

**THE APPLICATION OF THE PRINCIPLE OF CONTRIBUTORY CAPACITY IN  
INDIRECT TAXATION OF FOOD AS AN INSTRUMENT OF PUBLIC POLICIES TO  
REDUCE SOCIAL INEQUALITIES.**

**A APLICAÇÃO DO PRINCÍPIO DA CAPACIDADE CONTRIBUTIVA NA  
TRIBUTAÇÃO INDIRETA DO ALIMENTO COMO INSTRUMENTO DE POLÍTICAS  
PÚBLICAS DE REDUÇÃO DAS DESIGUALDADES SOCIAIS.**

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**ABSTRACT:** The purpose of this article is to examine how to enable the application of the contributory capacity principle (primarily concerning indirect taxation), considering its flawed constitutional wording, as an instrument of public policy aimed at protecting taxpayers from the taxation of food as a component of the minimum essential and the promotion of policies to reduce social inequalities, resulting in the social inclusion of those who qualify for it. In this context, the issue at hand is: How to enable the application of the principle of contributory capacity (primarily in terms of indirect taxation), given its flawed constitutional wording, as an instrument of public policy aimed at protecting the minimum essential and promoting the social inclusion of those who fall within its scope? For the development of this article, a qualitative, documentary, and bibliographical research approach was adopted, employing deductive reasoning as the chosen method of analysis and the monographic method as the procedural approach. The results indicate that by using tax mechanisms that allow for the application of the principle of contributory capacity in indirect taxes on food that forms part of the minimum essential, the application of this principle can serve as a tool for reducing social inequalities and, consequently, social inclusion. This is because it would prevent an exacerbation of inequalities and allow for the allocation of the collected funds towards investments in education, culture, and information. These investments have the potential to enhance people's lives, thereby enabling equality of opportunities.

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**Keywords:** Public policies; Principle of contributory capacity; Protection of the minimum essential, Reduction of social inequalities, Indirect taxation.

**RESUMO:** O objetivo do presente artigo é verificar como viabilizar a aplicação do princípio da capacidade contributiva (fundamentalmente quanto à tributação indireta), tendo em vista sua lacunosa redação constitucional, como instrumento de política pública que vise a proteção do contribuinte face a tributação do alimento como elemento do mínimo existencial e a promoção de políticas de redução das desigualdades sociais, acarretando na inclusão social daqueles que nele se enquadram. Neste contexto, a problemática é: Como viabilizar a aplicação do princípio da capacidade contributiva (fundamentalmente quanto à tributação indireta), tendo em vista sua lacunosa redação constitucional, como instrumento de política pública que vise a proteção do mínimo existencial e a promoção da inclusão social daqueles que nele se enquadram? Para a elaboração do presente artigo, pesquisa desenvolvida foi qualitativa do tipo documental bibliográfica, o método de abordagem escolhido foi o dedutivo e como método de procedimento foi adotado o método monográfico. Os resultados alcançados foram que ao utilizar os mecanismos tributários que permitem a aplicação do princípio da capacidade contributiva nos tributos indiretos que incidem sobre o alimento que compõe o mínimo existencial, a aplicação do referido princípio será instrumento de promoção de redução das desigualdades sociais e conseqüentemente de inclusão social, tendo em vista que evitaria um acirramento das desigualdades além de permitir, com o valor arrecadado, aplicação em investimentos na educação, cultura e informação, investimentos capazes de melhorar a vida das pessoas possibilitando igualdade de condições.

**Palavras-chave:** Políticas públicas; Princípio da capacidade contributiva; Proteção ao mínimo existencial; Redução das desigualdades sociais; Tributação Indireta.

## **INTRODUCTION**

In addition to wealth concentration, another factor that exacerbates social inequality is taxation when it does not meet the criteria of fiscal justice. In other words, if those with a lower capacity are taxed more and those with a greater capacity are taxed less, it will result in an increase in social inequality.

In this context, considering that taxes are the primary source of State revenue and that fiscal adjustments are a topic of debate due to resource scarcity, it is important to analyze the tax system with fiscal justice as a criterion. In light of this context, one should not refrain from discussing topics such as the principle of contributory capacity,

property protection, protection of the minimum essential, and public policies within the tax sphere in order to achieve fair taxation and reduce social inequalities.

Given the principle of contributory capacity, in which the tax burden is imposed on citizens in accordance with their ability to pay, and considering the limitations imposed by the minimum essential and the prohibition of confiscation, it is evident that there is a need to further investigate the application of the principle of contributory capacity to indirect taxes.

It should be noted, however, that the concept of the minimum essential is ambiguous and vague. Therefore, it is necessary to provide a delimitation, and for this purpose, food will be used as an integral component of it.

