³

The second point, in turn, is related to the actual international economic integration, with the evolution of technology and communication, facilitating the exchanges between countries and the formation of a new market, aspects of globalization. The international tax competition is so evident that, in 1998 alone, when the OECD report on harmful tax competition was published, there were at least 103 countries using preferential tax regimes or advantages to attract investment. As a result, there has been an effective migration of tax bases, with an overall decrease in taxes on income and on capital, in view of the so-called mobility. And, at the opposite end of the scale, an extremely worrying fact has been the increase in the levy on less volatile bases, such as wages and consumption.

And the problem arises with this change in tax bases, because the taxation eventually leads to economic and social problems. After all, as emphasized by Avi-Yonah, high taxes on labor discourage work; high payroll taxes discourage job creation and contribute to unemployment; and high taxes on consumption of goods and services drive consumption overseas.⁶⁴

Avi-Yonah also argues that, since countries cannot tax the income of capital in light of this international movement, their only recourse is to cut social security nets and their public services, thereby creating a dilemma about globalization itself.⁶⁵

Thus, the so-called tax degradation involves the reduction in governmental tax revenues, which ultimately restricts the capacity to fund public policies, leading governments, due to the need for resources, to increase taxes on less volatile economic bases, especially, in this case, on the income of workers and on consumption, as previously seen.

Take, for example, the case of Russia, which, with the purpose of attracting investments and capital in the period of transition to market economy, eventually struggled with the unjustified granting of tax incentives, which culminated in ongoing problems with fiscal deficits and the famous 1998 crisis.⁶⁶

Other countries that underwent a transition also had to face the consequences of a misguided economic and fiscal policy, as in the case of Romania, which, besides granting tax incentives and direct subsidies to businesses in a non-transparent way, became known internationally for being tolerant towards tax delinquency, and this eventually also led to serious fiscal problems.⁶⁷

It was also shown that misguided policies eventually increased the fiscal problems of countries such as Bulgaria, Hungary, Poland and Slovenia.⁶⁸

Thus, there is the possibility⁶⁹ of an increase in unemployment rates and social problems, as well as the creation of economic inefficiencies, such as the change in the allocation of financial

resources only on the basis of tax considerations, leaving aside issues such as market size, political and economic structure of the states and manpower, among others.

Andreas Haufler presents three externalities resulting from the use of competition between countries: (i) the tax base externality; (ii) the tax exporting externality; and (iii) the terms of trade externality.⁷⁰ The first hypothesis has to do with the effects of the reduction and/or increase in the taxes of a country on its neighbors, which can lead to positive externalities for some economic players.⁷¹ The so-called tax exporting externality, in turn, occurs when foreigners derive benefits, in their countries of residence, from non-coordinated fiscal policies. Also according to Haufler, these non-coordinated fiscal policies lead to capital fluctuations and, with the reduction in taxes on profits, for example, negative externalities may be caused for neighboring countries, with the volatility of the tax base. With respect to the terms of trade externality, the taxation of certain activities can be used as a mechanism to influence prices in the international market, such as the prices of commodities, in favor of some countries and at the expense of foreign economic agents. And as Haufler warns, "countries can impose domestic taxes on capital in order to influence the world rate of return, i.e., the inter-temporal terms of trade."⁷²

All the situations described and exemplified by Haufler are understood, by the legal-economic doctrine, as failures of the so-called market mechanisms, because they ultimately distort the proper allocation of resources and change the tax policy of countries involved in the process of market integration. Every day, the literature, politicians and economists reiterate their concern over the constant migration of tax bases, because the states, in need of resources, have to maintain their revenues by levying taxes, more and more often, on less mobile bases, such as labor, wages, property and consumption.⁷³

Therefore, it becomes evident that international tax competition is one of the causes of the crisis under examination, because it prevents, in fact, the adoption of better criteria for inspection and taxation of interstate operations. If the capital moves more and more in a tax-free way, states are faced with the need to attract capital and, in order to maintain their financial structures (after all, they are fiscal states), they have to tax other bases, such as wages and consumption, generating tax regressiveness and economic and social inequality, as a more pragmatic consequence.

