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Shared Competence: An Analysis and Reinterpretation of the New Model for the Distribution of Tax Competence in the Constitution of Brazil Considering Constitutional Amendment No. 132/2023

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Abstract

This paper examines the shared competence of states, the Federal District, and municipalities, as established by Constitutional Amendment No. 132/2023, through the lens of its practical effects. Using analytical and dialectical methods, the study analyzes the changes to the federative structure and to legislative and tax autonomy brought about by the reform, clarifying their procedural implications and highlighting that the reform centralizes federal power and is expected to significantly increase judicial litigation.

Keywords

Constitutional Law, Tax Law, Federative Structure, Shared Competence, Tax Autonomy, Practical Effects, Constitutional Amendment No. 132/2023

1. Introduction

Federalism represents a form of state organization that has enabled Brazil to distribute political power, thereby ensuring both national stability and territorial integrity, a necessity given the country's diverse cultural, ethnic, and philosophical characteristics (Anderson, 2009: p. 18). The Brazilian Empire (1822-1889 AD), once a Unitary State, demonstrated that maintaining coherence and uniformity across a continent-sized nation is a persistent challenge, particularly when power is centralized (Basile, 2011: pp. 68-72).

Recognizing this, the adoption of a federal form of state upon the proclamation of the Republic provided a solution. This new structure distributed political, legislative, administrative, tax, and financial competences to federative entities while retaining sovereignty within the Union (Lemos, 2011: p. 437). However, the federation has undergone significant changes in its power distribution, notably with the 1988 Federal Constitution, which established a tripartite, rather than a bipartite, model of distribution (Mendes & Branco, 2023: p. 125). This new division amplified the challenges to the federative balance, as the allocation of competences became more complex. Among the most critical of these challenges was the distribution of legislative and tax competences (Barroso, 2021: pp. 515-516).

For an extended period, the debate over the centralization or decentralization of tax competences, especially regarding consumption taxes (IPI—Tax on Industrialized Products (often referred to as Federal Excise Tax), ICMS—Tax on the Circulation of Goods and Services (often referred to as State Value Added Tax—VAT), ISS—Tax on Services of Any Nature (often referred to as Municipal Service Tax), PIS—Social Integration Program (this is a Federal Social Contribution) and COFINS—Contribution for the Financing of Social Security (this is also a Federal Social Contribution)), led to dilatory compromises involving financial compensations, such as those stipulated by the Kandir Law (Appy, 2017). This approach merely postponed a solution to the problem of triple taxation on consumption, resulting in a profound imbalance within the federation and fostering a tax war among various entities, thereby exposing fragilities stemming from historical and regional issues (Appy, 2017).

Constitutional Amendment No. 132/2023 was ostensibly enacted to address these inconsistencies by altering the model for the distribution of tax competencies and resources. Nevertheless, the new constitutional design has resulted in a further alteration of the federation, leading to a greater centralization of power within the Union (Carrazza, 2024). The term "shared competence," while conceptually appealing, is questionable from dogmatic, practical, and consequentialist perspectives. This work seeks to analyze the concepts of federation and competence, examining the constitutional changes and, ultimately, their true legal meaning in terms of the distribution of tax competences and federalism, from both a dogmatic and a procedural standpoint.

The first part of the article discusses the historical organization of Brazil's federation and the distribution of competencies. The second part analyzes how the modifications introduced by Constitutional Amendment No. 132/2023 have impacted the organization of the federative pact, the distribution of competences and resources, and the anticipated effects of these changes. In the third part, the dogmatic consequences of the new constitutional principles are analyzed in conjunction with the provisions of Complementary Law No. 214/2025. The fourth part examines the practical consequences in the procedural, administrative, and judicial spheres that stem from this new form of federation or distribution of competences. The study also includes an extensive analysis of the conclusions reached

by the STJ's Working Group, the solutions proposed by the Attorney General's Office, and those put forth by the STJ, engaging in a dialectical debate on the consequences of adopting each measure.

Throughout the work, analytical and dialectical methods were employed to substantiate the premises presented and to perform the necessary deductions and inductions to support the conclusion.

2. Federation and Competence

2.1. Perspectives in the 1988 Federal Constitution

The preamble of the 1988 Brazilian Federal Constitution (CF/88) establishes the country as the Federative Republic of Brazil (Brazil, 1988). This choice is confirmed by Article 1, which declares the indissoluble union of states, municipalities, and the Federal District (Brazil, 1988). This federal structure, with its modern historical roots tracing back to the 1789 U.S. Constitution, is designed to ensure the unity of these autonomous entities through a division of powers, while sovereignty remains vested in the Union (Tocqueville, 2005).

The term "federation" is derived from the Latin foedus, meaning alliance, pact, or union. From a legal and political standpoint, its core feature is sovereignty, which underpins the entire legal order and shapes the legal frameworks of its constituent parts (Silva, 2020). A federation is characterized by juridic-political and territorial decentralization. While sovereignty is concentrated in the Union, federated entities hold specific powers through a rigid constitution that outlines the division of competences (Moraes, 2022). A key feature is also the participation of these entities in the national legal will, typically through a legislative body that represents them (Lenza, 2023). Furthermore, a federation allows for the self-constitution of its members, enabling them to enact their own partial legal orders, which reflects their autonomy from the national state (Kelsen, 2009).

Mendes and Branco (2023) identify a rigid constitution and the presence of a Supreme Court to resolve disputes between autonomous entities and the Union as additional characteristics of a federation. While constitutional rigidity is debated, since a federative pact could theoretically be established under a semi-rigid or even flexible constitution if the division of powers is clear, it is widely considered an essential feature by most scholars (Temer, 2012; Silva, 2020; Moraes, 2022).