In this sense, considering social inequalities, the unfair distribution of wealth in Brazil, and the embedded taxation in prices and services intended for general consumption, as well as the primary purpose of fiscal justice in the Brazilian tax system, based on the provisions of the Brazilian Constitution, which, in Article 3, Section III, mandates the eradication of poverty and marginalization, and the reduction of social inequalities, the question arises: How can the application of the principle of contributory capacity be made feasible (particularly in the context of indirect taxation), given its flawed constitutional wording, as an instrument of public policy aimed at protecting the minimum essential and promoting the social inclusion of those who fall within its scope?

Therefore, the aim of this article is to examine how to enable the implementation of the principle of contributory capacity (primarily concerning indirect taxation), given its flawed constitutional wording, as an instrument of public policy aimed at protecting taxpayers from taxation on food as an element of the minimum essential and the promotion of policies to reduce social inequalities, leading to the social inclusion of those who fall within its scope.

The research will be a qualitative documental bibliographic study (both national and foreign) and will consider relevant national legislation and legal studies that are pertinent to the central subject of the research. Furthermore, this work will use a deductive method of approach and a monographic method as the procedural method.

For the development of this study, it will be divided into three fundamental points. Firstly, the relationship between the principle of contributory capacity, the minimum essential, and human dignity will be analyzed. Next, the importance of the

“food parcel” will be demonstrated to delimit the concept of essential minimum, which is ambiguous and vague. Then, indirect taxation on food will be examined to understand the mechanisms of achieving fiscal justice related to these taxes and to determine how to apply the principle of contributory capacity to indirect taxes on food. Only then can we gain an understanding of its relationship with the reduction of social inequalities.

## **1 CONTRIBUTORY CAPACITY AND THE PROTECTION OF THE MINIMUM ESSENTIAL: FOOD AS A RESPONSE TO THE FLAWED DEFINITION OF THE MINIMUM ESSENTIAL**

As we have seen, the principle of contributory capacity is an instrument of fiscal justice, considering that, according to this principle, only those who have the ability to fulfill the said tax should be burdened. We should be reminded that the principle of contributory capacity is bounded by the minimum essential and the prevention of confiscation. Therefore, it is of paramount importance to analyze the relationship between the principle of contributory capacity and the respect for the minimum essential and human dignity.

Klaus Tipke brilliantly elucidates the existing relationship between the minimum essential, human dignity, and contributory capacity, explaining that the minimum essential arises from human dignity, with contributory capacity being an instrument for protecting the minimum essential. This protection should be pursued regardless of the model adopted by the State, as follows:

The principle of contributory capacity protects the minimum essential. As long as income does not exceed the minimum essential, there is no contributory capacity. The same arises from human dignity and the principle of the Welfare State. The principle of contributory capacity serves both principles. In a Liberal State, it is not permitted for the minimum essential to be subtracted by taxation, either partially or completely, and compensation to be provided in the form of social benefits. The

State cannot, as a Tax State, subtract what it must return as a Welfare State. (TIPKE, 2002, p. 34)

In addressing the protection of human dignity and the minimum essential, Silva highlights the relationship between this protection and the principle of contributory capacity. In order to demonstrate this relationship, it is emphasized that in a Democratic State of Law, which is the model of the State adopted in Brazil, "the idea that a citizen may be deprived of a minimum essential by being forced to pay taxes cannot be conceived, as the principle of human dignity prohibits it" (SILVA, 2010, p. 96). Therefore, fiscal demands must not disregard what is indispensable for a citizen's survival, in accordance with the concept of human dignity. It is further added that "when taxation is in line with the economic capacity of the taxpayers, the taxation of the minimum necessary for their existence is being avoided" (SILVA, 2010, p. 96).

The author also highlights the need to limit taxation conditioned to the existential minimum, arguing:

As it was determined that the tax system should be based on taxation that takes into account an individual's income, it was also recognized that there is a need for a limitation that is conditioned on the minimum amount that each person requires for their existence (SILVA, 2010, p. 100).

To dispel any doubts about the necessity of limiting taxation based on the minimum each person requires for their existence, the author cites José Ricardo Meirelles, who stated, "the goods necessary to satisfy the elementary needs of life should be excluded from tax imposition" (SILVA, 2010, p. 100).

Regarding the protection of the existential minimum and human dignity, Silva explains that the legislator should be guided by the minimum essential and the prevention of confiscation as limits for taxation, ensuring that taxation does not compromise the minimum for subsistence and does not exceed the maximum imposition. This way, the taxpayer is not deprived of the minimum necessary for a dignified existence, and their assets are not expropriated by taxation.

