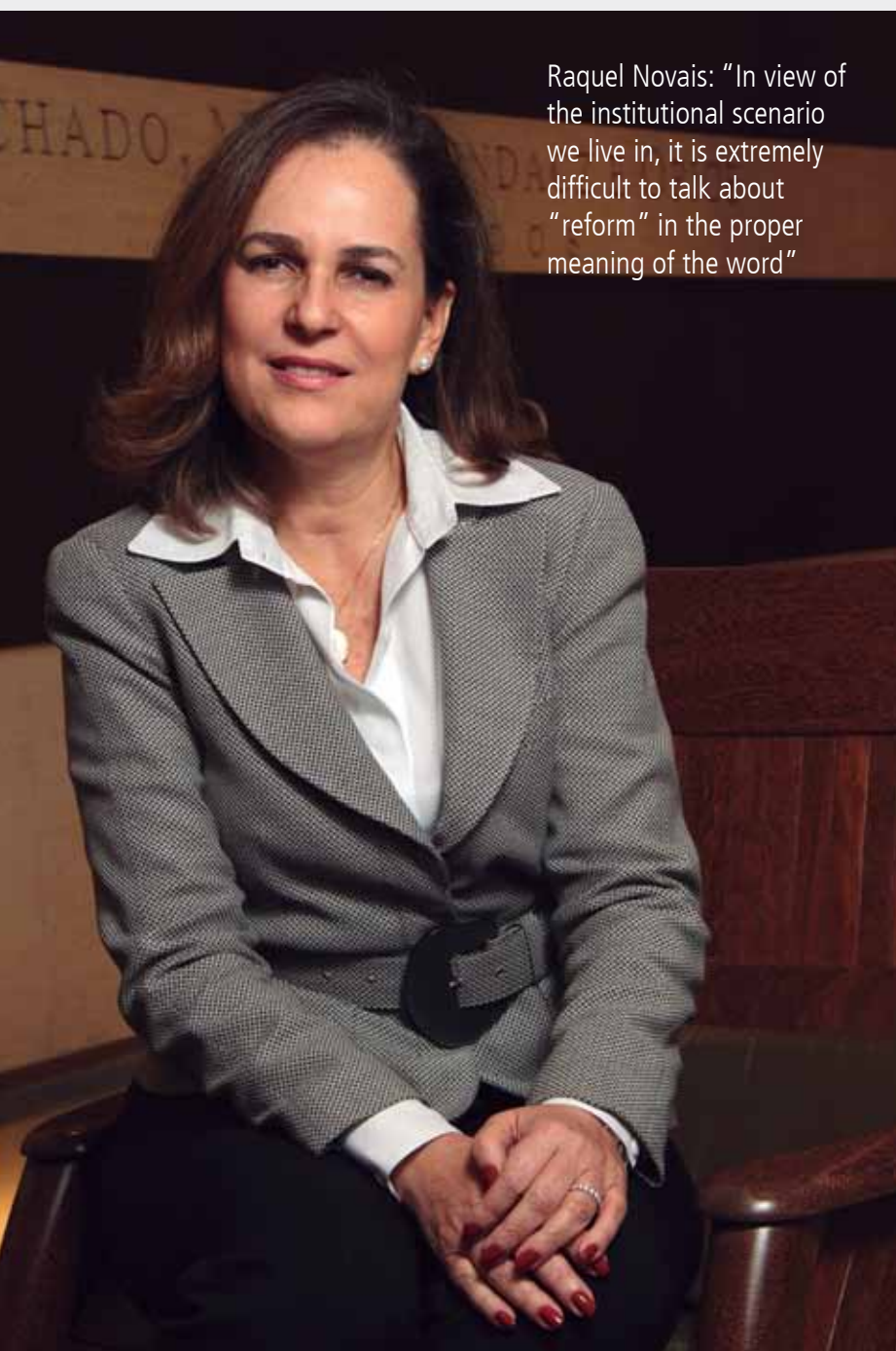


By Caroline Martin  
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# The costly Brazilian tax burden



Raquel Novais: "In view of the institutional scenario we live in, it is extremely difficult to talk about "reform" in the proper meaning of the word"

DISCLOSURE

According to the Brazilian Institute of Tax Planning (IBPT), R\$ 700 billion were collected in taxes by the public safes until the end of last June. The amount is only a statement of a tax burden which, at the moment, is in a level near 34% of the Gross Domestic Product (GDP), according to data from the Court of Audit (TCU).

Whenever evaluated alone, the index is not high enough to frighten. The tax burden of the countries which are members of the Organization for Economic Cooperation and Development (OECD) is approximately 35%. The problem arises when one compares the Brazilian situation to nations with similar taxes. "We support a taxation level equivalent to the level of countries like Germany and the United Kingdom, and higher than Canada, New Zealand, United States and Japan; however we have to spend an additional part of our earnings to pay for education, health, safety and retirement pension, services which should be provided with similar quality", points out the attorney Raquel Novais, who was a judge in the Taxes and Fees Court of São Paulo in 1994.

A partner of the Machado, Meyer, Sendacz and Opice Lawyers office, Raquel believes that the real Brazilian tax burden is related to the insecurity in interpreting the complex and wide existing legislation, associated with the inconstancy of jurisprudence. In this month Interview, the lawyer makes a full diagnosis of the imbalance that affects the economic development of the country and points ways to remedy the situation.

