

## ISONOMY IN TAXATION IN REURB-S PROJECTS

### *A ISONOMIA NA TRIBUTAÇÃO EM PROJETOS DE REURB-S*

Article received on: 08/09/2023

Article accepted on: 04/18/2024

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The authors declare no conflict of interest.

**Abstract**

If land and urban regularization is urgent in the cities of the global South, the same can be said about the tax treatment given to the beneficiaries of Urban Land Regularization of Social Interest (Reurb-S) projects. In this sense, the main goal of this research is to propose a model of municipal tax policy that is sensitive to the condition of those historically “invisible” in Brazilian cities. The methodology was based on exploratory qualitative research, which is necessary to lay the foundations and information that will allow us to arrive at the result. From a bibliographic and documentary review, it was possible to lay the foundations for

**Resumo**

*Se, nas cidades do Sul global, a regularização fundiária e urbanística é urgente, o mesmo pode ser dito sobre o tratamento tributário dispensado aos beneficiários dos projetos de Regularização Fundiária Urbana de Interesse Social (Reurb-S). Nesse sentido, esta pesquisa tem como objetivo principal propor um modelo de política tributária municipal sensível à condição daqueles historicamente “invisibilizados” das urbes brasileiras. A metodologia baseou-se em pesquisa qualitativa exploratória, necessária para expor as bases e as informações que viabilizem chegar ao resultado. A partir de uma revisão bibliográfica e documental, foi possível criar o alicerce à*



a fiscal policy proposal that is sensitive to the subjectivity of the vulnerable population that lives in Reurb-S areas. After carrying out the research, we observed that, with a bold exegetical effort, it is feasible to interconnect constitutional tax law with the normative plexus of urban-environmental law, concluding that, based on the principles of tax isonomy, of contributory and receptive capacity of municipal tax payers and the existential minimum, there are normative and principled foundations that make it feasible to implement taxation rules that promote tax and socio-spatial justice that is sensitive to the vulnerable population that inhabit parts of the informal city.

**Keywords:** contributive capacity; municipal taxation; Reurb-S; socio-spatial justice; tax equality.

*proposta de política fiscal sensível à subjetividade da população vulnerável que habita áreas de Reurb-S. Após o desenvolvimento da pesquisa, percebeu-se que, por meio de um arrojado esforço exegetico, é viável interconectar o Direito Constitucional-Tributário com o plexo normativo do Direito Urbano-Ambiental, concluindo-se que, com base nos princípios da isonomia tributária, da capacidade contributiva e receptiva dos contribuintes dos tributos municipais e do mínimo existencial, existem fundamentos normativos e principiológicos que viabilizam a elaboração de regras de tributação capazes de promover justiça tributária e socioespacial sensível à população vulnerável que habita as parcelas da “cidade informal”.*

**Palavras-chave:** capacidade contributiva; isonomia tributária; justiça socioespacial; Reurb-S; tributação municipal.

## Introduction

Urban areas in cities of the global South, such as those in Brazil, exhibit clear layers of inequality. This phenomenon arises from an urban policy paradigm that, rather than prioritizing the collective interests essential for a diverse, sustainable, and fair city, favors the economic interests of specific social actors shaping urban landscapes, which include owners of means of production, social movements, political entities, landholders, and real estate developers.

Therefore, in striving for socio-spatial justice in Brazilian cities, it is crucial to explore the potential utilization of all tools within the legal and principled framework of Brazilian Urban-Environmental Law, particularly focusing on tax mechanisms.

It remains evident that within Urban Land Regularization<sup>1</sup> of Social Interest (*Regularização Fundiária Urbana de Interesse Social* – Reurb-S)<sup>2</sup> initiatives, a

1 Henceforth, whenever the term “land regularization” or the acronym Reurb-S is mentioned in the text, it is to be understood that it also encompasses urban and environmental regularization, as outlined in Section XIV of Article 2 of the City Statute.

2 As per Section I of Article 13 of Law No. 13,465/2017, the Urban Land Regularization of Social Interest (Reurb-S) “applies to informal urban areas predominantly inhabited by low-income communities, as designated by an official decree from the municipal Executive Branch” (Brasil, 2017; free translation).

common feature is the presence of a socially vulnerable population with limited financial means to uphold their dignity. Consequently, there arises a necessity to deliberate on a differentiated tax treatment for beneficiaries of these programs, grounded in the concept of securing a basic standard of living (*status negativus*), guided by principles of tax fairness and the ability to contribute and receive.

Therefore, for initial comprehension, Urban Land Regularization (Reurb) comprises a series of legal, urban planning, environmental, and social measures aimed at integrating informal urban areas into urban land planning. Primarily, this involves issuing titles to guarantee tenure and property rights for residents.

Regrettably, many municipal tax administrations in Brazil overlook the fact that individuals benefiting from Reurb-S initiatives lack the financial capacity to support municipal tax collections (associated with formal urban services). Consequently, enforcing tax obligations may directly jeopardize the basic needs of these taxpayers, contravening Paragraph 1 of Article 145 of the Constitution.

From this standpoint, the primary objective of this article is to propose a foundational model for a municipal tax relief program tailored to beneficiaries of Reurb-S projects, a proposal rooted in principles of equality, capacity to contribute, and recognition of the minimal existential requirements for its beneficiaries' subsistence. Building upon this proposal, the aim is to provide these individuals with a tax regime that aligns with their circumstances, fostering fiscal fairness and facilitating their meaningful integration and sense of belonging within the urban community where they reside. The central question at hand is: How can a municipal tax benefit program be crafted within Reurb-S projects to facilitate the inclusion of beneficiaries into the city's roster of official taxpayers? This design must uphold principles of tax equality, contributory capacity, and acknowledgment of the existential minimum status, without disrupting the equilibrium of tax revenue.

To tackle this issue effectively, the following secondary objectives have been identified in alignment with the primary goal: (a) Analyze the functioning of municipal taxation in informal urban areas<sup>3</sup> (whether established or not) inhabited by low-income communities, with particular consideration for land rights concerning urban properties; (b) Propose a model for a municipal tax benefit policy applicable to areas undergoing Reurb-S initiatives, to be developed by principles of equality, contributory capacity, and acknowledgment of the *status negativus* of the existential minimum for beneficiary citizens.

