

**PUBLICATIONS ABROAD REGARDING THE BRAZILIAN LAW : Tax Law,
Civil Law and Intellectual Property Law**

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ABSTRACT

This article compiles the research results of articles, books and book chapters written in foreign languages, especially in English, published abroad or in Brazil regarding the Brazilian law, more specifically about tax law, civil law and intellectual property law.

KEY WORDS: Publications abroad; Brazilian law; Tax; Civil; Intellectual Property.

**PUBLICAÇÕES NO EXTERIOR SOBRE O DIREITO BRASILEIRO: Direito
Tributário, Direito Civil e Direito da Propriedade Intelectual**

RESUMO

O presente artigo compila o resultado da pesquisa em busca de artigos, livros e capítulos de livros escritos em língua estrangeira, especialmente em inglês, e publicados no exterior ou no Brasil sobre o direito brasileiro, mais especificamente sobre os direitos tributário, civil e da propriedade intelectual.

PALAVRAS-CHAVE: Publicações no exterior; Direito Brasileiro; Tributário; Civil; Propriedade Intelectual.

1) Introduction

During the second half of 2010, Professor Jacob Dolinger ministered the subject Brazilian Law Abroad II on the course of post-graduate studies at UERJ. The purpose of the subject was, through the compilation of what have been published, instigate Brazilian

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authors to write more about Brazilian law abroad, specially in English. In this context were researched publications on tax, civil and intellectual property law.

Despite the limitations and difficulties faced on the search, it was possible to compile a number of relevant publications that are the subject of this article which has not been written as a way to deepen into Brazilian law or the publications found, but aiming at the presentation of the themes that were the subject of these publications, with its indication in footnotes².

2) Tax Law³

Knowledge of tax law of the host country is essential for the foreign investor not only for the elaboration of a business plan, but also for evaluation purposes of, for instance, how it will perform its capitalisation, not limited to the direct foreign investment and how to obtain financial return of it without restrictions regarding distribution of dividends, so that the legal structure of the investment can be defined.

In this sense, the tax aspects of a country are essential so that the investor can determine the outlines of his operation in it. Foreign interest in Brazilian tax law stem first from this investors need. Tax matters are constantly indicated in guides about foreign investment in the country, considering that, nowadays, specific guides on the matter have been published⁴.

2.1 First publications abroad

² It is worth mentioning the lack of research tools which allow its realisation in an integrated manner in the country and the lack of information on publications abroad of some authors, which compromises in a way the object of this work, in such a manner that it must not be read as an exhaustive list of publications on Brazilian law abroad.

³ Special thanks to Drs. Agostinho Toffoli Tavoraro and Luís Eduardo Schoueri by the information provided about their references and publications abroad.

⁴ USA Global Investment Center Staff. *Brazil Tax Guide*. 3a ed.. International Business Publications, 2008. USA International Business Publications. *Brazil Taxation Laws and Regulations Handbook*. International Business Publications, 2008. *Brazil Tax, Law and Business Briefing*. 5a ed.. Worldtrade Executive, 2010, 260 p.. DIMANCESCU, Katherine (organiser). *Brazil Tax, Law and Business Briefing*. 4a ed.. Worldtrade Executive, 2008, 300 p.. JOHNSON, Amanda D. (organiser). *Brazil Tax, Law and Business Briefing*. 3a ed.. Worldtrade Executive, 2006, 340 p.. JOHNSON, Amanda D. (organiser). *Brazil Tax, Law and Business Briefing*. 2a ed.. Worldtrade Executive, 2005, 224 p.. KUAN, Judy S. (organiser). *Brazil Tax, Law and Business Briefing*. Worldtrade Executive, 2004, 232 p.. ROTHMANN, Gerd Willi. *Investitionrecht in Brasilien (Corporate Law in Brazil)*. São Paulo: 1971. ROTHMANN, Gerd Willi. *Merkblatt für Kapitalanlagen im Ausland - Brasilien (Information on investments abroad - Brazil)*. Bundesstelle für Außenhandelsinformation, 1976.

First publications about Brazilian tax law abroad are from the 1950s, with highlight to the book *Taxation in Brazil* from Henry J. Gumpel and Rubens Gomes de Sousa in 1957, which is part of several studies published by *Harvard Law School* as a result of the *World Tax Series* programme of the university and detailed the tax system in force at the time⁵.

During that period and in the following decade the general outlines of the Brazilian tax system were still a foreign interest, particularly the treatment of foreign remittances, which means, the incidence of income tax withheld on the income of non-residents in country⁶.

