Financial Transaction Tax and Economic Crisis: is it Time for a Tax on International Transactions?

Imposto sobre Transações Financeiras e Crise Econômica: é Chegada a Hora de um Imposto sobre Transações Internacionais?

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Recebido em: 15-04-2019
Aprovado em: 04-06-2019

Abstract
This paper aims at the legal problems that arise concerning the introduction of a financial transaction tax. The article analyzes the impact, characteristics and challenges of a tax on international financial transactions and its relationship to economic crises.
Keywords: financial transaction tax, economic crisis, international taxation, regulatory measures.

Resumo
Este artigo visa os problemas jurídicos que surgem com a introdução de um imposto sobre transações financeiras. O artigo analisa o impacto, as características e os desafios de um imposto sobre transações financeiras internacionais e sua relação com crises econômicas.
Palavras-chave: imposto sobre transações financeiras, crises econômicas, tributação internacional, medidas administrativas.

1. Introductory remarks

"Crisis is not the best advisor on formulating rules for normal times."[1]

In the event of a financial crisis two phenomena will certainly occur: first, money will flow from unstable and poorer countries into more stable and richer ones; second, the discussion about a financial transaction tax (henceforth FTT) will be revived and gain attention among the press, economists, tax law professio-

[1] Paul Kirchhof, *Das Maß der Gerechtigkeit*, Droemer, 2009, 299.

nals and oppositional politicians[2]. The second phenomenon could be seen prior to the G-20 summit in Canada in 2010, when the European Commission issued a communication, on which stated that "[t]he introduction of a global financial transaction tax should be explored and developed further"[3].

The last financial crisis also helped undecided European politicians to speak in favor of the FTT, both in a global level as well as within the European borders. The main argument in favor of a FTT is that it could work as a deterrence mechanism for harmful and pernicious financial transactions that could cause, help or develop a crisis. The argument is that the FTT – and its natural and desired effects and consequences throughout the economy – is a suitable and opportune mechanism to create costs to financial transactions, and could help prevent future crises, as well as raise enough revenue to invest in important projects, may it be battling the consequences of an ongoing crisis or helping those affected by it.

However, these goals are not alone in justifying a global financial tax. Brazil currently experiments political and financial turmoil, due to difficult political conjuncture and a severe economic crisis.

The original idea of a global financial transaction tax – largely ignored after it was first proposed by a Nobel Laureate American economist called James Tobin in the 1970's[4] – is relatively simple and straightforward: observing the flow of capital, and the amount that was considered pure speculation – *i.e.* short-term investments – in order to gain fast and certain earnings, J. Tobin proposed a tax to be levied upon international financial transactions based on currency transactions. According to Tobin on his important variation on the theme, the recommendation was the imposition of a tax on international capital flows that would not merely allow individual countries to mitigate the impact of economic instability on domestic economies but would actually reduce instability at an international level. The tax would have mainly a regulatory character, leaving the possibility of revenue as a (desirable) side effect or by-product. The levy should have a fixed tax base and a small tax fare – ranging to a maximum 1% – in order to work as a deterrence mechanism to solely speculative transaction, reducing the efficacy of the international financial market. This instrumental use of taxation is not

[2] This fact is also noted by J. Tobin himself: "The interest that occasionally arouse came from journalists and financial pundits. It was usually triggered by currency crises and died out when the crisis passed from the headlines." See, J. Tobin, Prologue, in Haq/Kaul/Grunberg, *The Tobin tax* – coping with financial volatility, OUP, 1996, x. Tobin also narrates, not without some humor, the fact that the President of the german Federal Bank once called the Tobin Tax the "Loch Ness Monster". See also, Fuest, *Ist mit der Finanzkrise die Zeit für eine Finanztransaktionssteuer gekommen?*, 2011, 14 DB 25.

[3] EC – Com (2010) 549/05, 2.