2 CRITICAL POSITION

The competition between companies increases by virtue of differences in the economic and fiscal structures of countries. And, if on the one hand, companies in developed countries benefit from globalization, on the other, they end up preferring to invest in countries with lower costs. Thus, the effects of globalization are highly asymmetrical.

The most immediate consequence of the competition between countries is the shift in the tax bases in many of these countries. That is, there has been more and more tax on less mobile bases, such as consumption, property and labor and, on the other hand, there has been less and less tax on capital and international investment. In the end, the ones that benefit are the large

international taxpayers, who, without thinking twice, transfer their resources to the most favorable tax environment, creating an economic and financial imbalance for countries that need to provide public services and ensure the basic rights of their citizens.

Every day, countries around the world have to find ways to keep their tax revenues, the financial surplus and the share in the global market of their economic agents. On one hand, there has been an increase in the international economic movement headed by transnational corporations. On the other hand, there has been a considerable increase in social exclusion, since the impoverishment of states leads to a reduction in wealth distribution policies, making it difficult to solve scarcity problems (that is why there is the allusion to social exclusion).

This process of increasing internationalization of companies and financial capital has forced states, including the most developed ones, to make tax reforms and to reduce public spending, in order to keep their territories attractive and competitive, by alleviating the taxation on investments. However, if these changes are poorly planned, they can lead to what experts call a fiscal degradation, with serious crises, as what happened in Russia, for example, with the impoverishment of countries and the regressiveness of taxation, which affects the economy and generates huge social distortions.

Based on everything that has been seen, it seems that, in addition to other equally important aspects (method of international regulation, control mechanisms, lack of liquidity, etc.), it is essential to correlate the global financial crisis with international tax competition. A consequence of globalization itself, the competition between countries to attract capital and investments eventually imposed obvious limitations on the sovereignty of countries, increasingly pushing supervision and taxation away from financial transactions, leading states, for the sake of survival, to levy higher taxes on less volatile economic bases, such as production, wages and domestic consumption. This ends up worsening the fiscal degradation of less developed countries, which, in an increasingly economically integrated world, become trapped in a real race to the bottom. This means that national states are and will increasingly be hostages to the global economic system, preventing them from providing, in the intended manner, public services and ensuring the welfare of their citizens. The lack of control over international financial businesses and the reduced regulation on international tax competition are also indisputable causes of the crisis, which, serving as the basis for changes at a global level, must lead to the imposition of greater control over capital mobility. Otherwise, it will be increasingly difficult for states to provide public services to ordinary people, with the "search for social rights" being driven away from material reality.

The granting of tax incentives and direct subsidies, instead of something harmful to countries, ends up being one of the only ways to keep them in the path of world investments. Eliminating tax incentives and/or subsidies means harming economic environments for competitors, because, in practice, all developed and developing countries grant state incentives to the market (despite the ranting against such incentives). If there is no effective global control, either by a body to be created or by the WTO itself, countries concerned with the growth of their economies should continue granting such incentives, otherwise, these countries may be left out

of the global economic process. However, such governmental incentives must not be granted without legitimacy criteria, such as equality (i.e., non-discrimination, in a more practical sense) vis-à-vis the free competition.⁷⁴