A federal state can emerge in two ways: by aggregation or disaggregation (Temer, 2012). Aggregation involves a centripetal movement where several states unite to form a federal state, as exemplified by the United States. Disaggregation is a centrifugal process where a centralized state's power is dispersed among various autonomous entities, as seen in Brazil and Russia (Temer, 2012). The strength of a federal state is determined by the concentration of powers. Symmetrical federalism exists when powers are distributed equitably, ensuring entities are not practically dependent on one another and unity is maintained for external purposes (Bonavides, 2020). Conversely, asymmetrical federalism arises from an un-

equal distribution of powers, with a concentration in either the Union or a specific entity (Horta, 2012).

Federations can also be classified based on their organizational structure. Tavares (2023) notes that federalism can be dual (Union and States) or trinary (Union, States, and Municipalities). Cooperative federalism, where the separation of powers is less clear, fosters a forced proximity between the Union and other entities (Tavares, 2023). Bonavides (2020) criticizes this model, which he argues Brazil's 1988 Constitution adopted, as it lends itself to authoritarian tendencies by allowing the Union to override other entities. Tavares (2023) also describes organic, integration, and balance federalisms, all of which result in a centralized Union, whether symbolically, as a decentralization of a unitary state, or through a formal balance.

Brazil's federal structure is based on a division of powers among the Union, States, and Municipalities, with the Federal District serving as a hybrid entity. This division theoretically creates dual or trichotomous federalism, where the competencies of autonomous entities and the sovereign Union are clearly defined in the national legal order. This division implies five key autonomies: political self-organization, legislative self-organization, administrative self-organization, financial self-organization, and fiscal self-organization (Mendes & Branco, 2023).

Political self-organization is exercised through the constituent power of each entity to establish its own partial legal order (Silva, 2020). Legislative and administrative autonomies are derived from the powers allocated by the Federal Constitution and exercised through each entity's legislative body and executive branch, respectively (Moraes, 2022; Silva, 2020). Financial and fiscal autonomies stem from the constitutional distribution of powers regarding taxation, revenue collection, and resource allocation, as further detailed in State Constitutions and Municipal Organic Laws (Mendes & Branco, 2023).

Since its promulgation, the 1988 Federal Constitution has created asymmetrical federalism, with the Union holding a significant preponderance of powers (Bastos, 2011). Examples include the Union's exclusive legislative competence over general norms for ICMS and ISS (arts. 155, §2º and 156, §3º, CF/88), which are state and municipal taxes, respectively. This asymmetry is further evidenced by the Union's private legislative competence over various administrative matters (art. 22, CF/88) and its power to intervene in the economic order (art. 175, CF/88) and establish general norms in concurrent matters (art. 24, CF/88).

This design has historically concentrated power in Brasília, particularly in the Federal Senate. While the Senate is intended to represent the states' will, political practice has deviated from this principle. Instead of state interests, the Senate's political compromises have led to a concentration of power in the Union (Bercovici, 2004). The failure of federal initiatives like the Kandir Law and Complementary Law 103/2001 to resolve fiscal disputes among States and Municipalities highlights this issue (Scaff, 2011; Machado Segundo, 2011). Despite establishing uniform tax norms, these laws failed to end the "fiscal wars" and exacerbated problems, such as the Union's failure to compensate States for tax losses, leading to

financial crises and litigation (Agência Brasil, 2020).

The Federal Senate's inability to effectively represent the interests of its federated entities primarily stems from its members' allegiance to the governing coalition or their pursuit of a personal electoral base, rather than the defense of their States' autonomy (Neiva & Soares, 2013). Unlike models such as the German one, which mandate ties to state governments (Germany, 1949), Brazilian senators, elected by popular vote, tend to prioritize the dynamics of national politics—and, crucially, their relationship with the Executive Branch—over state-level agendas (Neiva & Soares, 2013).

The financial effects of this asymmetrical federalism are evident in the concentration of resource transfers from the Union to the States and Municipalities. This structure has been widely criticized, leading to calls for reducing the number of municipalities and revising the division of powers (Brazil, 2019). For example, at the 2019 Fórum da Liberdade, Carlos Eduardo Didier Reverbel argued that Brazil's 1891 Constitution failed by not fully adopting the U.S. model, where powers not explicitly granted to the Union are reserved for the states or the people (Reverbel, 2019). While the 1891 Constitution of Brazil aimed for a similar structure, the Union gradually encroached upon local and regional matters, a trend that continued in subsequent constitutions (Torres & Cooke, 2025).

Ultimately, these debates have often sidestepped the core issue of Brazil's federalism: the division of competencies, especially in the financial and tax fields (Leite, 2022). This is a political problem rooted in the federal structure itself. The Union's concentration of powers and resources creates bureaucratic hurdles for implementing public policies, forcing states and municipalities to bargain for their limited power to advance development projects (Oliveira, 2025). This fundamental issue has finally been addressed by Constitutional Amendment No. 132/2023, which aims to reshape the federative pact in the fiscal and financial spheres.

2.2. Perspective in the Aftermath of Constitutional Amendment No. 132/2023

Constitutional Amendment No. 132/2023 introduced a significant innovation in Brazil's federal structure. Article 156-A of the Federal Constitution (CF/88) now stipulates that "a complementary law shall establish a tax on goods and services with shared competence among the States, the Federal District, and the Municipalities." This tax, the IBS, is a value-added tax (VAT) like those widely used in Europe (Pontalti, 2024). In Brazil, it takes on a dual characteristic with the creation of the Contribution on Goods and Services (CBS), specified in Article 195, V, of the CF/88, resulting in dual taxation on the same economic base. This is not unconstitutional (Pontalti, 2024), as it involves the taxation of the same base by two distinct types of taxes—a tax and a contribution—thus not infringing Article 154, II, of the CF/88.