[4] J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal* 153. For more than 25 years the proposal was largely ignored by most economists, being brought to attention due to the increase in foreign exchange markets in the last decade as well as due to a series of currency crisis.

new and would not represent a rupture in the modern fiscal structure of most nations.

While the tax would be imposed on all transborder transactions, its low rate and repeated application to transactions that have short turnaround times would reduce the incentive to invest in short-term currency speculation while having a minimal, potentially immaterial effect on long-term capital flows[5]. The essential problem according to Tobin was the "excessive international – or better, intercurrency – mobility of private capital"[6] that could lead up to economic or currency instability. Since a full global monetary and currency integration is not possible, J. Tobin suggested that this sort of problems could be resolved "throwing some sand in the wheels of our excessively efficient international money markets"[7].

This *grain of sand* in the wheels of the well-greased financial markets would aim specially at international financial speculation. In this sense, such a tax could be considered an "excise tax on capital transactions specifically designed to impose an additional burden on fast-moving capital"[8]. Such a tax would increase the costs of international financial transactions, thereby reducing the short-term profit motivation that drives financial speculation. Such an effect could also be experienced inside national borders. This would lead two different benefits for Brazil: firstly, it would prevent financial speculation from foreign investors; secondly, it would prevent Brazilian investors to rashly withdrawn their investments and place them somewhere else, in a more solid and stable economy, for example.

Once again, Brazil experiences an economic crisis and its effects are ongoing. Yet again, the discussion of a FTT arises. Some claim the tax to be "a magical weapon" to prevent a new crisis. Others just have in mind the revenue-raising potential of financial market transaction taxes[9]. In this political and economic uproar, it is indispensable to analyze the benefits, potentialities, and, most of all, risks attached to a financial transaction tax.

5 A. Avitable, *Saving the world one currency at a time*: implementing the Tobin Tax, 2002, *Washington University Law Quarterly* 398 f.

6 J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal 153*.

7 J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal 153*; White, *The Tobin tax*: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 389.

8 Michael Graetz/Itai Grinberg, Taxing international portfolio income, 2003, *Tax Law Review* 537, 554.

9 Estimations vary, but they all agree that financial taxes have high revenue-raising potential. In Brazil some estimate that it could bring up to 70 billion reais (approximately 25 billion dollars) every year. See <http://www.bbc.com/portuguese/noticias/2016/01/151228_cpmf_pros_contras_ms_rs> (last accessed on 15 December 2018). Accordingly, an EU-based financial levy could bring up tenths of billions of dollars in proceeds per year. The most optimistic estimate that a global FTT could bring revenue of up to 600 billion US dollars per year. However, J. Tobin himself argued that the revenue would be lower than expected. See, J. Tobin, Prologue, in Haq/Kaul/Grunberg, *The Tobin tax* – coping with financial volatility, OUP, 1996, xvi-xvii.

This paper aims at the legal problems that arise when the discussion of the introduction of a FTT comes once again to the public debate, especially in Brazilian tax and political forums. Thousands of pages have been written on the economic effects of a (regional or international) financial transaction tax. Such economic arguments – for and against the levy – will be only mentioned when a direct juridical problem can be resolved or dismissed by an economic idea or argument. Otherwise they shall remain with the economists. The same approach will be taken with political arguments. Even though politics has a major role in establishing a financial tax in Brazil, this article has no intention in dwelling into the tortuous ways of Brazilian politics.

2. Justification of a FTT

The main justification of a FTT is the belief that it could help prevent a crisis by increasing the costs of financial market transactions described as speculative or harmful, and in the occurrence of a new financial crisis, it could reduce its effects, may it be by imposing burdens on capital flow or by aiding countries and regions with its proceeds. As Tobin formulated the FTT could reduce de efficiency of international and intercurrency financial transactions, which are usually blamed for economic crisis.

