

ENVIRONMENTAL PROTECTION, TAX SYSTEM AND GREEN TAXES. BRAZIL AND JAPAN: PROBLEMS IN COMMON?¹

José Marcos DOMINGUES

Professor of Financial Law
Rio de Janeiro State University Faculty of Law
Director, Brazil-Japan Exchange Program

Introduction

Environmental Law is a branch of Law having as its underlying inspiration the preservation of human life on Earth through sustainable development; that is to say, the right to exist, the true Freedom (a subject dear to Tax Law jurists) is the basic motivation of Environmental Law.

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From the Stockholm Protocol (1972), dealing with environmental protection, to the ECO-92 Summit in Rio de Janeiro, where debates centered around “Environment and Development” (having Man as the focus of the issue), and, passing by the Kyoto Protocol (1997), when reductions of pollutant emissions were proposed, the world has seen a series of declarations of intent ranging from ratification of those intentions to denial of the same for they could jeopardize the interests of some major economic power.

It is time, thus, for a deep ethic reflexetion on what we are, what we want and what we should do in favor of future generations. And here there is a preliminary perspective regarding Human Rights and the Environment, since as Argentina’s Professor SANTIAGO FELGUERAS² puts it, environmental degradation may

“ultimately hinder the exercise of rights already recognized (...) such as the right to live and the right to health (...) even other rights such as cultural rights and the minorities’ rights”.

² *Derechos Humanos y Medio Ambiente*. Buenos Aires: Ed. Ad-Hoc, 1996, p. 17.

One of the oldest quotes one can find on environmental law may be found in the Bible³ according to which, having finished Creation, God saw everything he had done and found it “very good”, ordered and balanced and entrusted Man with a mandate: “have dominion over the fish of the sea, the birds of the air, and all the living things that move on the earth”. Apparently Man has mistakenly interpreted these words, wrongly identifying it with *spoil* and *degrade*, instead of use naturally, take harmonious benefit of, enjoy what was and should have been kept “good”, or *balanced*.

In fact what seems to be at stake is nothing less than the most important value to Humanity: that is human life, and human life with dignity.

³ ... “fill the earth and subdue it; Have dominion over the fish of the sea, the birds of the air, and all the living things that move on the earth; I give you every seed-bearing plant all over the earth and every tree that has seed-bearing fruit on it to be your food; and to all animals I give all the plants for food. Then God looked at everything He had made, and He found it very good” (Genesis, chapter 1).

Today the Environment raises some fundamental questions connected to political and economic issues. The first one relates to Human Rights and the Environment which projects itself in the spectrum of North-South relations between the so-called First World and Third World, involving the question of industrialization and development of some few at the cost of des-industrialization and underdevelopment of many, followed by an increasing degradation of life quality standards in most parts of the Earth. Yet, this is not a new or recent issue, for the tension *development vs. exploitation* of natural resources and of people (notwithstanding the human right to a healthy, clean, environment) is an old problem that dates back to the Roman Empire, the Great Navigations, the Colonialism, the Liberalism, the Neo-liberalism...); it also relates to tariff and non-tariff trade barriers imposed by developed countries in times of globalization... After all, if natural resources and poverty are found in the same places, one may reasonably argue: are the resources of the Third World being developed to its peoples' benefit?

A second issue refers to the environmental cost of economic development and sustainable development. Today there is a consensus that not-sustainable development is *not* development, for it disrupts the environment and threatens Life.

A third issue relates to “environmental awareness”. It deals with **people’s** awareness and has to do with education in general and environmental education in particular. It reminds us of the need of **governmental** awareness and deals with the conflicts of interests between government economic and environmental agencies, and related budgetary disputes (earmarking, not-earmarking of revenues, tax neutrality and environmental taxation credibility). It also relates to the internalization of business environmental costs, reflecting **businesses’s** accountability of environmental protection measures in the prices of goods. And finally it raises the question of the use (and the usefulness) of **economic instruments** for environmental protection and sustainable development.

Of course, one must also pay attention to administrative instruments for environmental protection: command-and-control, regulation,

licensing, monitoring, auditing and fining are traditional tools based on State *police power* which is the power (but also duty) to regulate individual rights in view of the public interest.