To achieve the proposed primary objective, we employed an exploratory

<sup>3</sup> Article 11 of Law No. 13,465/2007.

qualitative research methodology, marked by a strong interdisciplinary approach essential for elucidating the foundations and information necessary to comprehend the perspectives of legal doctrine and higher courts regarding the current model of municipal taxation. This involved conducting bibliographical and documentary research to gather insights from legal scholars and analyze relevant documents and studies concerning the research topic. By doing so, a deeper understanding was gained regarding the underlying principles that support the proposal for differentiated taxation concerning municipal taxes for Reurb-S program beneficiaries, all while ensuring the preservation of municipal revenue balance.

Consequently, the article is structured into two main sections with a brief introduction and conclusions. The first delves into municipal taxation concerning Reurb-S program beneficiaries residing in informal urban areas inhabited by low-income populations, with a focus on the land rights aspect of urban properties. The second presents a prototype of a municipal tax policy sensitive to the unique circumstances of Reurb-S beneficiaries.

The significance of this research lies in its effort to stimulate academic and societal discourse and reflection, potentially leading to the formulation and adoption of municipal laws that embody the principles outlined in this article. Thus, it is evident and imperative to acknowledge the status of Reurb-S program beneficiaries, providing them with tax treatment that aligns with their unique circumstances. This approach is essential for fostering tax justice within the urban landscape, ensuring that these individuals become integral members of a city where their citizenship rights are safeguarded. With this goal in mind, there is an urgent need to contemplate a municipal fiscal policy program aimed at mitigating inequalities while adhering to the principles of tax equality and the capacity for both contribution and reception.

## **1 Municipal taxation 1 in informal urban centers in Brazil**

To start, it is crucial to recognize that Brazil's tax distribution regime is highly asymmetrical, leading to discrimination and unfairness. This system treats the entities within the Federative Republic of Brazil unequally in terms of accessing tax resources.

In simpler terms, despite the constitutional provisions aimed at equalizing tax revenues with mandatory transfers, such as the ICMS quota and Fundeb, a fiscal federalism model persists, which remains notably unbalanced, particularly concerning municipalities that are often perceived and treated as secondary entities.

The Federative State comprises entities with political, administrative, and financial autonomy, yet they lack the right to secede<sup>4</sup>. As noted by Silva (2006), despite the absence of hierarchical structuring within the federal organization, a stark contrast exists between the principles outlined in political science and the actual state of affairs within the Brazilian Federal State. Particularly concerning the assurance of financial autonomy for municipal entities—an essential characteristic of the Federative State—the asymmetrical distribution of tax resources not only undermines but often jeopardizes the autonomy of municipalities, potentially leading them to financial insolvency. In essence, it is simply not feasible to fulfill the demands of society and the constitutional obligations assigned to municipalities given the limited resources distributed to them under the existing fiscal federalism paradigm.

In Article 156 of the constitution, municipalities were granted the authority to levy taxes through their legislation. This includes the Urban Property and Territorial Tax (*Imposto Predial e Territorial Urbano* – IPTU) and the tax on *inter vivos* transfers of real estate, whether through purchase or any other transaction, including physical improvements or additions, and real property rights, excluding those serving as collateral. Additionally, municipalities have the power to impose the Real Estate Transfer Tax (*Imposto de Transmissão de Bens Imóveis* – ITBI) on assignments of rights related to real estate acquisitions.

As stated in Article 32 of the National Tax Code (*Código Tributário Nacional* – CTN), IPTU is applicable in scenarios involving ownership, possession, and beneficial use of urban property. Similarly, Article 35 of the CTN, which has been revised by the current Federal Constitution (FC) under Article 156, outlines the scenarios where ITBI applies, including the transfer (in any capacity) of ownership, beneficial use, and real rights over real estate (excluding real guarantee rights), as well as the assignment of rights related to transfers.

Therefore, if there is an unfair, unbalanced, and asymmetrical model for distributing tax revenue, municipal revenues, including those derived from IPTU, become crucial. They constitute, in theory, one of the largest and most significant sources of income within municipal finances<sup>5</sup>, along with revenue generated from

<sup>4</sup> In Brazil, not even a Constitutional Amendment can recognize the right to secession, as stated in Article 60, Paragraph 4: “No proposal of Constitutional Amendment shall be subject to deliberation if it has the tendency toward abolishing the: I – federalist form of State” (Brasil, 1988).

<sup>5</sup> According to Valentin (2023), smaller municipalities in São Paulo typically impose lower IPTU collections. One significant reason for this trend is the close proximity of municipal managers to taxpayer voters, particularly in smaller municipalities in São Paulo, who often face intense political pressure from groups of property owners to keep property taxes, such as IPTU, at low levels.

ITBI. It is important to emphasize that real estate tax has been a significant source of revenue for local entities globally, as noted by Carvalho Junior (2009). This applies not only to Brazil but also to various other regions around the world.

When it comes to property tax (IPTU), a key aspect to highlight is the various scenarios under which this tax is applied. It is important to emphasize that property<sup>6</sup> must inherently contribute to society in some way, regardless of its specific function. However, what is currently underscored is the housing function, which is a fundamental social right enshrined in Article 6 of the FC, as social justice can only truly prevail when everyone has access to adequate housing.

Moreover, IPTU is predominantly recognized in legal doctrine as a real tax (Furlan, 2004, p. 34), meaning it pertains primarily to a tangible object (urban property), thereby disregarding the subjective aspects of the taxpayer's legal-tax relationship. In another sense, as it is classified as a real tax, IPTU does not respect the personal characteristics of the taxpayer, notably their ability to contribute.

The classification of IPTU as a real tax is affirmed by Harada (2004, p. 17), who explains it as “a tax of real nature, which registers the economic availability of the property or its acquisition title” (free translation). Thus, the tax does not account for factors related to the conditions and attributes of the taxable individual, whether they are occupants, owners, or holders of beneficial interests, as these are deemed extra-legal elements, as highlighted by the aforementioned legal expert.