In a nutshell there are mainly three underlying fundaments that justify the financial transaction tax[10]: firstly, a FTT can have the ability to restrain the flow of capital – mainly speculative transfers – between countries, and therefore deter the occurrence of a financial crisis – assuming that speculation could be one of the causes. In this way, a FTT would reduce the profitability of short-term speculation and allow exchange rates to better reflect long-term factors in the real economy, rather than short-term speculative flows[11]. As an example, a FTT could create exemptions for investments on infrastructure or long-term related investments. A transactions tax would, it is argued, shift the balance of factors influencing the exchange rate, away from short-term expectations towards longer-run and more trade-oriented factors[12]. The European Commission also added the fact that risk-taking financial activity generates externalities to the society (including bail-out money) that could and should be internalized by a FTT. Aware of the practical problems concerning the creation and execution, the Commission imposed the condition that such a tax "be specified to achieve this objective"[13].

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[10] See Segura/Braun, *An eponymous dictionary of economics*, Elgar, 2004, 259.

[11] White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 389; A. Avitable, Saving the world one currency at a time: implementing the Tobin tax, 2002, *Washington University Law Quarterly* 400-401.

[12] Philip Arestis/Malcolm Sawyer, How many cheers for the Tobin transactions tax?, 1997, *21 Cambridge Journal of Economics* 753.

[13] EC – COM (2010)549/5, p. 3; the same position is advocated by the International Monetary Fund. See IMF, *A fair and substantial contribution by the financial sector*, 2010, p. 47.

Second, such a tax could restore the autonomy of national or regional monetary, economic and fiscal policies, making it more complex to the effects of large capital flows within these countries or regions. This argument could be described as strengthening monetary and fiscal sovereignty of countries that are subject to heavy flow of speculative investments.

Lastly, the revenue of such a tax could serve good purposes, such as aiding developing countries, helping the poor, creating funds for the next crisis, as bail -out money for banks, investing in the development of environmental friendly technologies. More recently the environmental agenda has given a wide set of arguments for the advocates of a FTT. Since a substantial part of the capital flow concerns commodities, some supporters suggests that such FTT such impose a burden on speculative investments that directly affect the environment, as well as heavily taxing speculation on the so called "food commodities". Moreover, the proceeds of such a FTT could, and according to some, should be used to reduce the environmental degradation produced in the countries that suffer from commodity speculation.

3. Consequences of a FTT

3.1. Revenue

Even though one of the most prominent advocates of the global FTT, J. Tobin, expressly stated that the revenue would be a mere "by-product of the tax, not its principal purpose"[14], most of the current and prevailing analysis focuses on the revenue-raising potential of a FTT. Regardless of the revenue being a mere by-product, "the tax would provide an important amount of resources that could help developing countries"[15]. Since the economic crisis led to a steep fall on revenue, Brazilian politicians tend to enhance this feature of a financial tax. There are many.

The estimations on the amount of revenue of a – global and European – FTT vary among economists and public authorities. This lack of agreement has arisen because the imposition of the levy would most certainly affect the level of international transactions – indeed, that is the whole point of the FTT – but no one can be sure of the diminution in transaction volume. As a result, estimates of the revenue generated by a FTT vary widely[16]. The revenue potential of a FTT "is also affected by possibilities to circumvent by re-engineering of financial products and the tax rate chosen"[17]. The revenue-raising potential of a FTT was ne-

[14] See, J. Tobin, Prologue, in Haq/Kaul/Grunberg, *The Tobin tax* – coping with financial volatility, OUP, 1996, p. X.

[15] Segura/Braun, *An eponymous dictionary of economics*, Elgar, 2004, 259.

[16] Tobin, Prologue, in Haq/Kaul/Grunberg, *The Tobin tax* – coping with financial volatility, OUP, 1996, xvii; White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 390 f.

[17] EC – COM (2010) – 549/5, 4.

ver challenged, and most authors agree that a FTT can be an important source of proceeds, may it be in national, regional or in a more complicated way, international levels[18].