Economic instruments for environmental protection

Environmental doctrine ⁴ recognizes subsidies, tradable permits, deposit-refunds, and environmental taxation as adequate economic instruments to enhance environmental protection.

Subsidies and **subsidized project financing** are, respectively, governmental, direct or indirect, grants to economic agents engaged in an activity relevant to the public good which, thus, deserves state support, whereas **tradable permits** are a market mechanism which allows environmentally efficient companies to sell their underused

⁴ ISHI, Hiromitsu. *The Japanese Tax System*. New York: 3rd. ed., Oxford University Press, 2001, p. 303-304.

polluting-limit licenses (**trade-off of permits**) to technologically outdated companies⁵.

Deposit-refunds is a device whereby a part of the price of dischargeable goods (such as razor blades, batteries, packing) is repaid to the Consumer. This tool may work both as a legally allowed **private overprice**, or as a **tax** such as that created by the Belgium law of July 16, 1993 which is due on practically all purchases of dischargeable products, but which is not due, or refundable, in case of purchases of recyclable items, thus operating as a **tax incentive**.

Environmental taxes are fiscal tools derived from state power to collect financial compulsory contributions from those who fall under its authority aiming at funding state actions. They have a *broad meaning* and a *strict meaning* depending on their being charged on *direct* use of the environment or on ordinary actions or situations only *indirectly* connected to the former (see hereinbelow).

⁵ OECD. *Évaluer Les Instruments Économiques des Politiques de L'Environnement*. Paris: 1997. KORMONDY, Edward, coord. *International Handbook of Pollution Control*. New York, Westport, London: Greenwood Press, 1989. *Trade-offs* are still an incipient tool in many countries. The Kyoto Protocol stimulates their use, but Japan, for instance, has recently postponed decision on on-going studies for implementation thereof ("Emissions-trading plan put on back burner. (...) Trading regimes are going online around the world, and some commentators worry that Japan is falling behind the curve"(*The Japan Times*. Tokyo: Jan. 18, 2002, p. 3).

Economic instruments are fundamentally based on a general principle of Environmental Law, which is the polluter-pays principle⁶, which has a *positive* meaning (polluter imputation of the costs of environmental public services) and a *selective* meaning (modulating or adjusting the said imputation of cost according to the intensity of pollution)⁷.

In order to work, Environmental Taxation has to be adapted to a country's tax system.

The Brazilian and the Japanese tax systems

The Federative Republic of Brazil is a federation instituted in 1889 which substituted for the Empire of Brazil as the country had been known since its declaration of independence from the Kingdom of Portugal in 1822.

⁶ “Il (le principe pollueur-payeur) est inspiré par la théorie économique selon laquelle les coûts sociaux externes qui accompagnent la production industrielle (dont le coût résultant de la pollution) doivent être internalisés c'est-à-dire pris en compte par les agents économiques dans leurs coûts de production” - PRIEUR, Michel. *Droit de l'Environnement*. Paris: Dalloz, 2ème. Ed., 1991, p. 123. Note that “The greater the cost share borne by the polluter, the greater the adherence to the polluter-pays principle” (OECD – *The Polluter-Pays Principle – Definitions, Analysis, Implementation*. Paris: 1975, p. 6).

Nowadays, the Brazilian Tax System is basically provided for in Title VI, Chapter I (articles 145 through 156) of the Federal Constitution of October 5th, 1988 which distributes the taxing power directly among three different levels of government – the federal, the state and the municipal – because all these three levels of government⁸ ought to be politically and financially autonomous⁹; thus, in Brazil there is no *delegation* of taxing power to local governments, but constitutional direct grant of local taxing power.

Also, the Brazilian Constitution, following a United States tradition, expressly indicates functions to be exercised by the federal government, leaving residual functions to be exercised by States¹⁰ (it also refers to those parochial interests to be dealt with by municipal authorities¹¹).

⁷ DOMINGUES-de-Oliveira, José Marcos. *Direito Tributário e Meio Ambiente*. Rio de Janeiro: Ed. Renovar, 2nd. revised edition, 1999, p. 17-27.