Ricci has a similar understanding and emphasizes that the ability to contribute is a prerequisite for taxation. Only a citizen displaying wealth should be compelled to contribute to state expenses. Furthermore, not every display of wealth indicates taxable wealth. The author employs Derzi's teachings to reinforce the argument that the minimum essential serves as the defining parameter for where contributory capacity begins, stating:

From a subjective standpoint, contributory capacity only begins after deducting the necessary expenses for maintaining a dignified existence for the taxpayer and their family. These mandatory personal expenditures (such as food, clothing, housing, healthcare, dependents, taking into account the taxpayer's family and personal relationships, etc.) should be covered by economic income, even in the case of taxes on property, inheritances, and donations, which are not available for tax payment (RICCI, 2015, p. 108).

Regina Helena Costa also emphasized that, in assessing contributory capacity in a specific case, the resources used for one's maintenance should be excluded. She stated, "We believe it is imperative to emphasize that this concept also implies that the expenses necessary for the maintenance of the taxpayer, whether an individual or a legal entity, should be deductible" (COSTA, 2012, p. 71). The author concludes, reinforcing the understanding that contributory capacity is only relevant if the taxpayer earns any wealth beyond the "vital minimum," which is untouchable.

Therefore, it appears that there is a relationship between the contributory capacity, the essential minimum and human dignity, while these would be the indicators of where the contributory capacity begins and at the same time act as limits to the imposition of tax burdens.

This is also the viewpoint of Edilson Pereira Nobre Junior, as he states,

Another principle not unrelated to contributory capacity is that of human dignity. Drawing inspiration from the Universal Declaration of Human Rights, adopted by the United Nations

General Assembly on December 10, 1948, as a response to the Nazi-fascist barbarism, it has been guiding contemporary constitutional systems by recognizing the human being as the center and purpose of the law. In our context, it is embraced as a fundamental value of the Democratic State of Law (Article 1, III, Constitution) (NOBRE JÚNIOR, 2001, p. 39).

Furthermore, regarding the relationship between contributory capacity, the minimum essential, and human dignity, Pawlowsky contemplates that the existential minimum extends far beyond the expenses used to maintain an individual's needs, encompassing also the wealth employed to satisfy the needs of their family. This suggests that the existential minimum is associated with the principles of human dignity, family protection, and equality.

Such consideration is crucial to determine which portion of wealth should be deemed suitable for contributing to public expenditures. Only the portion of wealth that exceeds what is used to meet the basic needs for a dignified life for citizens and their families can be considered as contributory capacity.

In this context, the ability to contribute is only “achieved after deducting expenses related to the existential, individual and family minimum” (PAWLOWSKY, 2012, p. 138).

Clearly, taxation should be demanded based on each individual's ability to pay, ensuring it does not harm their livelihood or their family's. Therefore, income and assets required for the satisfaction of basic needs should not be considered as capacity to contribute to public expenditures.

As a logical consequence of this line of thought, several authors argue that as the ability to contribute only begins after the resources necessary to satisfy the basic needs of the individual and their family, the portion of wealth used for this purpose is non-taxable.

Among the scholars who defend the non-taxability of resources intended to guarantee a dignified life, Carrazza is noteworthy. He argues:

On the other hand, the economic resources essential to satisfying people's basic needs (minimum vital), guaranteed by

the Constitution, especially in its Articles 6 and 7 (food, clothing, leisure, culture, health, education, social security, transportation, etc.), cannot be reached by taxes. Such resources must be safeguarded by the careful creation of non-incidence situations or through timely, legislatively authorized deductions. (CARRAZZA, 2013, p. 116-117)

Conti is also one of the scholars who advocate for the aforementioned non-taxability, stating that it is "unconstitutional to impose taxation on a specific manifestation of a taxpayer's economic capacity that affects the resources they would allocate to their basic needs, essential for ensuring their survival" (CONTI, 1997, p. 63).

According to Vasconcelos (2012), the exclusion from taxation of resources intended to promote human dignity and the minimum for the existence of the individual is a duty arising from tax justice, considering that in these situations the citizen is unable to contribute, as he does not have the capacity to contribute.

Furthermore, regarding the non-taxability of resources allocated to safeguard the minimum subsistence, the author says:

Another principle considered by scholars as the basis of existential protection is human dignity. It demands that the Welfare State provide minimally dignified living conditions for its citizens, enabling their full development as individuals. In this context, the government can both take positive actions by ensuring the implementation of public policies, for example, aimed at reducing poverty, and refrain from interfering in the financial sphere of the citizen by not collecting taxes from those who do not have the economic means to contribute, thus respecting the limit set for subsistence protection (VASCONCELOS, 2012, p. 98).