However, the problems and difficulties that arise with such a revenue are yet to be answered and solved. How would the revenue be divided? Would countries that export capital (most of the European countries, as well as USA and China) allow or have interest that countries that attract investments keep the revenue of a FTT? Who should administer the revenue? The countries themselves, an international organization or an international independent fund? Moreover, who would control the imposition by the countries and how a coordination among them to avoid double or multiple taxation would be done? As said before, these are the first questions that arise when the subject of the revenue from a FTT is being discussed. Many more could be listed. And yet others will arise if such a FTT is to be implemented. Unfortunately the answers given so far fall short for almost of the questions.

3.2. Migration of capital – tax havens and technology

> "Increased global transport efficiencies have strongly reduced economic and technical barriers to trade and investment flows, whilst portfolio investments, often implying short-term considerations, received a boost due to the IT revolution reducing massively the barriers to financial transactions."[19]

Another important consequence, yet to be determined if beneficial or not, is that with the creation of a levy upon financial transaction, the movement of capital tends to search for jurisdictions with reduced tax burdens. This would not be different with the creation of a FTT. Financial reengineering follows the creation of almost all taxes and costs upon transactions and it would be naïve to think that a FTT would not bring such consequence after its introduction.

Bearing in mind the growing importance of off-shore financial centers and tax havens as means for financial investments and tax planning, a plausible effect of the FTT would be the migration of capital from countries with such levy to reduced taxation jurisdictions. The growth of these financial centers and tax havens has been strongly stimulated by the development of digital information that now allows money and capital to move easily and cheaply in real time, making the control of such movements an almost unbearable activity to national fiscal authorities.

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[18] D'Elia/Gabriele, *Il finanziamento dei beni publicci globali* (Alpina 2008), 25; White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 390 f.; Rajan, Tobin tax revisited: a global tax for global purposes?, 2002, *37 Economic and Political Weekly* 1025.

[19] Guili, Learning from the financial crisis: tax competition and income inequalities, 2010, *Madriarga Paper* 1, 4.

Highly skilled corporations, tax lawyers, accountants and consultants make possible to conduct investment and speculative activities outside their countries of residence or where permanent establishments are located. Our reality is that the exchange of information among tax authorities is very limited and bureaucratized, and is most likely to remain this way. Financial activities using such jurisdictions "allow individuals to underreport, or not to report at all, their foreign earnings to their national authorities"[20]. As J. Tobin stated, the global FTT "will not, should not, permit governments to make domestic policies without reference to external consequences. Consequently, it will not release major governments from the imperative necessity to coordinate policies more effectively."[21]

The increased integration across borders, facilitated by rapid technological progress, is likely to affect the countries' capacity to collect taxes. With the implementation and development of internet based financial services, the speed of financial transactions, the different types of financial products, the conflicting concepts among countries, the less-then-optimal coordination between tax authorities, the migration of capital and investment due to a FTT is not to be underestimated. It is worth mentioning that the global FTT was conceived before the technological and communications revolution that drastically changed the nature of capital flow and investment movement in the world since de late 1990's[22].

3.3. Tax avoidance

The proposition of a FTT is most certain easy for politicians and NGO's speakers, while actually imposing such a tax in today's international market reality may prove to be almost impossible. The difficulty arises mainly because of substitution, in order to avoid the tax burden. It is not difficult to imagine that investors and financial institutions will simply substitute the taxed financial instruments for untaxed ones, creating new forms of transactions, in an effort to avoid a regulatory levy, thereby defeating the whole purpose of the FTT.

However, it is argued that this substitution problem could be defeated through simple extension of the FTT to all existing financial instruments[23]. J. Tobin suggested that his tax "should apply to all payments in one currency for goods, services and real assets sold by a residence of another currency area". Such a broad tax base was justified, since he could not see "other way to prevent financial transaction disguised as trade"[24]. Notwithstanding all the problems concerning the definition of *all financial instruments*, this argument simply ignores three

[20] See Avi-Yonah, Globalization, tax competition, and the fiscal crisis of the welfare state, 2000, *Harvard Law Review* 1586-1593.