⁸ Due to a Portuguese tradition of recognizing strong voice to City Councils, Brazilian Municipalities have become a party to the Federation beside Member States and the Federal District (article 1 of the Brazilian Constitution).

⁹ States' powers (art. 25). Municipalities' powers (article 30).

¹⁰ Art. 25, § 1º.

¹¹ Art. 30, items I through IX.

The Brazilian Tax System consists of three basic types of tributes¹² or “kooka”, in Japanese: “impostos”¹³ or “zeikin”, which are taxes on general expressions of wealth; “taxas”¹⁴ or “shiyooroo”, which are fees charged by virtue of the exercise of police power (some being similar to the Japanese “ninka kachoo kin”) or for the actual or potential use of specific and divisible public services rendered to taxpayers or made available to them; and “contribuições de melhoria”¹⁵ or “juuekisha futan”), which are betterment assessments charged on the appreciation of private real estate property due to public works.

Since¹⁶ the 18th Constitutional Amendment of December 1st, 1965, Brazilian tributes have been statutorily classified in the foregoing three basic categories according to their respective “fatos geradores” or taxable events (in German, “steuertatbestand” and, in Japanese, “kazei

¹² “Tributo” is the general word used in Portuguese in the same sense as “*abgabe*” is German.

¹³ “Imposto” (imposts as “taxes, duties or impositions levied for divers reasons” – cf. **Black’s Law Dictionary**, St. Paul, Minn: West Publishing Co., 6th ed., 1990, p. 756) is the specific Portuguese word for the German “steuer”.

¹⁴ “Taxa”, which corresponds to the German “gebühre”, may not have assessment basis reserved for “impostos” (art. 145, § 2, of the Constitution).

¹⁵ “Contribuição de melhoria” roughly corresponds to the German “erschliessungsbeitrag”; however its amount may not exceed the amount of the property value appreciation derived from the public works concerned.

¹⁶ Before this date, Decree-Law n. 2.416, of July 17, 1940, had defined “imposto” or impost as “the tribute the purpose of which is to attend general needs of the Public Administration”, and “taxa” or fee as “the tribute collected in payment for specif public services rendered to the taxpayer or made available thereto, or the contribution the purpose of which is to fund special (public) actions arising from the public in terest or from given groups of individuals”.

taishoo”). The National Tax Code¹⁷ specifies that the taxable event of an “imposto” (impost) is a situation not connected to any state action referred to the taxpayer (art. 16), and that the taxable event of a “taxa” (fee) is the exercise of administrative police power or the actual or potential use of specific public services rendered to the taxpayer or put at the disposal of the same (art. 77). Finally, the taxable event of a betterment assessment is the appreciation of real estate property value due to public works in its vicinage (art. 81).

Besides, the Brazilian Constitution also provides (art. 148) that the Federal Union may institute “empréstimos compulsórios”¹⁸ which are compulsory loans (“kyoosei kari-ire”, in Japanese) to defray extraordinary expenses resulting from public calamity, foreign war or imminence thereof and in the event of a public investment that is urgent or of relevant national interest. The Union may also institute “contribuições parafiscais”¹⁹ (or “futankin” in Japanese²⁰). The States,

¹⁷ “Código Tributário Nacional” (Law n° 5.172, of October 25th, 1966).

¹⁸ “Empréstimo compulsório” is the Portuguese equivalent to the French “emprunts forcés”, or the German “zwangsanleihe”.

¹⁹ “Contribuição parafiscal” is the Portuguese equivalent to the French “contribution parafiscal” and the German “parafiskalischebeiträge”.

²⁰ As in Japan (MASAO KANBE and HANYA ITO), also in Brazil these contributions have been traditionally treated as *quasi-public finance* (“jun zaisei”) revenues falling within the general category of “compulsory take economy” (KANBE, *Jun Zaisei* - ITO, *Essays in Public Finance*. Tokyo: Science Council of Japan, 1954;., *apud* BALEEIRO, Aliomar. *Uma Introdução à Ciência das Finanças*. Rio de Janeiro: Ed. Forense, 2nd. edition, 1958, v. II, p. 40, 447). Nowadays, Brazilian authors agree that said

the Federal District, and the Municipalities may institute a social contribution payable by their respective public servants to fund social assistance and security systems to their benefit, a sort of “shakai hoken” in Japanese.

