

Chapter 46

Brazilian tax incest: a reflection on taxation in the country



<https://doi.org/10.56238/methofocusinterv1-046>

Carlos Antonio Da Silva

Economist and Bachelor of Law from Estácio de Sá University - RJ,
Specialist in Business Law at The Getulio Vargas Foundation.
Specialist in Tax Law, Unisul University of Santa Catarina

ABSTRACT

It is a reflection of taxation in the Brazilian territory. An enlightening instrument to guide the practice or a possible reformulation of the model

Keywords: Icms, Tributary Incest, Imports.

1 INTRODUCTION

Brazil is one of the most creative countries in the world and surprising in tax matters, which should not be confused with the creative sector of the economy, certainly, the creative has to renew itself to find ways to continue spreading in the new context of the new times.

In this sense a clear example of this creativity that borders on the "Tax Incest", nor Sigmund Freud, could explain, by abandoning the logic, morals, and guilt contained in the construction of our legal system, where creator and creature are confused and relate to each other, in this sense, we can indicate the calculation of the Goods Circulation Tax (ICMS) incident on imports.

Continuing it is important to clarify that the ICMS is one of several taxes that affect imports, where purchases above **US\$ 3,000.00 (Three thousand U.S. dollars)**, began to be considered as being a Legal Entity, whose incidence will occur in formal import, above this amount.

It is worth remembering that the ICMS is defined in the Federal Constitution of 1988, being regulated by Complementary Law 87/96, legislation, and subsequent agreements. When importing the ICMS focuses when there is the entry of goods imported from abroad by a natural or legal person, even when it is goods intended for consumption or permanent assets of the companies.

In this context, to correctly determine the ICMS on the importation, it is necessary to identify some basic concepts about the calculation of this tax, established, such as the generating fact of the ICMS on the import to be considered at the time of customs clearance of goods. It focuses on the entry of goods or goods imported from abroad by a natural or legal person, even if it is not a habitual taxpayer of the tax, whatever its purpose.

On the other hand, regarding the ICMS calculation base, although this tax is established by each Federative Unit, the regulations have similar tax characteristics. There is differentiation with some rates, in

most, in general, the rules are valid for the entire National Territory. As for the composition of the calculation basis of the ICMS, the value of the goods contained in the import document Value of goods at the Place of Unloading (VMLD) should be considered, plus the value of import taxes. Any other taxes, fees, contributions, and customs expenses should also be included.

To evaluate in addition to all the expenses that make up the calculation base, which is the ICMS itself, is already contained in its base. This may seem a little confusing, because if I need the basis of calculation to calculate the ICMS and the ICMS to find the basis of calculation, (something similar to the history of the egg and chicken), in this case, we should operate a mathematical alchemy, "practice focused on the transformations of matter that combines different sciences", to facilitate understanding in general, we will use the formula of the following calculation basis:

$$\text{VMLD} + \text{II} + \text{IPI} + \text{PIS} + \text{COFINS} + \text{SISCOMEX} + \text{AFRMM} + \text{FINES} + \text{ICMS}.$$

We can then initially, for each of the items, sum all the values without the ICMS. Let's call this sum "ICMS Calculation Base before ICMS".

We will have VMLD (with freight and insurance) + II + IPI + PFINS + COFINS + Siscomex + AFRMM + Fines if any.

Once this value is found, we can divide it by $(1 - \text{ICMS rate})$, to find its real base. For example, suppose the ICMS rate (already with - State Fund to Combat Poverty - FECFP embedded) is 20%. In this case, we should divide the "ICMS Calculation Base before ICMS" by 0.80, i.e. $(1-0.20)$, to find the actual ICMS calculation basis. If the rate is 18%, we divide by 0.82, which is: $(1-0.18)$, and so on, therefore, just apply the rate on this basis to find the ICMS value. "Defined here clearly the Brazilian tax incest, an act condemned by morals, law, religion, and society."

2 PRACTICAL CALCULATION OF ICMS

Continuing, let's assume that all expenses (VMLD, II, IPI, PIS, COFINS, Siscomex Fee, AFRMM, and Customs Expenses) total R\$ 100,000.00. (One hundred thousand reais); If the ICMS rate is 20%, and the value of the goods is R\$ 100,000.00 the ICMS will not be R\$ 20,000.00, that is, $(\text{R\$ } 100,000.00 \times 0.20)$, because as The ICMS is contained in its base, one must first determine the calculation basis, dividing the total expenses so far by 1 (one) minus its rate, as follows:

Example: $\text{R\$ } 100,000.00 / (1 - 20\%) = \text{R\$ } 100,000.00 / (0.80) = \text{R\$ } 125,000.00.$

With the calculation base found, then you can apply the aliquot to reach the ICMS value on import as follows:

$$\checkmark \text{ R\$ } 125,000.00 \times 20\% = \text{R\$ } 25,000.00.$$

3 CONCLUSION

After this exposure, the calculation base is the legal dimension of the materiality of the tax and should maintain a correlation with the incidence hypothesis. The tax is part of its calculation base, the rate paid by consumers is higher than that contained in the tax document, is lost in transparency, and the population does not know how much it pays the tax in reality. Therefore, if there is no possibility of raising the tax rate, not to create conflicts, discreetly we will create something unusual, completely out of the ordinary, the incidence of the tax on itself, there being no birth of the tax obligation, we will give the Brazilian way of making the creator become a creature, rises discreetly to the base and consequently increase the value of the tax and thus increases the collection for the general happiness of the nation.

REFERENCES

BRASIL. Presidência da República. Constituição Federal de 1988. Presidência da República. Casa Civil. Subchefia para Assuntos Jurídicos. Disponível em:

https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

BRASIL. Presidência da República. Decreto nº 6.759, de 05 de fevereiro de 2009. Disponível em:

https://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6759.htm

BRASIL. Presidência da República. Regulamenta a tributação, a fiscalização, a arrecadação e a administração do Imposto sobre a Renda e Proventos de Qualquer Natureza. Disponível em:

https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/d9580.htm

BRASIL. Presidência da República. Instrução Normativa RFB nº 1781 de 29 de Dezembro de Instrução Normativa RFB nº 1781 de 29 de Dezembro de 2017. Disponível em:

<http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=89204>

BRASIL. Presidência da República. Lei complementar 87/96. Dispõe sobre o imposto dos Estados e do Distrito Federal sobre operações relativas à circulação de mercadorias e sobre prestações de serviços de transporte interestadual e intermunicipal e de comunicação, e dá outras providências. (LEI KANDIR). Disponível em: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp87.htm

GOVERNO ESTADO RIO DE JANEIRO. Regulamento ICMS. Disponível em:

http://www.fazenda.rj.gov.br/sefaz/faces/menu_structure/legislacao/legislacao-estadual-navigation/coluna2/RegulamentoDoICMS;jsessionid=xLuinL2Dm526wR-_zUve1b6hsJF3bl_UqMd8eH4nKr50btPTiOO!369449463?_afLoop=92539293844224979&_afrWindowMode=0&_afrWindowId=null&_adf.ctrl-state=zogupatqa_1

GREENE R. As Leis da Natureza Humana. Editora Planeta Estratégia; 1ª edição (1 julho 2021) Ebook.

Disponível em: <https://www.amazon.com.br/leis-natureza-humana-Robert-Greene/dp/6555353686?asin=B096G3BF96&revisionId=d1ecc66e&format=1&depth=1>