He concludes by stating that the relationship between the minimum existential and human dignity is clear, and he recognizes the role of applying the contributory capacity in the state's protection of the vital minimum and human dignity.

In a similar line of thought, Melo states that “the existential minimum can be verified as a kind of hard core that limits the action of the State's taxing power” (MELO, 2012, p. 122), and as a result of this limitation he argues that the state cannot tax the resources used by the taxpayer to exercise their right to health, leisure, education, housing, and food.

Based on the extensive doctrinal discussion presented, it can be inferred that in assessing contributory capacity, the wealth allocated to ensure the minimum essential and human dignity should not be considered, and, consequently, this wealth should not be subject to taxation. In this context, several authors argue that the principle of contributory capacity serves as an instrument for protecting the minimum essential and human dignity.

On another note, Ricci criticizes the current tax system, which has a high tax burden on consumption. In the author's words, in the Brazilian tax system whose “taxation focuses, predominantly, on consumption and the income of minimum wage workers, it seems utopic to talk about an existential minimum” (RICCI, 2015, p. 109). In this context, the author states that the protection of the existential minimum would not be effective and “remains a dead letter within tax law books” (RICCI, 2015, p. 109).

Furthermore, even though the majority opinion understands that capacity to pay is an effective instrument for protecting the vital minimum and human dignity, it is important to note that the concept of the vital minimum is not universally agreed upon in doctrine. There is also a lack of consensus regarding which elements or rights constitute this minimum for a dignified life. Additionally, the lack of a constitutional provision defining its content further complicates the matter.

In relation to the vagueness of the definition of the minimum essential and the lack of express provision for this definition in the Federal Constitution, Melo (2012) compares the minimum essential to the principle of contributory capacity, explaining that both are imprecise, vague, and open concepts. However, contributory capacity is expressly provided for in the Constitution, while the minimum essential has no express provision in the Constitution, not even a written mention of the term. He concludes that

the content of the minimum essential is derived from a systematic interpretation of the constitutional text.

In the same line of thought, Vasconcelos (2012, p. 86) debates that "in the current Brazilian Constitution, the principle, unlike what happened in the 1946 and 1967 constitutions, is not expressly stated but has been deduced as an unfolding of other principles provided in the constitutional text", pointing out as an example of principles that derive from the definition of the vital minimum, the dignity of the human person, equality and the eradication of poverty.

It is worth highlighting that the difficulty in defining the content of the existential minimum implies a difficulty in measuring the wealth used to meet the basic needs of the individual and their family, therefore the difficulty of delimiting the beginning of the contributory capacity is manifested, i.e. , the difficulty in identifying the portion of wealth that is intended to guarantee a dignified life makes measuring contributory capacity unfeasible.

Gregório comments on the difficulty in measuring the existential minimum in the following way:

In addition, just as with the prohibition of confiscation, the challenge faced by legal professionals in assessing the minimum essential was primarily related to its measurement. When recognizing it, there is an obligation to develop elements capable of defining what constitutes the minimum essential of a citizen (GREGÓRIO, 2011, p. 139).

Tools must then be sought to overcome the difficulties in applying the principle of contributory capacity due to the difficulty of measuring it, which arises from the difficulty in defining the content of the minimum essential.

According to Vasconcelos (2012), "a question of extreme relevance is to identify the minimum essential in relation to the nature of the protected assets" (VASCONCELOS, 2012, p. 86). Therefore, due to the vagueness and imprecision of the content of the minimum essential, it is necessary to define which elements constitute this existential minimum. This definition should be made from both an objective and a subjective perspective.

Subsequently, Vasconcelos explains how to define the content of the existential minimum both objectively and subjectively, stating:

Fundamentally, from the perspective of the objective element, it is understood that this minimum should be a legal asset that expresses the capacity to satisfy a basic, elemental need for human survival. Therefore, a luxury car or a bottle of champagne, for example, cannot be evaluated as a minimum essential, as they are not considered vital for meeting an urgent need. On the other hand, expenses for the purchase of medicines, basic food items, and resources required for the funding of basic education, for instance, should be protected from the taxing power of the state (VASCONCELOS, 2012, p. 87).

Given the lack of an express provision in the current Federal Constitution regarding the content of the minimum essential and the need to define the elements that constitute it, it falls to the infraconstitutional legislator to play this important role in defining them. They must not forget to consider constitutional guidelines and values while undertaking this crucial task.

The considerations presented so far demonstrate how broad the content of the existential minimum is, and it must then be delimited by pointing out which elements make up the existential minimum. Thus, the present work delimited the study of the protection of the existential minimum from food as an integral element of it.

In this context, given the delimitation presented in this work, we emphasize the importance of the “food parcel”, as this is the most important asset for low-income families, with almost all of these families' income being used to purchase the items that constitute the basket.