Federal Taxes (imposts) – Article 153 provides for the exclusive federal competence to impose taxes (“impostos”) on:

- imports of foreign products;
- exports to other countries of national or nationalized products;
- income and earnings of any nature;
- industrialized products;
- transactions of credit, foreign exchange and insurance, or transactions with instruments and securities;
- rural land property;
- large assets.

contributions ought to be considered “tributo” (“kooka”). According to their respective goal or destination (“mokuteki”) they are specifically designated *social contributions*, *contributions regarding intervention in the economic domain*, and *contributions in the interest of professional or economic categories*. Their taxable events are basically those of “impostos” and “taxas” (in fact they become “mokuteki zei” imposts or fees). The Federal Government has enormously increased the number of these contributions charged on the basis of companies’ gross revenue, what has been toughly criticized by legal doctrine on account of their unfairness and disruptive effect on the tax system.

Also, article 154 provides for the exclusive federal competence to establish extraordinary *war taxes* upon the imminence or in the case of foreign war whether or not included in its taxing power, and to establish taxes not listed in article 153, provided they are non-cumulative and have a specific taxable event or assessment basis other than those specified in the Constitution (that is to say, not falling within the respective exclusive taxing competences of States, the Federal District and Municipalities).

Article 155 provides for the exclusive competence of the States and of the Federal District to impose “impostos” on:

- inheritance and gifts;
- transactions relating to the circulation of goods and to the rendering of interstate and intermunicipal transportation services and communication services;
- ownership of automotive vehicles.

And article 156 provides for the exclusive competence of Municipalities to impose “impostos” on:

- urban real estate property;
- transfer of real estate propriety rights on any account and for consideration;
- rendition of services other than those mentioned in article 155 (which are taxed by the States and the Federal District).

In Japan, which is a unitary and centralized State, all financial and taxing powers are vested in the National Diet (arts. 83 and 84 of the Japanese Constitution). The Diet may delegate some taxing powers to provinces (“too-doo-fu-ken”), but always within the framework of the delegation. What is a National Tax and what is a Local Tax it is up to the National Diet to decide on a case-by-case basis. Not even the Japanese National Tax Code (“Kokuzei tsu-soku hoo” – Law n. 66, of April 2nd, 1962”) does so, since it only provides for tax liability, tax payment and collection, tax refund and tax delinquency, and tax administrative procedural law and related matters.

Neither the Japanese National Tax Code provides for the distinction among taxes, such as imposts and fees, which distinction one finds,

directly or indirectly, in other countries' National Tax Codes, such as the German "abgabenordnung", the Spanish "ley general tributaria", and in the legislation of major Latin American countries, like Brazil.

In Japan it is up to the legal doctrine to establish the differences among the three categories above. There is to say that, in Japan, neither a lawmaker nor a layman taxpayer has a statutory reference to check whether a given tax bill or a new tax falls within given legal criteria.

Another primary function of a National Tax Code is to make clear the basic principles of the tax system, such as the meaning of tax legality, tax equality, tax immunity and tax exemption criteria, and standards for solving tax-competence conflicts among the three levels of government. And this is not provided for in a general tax statute in Japan, but in every single tax statute enacted by the National Diet.

Pursuant to the provision of article 146 of the Brazilian Constitution the National Tax Code shall (I) provide for the resolution of conflicts of taxing power among the Federal Union, the States, the Federal District and Municipalities; (II) to regulate the constitutional limits of the taxing

power; and (III) establish general rules for tax legislation, particularly regarding (a) the definition of tributes and their kinds, and, as regards the “impostos” specified in the Constitution, the definition of the respective taxable events, assessment basis, and taxpayers thereof; (b) tax obligation, assessment, credit, statute of limitations, and laches; and (c) adequate tax treatment for the “cooperativas” or cooperative entities (“kyoodoo kumiai”).