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NOTES

- 1 See Celso Furtado. *Transformação e crise na economia mundial*. São Paulo: Paz e Terra, 1987, p. 274.
- 2 See André Elali. *Concorrência fiscal internacional: a concessão de incentivos em face da integração econômica*. Recife: Faculdade de Direito da UFPE, 2009. *Doctoral thesis on Public Law and Internship and Research Scholarship in the Department of Intellectual Property, Competition and Tax Law from the Max-Planck Institute, Munich, Germany*.
- 3 See José Eduardo Faria. *Poucas certezas e muitas dúvidas: o direito depois da crise financeira*. Revista DIREITO GV. São Paulo: DIREITO GV, v. 5, n. 2, jul-dez 2009, pp.297-324.
- 4 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 299.
- 5 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 299.
- 6 See Celso Furtado. *Transformação e crise na economia mundial*. São Paulo: Paz e Terra, 1987, pp. 219-ss.
- 7 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 303.
- 8 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 313.
- 9 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 313.
- 10 See José Eduardo Faria. *Poucas Certezas e muitas dúvidas: o direito depois da crise financeira*, cit., p. 313.
- 11 See Manoel Gonçalves Ferreira Filho. *O Constitucionalismo e a conjuntura econômica mundial. Injunções do sistema global nas políticas públicas internas*. *Unpublished manuscript submitted by the author upon presentation of the topic of the same title in the 4th International Summit of Public Law held in Natal/RN, on June 4, 2009*.
- 12 See, sobre o tema, Paul Krugman. *A crise de 2008 e a economia da depressão*. Rio de Janeiro: Elsevier, 2009; Jeffrey A. Frieden. *Capitalismo Global - História Econômica e Política do Século XX*. Rio de Janeiro: Jorge Zahar, 2008.
- 13 See Luís Eduardo Schoueri. *Normas Tributárias Indutoras e Intervenção Econômica*. Rio de Janeiro: Forense, 2004.
- 14 See Vito Tanzi. *Taxation in a Integrating World*. Washington: The Brookings Institution, 1995, pp. 6-7.
- 15 See Ben. J. Keikebeld. *Harmful Tax Competition in the European Union*. The Netherlands: Kluwer Tax / Foundation for European Fiscal Studies - Erasmus University Rotterdam, 2004, pp. 3-4.

16 See John H. Mutti. Foreign Direct Investment and Tax Competition. *Washington: Institute for International Economics, 2003, p. 5.*

17 See Harald Baum. Globalizing Capital Markets and Possible Regulatory Responses. In: *Legal Aspects of Globalization - Conflicts of Law, Internet, Capital Markets and Insolvency in a Global Economy. Org.: Jürgen Basedow; Toshiyuki Kono. Hague: Kluwer Law International, 2000, pp. 79-80.*

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26 See Jagdish Bhagwati. In Defense of Globalization. *New York: Oxford University Press, 2007, p. 164.*

27 See Erich Kirchler. The Economic Psychology of Tax Behaviour. *New York: Cambridge University Press, 2007, p. 197.*

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30 See Reuven S. Avi-Yonah. Tax Competition, tax arbitrage, and the future of the international tax regime. In: *International Tax as International Law. New York: Cambridge University Press, 2007, p. 184.*

31 "Suppose a multinational entity is resident in country A, has its production facilities in country B, and sells its products in country C. Country C can only tax the MNE if it has a permanent establishment therein, and in the age of electronic commerce, that may be possible to avoid. Country B typically does not tax the MNE because it is a 'production tax haven', that is, a country that refrains from taxing production activities by MNEs while imposing a general corporate tax on domestic corporations. Country A also typically would not tax the resident MNE on a current basis because it is afraid that MNE headquarters will migrate to other countries (either by inversion-type transactions or by takeover by foreign MNEs) and of new MNEs being incorporated elsewhere. As a result, an MNE such as Intel ends up paying no tax at all on its foreign-source income (and if it can deduct stock options, also on its U. S.-source income)." See Reuven S. Avi-Yonah. Tax Competition, tax arbitrage, and the future of the international tax regime, *cit.*, pp. 184-185.

32 See Michael Keen; Alejandro Simone. Is Tax Competition Harming Developing Countries More than Developed? *34 Tax Notes International, p. 1317.*

33 See Brian Finegan. The Federal Subsidy Beast - the rise of a Supreme Power in a once a great democracy. *I. ed. Sun Valley: Alary Press, 2000, pp. 58-ss.*

34 See Daniel N. Shaviro. Taxes, Spending, and the U. S. Government's March Toward Bankruptcy. *New York: Cambridge University Press, 2007, p. 3.*