The innovation in the federal structure becomes evident in Article 156-A, IV, when it makes clear that this tax "shall have a single and uniform legislation

throughout the national territory, except for the provisions of item V." Item V, in turn, states that "each federative entity shall set its own rate by specific law." The combined reading of these provisions reveals that the reform altered the legislative and fiscal autonomy of the federative entities, concentrating power at the national level.

States, the Federal District, and Municipalities were left with only the authority to set rates, which, according to Article 156-A, XII, will be limited by a reference rate fixed by the Federal Senate. This makes it clear, as argued by Carrazza, that the term "shared competence" is misleading (Carrazza, 2024: pp. 1058-1059). Power has been almost completely concentrated in the Union, which is competent to establish all aspects of IBS's tax law. In cases of omission by the federative entities, the Union, through the Federal Senate —an organ that, while representative of the federation, is still tied to the Union—can fix the reference rates (Carrazza, 2024). This appears to be a rhetorical move, using the term "shared competence" to avoid potential conflict with the constitutional prohibition in Article 60, §4, I, of the CF/88 (Machado Segundo, 2024).

In contrast, proponents of a "shared competence" argue that there has been no violation of the "stone clause" (Albano, 2024). They contend that Article 156-A, §§9 and 11 require the granting of exemptions, disburdening, and legislative changes to be approved by the Federal Senate and by a national complementary law, based on studies of their economic and financial impact (Scaff, 2024). Some even go further to state that there is no definite model of federalism that is readily applicable to all contexts, and that the key to good coordination and federative organization is in the adoption of practices that make viable the unity in diversity, harmonizing autonomy and interdependence of the federative entities through cooperation and competition (Torres & Cooke, 2025). Therefore, according to these scholars, although the reform touches on a danger of increasing the Union's power, the efficiency of tax collection over consumption imposes unification of competence to end fiscal wars and conflicts over tax law (Torres & Cooke, 2025).

However, these provisions merely confirm, rather than deny, the centralization of competence in the Union. The Federal Senate has long ceased to represent the interests of the States in a direct manner, given that its members are not formally tied to their governors. Furthermore, the requirement for a complementary law to pass through the National Congress reinforces that the competence lies with the Union, leaving no substantive power in the hands of the States or Municipalities. As Carvalho (2023) argues, tax competence, in essence, constitutes a subset of the legislative prerogatives afforded to political entities, materializing as the capacity to legislate the production of legal rules regarding taxation. Therefore, if the production of the legal rules regarding the taxation of IBS is concentrated in the National Congress, the legislative body of the Union, the tax competence has been changed from States and Municipalities to the Union, concentrating power for the sake of uniformity and efficiency (Torres & Cooke, 2025).

The Management Committee, provided for in Article 156-B of the CF/88, is

composed of an equal number of members from the States, the Federal District, and the Municipalities—27 members for the states (one for each plus the Federal District) and 27 for the municipalities. However, the committee's competencies and voting procedures reveal a significant power imbalance. The Committee is responsible for creating common regulations, collecting taxes, making compensation and distributing funds, and deciding administrative disputes (Article 156-B, I-III). The voting rules, as outlined in Article 156-B, §4, state that decisions for the States and the Federal District require an absolute majority of their representatives and of representatives from States and the Federal District that correspond to more than 50% of the country's population, while municipalities only require an absolute majority.

Considering its organization, the argument that the Committee will guarantee federative autonomy as a form of "cooperative federalism" is also questionable (Albano, 2024). The voting and representation system clearly gives more populous states greater power within the Committee, leading to significant disproportionality in the decisions made by this body (Machado Segundo, 2024). The loss of autonomy in setting rules and, to a large extent, rates (outside the limited adjustment margin set by the Senate's reference rate) removes the ability of States and Municipalities to create fiscal incentives or special regimes for specific sectors or regions that require greater development. This could stifle regional economic growth and make it impossible to create differentiated tax policies that address local peculiarities. It is true that some scholars argue that the reform will result in quite the opposite, improving the quality of policymaking by uniformizing the set of tax rules and distributing the revenue to the other entities with regard to population size, human development index, productivity, and other criteria (Gobetti, 2025).

Nevertheless, the perception of power centralization in the Union is further confirmed by Complementary Law 214/2025. Article 317 states that the Management Committee is responsible for issuing the IBS regulation, while the Union's Executive Branch is responsible for the CBS regulation (Brazil, 2025c). The single paragraph of this article specifies that common provisions will be approved by a joint act of both. Given the power the Presidency holds over the distribution of resources and parliamentary amendments (Articles 84, XXIII, and 165, §9º, I and III, of the CF/88), it is highly likely that the Union's interests will prevail, reinforcing the nationalization of State and Municipal competences.

Complementary Law 214/2025 goes even further. Article 318 (Brazil, 2025c) states that the IBS Management Committee, the Federal Revenue of Brazil, and the National Treasury's Attorney General's Office will "act with a view to harmonizing norms, interpretations, ancillary obligations, and procedures related to the IBS and the CBS." This provision mandates harmony between two federal bodies and one national body supposedly representing the interests of States and Municipalities (Machado Segundo, 2025). However, as Schoueri (2025) states, it is not clear what the resolution mechanism is for a scenario where the Managing Com-

mittee, on the one hand, and the Union's tax administration, on the other, adopt distinct interpretations of the same legal text, given that it is standardized by a Complementary Law. In my opinion, the practical outcome is predictable: either there will be dissonance with no easy solution (increasing cases in courts), or federal power will prevail.