The dividends were the primary form of return on investment, but these amounts were considered doubly taxed by the company in the determination of actual profit and dividends received by shareholders as a result of the incidence of income withholding tax. Aiming at tax saving, subsidiaries of foreign companies began to use remittances as payment of technology transfer, which were only subject to income tax withholding and deductible for the Brazilian company⁷.

The result of that strategy was the stipulation of absurd amounts of royalties and compensation for know-how, with Brazilian companies having excessive losses or deductible expenses and consequently, in some cases, no longer collecting the income tax. The first Brazilian measure in response to that was fiscal, with the enactment of a law that limited the percentage of deductible expenses of the company.

A few years later, Brazil took advantage of this measure and its newly instituted policy of importing technology at the lowest possible cost, by Law nº 4.131/62, to link the price of the technology to the percentage of deduction, sealing some of these remittances abroad and instituting additional taxation on the remittance of dividends⁸.

⁵ ULHÔA CANTO, Gilberto de. Taxes affecting industrial and commercial enterprise in Brazil. *Bulletin of the International Bureau of Fiscal Documentation*, Amsterdã, 1952, v. 6, n° 112, p. 66. DIAMOND, Walter H.. *Digest of brazilian taxes and business organization*. Matthew Bender, 1956. DIAMOND, Walter H.. *Digest of brazilian taxes and business organization*. Matthew Bender, 1958. DIAMOND, Walter H.. *Digest of brazilian taxes and business organization*. Overseas Press and Consultants, 1960. GUMPEL, Henry J.; DE SOUSA, Rubens Gomes. *Taxation in Brazil – World Tax Series*. Boston: Little Brown and Company, 1957, 373 p.. HECKERLING, Philip E.. *Latin American Tax Systems*. *Kentucky Law Journal*, 1963-1964, Vol. 52, n. 3, p. 609-630.

⁶ HORNBOSTEL, Peter A.. Brazil: Withholding Taxes on Foreigners Income. *Law and Policy in International Business*, 1974, Vol. 6, n. 4, p. 987-1016.

⁷ SWANSON, Howard. Royalties and Technical Assistance Arrangements. *Taxes - The Tax Magazine*, Novembro de 1958, Vol. 36, n. 11, p. 825-828.

⁸ XAVIER, Alberto. *The taxation of foreign investment in Brazil*. Kluwer Law and Taxation, 1980, 130 p.. NETO, J. M. Pinheiro. Multinationals in Brazil. *Case Western Reserve Journal of International Law*, 1976, Vol. 8, n. 2, p. 311-328. EDUARD, Metzger. *Die Besteuerung von Tochternehen in Brasilien nach deutschem und brasilianischew Recht*. Institut fur Iberoamerika Kunde, 1974, 182 p.. ULHÔA CANTO, Gilberto de. Changing loans into equity capital.

This treatment has been the subject of numerous articles abroad and remained as a policy until the early 1990s⁹.

2.2) International treaties against double taxation of income

International treaties against double taxation of income are the most used instrument for countries in order to avoid it. Brazil has signed its first treaty in the late 1960s (with Japan and Sweden) and shortly after Gilberto de Ulhôa Canto published with Sten F. W. Bille, by the *International Bureau of Fiscal Documentation - IBFD* ("*IBFD*"), the book *The Tax Convention between Brazil and Sweden with Brazilian and Swedish Commentaries*, in which both authors presented their comments on the recently signed convention to avoid double taxation income¹⁰.

Over the following decades, the growing participation of Brazil in the international market and foreign interest in domestic economy contributed to increase the number of treaties signed by the country that, although it does not figure as a member of the *Organisation for Economic Co-Operation and Development – OECD*, uses its standard

Brazilian Business, 1978, n° 3, p. 15. MARTINS, Ives Gandra da Silva. The foreign controlling shareholder and the hidden distribution of profits. *Intertax*, nov. /dec. 1979, p. 447/338. MARTINS, Ives Gandra da Silva. The foreign controlling shareholder and the hidden distribution of profits. *Resenha Tributária* 4/80, section 1.3. MARTINS, Ives Gandra da Silva. The supplementary income tax on the remittance of dividends abroad: legal nature computation. *Bulletin for International Taxation*, august, 1982, International Bureau of Fiscal Documentation, p. 395/404. MARTINS, Ives Gandra da Silva. The supplementary income tax on the remittance of dividends abroad: legal nature computation. *Revista IASP*, p. 1/85.