Reiterating the importance of the infraconstitutional legislator in defining the elements that constitute the minimum essential and within the context of the significance of the “food parcel”, it should be noted that the legislator defined the “food parcel” in Federal Law No. 185/1936. This was subsequently regulated by Decree Law No. 399/1938, which defined the products in the “food parcel” and their quantities according to the reality of each Brazilian region. Later, the list of products and

quantities was updated by DIESSE (Inter-Union Department of Socioeconomic Statistics and Studies).

Appropriately, Galli emphasizes the importance of the “food parcel”, as the food that makes it up is "considered minimum for the population to live with dignity, and not be in need" (GALLI, 2015, p. 41). She defines it as "the name given to a set of basic foods consumed by the population during the month" (GALLI, 2015, p. 41). To conclude the discussion on “food parcel”, the author uses DIESSE to point out the elements that make it up: meat, milk, beans, rice, flour, potatoes, tomatoes, bread, coffee, sugar, oil, butter and fruits such as bananas and apples.

## **2 MECHANISMS THAT ALLOW THE APPLICATION OF THE PRINCIPLE OF CONTRIBUTORY CAPACITY TO INDIRECT TAXATION ON BASIC FOODSTUFFS IN THE “FOOD PARCEL”.**

As discussed in the previous section, the content of the minimum essential is quite extensive, and it is necessary to delimit it by identifying the elements that constitute it. To address the problem of ambiguity and vagueness regarding the existential minimum, we have used food as a defining element. We have also emphasized the role of infraconstitutional legislation in filling gaps in the Constitution and identified which foods fall under this protection, highlighting the importance and components of “food parcel”.

Having overcome this issue, we will now attempt to answer the question of how to apply the principle of contributory capacity to indirect taxes that apply to the food items that constitute the minimum existential. In the case of indirect taxes, contributory capacity is realized through selectivity, where a lower tax burden is imposed on essential products, and a higher tax burden is applied to more non-essential products.

Initially we will deal with selectivity as a response to the difficulty of applying the principle that is the subject of this work. Buffon (2009) defines selectivity as:

Through the application of selective tax rates, essential goods for subsistence could be subject to lower tax rates or even exempt from taxation, while non-essential goods could be taxed at higher rates. This approach aligns consumption with a reasonable way

to structure indirect taxes according to the taxpayer's capacity to pay (BUFFON, 2009, p. 213).

Conti presents a different concept of selectivity, although this concept does not diverge or contradict the previous one, adding that “selectivity is, as can be seen, an excellent way in which the principle of contributory capacity applies to indirect taxes” (CONTI, 1997, p. 68) and concludes that “the application of the principle of contributory capacity, with regard to indirect taxes, is intrinsically linked to selectivity due to essentiality” (CONTI, 1997, p. 68).

It should be noted that this position is criticized in Brazilian legal doctrine. The main argument against it is that the use of selectivity leads to regressive taxation, which does not align with the guidelines of the principle of contributory capacity and tax justice.

Furthermore, as there is no way to assess the taxpayer's economic capacity, selectivity alone will not guarantee the protection of the existential minimum and human dignity, in other words, in indirect taxes, even if selectivity is applied, situations may occur in which taxation, even if very lenient, could harm the existential minimum and the dignity of a given citizen to the extent that taxation is being borne by people who have very low income and who are even unable to acquire sufficient food for their subsistence or their family's.

Therefore, it is ideal that when taxing food items that are part of the minimum essential, particularly those in “food parcels” and considered essential for an individual's subsistence, there should be tax relief. This can be achieved through tax exemptions, zero tax rates, or tax immunities introduced into the Federal Constitution through constitutional amendments.

In this sense, Galli maintains that “the exemption of food from the food parcel, those that are essential, of primary necessity for the survival of human beings, a constitutional guarantee for the existential minimum is viable” (GALLI, 2015, p.41).

In the same vein, we highlight the teachings of Regina Helena Costa:

From the considerations provided so far regarding the “minimum essential,” it can already be inferred that the topic is closely related to another, previously discussed, which is the concept of

"indirect imposition" or "tax repercussion" because it refers to the consumption of goods. Certainly, articles of primary necessity are consumed by people of all economic classes. However, ignoring the principle in this particular case would be neglecting a requirement of tax justice since, in such taxes, the taxable event is not related to the consumer's wealth. Therefore, the best solution is to exempt these mentioned goods from this imposition as a way to comply with the principle (COSTA, 2012, p. 73-74).

Corroborating the understanding that it is imperative to reduce the tax rate on basic necessities, Santos (2011) highlights the importance of a fiscal policy that includes the exemption of essential products for the subsistence of low-income families and emphasizes the modification proposals legislation worked on by Tomich that aims to exempt these products.