[21] J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal* 159.

[22] This fact was also noted some 20 years later by J. Tobin. See J. Tobin, Prologue, in Haq/Kaul/Grunberg, *The Tobin tax* – coping with financial volatility, OUP, 1996, xiii.

[23] Jörg Alt, Warum ist es Zeit für eine, Steuer gegen Armut?, 2010, *ZRP* 109.

[24] J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal* 159.

main problems; first, derivative pricing and risk; second, the development of new instruments; and third, legal limitations on taxation that could represent a restriction on capital movement[25]. It is easy to see that FTT's suffer from severe practical problems that could render it unfeasible.

It is clear that the imposition of a financial transaction levy would create an incentive to all financial and tax planning professionals to develop new instruments not subject to the FTT, "creating an 'arms race' between traders attempting to avoid the Tax with new instruments and national, or international, taxing authorities"[26]. Private investors, financial institutions, banks and tax planners are far more efficient at producing new financial instruments than any taxing authority could ever imagine to be at regulating them. Authorities would spend uncountable hours and manpower to be able to control all transactions and the development of new financial instruments in a real *Sisyphean task*.

3.4. Centralization

In theory such a FTT could also have the effect on the centralization of international investments through banking and financial institutions. The reality shows that capital flow between markets is not done solely by big financial corporations with interests in different parts of the globe. With the current state of the art on online investments the private investor can, from his home, send money to another jurisdiction with more favorable taxation. Since individual and decentralized investors would be disfavored by a FTT, banking would assume this position, reducing the efficiency of international financial trade[27].

In a world with private investors using the IT revolution to move their capital without the intermediation of financial institutions or international banks, imposing a levy upon financial transactions could change this reality, making centralization of investments and capital flow through major institutions the only viable option for the small investor.

3.5. Liquidity

Another major drawback of a FTT is the loss of efficiency in the international trade[28]. Since the FTT would be deterrent for an important part of investors,

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[25] TFEU – Art. 63 – Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

[26] White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 398 f.; As stressed by the European Commission: "The cumulative impact of such measures must be borne in mind [...], so that a viable financial sector, able to properly and efficiently finance the broader economy, is not put at risk." See EC – COM (2010) – 549/5, 4.

[27] White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 392.

[28] White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 394 f.

this decline in the volume of the international market would, in turn, have as consequence a decline in the liquidity of the market. This effect would be reflected in larger spreads of investor that take part in the international market. These larger spreads would impose higher costs on *all* customers in the market, regardless of the time horizon of their investments, regardless if speculative or non-speculative investments.

Concerning the effects on liquidity and volatility of the international market, there is no consensus that the effects will be the expected ones. Such tax could reduce volatility and bring additional tax revenues. A review of the existing theoretical and empirical literature shows however mixed results and does not exclude that such a tax would instead increase volatility[29].

Critics argue that a tax on international transactions will increase transaction costs and reduce liquidity, thereby acting as a barrier to long-term investment. Likewise the FTT will affect the foreign exchange market itself and could create economic distortion by failing to distinguish between beneficial, long-term financial transactions and detrimental, short-term speculative transactions. Moreover, it is not a consensus among economists that short term investments are *per se* a bad thing[30].

Another problem concerning the FTT is the possibility of "windfall" taxation. Unexpected benefits arisen from legitimate long-term investments will be taxed as "speculative flow od capital" conferring yet another restriction to the movement of capital, reducing the "incentive" for such types of investments[31]. The mains problem is the definition of risk, (un)expected benefit and "windfall". Whenever the line is drawn to close to one another, the deterrence effect of a FTT can impair the movement and flow of capital, even though the aim was not speculative.