⁹ LACEY, Frank. Technology and Industrial Property Licensing in Latin America: A Legislative Revolution. *International Lawyer (ABA)*, Abril de 1972, Vol. 6, n. 2, p. 388-408. International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 60a – Tax treatment of the importation and exportation of technology, know-how, patents, other intangibles and technical assistance*. 1975. NATTIER, Frank E.. Limitations on Marketing Foreign Technology in Brazil. *International Lawyer (ABA)*, 1977, Vol. 11, n. 3, p. 437-452. KANTOR, Norman D.. Restrictions on Technology Transfer in Latin America. *The Trademark Reporter*, 1978, Vol. 68, n. 4, p. 552-580. BISCHHEL, Jon E.. Intercompany Transfers of Technology: A Comparative Tax Analysis. *International Tax Journal*, Fevereiro de 1979, Vol. 5, n. 3, p. 181-197. MARTINS, Ives Gandra da Silva; COLASUONO, Miguel. Tax aspects of technology transfer within/into/out of South America. *International Tax Planning Conference: 9th to 12th January, 1979*. Bahamas: Maechmont Taxation Group Limited, 1979. FRENCH, Jan Hoffman. Brazil's Profit Remittance Law: Reconciling Goals in Foreign Investments. *Law and Policy in International Business*, 1982, Vol. 14, n. 2, p. 399-452. TAVOLARO, Agostinho Toffoli. Regime Jurídico dos Investimentos Estrangeiros no Brasil. *Ciência e Técnica Fiscal*, Janeiro/Junho de 1982, n° 277 a 282. TAVOLARO, Agostinho Toffoli. Regime Jurídico dos Investimentos Estrangeiros no Brasil. *Boletim da Direção Geral das Contribuições e Impostos – Ministério das Finanças*, Lisboa. ROSENN, Keith S.. Regulation of Foreign Investment in Brazil: A Critical Analysis. *Lawyer of the Americas*, 1983, Vol. 15, n. 2, p. 307-366. STUBER, Walter Douglas. Transfer of Technology Agreements in Brazil. *International Business Lawyer*, Setembro de 1988, p. 370-373. SCOTT, W. Andrew. Technology Transfer Laws and International Franchising. *International Business Lawyer*, Junho de 1994, p. 256-268. PASQUALIN, Roberto (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 82a. – The taxation of income derived from the supply of technology*. Kluwer Law International, 1997, p. 253-271. LEONARDOS, Gabriel F. (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 92a - Transfer Pricing and Intangibles*. 2007.

¹⁰ IBFD was founded in 1938 and publishes either in paper and in electronic format (e.g. Latin American Tax Handbook e Latin America - Taxation & Investment), articles about international tax law and tax aspects of several countries, including Brazil. A list of articles written by Brazilian authors published by IBFD can be found in TÓRRES, Heleno Taveira (organizador). *Direito Tributário e Ordem Econômica – Homenagem aos 60 anos da ABDF*. Quartier Latin, 2010. ULHÔA CANTO, Gilberto de; BILLE, Sten F. W.. *The Tax Convention Between Brazil and Sweden with Brazilian and Swedish Commentaries*. Amsterdã: International Bureau of Fiscal Documentation, 1968, 51 p.

agreement, with some punctual changes. However, despite the numerous treaties signed, Brazil has not succeeded yet in its negotiations with the United States, which almost happened in the 1960s, but as a result of changes required by the U.S. Senate was not possible to be approved by Brazil¹¹.

These treaties signed, however, often do not reach its aim as a result of misinterpretation by the Federal Treasury and Brazilian judiciary. The problem starts with their status. The supremacy of the treaty to other internal tax rules is not always recognised, although the doctrine generally indicate its prevalence based on the criteria of specialty as provided by Agostinho Toffoli Tavoraro (PUC Campinas) in *Taxation Agreements under the New Constitution and A Supremacia dos Tratados Internacionais face à Legislação Interna* (in English, *The Supremacy of International Treaties over Domestic Legislation*).¹².

Besides denying the specialty of the treaty to avoid its application, Brazilian federal tax authorities and the courts insist on interpretations which do not observe the standards of interpretation for treaties and sometimes are clearly contrary to the provisions thereof. This situation often occurs in relation to norms which will result in the proper interpretation of the income tax by another signatory state and not by Brazil, which means that, aiming at ensuring illegitimate tax revenue of the federal government at the expense of the agreement signed¹³.