The work of Tomich et al. (1997), for example, presents three legislative change proposals aiming for tax benefits on products that would be part of "food parcels" in Brazilian states. The first one relates to Constitutional Amendment Proposal No. 46/95, which would limit the power to tax products in "food parcels", mainly concerning ICMS and IPI cases. However, being a constitutional amendment, it would depend on the approval of a Complementary Law, which did not happen. The second case concerns Resolution No. 85/1996 presented in the Federal Senate, which proposed minimum tax rates on food products in "food parcels" in state operations (1% to 1.5%). According to the Federal Constitution, the Federal Senate can only set maximum ICMS rates in cases of state conflicts, so it did not make progress toward its goal. The last proposal on the topic was addressed in Constitutional Amendment No. 46/96, which aimed to add a clause "c" to inc. III of art. 150 of the Federal Constitution, prohibiting the collection of taxes on food items in the "food parcel" intended for domestic consumption in the country.

However, the products that would compose such “food parcels” were not specified (SANTOS, 2011, p. 90).

The author reinforces the importance of the non-taxability of the foods that make up the “food parcel”, pointing out yet another attempt to achieve it, citing PEC 233/08, being processed in the National Congress, which deals with the immunity of the cost of the “food parcel”, without taxation being applied in bread, sugar and oil, essential consumption items for the lower classes.

In the same line of thought, Araújo (2005) also argues that products in the “food parcel” should not be taxed, considering them as integral elements of the minimum essential and respecting the capacity of less fortunate individuals. The author mentioned another legislative provision that also aimed for a total tax exemption on food items that make up the “food parcel”.

The total exemption of products from the “food parcel” from indirect taxes was another policy carried out by the federal government in 2013, through Provisional Measure No. 609, which zeroed the PIS/PASEP, COFINS and IPI rates on goods belonging to the “food parcel” that had not yet been reset. The goods covered by this measure were: Meat (beef, pork, poultry, fish, sheep and goats), coffee, oil, butter, sugar, toilet paper, toothpaste and soap. (ARAUJO, 2005, p. 19)

All these attempts to change the tax system in order to adjust indirect taxation to ensure the minimum essential demonstrate that the government itself recognizes that taxation can only occur when there is capacity to contribute, as well as that in these cases there is no need to talk about the capacity to contribute, as the portion of resources used by low-income individuals does not exceed the minimum subsistence limit.

This solution is also pointed out by Carrazza, who states “that indirect taxes (whose economic burden is borne by the final consumer) should not affect essential goods (e.g., those that make up the so-called “food parcel”), which guarantee the existential minimum for people” (CARRAZZA, 2013, p. 117).

Therefore, the exemptions and immunities sought regarding the taxation of “food parcel” components are justified and based on the lack of capacity to contribute; therefore, such immunities and exemptions realize the principle of the contributory capacity.

Another option to consider that may facilitate the application of the contributory capacity principle in the case of indirect taxation on food as an element of the minimum essential is the replacement of these indirect taxes, such as IPI, ICMS, PIS, COFINS, with a single tax, the value-added tax.

Regarding Value Added Tax, Águia clarifies that “it is a consumption tax that is levied on the added value of transactions of goods and services” (ÁGUIA, 2007, p. 124), and regarding its impact on the production chain, he explains that “it directly achieves the free circulation of goods and services, including all phases of the production chain, from production or import to the final consumption of the good or use of the service provided” (ÁGUIA, 2007, p. 124). In this way, the author classifies the aforementioned tax as multi-phase.

In order to better understand the contribution of creating this tax, it is necessary to list its main characteristics. For this purpose, we will use the teachings of Canazaro, who identifies the following characteristics of the VAT (Value-Added Tax):

- It is a general indirect consumption tax because it transfers its burden to the consumer.
- It is a multi-stage tax as it affects all stages of the circulation of goods and services.
- It is a neutral tax as it is non-cumulative due to the adoption of a financial crediting system based on the indirect subtraction method. In the calculation of the VAT, taxpayers subtract the deductible tax (from purchases) from the tax due (from sales). Furthermore, the VAT, regardless of the number of transactions, will always be borne solely by the consumer.
- It should be graded based on the essentiality of goods and services by using one or two different (reduced) tax rates according to the degree of necessity/utility of taxed goods and services (selectivity).

- It can immediately adopt special regimes, such as those applicable to small businesses and agricultural producers. (CANAZARO, 2015, p. 35-36)

Thus, the establishment of the Value Added Tax (VAT) would make a significant contribution to addressing the issue of applying the principle in question to indirect taxation, considering that this tax is characterized by its primary features of neutrality, non-cumulativeness, and essentiality. Furthermore, by consolidating all taxation into a single tax, it would streamline efforts towards the analysis of how to apply only one tax instead of assessing the application across multiple taxes, each with its distinct characteristics. And finally, the creation of VAT would reduce the complexity of collection and inspection.