Still on the doctrinal classification regarding IPTU, according to Oliveira (2009, p. 268; free translation, emphasis added):

[...] IPTU is classified as a *direct tax* (typically, the burden is not shifted to a third party); it is a *real tax*, as it does not account for the specifics of the taxpayer but rather focuses on the taxable object; its primary characteristic is *fiscal* in nature, aiming to generate revenue for City Halls; it is a *proportional tax*, applying fixed rates based on the calculation base amount and may have a progressive nature.

Similar considerations apply to ITBI, regarded as a real tax by legal doctrine (Mangieri; Melo, 2015), as well as by the esteemed Federal Supreme Court (*Supremo Tribunal Federal* – STF), which solidified this understanding in Precedent 656: “The law that establishes progressive rates for the ‘*inter vivos*’ transfer tax on real estate—ITBI based on the market value of the property—is unconstitutional” (Brasil, 2003; free translation).

6 FC. Law No. 10,257/2001 (City Statute), Article 39: “Urban property fulfills its social function when it meets the essential requirements [...] of citizens concerning quality of life, social justice, and the promotion of economic activities, in accordance with the guidelines outlined in Article 2 of this Law” (Brasil, 2001; free translation).

Thus, if the Constitutional Court asserts that the principle of contributory capacity is implemented proportionally only concerning the sale price, it follows that ITBI is also viewed as a real tax that does not account for the taxpayer's identity, giving precedence to the property and its market value over the taxpayer's subjective capacity to fulfill tax obligations.

Consequently, it seems that both IPTU and ITBI are governed by a solid and established legal doctrine that disregards the personal characteristics of the taxpayer, particularly their ability to meet tax demands, due to their real tax nature.

As a result, during the imposition and collection of the taxes, the municipal tax administration does not take into consideration the personal attributes of the taxpayer, notably their ability to meet the demands of IPTU (a constitutional principle of contributory capacity). However, such an interpretation of the aforementioned taxes could exacerbate the glaring social injustice present in Brazilian cities, as will be elucidated throughout this article.

Drawing from the prevailing legal doctrine, the fundamental characteristics intrinsic to the taxation of IPTU and ITBI have been delineated, requiring an examination of the ramifications that this taxation model, reliant on real taxes, imposes on the lives of the respective taxpayers of these levies, who often reside in the most marginalized sectors of Brazilian urban areas, including informal settlements (*favelas*, or slums, and urban communities)—as defined by the Brazilian Institute of Geography and Statistics (IBGE)<sup>7</sup>—; Special Zones of Social Interest (Zonas Especiais de Interesse Social, ZEIS)<sup>8</sup>; and areas subject to, or that have undergone, the Reurb-S process.

In this context, when examining the patterns of land use and urban space occupancy in Brazilian cities, it becomes evident that the prevailing model of corporate urbanization, as described by Santos (2007), is inherently segregative. Consequently, it results in the displacement of economically disadvantaged individuals—often referred to as the socioeconomically vulnerable—towards the outskirts of urban areas. In such an unequal country, these individuals struggle to secure the necessary resources to meet their basic survival needs (existential minimum), often facing significant challenges or, in more severe cases, being unable to fulfill their municipal tax obligations (IPTU, ITBI, Improvement Contribution, and fees).

To illustrate this scenario, Nunes and Figueiredo Junior (2018) researched

7 FC. Methodological Note No. 01: Transition from Subnormal Settlements to Favelas and Urban Communities (IBGE, 2024).

8 The legal definition of ZEIS (item V of Article 47 of Law No. 11,977/2009) was invalidated by Law No. 13,465/2017, despite still incorporating the term “ZEIS” in certain provisions.

urban land regularization in the Nova Conquista neighborhood, situated in the municipality of São Mateus, in the state of Espírito Santo, revealing a population of low-income residents residing in an area lacking adequate infrastructure and urban amenities, which the city administration failed to provide. As a result, the Reurb-S process merely entailed the issuance of property documents, effectively categorizing the residents of that community as taxpayers liable for IPTU, despite the absence of genuine urban regularization.

Consequently, even though the area lacks adequate urban infrastructure<sup>9</sup> and is inhabited by citizens with limited contributory capacity, the municipality, exercising its governmental authority (*ius imperii*), continues to impose IPTU on the residents of the area. This approach blatantly disregards the provisions outlined in Paragraph 1 of Article 145 of the FC, completely overlooking the principle of contributory capacity and adhering to an interpretation aligned with the passive but unjust legal doctrine, which views IPTU as a real tax, as previously discussed.

In this context, Maricato's concept of the "informal city" (2009, p. 275; free translation) merits attention:

Excluded from the formal or market-driven city, the impoverished population occupies precisely those areas deemed unprofitable by the real estate market. These areas often include lands designated for environmental preservation, such as stream banks, floodplains, spring basins, mangroves, and forests. Environmentally fragile areas frequently become sites for low-income housing.

Thus, it is these marginalized citizens, relegated to the informal city (Maricato, 2009), who, following the principle of receptive capacity (Oliveira, 2010), require proportional attention from the state regarding their condition. In light of the principle of (tax) equality and the *receptive capacity* of citizens, it becomes evident that public resources must be allocated considering the lower contributory capacity of individuals. Those most in need should be prioritized by public authorities, with a greater allocation of resources aimed at ensuring the minimum necessary to uphold their dignity (Article 1 of the FC) and achieving the fundamental objectives outlined in Article 3 of the FC (Oliveira, 2010).

However, it is understood that this more favorable treatment for individuals most in need can also be realized through income exemptions (Article 150, Section 6 of the FC). In this scenario, municipalities can opt for negative provision (tax exemption), based on the *status negativus* of the existential minimum, thereby moving towards mitigating the socioeconomic and socio-spatial inequality so prevalent in Brazilian cities.

<sup>9</sup> The provision of urban infrastructure is paramount in ensuring the quality of life for residents in specific neighborhoods or areas of the city.



In line with the above, Torres' statement (2009, p. 69; free translation) is pertinent:

The issue of the existential minimum is often conflated with the problem of poverty itself. There is a right to minimum conditions of dignified human existence that should not be subject to tax imposition and necessitates positive state interventions. [...] The existential minimum, although lacking specific normative language, is encompassed within several constitutional principles.

Therefore, in addition to this doctrinal perspective, which advocates for positive benefits for the impoverished, municipal tax administrations can and should waive (negative benefit) a certain portion of tax revenues, originally borne by the most vulnerable individuals, to allow them to at least attain the existential minimum and, consequently, uphold the dignity of the human person.