¹¹ English version: <http://www.receita.fazenda.gov.br/principal/ingles/Acordo/DuplaTributDefault.htm>. SITRICK, James. Conventions for the Avoidance of Double Taxation between United States and Latin America: The Proposed Convention between United States and Brazil. *Taxes - The Tax Magazine*, Junho de 1967, Vol. 45, n. 6, p. 380-400. KERN, Norton. Trends in Latin American Taxes. *Tax Executive*, Janeiro de 1968, Vol. 20, n. 2, p. 139-152. MITCHELL, Richard. United States-Brazil Bilateral Income Tax Treaty Negotiations. *Hastings International and Comparative Law Review*, 1997, Vol. 21, n. 1, p. 209-240.

¹² TAVOLARO, Agostinho Toffoli. Brazil: Taxation Agreements under the New Constitution. *Bulletin for International Taxation*, Amsterdã, 1989, Vol. 43, pág. 371. TAVOLARO, Agostinho Toffoli. A Supremacia dos Tratados Internacionais face à Legislação Interna. *Revista Diritto e Pratica Tributaria Internazionale*, CEDAM – Padova, 2002, Volume LXXIII, nº 4.

¹³ TAVOLARO, Agostinho Toffoli (National Reporter). “Brazil”. In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 59b - Tax Problems Resulting from the Temporary Activity Abroad of Employees of Enterprises with International Operations*. 1974. ROCHA, Roberto Paraíso. (National Reporter). “Brazil”. In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 78a - Interpretation of double taxation conventions*, 1993. SCHOUERI, L. E.. The residence of employer in the 183-day clause. *Intertax*, Amsterdã, 1993, p. 20-29. TAVOLARO, Agostinho Toffoli. In: International Fiscal Association (IFA). *The Taxation of Employee Fringe Benefits*. Kluwer Law International, 1995. SCHOUERI, L. E.. “Qualifikation und Substitution im internationalen Steuerrecht”. In: KIRCHHOF, Paul; LEHNER, Moris; HAUPACH, Arndt; RODI, Michael (Org.). *Staaten und Steuern*. Heidelberg: Müller, 2000, p. 925-943. CARVALHO, André de Souza. “Offshore Mineral Activities under the OECD Model Convention”. In: AIGNER, Hans-Jörgen; LANG, Michael (coord.). *Permanents Establishments in International Tax Law. Schriftenreihe zum Internationalen Steuerrecht*, Band 29. Viena: Linde, 2003, p. 99-125. XAVIER, Manoela Floret Silva (National Reporter). “Brazil”. In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 91b - The attribution of profits to permanent establishments (PEs)*. 2006. BICHARA, Luiz Gustavo A. S. (National Reporter). “Brazil”. In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 92b - Conflicts in the attribution of income to a person*. 2007. ROCHA, Sergio André; CUNHA, A. B.. “Sportsperson

2.3) A lesson thought by Brazil: tax treatment of the monetary adjustment

In the past, Brazil has also interested the foreign countries by a peculiarity: the extremely high inflation, which resulted in the need for a tax treatment of monetary adjustment. The issue deserves attention, particularly in the context of income tax, because monetary correction does not constitute equity increase.

On the topic, Rubens Gomes de Sousa presented in Chile, in 1967, the Brazilian case with regard to the legal aspects of inflation in the tax system, which was later published under the title *Aspectos Jurídicos de la Incidencia de la Inflación en el Sistema Tributario: El caso Brasileño*¹⁴.

In the following year, Keith S. Rosenn published the article *Adaptations of the Brazilian Income Tax to Inflation* and afterwards another entitled *Taxation of Business Income Adjusting for Inflation: Lessons from Brazil and Chile*, where once again he highlighted the Brazilian legislation and praising it by providing that "*the two countries with the most comprehensive and sophisticated kinds of income tax inflation adjustments are Brazil and Chile*"¹⁵.

In the early 1980s, the issue about the tax treatment of the monetary correction resulted in the book *Monetary indexation in Brazil* coordinated by Gilberto Ulhôa Canto and Ives Gandra da Silva Martins (Universidade Mackenzie and Universidade Paulista - UNIP) at the request of the *International Fiscal Association - IFA*¹⁶. In the tax framework,

Taxation in Brazil". In: Félix Plaza Romero. (Org.). *Guide on Sportsperson Taxation in Certain Relevant Jurisdictions*. Navarra: Thompson - Aranzadi, 2008, p. 23-30. CARVALHO, André de Souza (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 94a – Is there a permanent establishment?* 2009. ROCHA, Sergio André. *Interpretation of Double Taxation Conventions - General Theory and Brazilian Perspective*. Kluwer Law International, 2009, 284 p.. BELLAN, Daniel. *Individual's Income Under Double Taxation Conventions. A Brazilian Approach*. Kluwer Law International, Agosto 2010, 464 p..