A further example of this power concentration is found in Article 319 of Complementary Law 214/2025, which establishes the Committee for the Harmonization of Tax Administrations, composed of four representatives from the Federal Revenue and four from the Management Committee. It also creates the Forum for the Harmonization of Legal Procuracies, with four members from the National Treasury's Attorney General's Office and four from State and Municipal Procuracies (two from each). The Union will always have a larger representation, even though it is formally on par with the States and Municipalities, which will give it an advantage in negotiating which interpretation, harmonization, rule, or norm will prevail. Defenders of the reform argue that the principle of cooperation, stated in Article 24 of the Constitution, is the basis for the efficient construction of this system within the constitutional structure (Torres & Cooke, 2025), but it seems rather difficult to envision a situation in which this higher national interest will prevail over the individual objectives of the autonomous entities.

The reform also contradicts the foundational principle of subsidiarity, which is that what can be done by a lower-level organization should not be taken over by a higher-level one (Aristóteles, 2017). This means political and social issues should be dealt with at the most immediate or local level that is competent to resolve them effectively. In simpler terms, it means that a central government (the federal level) should only intervene and exercise power if and when the objectives of a proposed action cannot be sufficiently achieved by the constituent units (regional, state, provincial, or local governments) acting on their own. When competence is concentrated in the Union, it begins to deal with problems that are not its concern, and distance prevents them from being solved in a way that corresponds to the location where they occur. Ultimately, if the reform effectively hollows out the legislative autonomy of subnational entities to the point of turning "shared competence" into a mere attribution of limited rate-setting, it represents not only a structural change but a potential affront to the federative pact as a constitutional "stone clause" (Article 60, §4, I, of the CF/88). The essence of the federation is not merely the existence of autonomous entities but the preservation of their autonomy in fundamental matters like tax competence, something the Supreme Court of Brazil (STF) has always emphasized in cases involving State and Municipal autonomies. For example, in ADI 939, the Supreme Court ruled that even the establishment of a new tax by constitutional amendment was unconstitutional when it taxed revenue from States and Municipalities, because this kind of taxation would compromise a cornerstone of the federation: the fiscal autonomy of the entities (Brazil, 1993).

If the fiscal and legislative autonomy of subnational entities is severely compromised and their representation in centralized management bodies is asymmet-

rical, there is a concrete risk that Brazil will move towards a centralized state. This means that decisions on resource allocation and tax policies will follow a majoritarian logic that may disregard the needs and priorities of local regions and communities. Diverging from this perspective, Caliendo (2025) argues that the reform will have a good outcome, specifically for municipalities, considering that it changes the distribution of revenue from consumption/production to population levels, which will deconcentrate wealth to the interior and will promote fiscal justice. However, this undermines the essence of a federative democracy, where the proximity of local government to make decisions should allow for a more effective and personalized response to citizens' needs, potentially leading to increased public distrust in politics and institutions. Despite the divergences among scholars, one thing is for certain: Constitutional Amendment No. 132/2023 and Complementary Law No. 214/2025 have inaugurated a new form of federation. It remains to be seen what this signifies both dogmatically and procedurally.

3. Union and Shared Competence

3.1. Dogmatic Consequences of the Federative Form

Constitutional Amendment No. 132/2023 established a new federal structure by substantially modifying the distribution of tax and financial competencies. Tax law scholars have used the term "shared competence" to describe this new framework for the Tax on Goods and Services (IBS), based on the wording of Article 156-A of the Federal Constitution (CF/88).

However, a deeper analysis of this "shared competence" reveals profound consequences for the federative structure. Competence is, at its core, power (Meirelles, 2016), and historically, power is distributed, not shared (Mendes & Branco, 2023). Although there are examples throughout the world of the establishment of "shared competences", the implementation of Value Added Tax (VAT) within the federal structure presents a foundational challenge in fiscal federalism: the optimal allocation of tax competency between central and subnational governments. An examination of federal systems, including Canada, India, Russia, Mexico, and Germany, reveals that true "shared competency" models—wherein both levels of government concurrently tax the same consumption base (often termed "Dual VAT")—are exceptionally rare. Furthermore, the functional examples of this model demonstrate that its viability is paradoxically predicated upon a significant degree of centralization.

Among the selected federations, only India and Canada utilize systems that can be classified as shared competency models, although they do not use that legal meaning. The remaining nations (Germany, Mexico, and Russia) have adopted centralized federal VATs, resolving the competency dilemma by vesting legislative authority exclusively in the central government and utilizing revenue-sharing mechanisms to finance subnational entities. This type of arrangement is known as "organic federalism," where "federated units are formed in the simple image and likeness of an all-powerful central authority" (Zimmermann, 1999).

India provides the most robust example of a contemporary Dual VAT. The 2017 introduction of the Goods and Services Tax (GST) replaced a chaotic system of cascading subnational taxes (Kannan & Shukla, 2017). The Indian model is structurally dual, comprising a Central GST (CGST) and a State GST (SGST) levied simultaneously on the same base (Kannan & Shukla, 2017). However, this shared competency is only functional due to a massive, constitutionally mandated centralization of legislative and administrative power. The system's cornerstone is the GST Council, present in Article 279-A of India's Constitution, a joint federal-state body that centralizes all critical policy decisions, including the definition of the tax base, all tax rates, and exemption rules. However, the GST Council voting system emphasizes the autonomous States' power rather than the Union's, considering that States have 2/3 of the votes and the Union 1/3, requiring 3/4 of the votes to pass a decision, according to Article 279-A, (9), of India's Constitution (India, 1949).

The analysis from local authors suggests that the model created in India, even with less voting power for the Union, has caused a de facto centralization of power, considering that one-third of votes could be used as a veto power for changes in the three-fourths of votes needed to pass a decision (Kannan & Shukla, 2017). Economically, the results have also been contradictory, considering that the new distribution system of revenue emphasized population, causing revenue loss to manufacturing states (Malagi & Walikar, 2025). Therefore, although not heavily centralized, the GST system in India did not solve the problem of revenue for States as promised, only emphasizing the uniformity character of the Federation in the Union's own objectives.