3.6. Control – money laundering

An undisputed beneficial consequence of a FTT would be the possibility to control the flow of capital that is the result of illegal activities. When a levy is imposed upon capital movement on international level, the flow of capital of illegal activities would be more easily traceable – and also taxed – providing an outstanding control mechanism to national and international criminal and tax authorities[32]. To use a FTT as an instrument to trace and recognize illegal money laun-

29 Hemmelgarn/Nicodeme, The 2008 financial crisis and taxation policy, 2010, *EU Taxation Papers, Working Paper* 20/2010, 40.

30 Rüdiger von Rosen, Globale Finanzmarktsteuer, 2010, *3 Betriebs-Berater* 1.

31 Kades, Windfalls, 1999, 7 *Yale Law Journal* 1502.

32 Tanzi, Globalization, technological development, and the work of fiscal termites, 2001, *Brooklyn Journal of International Law* 1271-1272: Rajan, Tobin tax revisited: a global tax for global purposes?, 2002, *37 Economic and Political Weekly* 1025.

dering is an important aspect that should be well considered in the public debate about the introduction of the levy.

4. Regulatory measures

Using taxation as a regulatory tool, as an instrument to achieve goals, is not an original idea. This instrumental use of taxation is a widespread technique among legislators, both here and abroad[33]. Tobin himself described that the main use of a FTT would be to pour some grains of sand in the well-greased gears of international finance.

Revenue would be an incidental and fortunate result or a "purely a positive externality of its main purpose"[34]. The FTT's are unlike most taxes, as the purpose of taxation is generally to raise revenue, regulatory and excise taxes. They resemble the "sin taxes" placed on alcohol and tobacco products for the purpose of raising the prices of these products to discourage their use by consumers[35]. In a regulatory sense, if the objective is to deplete the occurrence of such short-term transactions, that could be considered "vices" of the financial system, by increasing transaction costs to deter undesirable financial market activities[36].

In a broader sense, the withdraw of large amounts of capital from one country is the reflection of more fundamental national and regional economic realities, rather than the effect of the (in)existence of a tax burden on such capital movement. Even if a financial transaction tax existed, investors would still remove their investments if the country shows economical instability or is incapable of honoring its own debts. In this sense, the FTT as a regulatory measure also fails or, if set high enough, would represent a barrier for investors to deposit their money in political and economical instable countries. Thus, representing another barrier for non-speculative investments for more conservative investors. Notwithstanding the role of taxes in investment and corporate decisions, it should not be overestimated. Local, regional and global political and social factors also play an important role in capital and investment flow. Corporate decisions depend on the tax burdens, but also take into account the social and economical stability of the country, the existence of infrastructure, availability of work force, and multiples other factors. The amount of tax is just one of these factors, and in some (when not, most) cases, not the most important one. Therefore politicians, lawyers

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33 Rainer Wernsmann, *Verhaltenslenkung in einem rationalen Steuersystem*, Mohr Siebeck, 2005, 119f; Concerning instrumentalism see. B. Tamanaha, Law as a means to an end, CUP, 2006, 190 f.; A. Vermeule, Instrumentalisms, 2007, *120 Harvard Law Review* 2114.

34 Brow, The Tobin tax: turning swords into plowshares, 1999, *Transnational Law and Contemporary Problems* 377.

35 S. Vasques, *Os impostos do pecado*: o álcool, o tabaco, o jogo e o fisco, Almedina, 1999, 65-98.

36 Frankel, How well do foreign exchange markets function: might a Tobin tax help?, 1996, *Working Paper Series*, WP/5422, National Bureau of Economic Research, Cambridge, 21; Bai/Meng, Deterring, double-play manipulation in financial crisis: increasing transaction cost as regulatory tool, 2009, N.C. J. Int'l L. & Com. Reg. 141.

and economists should look for alternative instruments of control. On the other hand, the majority of economists and legal scholars confirm that at least the last crisis – mostly a debt crisis – could not have been deterred by a FTT.