¹⁴ DE SOUSA, Rubens Gomes. "Aspectos jurídicos de la incidencia de la inflación en el sistema tributario: el caso brasileño". In: *Cuadernos de finanzas públicas - 7*. Washington: Programa Conjunto de Tributación OEA/BID, Unión Panamericana, 1968, p. 1-18.

¹⁵ ROSENN, Keith S.. *Adaptations of the Brazilian Income Tax to Inflation*. *Stanford Law Review*, Novembro de 1968, Vol. 21, n. 1, p. 58-105. ROSENN, Keith S.. *Adjusting Taxation of Business Income for Inflation: Lessons from Brazil and Chile*. *Texas International Law Journal*, 1978, Vol. 13, n. 2, p. 165-198.

¹⁶ ULHÔA CANTO, Gilberto de, MARTINS, Ives Gandra da Silva; VAN HOORN JR., Jacobus. *Monetary indexation in Brazil*. Amsterdã: International Bureau of Fiscal Documentation, 1983, 201 p.. MARTINS, Ives Gandra da Silva *Inflacion Y Tributación*. *Revista de Derecho Financiero Y Hacienda Pública*, 09/11/90, v. XL-208. *International Fiscal Association – IFA* ("IFA") IFA ("IFA") is a worldwide organization founded in 1938 in the Netherlands, specialised in tax matters and has among its members tax advisors from around the world. The organisation publishes two books (*Cahiers de Droit Fiscal International*), each on a topic of tax law. The procedure requires each country to appoint a rapporteur detailing national treatment given to the theme of the book. Thereafter, each country report is forwarded to the rapporteur responsible for the general report which considers nominations made by each country in preparing its

in addition to the organisers, the tax experts Henry Tilbery and Bernardo Ribeiro de Moraes also contributed with a chapter each¹⁷.

In 1984, IFA organized the seminar *Adjustments for Tax Purposes in Highly Inflationary Economies* during its annual congress, having Ives Gandra da Silva Martins as one of their lecturers. The result of this workshop was published the following year¹⁸.

The Brazilian experience regarding the tax treatment of the monetary adjustment actually served as a case study overseas¹⁹. The senior consultant in the legal department of the International Monetary Fund (IMF) Victor Thuronyi came to Brazil to perform research on the subject in 1990 and in the chapter *Adjusting Taxes for Inflation* of the book *Tax Law Design and Drafting, Volume 1*, has highlighted some of the solutions applied by country²⁰.

2.4) The Constitution of 1988

The promulgation of the Constitution in 1988, with the effective return of democracy to the country, also instituted a new constitutional tax system indicating the competence of each entity of the Federation, the taxes liable of application and the constitutional principles to be observed for it. Flávio Bauer Novelli (UERJ) and Gerd Willi Rothmann (USP) are among the authors with works on the subject²¹.

document. Each book includes general report prepared based on the report of each country, in addition to the report itself of each country. Thus, there are several publications in English dealing with tax issues in Brazil. The list of national rapporteurs may be found in the book TÔRRES, Heleno Taveira (organizador). *Direito Tributário e Ordem Econômica – Homenagem aos 60 anos da ABDF. Quartier Latin*, 2010.

¹⁷ ULHÔA CANTO, Gilberto de. “Monetary correction and the legal tender of the cruzeiro”. In: ULHÔA CANTO, Gilberto de; MARTINS, Ives Gandra da Silva; VAN HOORN JR., J.. *Monetary indexation in Brazil*. Amsterdã: International Bureau of Fiscal Documentation, 1983, p. 13-16. MARTINS, Ives Gandra da Silva. “Monetary correction in the National Tax Code”. In: ULHÔA CANTO, Gilberto de; MARTINS, Ives Gandra da Silva; VAN HOORN JR., J.. *Monetary indexation in Brazil*. Amsterdã: International Bureau of Fiscal Documentation, 1983, p. 32-46. TILBERY, Henry. “Indexation in the Brazilian taxation system”. In: ULHÔA CANTO, Gilberto de; MARTINS, Ives Gandra da Silva; VAN HOORN JR., J.. *Monetary indexation in Brazil*. Amsterdã: International Bureau of Fiscal Documentation, 1983, p. 47-98. MORAES, Bernardo Ribeiro de. “The monetary correction of tax debts within the Framework of Brazilian Law”. In: ULHÔA CANTO, Gilberto de; MARTINS, Ives Gandra da Silva; VAN HOORN JR., J.. *Monetary indexation in Brazil*. Amsterdã: International Bureau of Fiscal Documentation, 1983, p. 99-135.