### **3 APPLICATION OF THE PRINCIPLE OF CONTRIBUTORY CAPACITY IN THE INDIRECT TAXATION OF FOOD AS A TOOL FOR PUBLIC POLICIES TO REDUCE SOCIAL INEQUALITIES**

Right at the beginning of the Constitution, in Article 3, the duty of the State to "eradicate poverty and marginalization and reduce social and regional inequalities" is enshrined as one of the fundamental objectives of the Federative Republic of Brazil. The idea of reducing social inequalities is reiterated in Article 170, VII, which states that the economic order is based on values such as social justice and has the reduction of social inequalities as one of its principles.

Both provisions set forth the reduction of social inequalities as a guideline to be followed by the State, aligning with the concept of fiscal justice, as taxation can be used as a tool to reduce social inequalities. In this context, Correia (2010) asserts that the use of taxes to reduce social inequalities stems from the inherent social function of taxation and adds that it should be a pursued goal, as the prevailing interest should be social welfare and the common good.

Taxes have the social function of contributing to the balancing of social inequalities, ensuring that taxpayers receive a return from the State in terms of services. In reality, taxpayers cooperate by

sacrificing a portion of their assets, in accordance with their capacity to pay, so that the collective interest is honored, aiming to establish an atmosphere of peace, security, and prosperity from which everyone benefits, even those who have contributed nothing due to being "exempt," "immune," or lacking the capacity to do so. Thus, taxes have the power to prioritize social interests over individual interests (CORREIA, 2010, p. 113).

Furthermore, the scholar argues that not only does taxation have the power to reduce disparities in wealth distribution, but the State also has a duty to intervene in the economic market to promote greater equity in income distribution. However, this is only achievable if taxation is applied rationally. Thus, "through rational taxation, it is possible to reduce the gaps between the minority of individuals who possess a significant concentration of individual wealth and the majority who have virtually no personal wealth" (CORREIA, 2010, p. 113).

In the same line of reasoning, Silva (2010) asserts that only through the application of the principle of contributory capacity is it possible to use taxation to promote the reduction of social inequalities. Silva states that "when used as a parameter for increasing and instituting taxes whenever possible, it is a powerful tool against the social inequality that a poorly distributed tax burden can potentially create" (SILVA, 2010, p. 116).

Baptista, despite pointing out criticisms regarding the effectiveness and evaluation of the contributory capacity principle, does not refute the idea that said principle is an indispensable tool for achieving fiscal justice. On the contrary, Baptista goes further, stating that beyond fiscal justice, it is possible to achieve social justice through the principle. According to Baptista (2007, p. 130), "taxing everyone according to their abilities respects the long-sought and pursued equality. The revenue collected justly returns to society in the form of investments for those who are most in need." This includes investments in education, culture, and information.

It is worth emphasizing that such investments have the potential to enhance people's lives by enabling equal opportunities. Therefore, in addition to appropriate revenue collection in accordance with the capacity to pay, the correct allocation of the collected resources is necessary to promote social inclusion. In this regard:

With optimal revenue collection and sincere policies, this funding could be reinvested in education, culture, and information for the betterment of people's lives, effectively redistributing and allocating available resources within society. The proper allocation of means of production and consumption would provide individuals in our society with the necessary resources for achieving material (production and consumption goods) and immaterial (access to culture, education, and leisure) equality of conditions (BAPTISTA, 2007, p. 131).

Regarding the distribution of goods in society, Iatarola (2005) explains that this distribution of goods in society is referred to as the "difference principle," which consists of three presuppositions. The first presupposition is the distribution of goods in a way that provides greater benefits to the most disadvantaged. The second presupposition is the opportunity for all individuals to occupy positions and roles in society. Lastly, the third presupposition is that individuals have equal opportunities with minimum conditions for existence.

As previously seen in the case of indirect taxes on food, due to the guarantee of existential protection, the principle of contributory capacity will be achieved through total relief from this taxation. In addition to protecting the existential minimum, this will also promote the reduction of social inequalities, according to Araújo's lesson:

The effects of tax policies, including food tax reductions and exemptions for inputs, are discussed by authors such as Santos and Ferreira Filho (2007). They analyze the effects of two types of tax policies related to indirect taxes using simulations based on a general equilibrium interregional model calibrated for the year 2001. These policies include reducing taxes on food and providing exemptions for the primary inputs used in agriculture. The simulations yield similar results, with the food tax reduction policy having more significant implications. The outcome is an expansion of economic activity in the poorer regions (North and

Northeast) and a contraction in the wealthier regions. In terms of the well-being of the population, all regions benefit, with the poorest regions benefiting more significantly (ARAUJO, 2005, p. 20).