On the contrary, if individuals with hypo-sufficiency are still burdened with tax obligations (such as IPTU, ITBI, Improvement Contribution, and Fees), there is a significant risk that they will not be able to maintain a dignified standard of living, which is fundamental to all human beings. Ultimately, they may face the agonizing decision of allocating their scarce financial resources towards purchasing essential items for themselves and their families' survival or contributing to the municipal treasury.

Therefore, if the conception of IPTU and ITBI as *real taxes* prevails, and consequently, the principle of contributory capacity is disregarded, it will undoubtedly undermine the principle of human dignity, contrary to the original intent of the constitutional framers when outlining the fundamental objectives of the Federative Republic of Brazil, particularly those outlined in Article 3, item III: "to eradicate poverty and marginalization and to reduce social and regional inequalities" (Brasil, 1988).

Despite the prevailing doctrinal understanding regarding the classification of IPTU and ITBI, dissenting voices persist in challenging the interpretation adopted by the majority and argue that these municipal taxes must align with the teleology emanating from the principle of contributory capacity (Article 145, Section 1 of the FC). As elucidated by Derzi (1988) and Coêlho (1982), cited by Furlan (2004), IPTU should consider contributory capacity and should be viewed as a personal tax.

Furthermore, regarding criticisms of the prevailing view that classifies IPTU and ITBI as real taxes, Becker's perspective (2013, p. 361) merits attention:

The legal relationship consists of two poles: the positive and the negative. The individual (whether natural or legal) is the sole permissible pole of legal relations.

Therefore, all legal relationships, including those that confer real rights to the active subject, are invariably interpersonal, occurring exclusively between individuals and never between an individual and an object.

From Becker's perspective (2013), the two taxes under analysis, despite being associated with certain real rights, cannot be deemed real taxes because both the taxpayer and the municipality occupy the poles of the legal tax relationship, rendering them inherently personal rather than real taxes. Therefore, considering the divergent thesis presented, if the substantive content of the IPTU and ITBI incidence hypotheses aims to ascertain the economic capacity to bear the tax burden, this implies that we are dealing with taxes of a personal nature. Consequently, both taxes must align with the provisions of Paragraph 1 of Article 145 of the FC.

Thus far, little attention has been given to the other taxes that municipalities can and should levy when the respective incidence hypotheses materialize, primarily due to the significant importance that IPTU and ITBI assume as auxiliary tools for urban policy in Brazilian cities. However, without shying away from discussing other taxes, some considerations are outlined below.

Regarding fees, it is essential to remember that they are a type of tax characterized by consideration, whether through the exercise of police power or the actual or potential provision of a public service. In this scenario, the taxpayer bearing the tax burden implies a state consideration, especially given that, according to Section 2 of Article 145 of the Brazilian Constitution, "fees cannot have their tax calculation basis" (Brazil, 1988).

The most significant aspect in this analysis of the impacts and consequences of taxation in informal urban centers in Brazil pertains to the fact that taxes need not adhere to the principle of contributory capacity due to their nature, as advocated by Moraes (2007, p. 222; free translation):

There is no correlation between the tax capacity linked to the rate and the taxpayer's economic capacity, as the tax is legally triggered by a state activity, rather than another factual situation that takes into account the taxpayer's personal (economic) data.

However, while upholding the doctrinal lesson mentioned above, it is crucial to emphasize that the same legal expert acknowledges that fees can serve an extra-fiscal purpose (Moraes, 2007), that is, municipalities can manipulate fees to achieve objectives beyond mere revenue collection, notably fiscal and socio-spatial justice, and ensuring the existential minimum for taxpayer-inhabitants. Therefore, fee collection should also be conducted to reduce various inequalities, such as socioeconomic, socio-spatial, environmental, and racial disparities.

On the other hand, the improvement contribution is a tax intended to capture real estate appreciation resulting from the completion of public works, as stipulated in Article 145, item III of the FC. According to Article 81 of the CTN, this tax is levied by any entity within the Republic “to cover the cost of public works resulting in real estate appreciation, with the total limit being the expenditure incurred and the individual limit being the increase in value resulting from the work for each benefited property” (Brasil, 1966; free translation).

Thus, the improvement contribution aims to recoup urban added value, serving as a “legal and constitutional mechanism for recovering gains from real estate appreciation” (Pereira, 2012, p. 208). It can function as an urban policy tool to finance urban development, particularly in a context of asymmetry in the distribution of tax revenues under the current fiscal federalism model, to promote socio-spatial justice in urban areas, which are often characterized by unfairness and segregation.

Furthermore, concerning the tax jurisdiction to institute the contribution, it is essential to note that it is a *sui generis* tax, falling under not only municipal jurisdiction but also federal and state, as specified in Article 81 of the CTN.

It is worth noting what the doctrine states regarding the relationship between the aforementioned tax and the taxpayer’s capacity to contribute. Ataliba (1964, p. 11) asserts that the “improvement contribution is the tax that burdens excess real estate values resulting from public works, without accounting for the contributory capacity” (free translation), being a tax linked to the property’s appreciation due to public works and not to the taxpayer’s personal circumstances. Therefore, Ataliba (1964) argues that this tax is not subject to the principle of contributory capacity.

With utmost respect to the aforementioned legal scholar but based on the thesis formulated by Becker (2013), it is understood that the consequence resulting from the occurrence of tax incidence will inevitably be borne by someone, namely, the taxpayer. This is because the legal-tax relationship involves two individuals at opposite sides—the tax authorities and the taxpayer/responsible party. Hence, the improvement contribution must also adhere to the principle of the contributory capacity of individuals residing in properties that have appreciated due to the completion of public works, particularly concerning taxpayers whose properties are situated in areas historically lacking infrastructure or located in favelas and urban communities (IBGE, 2024), within ZEIS or Reurb-S areas.

In alignment with Becker’s thesis (2013), Ribeiro (2010) understands that, although the ability to contribute is explicitly referenced only concerning taxes in

the Federal Constitution, it also extends to related taxes, such as fees, as per the understanding of the STF, and the improvement contribution.