- 35 See Heleno Taveira Tôres. Tendências da tributação dos lucros e do investimento. In: *Revista Internacional de Direito Tributário* n. 4. Belo Horizonte: Del Rey, 2005, p. 33.
- 36 See José Casalta Nabais. A Soberania Fiscal no Actual Quadro de Internacionalização, Integração e Globalização Económicas. In: *Estudos de Direito Fiscal - Por um Estado Fiscal Suportável*. Coimbra: Almedina, 2005, p. 203.
- 37 See José Casalta Nabais. A Soberania Fiscal no Actual Quadro de Internacionalização, Integração e Globalização Económicas, *cit.*, p. 203.
- 38 See José Casalta Nabais. A Soberania Fiscal no Actual Quadro de Internacionalização, Integração e Globalização Económicas, *cit.*, p. 204.
- 39 See José Casalta Nabais. A Soberania Fiscal no Actual Quadro de Internacionalização, Integração e Globalização Económicas, *cit.*, p. 205.
- 40 See Carlo Pinto. Tax Competition and EU Law, *cit.*, p. 21.
- 41 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in an International Setting, *cit.*, p. 81.
- 42 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in an International Setting, *cit.*, pp. 66-68.
- 43 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in an International Setting, *cit.*, p. 69.
- 44 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in an International Setting, *cit.*, p. 70. No original: "How can this Smithian model be translated into the realm of fiscal competition in the international setting? It cannot."
- 45 See Peggy B. Musgrave. Merits and Demerits of Fiscal Competition. In: *Tax Policy in the Global Economy*, *cit.*, pp. 338-ss.
- 46 See F. Rocha Andrade, Concorrência Fiscal e Concorrência Fiscal Internacional na Tributação Directa do Capital, in: *Boletim de Ciências Económicas*, XLIV, 2001, p. 209-ss.
- 47 See John Douglas Wilson. Theories of Tax Competition. In: *Foundations of International Income Taxation*. Editor: Michael J. Graetz. New York: Foundation Press, 2003, p. 519.
- 48 See Eckhard Janeba. International Tax Competition. *Tübingen: Mohr Siebeck*, 1997, p. 13.
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- 50 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in an International Setting, *cit.*, p. 71.
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- 52 See Frances M. B. Lynch. Harmonization through Competition? The Evolution of Taxation in Post-War Europe. In: *Global Debates about Taxation*. Organizadores: Holger Nehring; Florian Schui. New York: PALGRAVE MACMILLAN, 2007, p. 131.
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- 54 See Franz Philipp Sutter. National Report Austria. In: *Tax Competition in Europe*, *cit.*, p. 156.
- 55 See John H. Mutti. Foreign Direct Investment and Tax Competition, *cit.*, p. 11.
- 56 See Reuven S. Avi-Yonah. Globalization, Tax Competition, and the Fiscal Crises of the Welfare State, *cit.*, p. 532.
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60 See Michael P. Devereaux. The OECD Harmful Tax Competition Initiative. In: *International Tax Competition - Globalisation and Fiscal Sovereignty*. Edited by Raijv Biswas. London: Marborough House, 2002, p. 98.

61 See Michael P. Devereaux. The OECD Harmful Tax Competition Initiative, *cit.*, pp. 99-100.

62 See Reuven S. Avi-Yonah. Globalization, Tax Competition, and the Fiscal Crises of the Welfare State, *cit.*, p. 537

63 See Reuven S. Avi-Yonah. Globalization, Tax Competition, and the Fiscal Crises of the Welfare State, *cit.*, p. 537.

64 See Reuven S. Avi-Yonah. Globalization, Tax Competition, and the Fiscal Crises of the Welfare State, *cit.*, p. 534.

65 See Reuven S. Avi-Yonah. Globalization, Tax Competition, and the Fiscal Crises of the Welfare State, *cit.*, p. 534.

66 See Gerard Turley. Transition, Taxation and the State. Aldershot: Atheneum Press, 2006, p. 148.

67 See Gerard Turley. Transition, Taxation and the State, *cit.*, pp. 63-64.

68 See Gerard Turley. Transition, Taxation and the State, *cit.*, p. 66.

69 See Peggy B. Musgrave; Richard A. Musgrave. Fiscal Coordination and Competition in na International Setting, *cit.*, pp. 68-69.

70 See Andreas Haufler. Taxation in a Global Economy, *cit.*, pp 31-33.

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73 See Andreas Haufler. Taxation in a Global Economy, *cit.*, p. 308.

74 The topic at hand us only an attempt to introduce the relationship between international fiscal competition and the problems affecting countries worldwide, with evident repercussions on economic and social rights.

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