Canada employs a hybrid, optional model. The federal government levies a national GST. Provinces retain autonomy to either: (a) implement their own separate Provincial Sales Tax (PST), often not a true VAT; (b) operate a distinct provincial VAT (as in Québec); or (c) harmonize their tax with the federal GST, creating a single Harmonized Sales Tax (HST) (Bird, 2012). It is the HST model that represents shared competency. In participating provinces, a single, combined rate is applied. Crucially, this model relies on administrative centralization (Bird, 2012). The Canada Revenue Agency (CRA), the federal tax authority, administers and collects the entire HST, subsequently remitting the provincial portion (Bird, 2012). Thus, Canadian "shared competency" is achieved not through centralized legislation (as in India), but through provincial option and centralized administration.

Although Canadian scholars have considered the model to be a success (Bird, 2012), the very existence of three, not one, sales taxes is enough to showcase that the establishment of the VAT is not as simple and efficient as advocated in Brazil. The Canadian model, with medium centralization, truly consists of cooperative federalism, because it is optional and does not enforce the integration of state autonomies to the national level by Constitutional Amendment. Germany, Mexico, and Russia, while federations, are not examples of shared VAT competency, although they provide examples of what it truly means, from a legal perspective, to

emphasize national competence over States and Municipalities when it comes to tax law.

In Mexico, the VAT is centralized at the federal level, but the revenue is transferred to the local level, which, from their perspective, would grant fiscal autonomy (Huerta, 1997). However, it is a very complex system, and to this day, causes local scholars to argue about the mathematical solution for a better distribution of revenue (Rodríguez & Rodríguez, 2022). Russia follows the same path, where VAT is centralized in the Federal Government with revenue distributed to the local level. Although initial studies emphasized that the better distribution of revenue was able to grant improvement throughout the massive Russian Federation, more recent results suggest that the federal transfers did not significantly improve regional fiscal sustainability (Di Bella, Dynnikova, & Grigoli, 2018).

In Germany, Article 105(2a) of the Basic Law establishes that the Länder shall have the power to legislate with regard to local taxes on consumption and expenditure so long as and insofar as such taxes are not substantially similar to taxes regulated by federal law (Germany, 1949). Despite this provision in the Basic Law, the German VAT system is federal and, therefore, the Länder, in practice, do not have the tax competence to establish their own consumption tax. However, the Länder have the power to influence federal law because any alteration of federal legislation by the Bundestag (Federal Parliament) is subject to the consent of the Bundesrat (the legislative body composed of representatives of the Länder governments), according to Article 105(3) of the Basic Law. In other words, even if tax competence is centralized in the Federal Government, local autonomy is protected because the Bundesrat, made up of actual representatives of the local governments, and not directly elected officials as in Brazil, must approve any alterations, protecting their fiscal autonomy indirectly.

This system is distinctive because it centralizes the competence in the Union while keeping it at bay with the necessity of agreement from local authorities, represented in the Bundesrat. According to Spahn (1997), the German VAT system is successful because it emphasizes the cooperative aspect of federation, through the uniformity of living conditions for the whole nation and coordination among Länder and the Federal Government. The author also clarifies that the uniformity is achieved by revenue distribution with special provisions to Länder with more necessities (Spahn, 1997). But again, as stated before, this is not a "shared competence." Germans recognized that they had centralized power, but kept this power checked by the Bundesrat.

Therefore, despite the term used in the Federal Constitution, historically and dogmatically, "shared competence" does not exist in the manner it is portrayed. The term serves as a rhetorical device to obscure the true meaning of this new federal structure: the centralization of power in the Union (Machado Segundo, 2024). Dogmatically, the term goes against the principle of non-delegability of competence, enshrined in Article 7 of the National Tax Code (CTN). Tax competence is non-delegable and cannot be exercised by another political entity

(Carvalho, 2023). When a self-proclaimed "federalist" state concentrates competence in a central entity, weakening the autonomy of its partial legal orders, it becomes a decentralized unitary state (Tavares, 2023).

The argument that the Management Committee for the IBS—composed of members from States and Municipalities—signifies shared competence is flawed. The Committee's decisions are subject to collaboration with federal bodies such as the National Treasury's Attorney General's Office, the Federal Revenue, and the Presidency (CF/88, Art. 156-B; LC 214/2025, Arts. 317-319). If the Committee were truly a body of "shared" competence, it would not have to observe the regulations of federal bodies. This structure indicates that the value of national uniformity has prevailed over the autonomy of federated entities, leading not to shared competence but to a greater concentration of power in the Union, as seen in the examples of India, Mexico, and Russia.

The practical effect of this tax reform is a severe reduction in the tax autonomy of federative entities. When the most significant tax in the budgets of States and Municipalities—the IBS—falls under the Union's competence, it signifies a move towards unitarism. This is a centralizing trend that formalizes a centralist dynamic that was already present in practice under the previous constitutional framework. As Hugo de Brito Machado Segundo argues, the "shared competence" and the Management Committee provisions are a "smokescreen" to mask the unconstitutionality of the amendment, which, by annihilating the tax competence and autonomy of States and Municipalities, may be considered an attempt to abolish the federative form of the state, a "stone clause" under Article 60, §4, I, of the CF/88 (Machado Segundo, 2024).