Therefore, despite its potential as a tax<sup>10</sup> and urban policy tool for reclaiming urban surplus value, which can aid in the development of more equitable and sustainable cities, when its incidence applies to individuals in socially and economically vulnerable situations, residing in spaces of “urban invisibility” or, as Maricato (2009) describes, in the “informal city,” the improvement contribution must be applied with consideration to the subjectivity (contributory and receptive capacity) of those individuals benefiting from the public works. In this context, it becomes a matter of fiscal and socio-spatial justice.

Finally, concerning IPTU, ITBI, rates, and improvement contributions, with specific emphasis on the contributory capacity of taxpayers and the principle of equality—which serves as a guiding principle for the entire national legal system—it is imperative to recognize that individuals with low incomes residing in underprivileged areas of Brazilian cities, characterized by inadequate infrastructure, should receive a differentiated tax treatment that respects their unique circumstances.

Therefore, municipalities, as the privileged *locus* for implementing urban housing and land regularization policy, must use taxes that are within their sphere of tax competence as tools for social management of land appreciation (in an extra-fiscal bias), aiming to guarantee the well-being and access to the existential minimum for all its inhabitants.

## 2 Municipal tax policy sensitive to the subjectivity of “urban invisibles”: a proposal

The interconnectedness between urban planning law and Reurb-S has underscored the ramifications of the prevailing paradigm of municipal taxation, highlighting that municipal taxes can pose obstacles to ensuring the existential minimum for low-income families residing in areas where Reurb-S policies are being implemented or have been implemented. These projects often serve as instruments for exacerbating socio-spatial segregation<sup>11</sup>, as documented by Vieira and Vieira (2016, p. 227; free translation):

<sup>10</sup> It is evident that the improvement contribution primarily serves as a tax of an extra-fiscal nature, ultimately aimed at promoting socio-spatial justice by recuperating a portion of private enrichment acquired by some individuals for reinvestment in other urban areas.

<sup>11</sup> Socio-spatial segregation is a process that displaces inhabitants from central urban areas towards the ‘outskirts of the city’, namely the most peripheral areas, which often lack adequate infrastructure. This process reinforces the spatial separation of social classes within the city.

We firmly believe that IPTU (often classified as a prototypical real tax) can be customized to consider the taxpayer's specific circumstances. Failure to do so would disregard the principles of tax equality and, consequently, the contributory capacity, potentially exacerbating situations of socio-spatial segregation in Brazilian *urbes*.

The goal is to formulate a municipal tax policy proposal that respects the financial circumstances, namely, the profile and contributory capacity, of residents living in areas of the city where ZEIS are situated, and Reurb-S occurs. This aims to continuously strive towards achieving social justice and well-being for all *cidadinos*; after all, “the waiver of revenue through incentives, such as exemption from IPTU, can represent a significant stride in the development of a particular area” (Oliveira, 2010, p. 133; free translation).

Moreover, it is recognized that utilizing extra-fiscal measures serves as a crucial tool for addressing various issues, including those pertaining to urban and environmental concerns, as noted by Oliveira (2010, p. 303). “There are situations in which it is exceedingly fair, for instance, to exempt owners or occupants” (free translation) of properties occupied by individuals facing socioeconomic vulnerability from paying IPTU.

However, before proceeding with the aforementioned proposal, it is imperative to reaffirm the rationale behind it. As highlighted in the initial section, the current conventional model of municipal taxation disregards the individual circumstances of taxpayers, leading to a violation of the principles of tax equality and contributory capacity. Additionally, aligning the existing municipal tax paradigm with the urban policy outlined in the Federal Constitution is essential, which aims to foster urban development and ensure the well-being of all residents without exceptions.

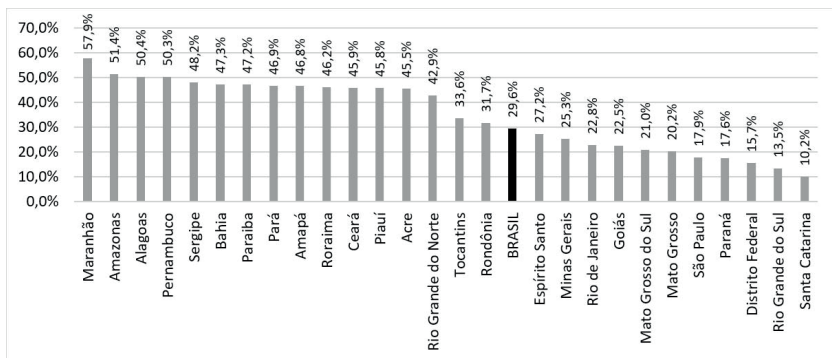
Therefore, a comprehensive examination of both the City Statute and Law No. 13,465/2017, which addresses rural and urban land regularization in Brazil, reveals additional justifying elements. These include the urban policy guidelines expressed in sections XIV and XV of Article 2 of the City Statute, which focus on land regularization, urbanization of areas inhabited by low-income populations, and the simplification of regulations regarding subdivisions, land use, occupation, and building standards.

Similarly, Article 290-A of Law No. 6,015 (Brazil, 1973), and Paragraph 1 of Article 13 of Law No. 13,465 (Brasil, 2017), stipulate that registration procedures related to Reurb-S are exempt from costs and fees. This exemption applies regardless of whether taxes or tax penalties have been paid, particularly in cases involving the initial registration of land legitimization and the establishment of

real property rights for beneficiaries of Reurb-S, registration of title legitimizing ownership, and its conversion.

Once again, it is evident that the legislature intends for beneficiaries of land regularization programs—specifically, those residing in informal urban settlements with low incomes—to receive lenient treatment that respects their socioeconomic status. This includes issuing instructions to real estate registration officers not to impede the completion of transactions involving real rights. This is because it is usual for municipal tax laws to mandate that such officials, before finalizing their actions, request evidence of payment of municipal taxes, particularly concerning IPTU and ITBI<sup>12</sup>.

It should also be noted that, in a country marked by significant regional inequality, it is imperative for municipalities situated in low-income regions to implement tax policies aimed at addressing this issue and offering essential support to families experiencing social and economic vulnerability. For instance, Chart 1 illustrates the stark social inequality among different states within the federation.