¹⁸ IFA organises a world congress with seminars every year. International Fiscal Association (IFA). *Adjustments for tax purposes in highly inflationary economies: proceedings of a seminar held in Buenos Aires in 1984 during the 38th Congress of the International Fiscal Association*. Kluwer Tax and Taxation Publishers, 1985, 136 p..

¹⁹ LEITE, Eduardo Cerqueira. Legal Solutions for Doing Business in a Hyperinflationary Jurisdiction: Brazil. *University of Miami Inter-American Law Review*, 1989-1990, Vol. 21, n. 2, p. 465-472.

²⁰ Available in <http://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch13.pdf>. Access on September 10th, 2010. THURONYI, Victor (organizador). *Tax Law Design and Drafting, Volume 1*. International Monetary Fund, 1996.

²¹ ROTHMANN, Gerd Willi. “Das Brasilianische Steuersystem in der Verfassung von 1988 (O sistema tributário brasileiro na Constituição de 1988)”. In: *43º Congresso da International Fiscal Association*, 1989, Rio de Janeiro. Anais. São Paulo: Resenha Tributária, 1989, p. 4-41. ULHÔA CANTO, Gilberto de. Brazil: The Constitutional Tax Reform - An Overview. *Bulletin for International Taxation*, Amsterdã, 1989, v. 43, n° 8/9, p. 79. NOVELLI, Flávio Bauer. “Notes

The new Constitution also brought a growing discussion and analysis of its provisions within the tax framework, particularly on its interpretation as principles or rules. Humberto Bergmann Ávila (UFRGS) published his book *Teoria dos Princípios - Da Definição à Aplicação dos Princípios*, in German and English, and provides in his text numerous examples of cases and its application by the Brazilian Supreme Court - STF, in addition to having conducted a comparative study of constitutional tax systems between Brazil and Germany. It was published in Brazil the book *Sistema Constitucional Tributário* (in English, *Constitutional Tax System*), while in Germany was launched *Materiell verfassungsrechtliche Beschränkungen der Besteuerungsgewalt in der brasilianischen Verfassung und im deutschen Grundgesetz*²².

Within the constitutional tax framework the issue of rules and principles distinguishes itself by aiming at the protection of the taxpayer, as between specific and general constitutional principles governing constitutional tax system, some have been recently outstand as the protection of legitimate expectations of taxpayers and legal certainty, according to articles of Misabel de Abreu Machado Derzi (UFMG) and Paulo de Barros Carvalho (PUC-SP and USP)²³.

2.5) The increase on taxation after the Constitution of 1988 and measures to curb tax evasion

on the Brazilian Tax System". In: DOLINGER, Jacob; ROSENN, Keith S.. *Panorama of Brazilian Law*. Ed. Esplanada / North South Center, p. 53-78, 1992. TAVOLARO, Agostinho Toffoli. "El Sistema Tributario Brasileño". In: *Consejo Profesional de Ciencias Economicas de la Ciudad Autonoma de Buenos Aires, Noveno Congreso Tributario, Tomo II*. Buenos Aires: 2001, p. 406. THURONYI, Victor. *Comparative Tax Law*. Kluwer Law International, 2003. HORTA-ANDRADE-RIGHI, Simone. "Le droit fiscal". In: ALMEIDA, Domingos Paiva de (organizador). *Introduction au droit brésilien*. L'Harmattan, 2006.