Thus, the actual implementation of the constitutional principle of contributory capacity, in the first instance, would materialize fiscal justice, resulting in economic equality. However, in the long term, it would also realize social justice, allowing for equal opportunities and social inclusion.

It should be added that, as seen previously, the term solidarity marks the supremacy of the collective in the face of individualism, always seeking the common good of society, and its main consequence is the reduction of social inequalities. Furthermore, the principle of contributory capacity, as previously stated, is an instrument that implements material equality, aiming to achieve social justice.

Returning to the concept of fiscal justice, it is simply the fair distribution of the tax burden among individuals. When we associate this concept with the principle of contributory capacity, as previously discussed, we can conclude that both are essential for achieving social justice.

Therefore, tax justice is closely intertwined with social justice, as the realization of fiscal justice would enable the realization of social justice. Fiscal justice determines the fair distribution of the tax burden among individuals in society, leading to income redistribution and, consequently, the reduction of social inequalities.

## **CONCLUSION**

After these considerations and observations, it has become evident that, in addition to the challenges in applying the principle discussed in this work due to its ambiguity and vagueness, the preference for indirect taxation in the Brazilian tax system poses a significant hurdle in the application process. This is because it is a challenging task to measure the capacity to pay in this type of taxation. This difficulty is exacerbated because, in this attempt to measure contributory capacity, one must consider the portion of resources allocated for the maintenance of the minimum

essential and human dignity, considering the lack of a clear definition of what constitutes the minimum essential.

As a result, and considering the need for the application of the contributory capacity principle to protect the taxpayer from taxation that affects elements constituting the argument of the minimum essential, it became necessary to define the content of the existential minimum. To achieve this, food, as an integral part of it, was used for delimitation purposes, highlighting the significance of the “food parcel”.

Therefore, the central focus of this study is the application of the constitutional principle of contributory capacity in the context of indirect taxation of food as an integral element of the minimum essential in public policies aimed at reducing social inequalities. In doing so, we have analyzed selectivity, the Value Added Tax (VAT), exemptions, and immunities as mechanisms to enable the application of the contributory capacity principle in indirect taxes that apply to food. This analysis allows us to understand their link to the reduction of social inequalities.

Regarding the creation of the Value Added Tax (VAT), it was observed that it would make a significant contribution to addressing the issue of applying the discussed principle to indirect taxation. This is because the VAT possesses key characteristics such as neutrality, non-cumulativeness, and essentiality. Furthermore, by consolidating all taxation into a single tax, the efforts would be concentrated on analyzing how to apply it to a single tax instead of dealing with the application across various taxes with their unique characteristics. Finally, the introduction of the TAV would reduce complexity in revenue collection and inspection.

As for essentiality, which involves different tax rates based on the essential nature of goods and products, with lower rates for essential items and higher rates for non-essential or luxury items, it represents a significant contribution to the application of the discussed principle. This is because the purchase of non-essential or luxury goods and products presupposes that the individual has the capacity to pay.

However, essentiality alone would not be sufficient to apply the contributory capacity principle to taxes on food in a way that protects the minimum essential, because even with reduced taxation, it could still be borne by people with very low income who may not have the means to acquire enough food for their subsistence and their families'. Therefore, the ideal approach to taxation on essential food items, particularly those that make up the “food parcel” and are considered indispensable for

an individual's subsistence, is to have a tax relief. This relief can be achieved through tax exemption, a zero tax rate, or through tax immunities introduced in the Federal Constitution through constitutional amendments.

In light of these considerations, it can be concluded that to address the problem of applying the contributory capacity principle to indirect taxes on food items that constitute the minimum essential, it is necessary to create a Value Added Tax (VAT) that replaces the entire indirect tax burden. This VAT should include fixed tax rates based on the essential nature of goods or products, and among these rates, there should be a zero rate for food items that make up the “food parcel” or other goods and products defined by sub-constitutional legislation as integral to the existential minimum.

In conclusion, we can assert that this solution would address the problem discussed in this article because, as seen, it would facilitate the application of the contributory capacity principle (particularly regarding indirect taxation) as an instrument of public policy aimed at protecting the minimum essential. Moreover, it would also serve as a tool for promoting the reduction of social inequalities and, consequently, social inclusion. Through the effective application of this principle, it would prevent a worsening of inequalities and allow for investments in education, culture, and information with the revenue collected. These investments are capable of improving people's lives and enabling equal opportunities.

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