**Chart 1.** Proportion of individuals living in poverty<sup>13</sup> in 2021 by Federation Unit (%).

Source: adapted from Neri (2022).

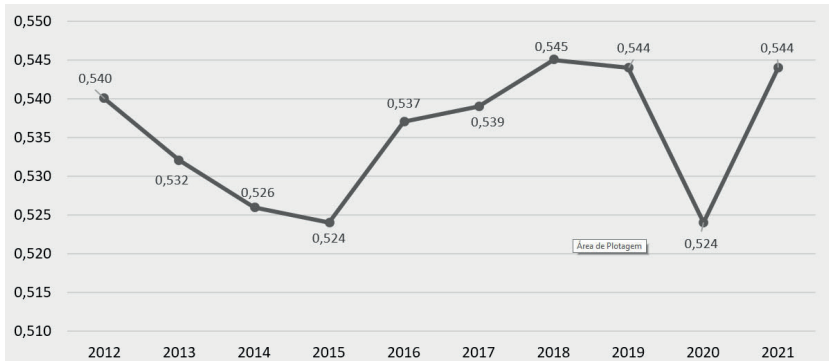
While only 10.16% of the population in the state of Santa Catarina falls under the poverty line, nearly 58% of residents in the state of Maranhão are classified as poor, according to the IBGE classification (2022) utilized by FGV Social (2022). This glaring discrepancy underscores a profound socioeconomic

<sup>12</sup> See Article 19 of Law No. 11,154 (São Paulo, 1991) and Article 15 of Ordinary Law No. 8,792 (Belém, 2010).

<sup>13</sup> It is important to mention that the study conducted by FGV Social lists as “poor” all individuals with a *per capita* household income of up to 497 reais per month (equivalent to approximately USD 5.50 per day).

inequality between regions, suggesting the existence of additional layers of inequality, such as socio-spatial disparities.

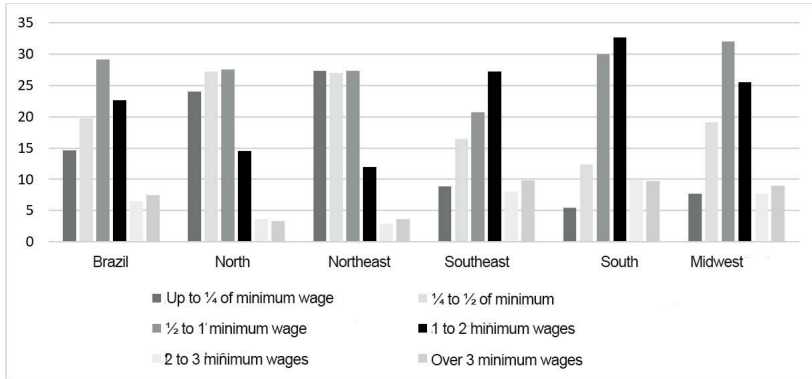
Likewise, analyzing the issue of inequality becomes more insightful with parameters such as the Gini index, researched and compiled by IBGE (2022), concerning *per capita* household income in Brazil, as illustrated in Chart 2.



**Chart 2.** Gini index of the distribution of *per capita* household income in Brazil (2012–2021).  
Source: adapted from IBGE (2023).

Chart 2 depicts the trajectory of the Gini index in Brazil from 2012 to 2021, providing an analysis of the evolution of income inequality during this timeframe. Remarkably, the years with the most favorable performance of the Gini index were 2015, marked by its lowest recorded value in the series at 0.524, and subsequently in 2022, following the implementation of government income transfer measures in response to the COVID-19 pandemic. In the last period analyzed, emergency benefits contributed to the index returning to its lowest level in the series, mirroring that of 2015, at 0.524. The chart underscores the substantial room for improvement in Brazil regarding inequality, aiming for the index to approach zero, an indicator of complete equality.

Additionally, focusing on data concerning major Brazilian regions, as depicted in Chart 3, sheds light on the level of monetary inequality between regions from 2012 to 2021 (IBGE, 2022).



**Chart 3.** Monetary inequality across the Major Regions (2012–2021).

Source: adapted from IBGE (2023).

The South Region exhibits the lowest income inequality, with a Gini index of 0.462 in 2021. In contrast, the Northeast Region reported a Gini index of 0.556 in the same year. Despite this, the Northeast Region harbors a significant portion of its population living in extreme poverty, signaling the urgent need for its municipalities to intensify efforts in reducing income inequality and underscoring the need for implementing an extra-fiscal tax policy that acknowledges this inequality, grounded in the principles of tax equality and contributory capacity.

Additionally, given that Brazilian municipalities consistently require financial resources, owing to the structure of the tax system resulting from the prevailing fiscal federalism model, any proposed modifications in tax policy must carefully consider this aspect of municipal reality. In essence, any modifications in tax legislation must ensure fiscal equalization. Failure to do so may lead to imbalances in municipal finances, resulting in reduced tax revenue that could impede the implementation of other crucial public policies.

However, the solution to this issue once again lies in the application of the principles of tax equality and contributory capacity. Just as it is necessary and justifiable to provide tax benefits (tax waivers) to low-income individuals residing in urban areas undergoing tax regularization, as previously discussed, it is also feasible to apply these same principles to justify increasing municipal taxes, particularly IPTU, for taxpayers with higher contributory capacity.

In light of the foregoing, we propose a municipal tax policy model aimed at benefiting residents in areas where land regularization projects are either underway or completed. To achieve this goal, a methodology has been selected to differentiate taxpayers based on their respective economic capabilities.



However, regarding the selection of criteria in research, it is crucial to consider Oliveira's reflection (2010, p. 121), wherein he asserts that "the fundamental aspect is the choice of the discrimination criterion used to differentiate the object of study. Classification can never be entirely certain. To us, what matters most is adopting a classification that is both useful and legally sound" (free translation). Additionally, Carrió's perspective (1973, p. 72) is noteworthy, highlighting that classifications

no son ni verdaderas, ni falsas, son serviciales o inútiles; sus ventajas o desventajas están supeditadas al interés que guía a quién las formula, y a su fecundidad para presentar un campo de conocimiento de una manera más fácilmente comprensible o más rica en consecuencias prácticas deseables<sup>14</sup>.