²² ÁVILA, Humberto Bergmann. *Teoria dos Princípios - da definição à aplicação dos princípios jurídicos*. 9. ed. São Paulo: Malheiros, 2009. ÁVILA, Humberto Bergmann. *Theorie der Rechtsprinzipien*. 1. ed. Berlin: Duncker und Humblot, 2006. 140 p. ÁVILA, Humberto Bergmann. *Theory of Legal Principles*. 1. ed. Springer, 2007. 154 p.. ÁVILA, Humberto Bergmann. *Materiell verfassungsrechtliche Beschränkungen der Besteuerungsgewalt in der brasilianischen Verfassung und im deutschen Grundgesetz*. Baden-Baden: Nomos-Verlag-Gesellschaft, 2002. 398 p.. ÁVILA, Humberto Bergmann. *Sistema Constitucional Tributário*. Saraiva, 2004

²³ CARVALHO, Paulo de Barros. "Sistema constitucional brasileño y los principios constitucionales generales". In: *XXV Jornadas Latinoamericanas y XXXIV Colombianas de Derecho Tributário - Foros y Debates*. Bogotá: Instituto Colombiano de Derecho Tributario, 2010. p. 463-478. VILARIÑO, Tania Martini. "Le rôle des principes du droit fiscal dans les droits français et brésilien". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. DERZI, M. A. M. Les Changements de Jurisprudence Fiscale au Brésil au Regard du Principe de Confiance Légitime et de l'intérêt Financier Public. *Revista de Estudos Tributários*, 2007, v. 100, p. 69-82. CARVALHO, Paulo de Barros. El supraprincipio de la seguridad jurídica y la revocación de normas tributarias. *Revista Quincena Fiscal*, 2008, v. 7, p. 11-21.

The 1990's and the turn of the century witnessed a substantial increase in Brazilian tax burden and on the number of tributes, particularly by the Union through social and specific contributions²⁴.

Besides the considerable increase in taxation, Union has limited its waiver of revenue containing the growing - and, somehow irresponsible - use of tax incentives in the 1960s and 1970s, which currently, as a result of the limitations bound by international trade agreements, are instituted in a more cautious manner and subject to more control²⁵.

The need to maintain this increased tax collection was also the subject of new rules aiming at combating tax avoidance and tax evasion²⁶. Among those, it stands out the enactment of law referring to the price of transfers and a growing discussion on norms of combating tax avoidance and abuse of taxpayer in tax planning, which was subject to report from Ricardo Lobo Torres (UERJ) at IFA Congress of 2002 and is still the subject of discussion in Brazilian tax law, the doctrine being against economic interpretation as provided in the article *Interpretación Económica en Derecho Tributario: Prevalencia del Contenido sobre la Forma: Imposibilidad en el Derecho Brasileño del Principio de Legalidad* from Sacha Calmon Navarro Coêlho (UFMG and UFRJ)²⁷.

²⁴ BYRNE, Peter D.. Foreign Tax Problems of U.S. Companies Doing Business in Latin America. *University of Miami Law Review*, Abril de 1996, Vol. 50, n. 3, p. 483-498. AMARO, Abel Simao; NOBRE, Lionel Pimentel. Brazil Broadens Its Tax Base. *International Tax Review*, Outubro de 2000, Vol. 11, n. 9, p. 28-31. XAVIER, Alberto. Brazil Cuts Principle of Territoriality. *International Tax Review*, Fevereiro de 1996, Vol. 7, n. 2, p. 19-21. HADDAD, Roberto. How Brazil Taxes International Services. *International Tax Review*, Vol. 14, p. 38-41. SCHOUERI, L. E.. "Las limitaciones decurrentes de la tributación mundial de la renta y la adopción de la territorialidad". In: Addy Mazz; Pasquale Pistone. (Org.). *Reflexiones en torno a un modelo latinoamericano de convenio de doble imposición*. 1 ed. Montevideo: Fundación de Cultura Universitaria, 2010, p. 281-296.

²⁵ OPPMANN, T. Rodney. Sudam and Tax Incentives: Brazil's New Program for the Development of the Amazon. *Journal of Law and Economic Development*, verão de 1969, Vol. 4, n. 1, pp. 133-139. MARTI, Mary Mercedes. Brazilian Tax Incentives to Exporters: U.S. Aspects. *Tax Executive*, Janeiro de 1975, Vol. 27, n. 2, pp. 171-192. DE OLIVEIRA, André Gomes (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 93a - Non-discrimination at the crossroads of international taxation*. 2008. DUBOWY, Irene Ribeiro. Subsidies Code, Trips Agreement, and Technological Development: Some Considerations for Developing Countries. *Journal of Technology Law & Policy*, Junho de 2003, Vol. 8, n. 1, p. 33-68. CATÃO, M. A. V.. Current Scenario of the Tax Incentives in Brazil: a comparison based on the concepts of State aid in Europe and of the Commerce clause in the United States. *Intertax*, 2007, v. 35, p. 638-646. COSTA, Maira. *Tax Competition and Fiscal Aid in Brazil*. Lap Lambert Academic Publishing, 2010, 120 p..