Roque Carrazza, another prominent critic, contends that the amendment is unconstitutional because it infringes upon the autonomy of States and Municipalities by depriving them of private competence over their taxes (Carrazza, 2024: p. 143). He argues that this undermines the indissolubility of the federation and imposes a subservience of other entities to the Union. Carrazza calls the limited ability of States and Municipalities to set rates a mere "vestige of competence," as the Union and the National Congress have centralized full power over the regulation of all aspects of the IBS's tax law (Carrazza, 2024: pp. 1055-1064). He also notes that Article 156-B effectively nullifies the regulatory competence of state and municipal executives and even interferes with the independence of the Judiciary by mandating the uniformity of interpretations provided by the Committee (Carrazza, 2024: pp. 1065-1067). Renato Lopes Becho, although not a critic, also concludes that the uniformity of rules dictated by the National Congress will result in the IBS and CBS being treated as a single federal tax (Becho, 2025). This is the practical result of the reform: by concentrating almost total competence in the Union, the distinction between IBS and CBS becomes merely formal, revealing that the ultimate objective was always a national Value-Added Tax (VAT).

Centralization also undermines the principle of subnational entities as "laboratories" for public policies (Tavares, 2023). By concentrating legislative and tax au-

tonomy in the Union, the reform stifles the capacity for experimentation and innovation at the State and Municipal levels. A rigidly centralized tax system drastically reduces the ability to adapt fiscal rules to regional peculiarities or test new approaches to local economic development. This homogenization can lead to a legislative monotony where solutions always come "from the top down," ignoring the rich diversity and different realities of Brazil, especially because the States and Municipalities will not have consistent and autonomous control over the decisions that are taken by the Committee, as in Canada and Germany.

The defenders of the reform think differently. Their argument is that the reform is constitutional for several aspects, most notably related to economics and democracy rather than legal meaning. Santi (2025) explains that the reform was organized by a diverse and "imparcial" group of scholars, whose aim was to congregate both public and private sector concerns and views regarding the elaboration of a VAT in Brazil to decrease bureaucracy and mitigate eventual revenue losses. Some scholars argue that the reform simplifies the former system based on triple taxation of different aspects of consumption, envisions a clearer repartition of revenue, not concentrating in larger manufacturing areas or urban centers, and will, in their opinion, decrease the tax burden over time (Gobetti, 2025). Others defend that the reform will be able to guarantee greater fiscal citizenship as the revenue will be shared based on population and representation (Campedelli, 2025).

While these arguments may be true, they still must be subject to the test of time, and they do not change the controversy over the legal meaning of "shared competence". The reform will come into force, partially, by January 2026 and it is yet to be seen if the tax burden will not increase, considering the higher risks for inflation and the rates that have been established by the legislature, some as high as 28%. Inflation is not, at any level, shape, or form, fiscal citizenship. If it rises, any of these noble objectives of the former scholars will be defeated by experience alone.

In the field of legal meaning, some defenders of the reform argue that the "shared competence" is a new model that stems from cooperative federalism, while others advocate that the centralization of power is an aspect of the necessary uniformity designed in the Constitution for the federation to work. The first opinion argues that the use of the word "shared" to qualify the competence is a legal innovation that emphasizes the structural principle of equality in the exercise of cooperation and solidarity in the Brazilian Federation, whose main figure would be a National Committee with no unitary and superior decisions, but with joint deliberation (Júnior, 2025; Caliendo, 2025; Gobetti, 2025). In the second perspective, scholars argue that uniformity is a successful characteristic of VAT in the world, quoting Canada as an example, and that this centralization does not abolish federation, as it keeps the autonomy of States and Municipalities under their fiscal responsibility, only centralizing decision-making in the National Committee (Torres & Cooke, 2025). Their opinion is followed by Sundfeld (2025), who argues that the Management Committee is a semi-public entity, whose main purpose is to guarantee neutrality and will, to a large extent, have independent ruling of tributary aspects that

will enforce the autonomy of States and Municipalities, but with uniformity.

Although the defenders of the reform argue that the federation has been severely weakened but not abolished (Scaff, 2024; Albano, 2024), and that the Brazilian federation is defined by its constitutional text rather than an a priori concept (Mendes & Branco, 2023), both perspectives of legal meaning from the defenders overlook the practical effects. Structures of power, such as forms of State, are social and political constructs with significant practical effects. A legal concept, such as "federation," cannot be fundamentally different in each constitution. As Charles Sanders Peirce taught, a concept is a secure term we use as a parameter to define objects, without which we lose our frames of reference (Peirce, 2017). The pragmatic view, as championed by legal scholars like Oliver Wendell Holmes Jr. ("The life of the law has not been logic: it has been experience"), suggests that the true nature of the reform must be judged by its practical consequences (Holmes Jr., 1881: p. 1).

As seen, critics argue that the practical effect of the reform is not a clear division of competencies and autonomy, which is the defining characteristic of a true federation. Instead, it is a structure in which the Union has taken on the function of regulating all aspects of tax law, even in areas that would seem to belong to the States and Municipalities. This centralization is seen in all the foreign systems that were compared in this paper (Canada, Germany, India, Russia, and Mexico) and reveals a deeper, perhaps unstated, nature of the reform: the practical and procedural consequences which are analyzed ahead.

3.2. Practical, Procedural, and Tax Consequences

While the debate over the centralization of power in Brazil's federation—and the constitutionality of its recent alterations—is ongoing, it is undeniable that the tax reform introduced by Constitutional Amendment No. 132/2023 has led to significant changes with severe practical consequences in both the administrative and judicial spheres.

The reform's shortcomings are apparent in the administrative sphere, where it fails to provide clear and precise definitions for the rules governing tax inspection, collection, registration, assessment, restitution, and compensation. Instead, these matters have been delegated to a Management Committee and a forum for harmonization, which will establish the relevant regulations (Machado Segundo, 2024). This lack of clarity will likely increase conflicts and legal uncertainty rather than diminish them. As an example of how even uniform national laws can still lead to jurisdictional conflicts in Brazil, environmental law is a long-standing case in point (Sarlet & Fensterseifer, 2017).