Furthermore, the criteria chosen by the authors aim to stimulate reflection and contribute to future research on the same subject, namely the establishment of a municipal tax policy that, while adhering to the principles of tax equality, contributory and receptive capacity, and ensuring the *status negativus* of the existential minimum, strives to achieve fiscal and socio-spatial justice.

Therefore, to facilitate comprehension of the ideas presented in this article, the criteria utilized by the Brazilian Institute of Geography and Statistics (IBGE, 2022) were selected as the foundation for preparing the proposal, as depicted in Table 1.

**Table 1.** Family income class<sup>15</sup>

Class	Family income (in minimum wages)	Family Income in Brazilian Real (BRL)
F	Up to ¼ of the minimum wage	Up to BRL 330.00
E	From ¼ up to ½ minimum wage	From BRL 331.00 to BRL 660.00
D	From ½ to 1 minimum wage	BRL 661.00 up to BRL 1,320.00
C	From 1 to 2 minimum wages	BRL 1,321.00 up to BRL 2,640.00
B	From 2 to 3 minimum wages	BRL 2,641.00 up to BRL 3,960.00
A	Over 3 minimum wages	BRL 3,961.00 or more

Note: The minimum wage of BRL 1,320.00 was considered, as approved by Provisional Measure No. 1,172/23 of 2023.

Source: adapted from IBGE (2022).

<sup>14</sup> Free translation: "Classifications are neither inherently true nor false; rather, their utility or lack thereof depends on the interests guiding any given formula. The effectiveness of a classification lies in its ability to present a field of knowledge in a manner that is easily understandable or enriched with desirable practical consequences".

<sup>15</sup> It is essential to differentiate between "household income" and "family income", as a household may encompass more than one family, thereby resulting in multiple family incomes within a single household. However, it is important to emphasize that the proposal outlined in this article utilizes family income as a parameter.

Accordingly, drawing upon the classification above and the data provided in Chart 3, a tax policy proposal has been formulated, grounded in the principles of tax equality and contributory capacity, as well as the existing normative framework within the Brazilian legal system (such as the Statute of the City and Law No. 13,465). Through a systematic interpretation, the aim is to foster comprehensive urban development and ensure the well-being of all inhabitants of Brazilian cities (Table 2).

**Table 2.** Proposal for municipal tax policy by economic stratification

Tax	F Class (PTR** beneficiaries) <sup>1617</sup>	E Class	D Class	C Class	B Class	A Class
IPTU	Full exemption	Full exemption	Full exemption	Partial taxation: 50%	Regular taxation	Regular taxation
ITBI	Full exemption	Full exemption	Full exemption	Partial taxation: 50%	Regular taxation	Regular taxation
CM*	Full exemption	Full exemption	Full exemption	Full exemption	Regular taxation	Regular taxation
Fees <sup>18</sup>	Full exemption	Full exemption	Full exemption	Regular taxation	Regular taxation	Regular taxation

\* Improvement contribution.

\*\* Income Transfer Program (Programa de Transferência de Renda, PTR).

Source: prepared by the authors.

Based on the classification utilized by IBGE (2022) as depicted in Chart 3, Table 2 has been prepared to illustrate the viability of establishing a municipal tax policy that considers the individual circumstances of taxpayers. Hence, it is evident that individuals classified in class F are recipients of income transfer programs, namely, individuals or families experiencing poverty or extreme poverty. They lack any contributory capacity to fulfill tax payments; otherwise, they risk losing all ability to access the existential minimum and uphold their dignity and livelihood.

<sup>16</sup> Federal, state, or municipal programs.

<sup>17</sup> Administrative poverty lines are established to identify eligible recipients for social programs. In the Brazilian context, major programs include BPC, *Bolsa Família*, and *CadÚnico*, all of which play significant roles in addressing poverty (IBGE, 2022).

<sup>18</sup> Fees whose triggering events are linked to the possession or ownership of property situated within the land regularization area. For instance, in Belém/PA, both the solid waste fee and the urbanization fee are levied, both of which are tied to urban property ownership.

If the prototype of municipal tax policy, as depicted in Table 2, forgives tax revenues through economic stratification, delineating families and/or individuals based on family income, it is reasonable to comprehend those categorizing beneficiaries of income transfer programs into class F is entirely justifiable. These individuals and families find themselves in a state of significant social and economic vulnerability, evidenced by their clear incapacity to contribute to the state through tax payments.

Consequently, imposing taxes on this group would endanger their ability to meet their basic needs and uphold their dignity. Therefore, non-taxation in this context upholds the citizen's right to be exempt from taxation due to their socio-economic status (*status negativus*), as elucidated by Torres (2009).

The failure to ensure the aforementioned *status* of the existential minimum will exacerbate socio-spatial segregation, as elucidated by Vieira and Vieira (2016), to the extent that citizens living in poverty, when subjected to charges by municipal tax authorities, will be compelled to sell their real estate, thereby fueling urban land speculation, forcing this population to relocate to more peripheral areas of the urban landscape, often characterized by precarious or nonexistent infrastructure.

On the other hand, classes D and E encompass families unable to access monetary transfer programs, with incomes ranging between  $\frac{1}{4}$  and  $\frac{1}{2}$  of the minimum wage (BRL 331.00 to BRL 660.00)<sup>19</sup> and between  $\frac{1}{2}$  and 1 minimum wage (BRL 661.00 to BRL 1,320.00), respectively, as indicated in Table 2. These classes will be shielded from taxation on IPTU, ITBI, Improvement Contributions, and fees. Socioeconomically, they find themselves in a situation very akin to those occupying class F—they are also vulnerable, and their food security, dignity, and lives would be jeopardized if compelled to pay municipal taxes.

Subsequently, it is determined that taxpayers (both individuals and families) within class C can bear some municipal taxation, particularly concerning IPTU and ITBI. However, when talking about taxation resulting from real estate appreciation (from the completion of public works), that is, taxation of the improvement contribution, it is understood that families with an income of one to two minimum wages live in spaces that, as a rule, were continually forgotten by state urban interventions, occupying territories with no or very little urban infrastructure, it can be said that these individuals are in the “informal city” (Maricato,

19 According to data from the Inter-Union Department of Statistics and Socioeconomic Studies (*Departamento Intersindical de Estatística e Estudos Socioeconômicos* – DIEESE, 2022), the minimum wage required in January 2023 to adequately meet the needs of a family of four is BRL 6,652.09.

