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BRAZILIAN ECOLOGICAL REFORM ON ENERGY TAXATION: A JURIDICAL ANALYSIS  
THROUGH THE GERMAN EXPERIENCE

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## **Brazilian ecological reform on energy taxation: a juridical analysis through the German experience**

The search for new ways to mitigate environmental impacts and to improve population's quality of life has intensified the use of tax law instruments to secure sustainable development. The increase of economic dependence on energy, the depletable nature of oil and gas reserves and the negative influence of their use on climate change have turned the energy sector into the core of economic related environmental protection. This sector is still the main target of indirect instruments to protect the environment such as taxation.

Aim of the study is to critically review concrete examples of environmental taxes in Germany and Brazil – German eco-taxes and the Brazilian fuel contribution – considering their similar tax systems and different development stages. The study findings are not only a timely contribution to the ongoing environmental tax reforms in Brazil and Germany, but they can also inform policy making and assist jurisdiction in these countries as well as in other countries facing similar challenges.

An ecological tax reform specifically demands a change in technology and/or consumer preferences in order to achieve a sustainable reallocation of resources. In this context the method analyzed was the adoption of a complementary tax following the German example of increasing the burden of polluters in form of a pigouvian tax, indirectly taxing the consumption of environmentally harmful products or services.

Germany began its big ecological tax reform in 1999 with the introduction of the so called eco-taxes (*Ökosteuern*): a tax on electricity (*Stromsteuer*) and a raise on the existent oil tax (*Mineralölsteuer*). Based on the model of *Pigou*-taxation, German eco-taxes increase the price of energy consumption while its revenue is used to subsidize social contributions. This leads to a general tax relief for employers. In this way, the German eco-tax promotes a shift to environmental friendly energy consumption whilst enabling the reduction of the tax burden on companies in a so called “double dividend”. The current problems faced by German scholars concerning ecological tax reform are

focused on its negative effects on competitiveness of German companies in the European and global market.

In Brazil an ecological reform has not yet materialized despite the constitutional advances in environmental law - specially brought by Art. 225 of its Federal Constitution from 1988. The levy on the use of fossil fuels – the special contribution called CIDE-Combustíveis – introduced in 2001 was not created as an eco-tax, but has benefic effects on the environment. Studies show however that the CIDE-Combustíveis has failed in practice in achieving its ecological goal. Despite the Brazilian Supreme Court's confirmation of the constitutional admissibility of the fuel tax, there are several juridical technicalities that throw its constitutional acceptability in doubt such as the binding use of its revenue to finance the transport sector - measures that usually harm the environment – among others.

The introduction of a new eco-tax in the Brazilian tax system resembling the German eco-taxes or even a genuinely green tax with its revenue bound to financing environmental protection can't be sustained in the context of the constitutional tax system and its principle of non-binding of taxes' revenue – differing from fees and contributions. These other levy types can and do play an important role in environmental protection, but their constitutionally restricted use does not reach a wide range of the population and does not allow a flexible use of its revenue in the field of environmental protection.

In conclusion a stepwise reform approach is welcomed by the Brazilian constitution and should progressively increase public acceptance and public environmental awareness. However, even a minimal ecological tax reform in Brazil faces the urgency of a more comprehensive tax reform which should address problems as the inequitable distribution of the tax burden and the politically motivated maintenance of a complex tax system and regulations, making it a problematic legislative challenge.