The historical central government inoperance in promoting effective public policies for the regional development contributes to the fiscal war between the States”

**O Papel** – Which factors still stiffen the long-awaited tax reform in the country?

**Raquel Novais** – We have a tax planning strongly concentrated in the Federal Constitution. In this area, the 1988 Constitution was extremely thorough, leading to the point of exhibiting no less than 45 provisions dedicated to the regulation of the Tax on Circulation of Goods and Services (ICMS), for example. This induces extreme rigidity to any attempt to modify the tax legislation. Add to this fact the difficulty of political alignment for the necessary consensus around matters that interfere in tax collection of the States members. In view of the institutional scenario we live in, it is extremely difficult to talk about “reform” in the proper meaning of the word. A viable approach, being suggested by experts and even by some government sectors, consists of specific improvements, initially. Even in an infra-constitutional context, there is a lot to be done.

**O Papel** – Which are your expectations about the government of President Dilma? Is there any possibility of the start up of a tax reform in the next months?

**Raquel** – The government idea of changing the tax legislation through specific projects, which does not comprise polemic issues – like the form of collection of ICMS and the creation of restrictions to the competence of the States and the Federal District to legislate over such tax – may be a more effective solution to approve faster some important measures which aim at simplifying, rationalizing and modernizing the tax system. However, after so many frustrated attempts of establishing a real tax reform, it is natural that the subject is faced with some skepticism, particularly considering that all the matters are, by definition, polemic. This is the case of the proposal for reducing the costs of the pay roll. Although there is a consensus on the necessity of the measure, remains to define in which areas, based on which taxes, a respective counterpart budget will come up. Whatever the matter is, there is no way to run away from the imperative agglutination of political desire.

**O Papel** – Talking about polemic questions, which motives initiate the fiscal war between the Brazilian States?

**Raquel** – Among the many and well known causes of the fiscal war, is the one which consists of the imbalance between the many regions and States related to the offer of infraestrutura of installation, qualified labor, access to raw materials and to the market, as well as distance of the large consumption centers. This whole pack

comes with the historical central government inoperance in promoting effective public policies for the regional development, enabling some States to use such instrument of authentic “self-protection” to attract investments to their territories. From the normative point of view, the causes are linked to two aspects: assign to the State members (sub national entities) the competence for charging the main tax on consumption and foster the “principle of origin” – a factor that concentrates the fiscal impact in the State where the company that runs the output operation is located, enabling the local governments to negotiate the conditions and, eventually, the ICMS mandatory collection itself. Changing any of those mentioned premises, in a tax reform movement, would be enough to eliminate or at least reduce dramatically the problem, but the political-institutional factors block this kind of change.

**O Papel** – Which would be, then, the alternatives to solve the obstacle?

**Raquel** – Recently, the Superior Courts returned to the direct confrontation of the subject. Decisions taken by the Federal Superior Court (STF) declared as unconstitutional a series of state benefits, as well as imposed limits to the disallowance of credits mechanism, a reaction of the destination States which was only sharpening the fiscal war. This attitude definition already forces a movement of composition between the local governments. We know that, in a certain level, conceding fiscal benefits is justifiable and is not, by itself, forbidden by the Federal Constitution. A simple measure, therefore, would be softening the unanimity rule (Article. 2º, § 2.º of LC 24/75), required for the approval of benefits within the scope of the National Council of Fiscal Policy (Confaz). Such measure would allow a better composition among the States and could be allied to the pre-definition of some criteria and levels of incentives granting. These would be achievements that would not ask for constitutional modifications and would already solve a significant part of the problem.

**O Papel** – Whilst the solution is not put into practice, can the ICMS benefits to imports offered by Paraná, Santa Catarina, Goiás and Pernambuco states bring losses to the local industry?

**Raquel** – In terms. In spite of the known arguments about a supposed offense to the competition equilibrium, one can observe that the fiscal benefits are offered as a counterpart to a deficit local structure, under

the perspective of production infrastructure and of the access to the markets. The problem for the local industry lies, actually, in the legal uncertainty that is around the whole discussion: the companies which decide to settle down in poles enjoying such incentives remain at the mercy of a revocation (or invalidation) at any time, without any warranty that the costs of the investment will ever be reimbursed. On the other hand, the buyers of products sold by those companies in other States are at gunpoint from imminent fines which aim at the disallowance of the used credits. The recent intervention of the Judiciary Power in the matter may minimize new attempts of the States in the sphere, but does not solve the initial problem, related to the deep regional inequality, neither the insecurity of the contributors that made significant investments in these regions.

**O Papel** – Taking the international taxation as an example, which country could be a reference to Brazil?

**Raquel** – Without any doubts, the United States. Like Brazil, it's a federation, with continental dimensions and

pretty populous (more than 300 million inhabitants). However, the tax system is not an obstacle for the internal consumption, neither for the growth of the North American multinational companies, for instance. It is possible to illustrate the efficiency of the North American tax system through the rules which allow that the profits of the US companies earned abroad are taxed only at the moment these values return to the United States – diversely of what happens in Brazil, whose rules require the anticipation of the taxation of the profits earned abroad by controlled or affiliate companies. This way, the multinational North American companies are subject to, in a first moment, only the taxes of the country where they are located, competing in a totally isonomic way against the local companies; on the other hand, Brazilian companies operating abroad must compute not only the taxes due at the production site, but also the taxes due in Brazil, regardless the economic achievement of such richness. This mechanism, which limits the resources for new investments, consists in a clear competitive obstacle to the Brazilian companies in the world scenario. ■

“Brazilian companies operating abroad must compute not only the taxes due at the production site, but also the taxes due in Brazil. This mechanism becomes a clear competitive obstacle.

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