Although Complementary Law 214/2025 made a brief effort to systematize obvious rules on tax assessment and inspection, largely by replicating existing provisions in the National Tax Code (CTN), it did not resolve the interpretive and enforcement problems that will inevitably arise (Machado Segundo, 2025). Furthermore, it is unclear whether State and Municipal-level decisions can be ap-

pealed to a national system, or if an indirect consultation with the Committee or a harmonization procedure will always be necessary. This ambiguity is exacerbated by the fact that the new system will involve triple tax oversight, another element that may increase, even further, the problem of Brazilian binding jurisprudence and the increased costs of the Judiciary power (Becho, 2020).

This triple oversight, contrary to what was promoted as a hallmark of the reform (Reforma Tributária, 2024), will lead to higher tax, accounting, financial, and legal costs for both taxpayers and the State. The most significant and concerning consequence is the triple tax inspection. Unlike the claims that the reform would simplify the system, this will lead to higher tax, accounting, financial, and legal costs for both taxpayers and the government. Administratively, a single taxable event could be subject to three separate inspections and assessments, potentially leading to three distinct tax enforcement actions—a stark contradiction to the National Council of Justice (CNJ) efforts to reduce and streamline such cases (Brazil, 2024a).

Furthermore, because the IBS and CBS share the same economic base, lawsuits brought by taxpayers—such as motions for annulment or writs of mandamus—will create a connection between cases under Article 55, §3, of the Code of Civil Procedure (CPC). This will likely result in endless disputes over jurisdiction and the suspension of proceedings across federal and state courts.

The reform also expands the original jurisdiction of the Superior Court of Justice (STJ) to include conflicts between federative entities or between them and the Management Committee related to the IBS and CBS (Article 105, I, "j", CF/88). This will significantly increase the STJ's caseload, as it must now handle both original inter-federative disputes and its traditional appellate role of unifying jurisprudence. The multiplicity of potentially conflicting interpretations from different courts—including state, federal, and special courts—will generate a massive increase in appeals and other legal actions, leading to systemic legal uncertainty and imposing enormous costs on the Brazilian state.

A working group established by the STJ in late 2024 to study the reform's procedural impacts confirmed these concerns. Its final report in April 2025 reached similar conclusions, highlighting an expected increase in administrative disputes, a lack of legal integrity in decisions, the issue of triple tax enforcement, and jurisdictional problems in anti-enforcement lawsuits.

The group's analysis, using DATAJUD data, projected a significant rise in tax litigation at STJ. It concluded that the reform could lead to an increase of 28,764 new cases, representing a 35% increase in tax-related litigation and a 2% increase in the court's overall distribution (Brazil, 2025b). The report also anticipates a 107% increase in tax enforcement actions in federal courts and a 16% increase in state courts.

The report also highlighted that it could not calculate the increase in cases related to new interpretive conflicts that will require national standardization. This suggests that even these numbers present a conservative view of the reform's true

impact on the judiciary (Brazil, 2025b). The report specifically pointed to three factors that will drive this increase: the lack of uniform rules on litigation and oversight, and the expected rise in non-compliance, which will lead to a higher number of collection actions, particularly from municipalities (Brazil, 2025b).

In a move that implicitly concedes the centralizing nature of the reform, the Federal Attorney General's Office (AGU) proposed either creating a mixed federal-state court or concentrating all tax litigation under the federal judiciary (Brazil, 2025b: p. 5). The STJ working group rejected both proposals, noting the constitutional and structural hurdles involved (Brazil, 2025b: pp. 26-28). This rejection, however, serves as a powerful testament to the reform's fundamental flaw: it has created a system so complex and centralized that even its proponents believe the traditional judicial structure is inadequate to handle it.

To mitigate these problems, the working group suggested several alternatives: 1) concentrating litigation or grouping cases by state and municipality to facilitate the discussion of IBS-related cases; 2) setting individualized threshold values for each entity, transferring collection efforts to a larger entity, and eventually to the Union and Federal courts; 3) making a prior administrative request a prerequisite for tax litigation, drawing an analogy to a similar requirement in social security cases (Brazil, 2025b). The solutions proposed by the STJ working group further expose the fragility of the federative pact. These suggestions, while intended to solve the logistical nightmare, would effectively turn States and Municipalities into mere "bill collectors" for a tax they have no real control over, directly violating the principle of non-delegability of tax competence (Carrazza, 2024: pp. 1055-1064).

The reform also creates fertile ground for violations of the principle of equality, as divergent interpretations by different tax authorities could lead to disparate treatment of taxpayers in identical situations (Brazil, 2025b). The "harmonization" process, rather than being a technical exercise, is likely to become a political power struggle that delays the issuance of clear rules, compromising the simplicity and legal certainty promised by the reform (Machado Segundo, 2025: pp. 411-412). The proposal to mandate prior administrative requests, while a relevant idea, has been consistently rejected by the judiciary over the years.

Just in a recent case, RE 1.525.407 RG, the Supreme Court of Brazil (STF) ruled that there is no need for a prior administrative request in claims for the recognition of income tax exemption, a ruling that has a precedent history from former cases prioritizing the right to petition (or access to justice) when challenged by the prerequisite of a prior administrative request (Brazil, 2025a). For example, in RE 388.359/PE, the STF ruled that the requirement of a prior deposit violates the constitutional guarantees of due process (or adversarial system), the full right of defense, and the right to petition (Article 5, XXXIV, 'a', and LV, of the Federal Constitution), constituting an undue restriction on the taxpayer's right to defend themselves in the administrative sphere without a financial burden (Brazil, 2007). This proposition would require a reversal of established jurisprudence, not be-

cause of the new taxes, but because the lack of this requirement has long resulted in high costs for the judiciary (Brazil, 2025b).