One might wonder if administrative prohibitions of the same nature would not be more effective. Whenever the financial authorities sense that the an intense and racy movement of investments and capital could provoke a crisis – national or regional – with effects on the economy as a whole, the administrative introduction of prohibitions, regulations, or the definition of conditions for the flow of such capital could offer better results than plain taxation. Not to mention the possibility of accurate long-term regulation of the financial system and its effects on the economy[37].

The European Commission recognized the fact that administrative regulation over the financial sector is flawed:

> "The financial and economic crisis has highlighted a number of misaligned incentives in the financial sector as well as weaknesses in the regulatory and supervisory framework for the financial system. As a result, significant regulatory reforms have been adopted or are in the pipeline. *There is a broad consensus that regulatory and supervisory reforms are essential in order to enhance the resilience and the stability of the financial system*."[38]

Regulation has the advantage of being, in most cases, unavoidable, whereas the tax planning abilities of every taxpayer, history has shown, are almost limitless[39]. Any steps towards a FTT without the joint modification on the regulatory system shows that the real interest is the revenue-raising potential of a FTT, rather than on its alleged capacity to prevent a new crisis. A FTT should always be subsidiary to regulatory commands[40].

5. Conclusion: "Tobin Hood tax"?

> "I do not want to claim too much for my modest proposal."[41]

A group of NGO's and other organizations, alongside professors and political authorities in Italy propose a reform on the international financial system in 2001. Along with this campaign there was the suggestion of a tax with a most creative name: *Tobin Hood*. The Tobin Hood tax had a pleasing complement: "A

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[37] "Additional taxes could indirectly and in addition to regulation contribute to the goal of improving the stability of the financial sector by dissuading it from carrying out certain risky activities and be a revenue source at the same time." (EC – COM (2010) – 549/5, p. 3)

[38] EC – COM (2010) – 549/5, p. 3.

[39] J. Hey, *Steuerplannungssicherheit als Rechtsproblem*, Otto Schmidt, 2002, p. 13 et seq.

[40] "Resolving these issues requires a better understanding of the complementarities and tradeoffs between regulation and taxation in dealing with negative financial sector externalities." (IMF, *A fair and substantial contribution by the financial sector*, 2010, 47)

[41] J. Tobin, A proposal for international monetary reform, 1978, *4 Eastern Economic Journal* 159.

tax for the development". The aim was to "tax the international movement of capital to finance the development"[42]. The main goals were to impose a burden on international speculation, to create a source of revenue that would make it possible to finance the underdeveloped markets, and to speed the reform of the international financial system[43].

In most cases – if not all – when crises happen, the rich (*i.e.* the banks or the financial system as a whole) are the ones that are blamed. At least, that is what is the common sense and what the history of crisis shows us. And if it is so, why not take from the rich, and give to the poor? Or, *even better*, why not take from the rich to prevent that the rich give origin to a new crisis that would aggrieve the poor[44]?

This seems to be the logic on the event of a crisis and the revival of the discussion on FTT's. This may also be linked with the view that the financial sector is relatively undertaxed, in that financial transactions do not usually are affected by any other types of taxes, nor are they usually subject to specific taxes in the way in which, for example, tobacco and alcohol are[45].

Along with this widespread feeling, inequality problems have boomed in the last few decades[46]. The "Tobin Hood tax" name shows that the tax can be used to take from the rich to give to the poor. Even though such measures – redistribution of wealth and the battle against extreme inequalities – are necessary and meritorious, the question if a global FTT could help to redistribute wealth is still debatable. Some more urgent measures concerning indirect taxation of basic goods and income taxation could have better and faster effects, helping all the "boats to rise to the tide". To some extent this very appealing campaign – at times almost populist – about world poverty and inequality and the "easy way of a FTT" to change this reality by taxing "greedy financial speculators" only mystifies the real causes of financial cyclical causes. In other words, FTT's are not the "wonder weapons" to combat and solve financial crisis, as we are made to believe by some politicians and NGO's representatives.