In fact, the National Tax Code has provided for the following matters:

- Definitions of tributes and their kinds;
- Legislative taxing power and administrative tax enforcement authority;
- Limits of the taxing power, including tax immunities;
- Compulsory Loans and war taxes;
- Characteristics (taxable events and assessment basis) of tributes – “imposto”, “taxa” and “contribuição de melhoria”);
- Tax Law General Rules, covering matters such as the meaning of tax legislation (including tax treaties and their efficacy), characteristics of the tax legality principle ²¹ , limits of

²¹ “Art. 97 – The following may only be set forth by law: I - imposition of tributes, or abolishment thereof; II - increase of tributes or reduction thereof (...); III - definition of taxable events of main tax obligations (...)

administrative regulation, guidance and interpretation of tax law; tax obligation; taxable event; creditor and debtor to a tax obligation; tax liability of taxpayers and of third parties; tax assessment; payment and refund of taxes; statute of limitation and laches; tax exemption and tax amnesty; guarantees and privileges of tax rights; and tax administration.

Maybe a general tax code is not relevant to a country so homogeneous like Japan, but sure it has been held absolutely necessary in Germany, Spain and Brazil and other countries built out of cultural and political diversification. As to Japan, its usefulness, and harmonizing and simplifying functions seem evident, although it might be held hard to consolidate tax principles now provided for in many sparse statutes.

In any event, though the Japanese and Brazilian tax systems are structured in different ways, the fact is that the main institutes of Tax Law are present in both systems, as elsewhere, there is to say, tribute

as well as the definition of the relevant debtor; IV - establishment of the tax rate and its assessment basis (...); V - imposition of penalties for actions or omissions contrary to law provisions or other violations defined therein; VI – cases in which the tax credit may be excluded, suspended and extinguished, cases for dismissal or reduction of the penalties. § 1º Any change in the tax assessment basis to the effect of increasing its amount is held equivalent to the increase of the tax. § 2º For the purposes of the provisions of item II of this article, the monetary adjustment of the value of relevant assessment basis does not constitute increase of the tax.

("tributo") or "kooka", which most important categories are "impostos" or "zeikin" are levied on wealth – capital, income, consumption (Adolf Wagner), "taxas" or "shiyoo ryoo-kin" or ninka kachoo-kin" are fees basically due in relation to the performance or rendition of specific compulsory public services, such as licensing, inspections and court procedures, and "contribuição de melhoria" or "jyuu-eki-sha futan" is a betterment assessment charged on the basis of real estate value appreciation due to public works in the respective vicinage.

Environmental taxation and tax systems

Environmental taxation is a category that has been in the fore front of economic and legal research for the past 15 years; yet, there is still a hard discussion going on as to its scientific soundness, and, even when theoretically accepted, then we find little consensus as to how it should be put into operation.

The so-called *green taxes* are technically designated environmental taxes. *Green taxes* is a layman's expression which refers to taxes that have environmental-friendly motivation. But, scientifically speaking,

there are two meanings for green taxes or environmental taxes – a *broad meaning* and a *strict meaning*.

The broad meaning of *environmental tax* is that of an ordinary or traditional tax adapted so as to benefit environmental protection efforts.

The strict meaning of it is that of a *new* tax charged on the use of the environment by economic actors.

How to make environmental taxes work, that's the issue. Let us have in mind the advice of Prof. HERRERA MOLINA²², of Spain's Complutense University, that one has to take into consideration that environmental regulation (and, let me add, so does environmental taxation) is of a "transversal or polycentric" character (and interdisciplinary, I would like to add) since it deals with multiple and conflicting interests.

Tributes ("kooka") have been originally conceived as an instrument to carry private resources to the Treasury to cope with public expenditure; in this former sense, taxes have a financial function, thus they are

²² HERRERA MOLINA, Pedro M. *Derecho Tributario Ambiental*. Madrid: Marcial Pons, 2000, p. 185.

referred to as *fiscal* or financial (“finanzsteuer” in German) taxation (thus, fiscal revenues), which correspond to a non-regulatory government, or in other words to *neutral* public finances, which was glorified by the classic liberalism “laissez faire, laissez passer”).