To draw these conclusions and suggestions, the working group will present a constitutional amendment project based on four problems and three solutions (Carvalho, 2025). The five problems listed are: a) tax enforcement of the taxpayer far from their residence; b) multiple tax litigation, including far from the residence of the tax collector or the taxpayer; c) multiple tax enforcement from a single tax event; d) risk of conflict of competence between federal and state courts. The solutions presented are a) the creation of a "shared competence" to rule over tax cases of the IBS and CBS, with judges from both federal and state courts, working exclusively digitally, with national competence; b) the distribution of one tax action (be it enforcement or motions for annulment) will legally prevent the judge from ruling over any related case; c) mandatory prior administrative requests to access the judiciary power and collection of court costs to a national fund. Once again, the solutions reveal the centralization process that has been inaugurated by the Constitutional Amendment No. 132/2023. Everything is becoming "shared" but strongly nationalized, and State and Municipal authorities are losing autonomy to the stronger federal government.

Ultimately, the reform, despite its stated goals, introduces significant complexities and imbalances that will have profound and negative impacts on Brazil's legal and tax systems, and on the very structure of its federation. By failing to account for its procedural consequences, the reform has created a chaotic environment that proves the centralizing and potentially unconstitutional nature of the new system. The unpredictability and increased costs for businesses, along with the potential collapse of the judicial system, create an unfavorable environment for economic activity and long-term planning (Brazil, 2025b).

4. Conclusion

The analysis of Constitutional Amendment No. 132/2023 on Brazil's federal structure reveals a profound transformation of the federal pact, which extends beyond a simple "shared competence." Historically, Brazilian federalism has been characterized by asymmetry, with a predominance of the Union. The tax reform, by centralizing legislative authority over the Tax on Goods and Services (IBS) and the Contribution on Goods and Services (CBS) at the federal level, has intensified this asymmetry, raising serious doctrinal and practical questions about the autonomy of subnational entities.

While the Constitutional Amendment was presented as a solution to complex fiscal disputes and the inefficiency of the previous tax system, an examination of its practical consequences suggests that the new structure could generate a significant increase in administrative and judicial litigation. The creation of Harmonization Committees and Forums, although with equal representation, does not guarantee the autonomy of the States and Municipalities, as the Union's power, evidenced by its control of resources and political influence, is likely to prevail.

The absence of clear rules for the audit, assessment, and collection of the IBS and CBS could lead to "triple audits" and "triple assessments," potentially resulting in multiple tax enforcement actions for the same taxable event. This contradicts the public policy of judicial rationalization. The multiplication of disputes and the resulting legal uncertainty could overburden the Superior Court of Justice (STJ) and lower courts. The report from the STJ's working group, which estimates a considerable increase in new cases, both in tax enforcement and anti-tax actions, corroborates this concern.

The legislative process appears to have overlooked these practical consequences, a "myopia" on the part of the reform's formulators. Ignoring historical lessons and the systemic costs for taxpayers and the State (the Judiciary) suggests a limited rationality or, at worst, a prioritization of political expediency over technical and systemic stability.

Beyond the technical and doctrinal aspects, the reform raises questions about the fiscal legitimacy of tax management and public policy. By centralizing legislative authority and, consequently, control over the largest revenue source for States and Municipalities, their capacity to establish public policy for local citizens, which directly affects their daily lives, is drastically reduced. The distance between the taxpayer and the center of fiscal decision-making widens, eroding the premise that federal autonomy brings government closer to the people and allows for a more effective response to local demands, a consequence that already evokes a reaction with another proposal for a Constitutional Amendment, with further centralization.

Furthermore, a centralized tax model is ill-suited for a country of continental dimensions with such immense regional diversity, arguably similar to the United States. The economic, social, and cultural particularities of each state and municipality demand flexibility and autonomy that the new IBS/CBS design appears to preclude. This forced standardization of the tax base and operational rules, largely controlled by national entities for the sake of uniformity, prevents subnational entities from developing fiscal policies tailored to their realities and regional development priorities.

In addition, the concept of federation is based on the idea of decentralization of power. This, of course, comes with certain costs, as the complexity of the system is higher to accommodate the individualities of each autonomous entity. But all of this is anticipated in this model of State form, and it is the differentiating aspect from the Unitary State. To address the issue of complexity by uniformity is to undermine the very concept of federation, forgetting that its structure is, ultimately, decentralized to serve the means not of uniformity, but of diversity. As James Madison proposed in Federalist No. 39 and 45, the Federation is neither national nor federal, but a composition of both, with the federal government having limited and few powers, while the states' powers remain numerous and indefinite to attend directly to individual citizens' interests (Publius, 1787).

In conclusion, Constitutional Amendment No. 132/2023 and Complementary

Law No. 214/2025 have not merely altered the fiscal system; they have profoundly reshaped the federal pact. The promise of simplification and a reduction in the "fiscal war" appears to be giving way to a scenario of power centralization in the Union, through the Management Committee, masked by the rhetoric of "shared competence" and "cooperative federalism." The analysis demonstrates that this doctrinal centralization will bring severe practical consequences, particularly in the administrative and judicial spheres.

Brazil is moving toward a model that flirts with unitarism, where the capacity for innovation at the local level may be sacrificed for the sake of imposed uniformity. The legislative myopia that disregarded historical warnings and predictable consequences compels us to question the quality of the decision-making process and the true understanding of what federalism entails. The future of Brazilian federalism, shaped by this reform, will be fertile ground for continuous debates and challenges.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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