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[42] Tobin Hood – una tassa per l sviluppo. Available at: <http://www.focsiv.it/>, accessed 23 March 2012; for the theoretical foundations of an obligation to help underdeveloped countries, see G. Chartier, Consumption, development aid, and natural law, 2007, *Washington and Lee Journal of Civil Rights and Social Justice* 208.

[43] This last objective has been the focus of the famous international organization Attac (Association pour la taxation des transactions financières et pour l'action citoyenne), which proposes to "shut down the casino economy". The group initially fought for the institution of a global FTT. Meanwhile, the objectives have been altered, comprising an agenda to fight globalization and modern capitalism. In an interview to the German magazine *Der Spiegel*, James Tobin said that anit-globalisation movements, such as Attac, were "misusing his name". See James Tobin, Die missbrauchen meinen Name, 2001, *36 Der Spiegel* 122 f.

[44] Jörg Alt, Warum ist es Zeit für eine, Steuer gegen Armut?, 2010, *ZRP* 109-112.

[45] Philip Arestis/Malcolm Sawyer, How many cheers for the Tobin transactions tax?, 1997, *21 Cambridge Journal of Economics* 754.

[46] S. Cohen, Inequality and deficit, 2011, *Georgetown Law and Economics Research Papers* 11-13, <http://ssrn.com/abstract01890645>, accessed in: 30 March 2017.

In any free market system those with the most capital and interest – and willing to pay highly expensive accountants and tax lawyers – always find ways – in most cases perfectly legal – to limit the amount they pay in tax. This would be as true of any FTT as it is already true of income tax. The main problem is the (im)possibility of a regulation that affects all the participants in the speculative international financial market. As the European Commission stressed a FTT should have the broadest base for taxation possible. In doing so, such tax will also impose a burden on every single type of capital and investment transaction. If the rules have flaws or loopholes that will allow that a part of the addressees manage not to be subjected to the tax, the costs of enforcement of the rules, and the bureaucracy that it will be required will surpass all intended benefits. This seems to be the conclusion of W. White:

> "However, the practical problems associated with the creation and enforcement of such a stable tax system ensure that any Tobin Tax regime would fail. The problems of asset substitution, market migration, and adverse political pressure would each serve to destroy the multilateral tax system. In addition, even if each of these three obstacles could be overcome, the global tax regime would still take on the structure of a cartel, with the concomitant pressure on all participants to defect and destroy the system. Finally, even if these problems could be solved and the system could be maintained, the Tax would impose its own costs in terms of reduced liquidity and possible changes in market structure that would outweigh any benefits created by the Tax."[47]

Once again, the problems of defining the transactions that would be subject to taxation, and more importantly, the definition of speculation and short-term investments represent an almost unbearable challenge on the introduction of a FTT, may it be on national, regional or international level. The tax is "a well intentioned idea that, however, faces great feasibility problems"[48].

If in any scenario where a crisis occur, and Brazil is no exception, public debate about a FTT, both regional and global, as a suitable mechanism for crisis prevention comes back to life, the question of why something in this direction has not yet been done is an obvious one. An appropriate answer would be: because there are still too many uncertainties about the conformation and practical efficacy of the FTT to prevent a new economic or financial crisis. An easy, and somewhat cynical answer would be: because the wheels of the international financial system are very well greased.

[47] White, The Tobin tax: a solution for today's international monetary instability, 1999, *Columbia Business Law Review* 401-402. This position ist not share, among others, by Avitable, to whom the "advantages far outweigh the disadvantages". See A. Avitable, Saving the world one currency at a time: implementing the Tobin tax, 2002, *Washington University Law Quarterly* 406.

[48] Segura/Braun, *An eponymous dictionary of economics*, Elgar, 2004, 259.

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