However, taxes may exercise a great influence over the economic activity, for taxes are one of the main costs of businesses. Taxes may be used as an indirect regulatory (“ordnungsteuer”) economic instrument: an activity or product that is highly taxed may be discontinued in favor of activities subject to lower taxes rates. Maybe the oldest example of this kind of tax is the “tariff barrier” to protect the domestic industry (the old Gaulees used them against the Romans; the mercantilists made wide-spread use of them; and even nowadays they have been used, along with non-tariff barriers, in what has been called *mercantilistic neo-liberalism...*).

In this latter sense, taxes are referred to as *non-fiscal* or *extra-fiscal*²³ taxes, because they do not aim at raising funds for public expenditure (some would aim at **no tax** collection at all – as the tariff barrier); their

²³ KRUSE, Heinrich Wilhelm. *Derecho Tributario, parte general* (Spanish translation of *Steuerrecht*, München: 3rd. ed., 1973). Madrid: Ed. de Derecho Financiero, 1978, p. 68-69).

goal is of **another nature**, an economic or political nature, that is, to **direct** the economy aiming at political goals they are also regulatory taxes, “taxes d’orientation” or “Marktordnungsabgaben”²⁴, because as “zwecksteuern” they are “money having the goal of affecting taxpayers’ attitudes” as put by Swiss Professor XAVIER OBERSON²⁵.

Environmental taxes may have both a *fiscal* function (which corresponds to the positive meaning of the polluter-pays principle) and an *extra-fiscal* function (which corresponds to the selective meaning of the principle), even though they are basically of a regulatory nature, for their main goal is to change the taxpayers’ (businesses, consumers) behaviors; in other words, they mostly aim at producing or enhancing environmental awareness.

Of course, fees and betterment assessments have basically a fiscal function, but imposts or “zeikin” (taxes on capital, income and consumption) are those most effective not only for fund raising but also for economic regulation.

²⁴ OBERSON, Xavier. *Les Taxes d’Orientation*. Bâle et Francfort-sur-le-Main: Helbing & Lichtenhann – Faculté de Droit de Genève, 1991, p. 23.

Europe, the United States, Japan and Brazil have adapted existing imposts for environmental protection. Here are some examples:

Belgium: a tax on consumption of dischargeable items, from razor blades to batteries, cameras and packing materials in general;

France: a tax on the storage of non-recyclable waste;

Germany: a tax on dischargeable packing and tableware;

Portugal: tax incentives to gifts to environmental NGOs;

US: oil and oil byproducts tax, and chemicals tax surtaxes; fishing and hunting equipment taxes (Oil Spill Liability Trust Fund, Black Lung Disability Trust Fund, Wild Life Restoration Fund);

Japan: special initial depreciation for solar energy equipment or for energy saving, pollution prevention, and recycling equipment; tax

²⁵ OBERSON, Xavier, *ibidem*, p. 23-24.

reduction for air, water, and noise abatement equipment, asbestos emission reduction facilities, oil desulphurization facilities.

Brazil: tax reductions for alcohol engines and alcohol-powered motor cars; tax incentives to forestation and reforestation; tax exemptions for natural forest preservation.

All these are examples of environmental taxes in the previously referred to *broad sense*.

The foregoing representative efforts towards environmental preservation notwithstanding, the big challenge nowadays is to further advance in establishing an environmental tax (some would say a “true” environmental tax) in its *strict sense* – meaning a *new* kind of tax.

Here are some examples:

Belgium established in 1993 a CO² emission tax which revenue is earmarked to the Social Security program;

France established in 1990 a tax on pollutant emissions;

Switzerland since 1981 has a wonderful example of a fee charged on aircraft noise, which revenues are earmarked to construction of noise-free airports;

and the United States have long established taxes on pollutant emissions.

Brazil has not established *strict sense* environmental taxes so far, even though there are studies going on.

Japan is said not to have established a *strict sense* environmental tax either. Professor HIROMITSU ISHI²⁶ is very much critical of the Japanese style of doing environmental taxation policy, based on subsidy-disguised tax exemptions.