2009). Consequently, those in class C should not bear the imposition of the improvement contribution tax. Otherwise, imposing the improvement contribution in such neglected areas, perpetually abandoned by the State, would be deemed a significant socio-spatial and, primarily, tax injustice.

Based on the teleology of the principle of contributory capacity as a corollary of tax equality, it is proposed that taxpayers in classes B and A (with incomes exceeding BRL 2,641.00), who occupy areas subject to land regularization projects, should bear a standard tax burden commensurate with their higher income compared to members of other classes (C, D, E, and F). According to Paragraph 1 of Article 145 of the Brazilian Constitution, those with the same contributory capacity should<sup>20</sup> bear an equal tax burden. Conversely, individuals with different incomes should bear different taxation according to their respective economic capabilities.

Unfortunately, concerning ITBI, as per Precedent 656 (Brasil, 2003), progressive taxation based on the market value of properties is deemed unconstitutional. Hence, the proposal outlined here maintains standard ITBI taxation for taxpayers in classes A and B. However, if the Supreme Federal Court (STF) were to reconsider this position, it would be reasonable to propose that taxation for classes A and B, regarding the transfer of real estate and real rights over real estate, should also align with the contributory capacity of taxpayers.

Regarding the collection of municipal taxes, except for taxpayers in or near the state of extreme poverty (classes D, E, and F), all taxpayers in other classes (A, B, and C), according to the proposed scheme, must fulfill their primary tax obligations. This is justified as the tax amounts are not substantial enough to jeopardize the guarantee of the existential minimum for these families.

An essential aspect, crucial to the advancement of this research, pertains to maintaining the balance of municipal tax revenues. Thus, while municipalities must, on one hand, forego a portion of their tax revenue due to the socioeconomic condition and consequent inability to contribute of beneficiaries of Reurb-S programs, on the other hand, the municipality must offset this tax exemption by increasing taxes for those taxpayers who, in other areas of the municipality, demonstrate wealth and, therefore, sufficient contributory capacity to bear a greater tax burden. This concrete application of the principle of tax equality frequently emphasized here, stands as one of the cornerstones of the proposal being presented.

Furthermore, based on the principles of contributory capacity and fiscal

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<sup>20</sup> The term “whenever possible” as stated in Paragraph 1 of Article 145 of the Brazilian Constitution (Brasil, 1988), must be redefined to be understood as compulsory.

equality, it is deemed appropriate for properties located in Reurb-S areas, occupied by legal entities, to bear an augmented tax burden. Similarly, other taxpayers with contributory capacity throughout the urban area of that specific municipality should also be subject to increased taxation. This increase aims to offset the tax exemptions granted to the most vulnerable residents living in favelas and urban communities (IBGE, 2024) where regularization projects are either planned or underway.

In conclusion, we highlight that the proposal outlined in this section serves as a starting point to stimulate discussion on the tax treatment of municipalities regarding low-income residents and families living in areas targeted by land regularization programs. The authors acknowledge that alternative proposals may emerge, and criticisms may be directed towards this prototype of a municipal tax policy sensitive to the vulnerability of Reurb-S project beneficiaries. However, as previously emphasized, it is crucial to foster reflection and debate on this issue, given its urgency and importance.

## Conclusion

Brazilian cities, much like those in peripheral capitalist countries, exhibit numerous inequalities: socioeconomic, socio-spatial, and environmental. Notably, informal urban centers emerge as crucial spaces for housing and community living for a significant portion of Brazil's vulnerable population.

Following the development of this research, it is announced that all initially proposed objectives have been achieved. This includes the analysis of how municipal taxation is conducted in informal urban centers, both consolidated and non-consolidated, occupied by low-income populations. Additionally, a prototype of fiscal policy sensitive to residents of Reurb-S projects has been developed.

Moreover, it is important to acknowledge that this research also carries a cross-cutting objective, observed throughout its implementation, of stimulating scholars, the general populace, and political stakeholders (such as council members and executives) to critically examine, question, and develop fresh perspectives on municipal tax policies.

In response to the research problem outlined in the introduction, while certain influential perspectives in legal theory advocate for municipal taxation to be implemented without considering the specific characteristics of residents in Reurb-S projects—positions rooted in a strictly positivist interpretation—there are also significant voices within legal scholarship, particularly within the teleology

of legal principles, that advocate for a municipal fiscal policy model aimed at fostering socio-spatial justice within the realms of Reurb-S implementation.

Hence, the proposal presented herein, grounded in a systematic interpretation of the current legal framework, is underpinned by the principles of tax equality—integral to the entire Brazilian legal system—the principle of contributory capacity, and its corollary, the principle of receptive capacity. Additionally, it takes into account the *status negativus* of the existential minimum, wherein the State refrains from demanding tax exaction when it jeopardizes the dignity and life of the taxpayer-citizen.

In this way, drawing from a classification rooted in the income levels of Brazilian families, highlighting monetary disparities across the country's regions, the municipal fiscal policy proposal delineated in section 2 of this article was crafted. This proposal was marked by a genuine and systematic concern to simultaneously: (a) promote fiscal and socio-spatial justice through the extra-fiscal use of municipal taxes; and (b) maintain the balance of municipal finances, establishing a fiscal policy concept.

Lastly, it is crucial to highlight that the prototype of a municipal tax policy attuned to the needs of the “invisible” residents within Reurb-S project environments, along with the concerns above, are grounded in the principles of tax equality, the contributory capacity of municipal taxpayers, and the existential minimum. This represents a significant exegetical endeavor aimed at systematically bridging Constitutional Tax Law with the normative framework of Urban-Environmental Law. Additionally, the authors extend their willingness to engage with contributions and critiques. Genuine scientific progress is realized when individuals dare to propose theses, fostering discourse, reflection, and the exploration of related ideas.

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### **How to mention this article (ABNT):**

VIEIRA, B. S.; VIEIRA, I. T.; TUPIASSU, L. Isonomy in taxation in REURB-S projects. *Veredas do Direito*, Belo Horizonte, v. 21, e212614, 2024. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2614>. Access on: Month. day, year.