However, the case of the “koogai kenkoo higai too hoshoo ni kan-suru hoo” (Law n. 111, of October 5th, 1973: law on compensation of health and other damages caused by pollution) seems to be a quite distinctive

and interesting one, combining the earmarking (“mokuteki zaisei”) of a compulsory governmental financial take (“kooka”) to make up a *sui generis* Fund.

Under the foregoing statute, annually, within the first 45 days of the fiscal year polluting companies are compelled to contribute to an “osen fukaryoo fukakin” (pollutant-emission generated damage-compensation fund) which is a state Fund who favors pollution victims. *Contributors* are companies whose sulphur oxides (SOx) emissions are above environmental standards, which emissions have caused health damages to the surrounding population: *contributions* to the Fund follow a *pro rata* pollution burden of each factory (articles 50 to 65). Here there is a sanctionatory aspect of this charge which could disqualify the same as a tax, apart other possible considerations as to the *nipponic* style of the remedy.

On the other hand, the revenue of the tax on the weight of automobiles (“jidoosha jyuuryo zeii”) is earmarked to the foregoing Fund (20%),

²⁶ ...”subsidy policies have frequently been employed in the form of ‘tax expenditures’ (i.e. disguised subsidies)” (...). “ ‘Environmental policy’ in Japan simply means such indirect subsidies as tax concessions, which are listed in special tax measures of national and local tax systems” (*op. cit.*, p. 304).

while the environmental contribution responds for the other 80%²⁷, which, besides confronting the *principle of non-earmarking of public revenues*, makes this an interesting hybrid Fund in that owners of carbon dioxide (CO₂) emitting vehicles are forced to pay a “pollution connected contribution”, without a sanctionatory character (thus a true tax), irrespective to any real causal damage link with pollution victims.

Final remarks

Brazil and Japan share the common fear that an environmental tax on CO₂ and other pollutant emissions would have an adverse impact in her respective competitiveness abroad, specially in globalization times.

For different reasons (Japan heavily depending on raw material imports, and Brazil being an undercapitalized developing economy), but having undertaken command-and-control measures to curb pollution, both countries feel they have relatively weak economies, and they should not be blamed for that way of thinking.

²⁷ ISHI, *op.cit.*, p. 309.

However, since other leading countries have already implemented various kinds of environmental taxes, including *strict sense* ones, it seems that in due course Japan and Brazil will also establish such taxes, for, aside international pressure, they will understand that emissions are a way of damaging the environment while making money out of it, and this deserves regulation and state intervention.

Environmental taxes fall under the scope of the polluter-pays principle, which is a fundamental principle of environmental law. Besides, taxing polluters for emissions would not violate a basic principle of tax law, which is the taxable ability (“*tanzei ryoku*”) principle (taxes are to be taken from where wealth is and according to the taxpayers’ economic strength), and polluters have a marginal gain when they pollute and do not internalize the costs of pollution²⁸, as if using the Environment for profit were a cost-free business. In this sense, taxes are a valuable instrument for environmental protection.

²⁸ This is because, by not internalizing the cost of environmental measures, such as mitigations (equivalent to the social cost of pollution – cf. OBERSON, *op. cit.*, p.26), Industry accumulates a marginal wealth, showing ability to pay taxes out of an activity detrimental to the Environment, which action is fought through extra-fiscal (“*ordnungsteuer*” or “*zwecksteuer*”) taxation (DOMINGUES-de-Oliveira. *Direito Tributario e Meio Ambiente*, *op. cit.*, p. 113, n. 190, and *Direito Tributário – Capacidade Contributiva*. Rio de Janeiro: Renovar, 2nd. edition, 1998, p. 118.

Finally, environmental taxation should be regarded as a tool to be shared by countries like Brazil and Japan, who care for the Environment and share common interests and worries as to environmental degradation.

And here is a challenge: to use the taxing power not to destroy economic actors²⁹, but *for the benefit of people*, for business ought to be carried out as a means of *sustainable development* of Humanity, and not to subdue Man to what *money-for-money* means in terms of self-destruction.

²⁹ “The power to tax involves the power to destroy” (Chief Justice John Holmes).