²⁶ ROTHMANN, Gerd Willi. "Verantwortlichkeit der Gesellschaftsorgane im Brasilianischen Recht (A responsabilidade civil, penal e tributária dos órgãos societários no direito brasileiro)". In: SCHMIDT, Otto.. (Org.). *Die Aktiengesellschaft*, 1989, p. 347-354. SEHN, Paulo Rogerio. Brazil Gets Tough on Tax Crime. *International Tax Review*, Dez./Jan. 1995, Vol. 6, n. 1, p. 45-47.

²⁷ TAVOLARO, Agostinho Toffoli. "Preços de Transferência". In: *Consejo Profesional de Ciencias Economicas de la Capital Federal, Sexto Congreso Tributario - 1998 - Tomo I*. Buenos Aires, Argentina. CARVALHO, Paulo de Barros. Precios de transferencia en el Derecho Tributario Brasileño. *Análisis Tributario*, Lima, 2003, v. XVI, p. 20-25. TÔRRES, Heleno Taveira (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 95a - Tax treaties and tax avoidance: applications of anti-avoidance provisions*. 2010. SANTIGAGO, Igor Mauler. Free competition: how tax evasion and tax competition distort markets - the Brazilian perspective. *Intertax*, 2010, Vol. 38, n. 3, p. 170-176. TÔRRES, Ricardo Lobo. (National Reporter). "Brazil". In: International Fiscal Association (IFA). *Cahiers de Droit Fiscal International Vol. 87a - Form and substance in tax law*. 2002. FERREIRA,

The ongoing debate on the use of taxes in the environmental context also resulted in works of José Marcos Domingues (UERJ)²⁸.

2.6) Brazilian Scholars abroad

Regardless of the topics of interest abroad, some Brazilian Scholars had their works translated and published in Latin countries, which demonstrates excellence of Brazilian tax law.

Geraldo Ataliba (USP e PUC-SP), for example, had his work *Hipótese de Incidência Tributária* translated in Uruguay and Peru, while *Fato Gerador da Obrigação Tributária* from Amílcar de Araújo Falcão (UERJ) was published in Argentina²⁹. Recently, the tax expert Paulo de Barros Carvalho had his book *Fundamentos Jurídicos da Incidência* published in Argentina (2nd edition) and in Italy, and also *Curso de Direito Tributário* in Spain³⁰. Paulo de Barros Carvalho has also organised a book and published articles and book chapters in other Latin American countries³¹.

Roberto Greco de Souza. Form versus Substance: A Comparison of Brazil's Tax System to the Tax System of the United States of America. *University of Miami Inter-American Law Review*, 2004, Vol. 35, n. 2, p. 311-344. RIBAS, Evelyse Carvalho. *Tax Avoidance - Limits of Legality in Brazil and United Kingdom*. Lap Lambert Academic Publishing, 2010, 92 p.. COELHO, Sacha Calmon Navarro. Interpretación económica en derecho tributario: Prevalencia del contenido sobre la forma: Imposibilidad en el derecho brasileño del principio de legalidad. *Revista de Derecho Financiero y Hacienda Pública*, 1989, Vol. 39, nº 204, p. 1445-1464. COELHO, Sacha Calmon Navarro. "El principio de la legalidad. El objeto de la tutela". In: PISTONE, Pasquale (Org.); TÓRRES, Heleno Taveira (Org.). *Estudios de derecho tributario internacional: homenaje latinoamericano a Victor Uckmar*. Buenos Aires: Abaco, 2005.

²⁸ DOMINGUES, José Marcos. Environmental Fees and Compensatory Tax. *Law and Business Review of the Americas*, 2007, v. 13, n. 2, p. 279-304. DOMINGUES, José Marcos. *Environmental Protection, Tax System and Green Taxes. Brazil and Japan: Problems in Common?* Available in <http://www.japonartescenicass.org/estudiosjaponeses/articulos/environmentalprotection.pdf>. Access on August 22nd, 2011.

²⁹ ATALIBA, Geraldo. *Hipótese de incidência tributária*. 6 ed.. São Paulo: Ed. Malheiros, 2009. ATALIBA, Geraldo. *Hipótesis de incidencia tributaria* (Traduzido por Roque García Mullin). Montevideo: Fundación de Cultura Universitaria, 1977. 213 p.. ATALIBA, Geraldo. *Hipótesis de incidencia tributaria* (traduzido pelo Instituto Peruano de Derecho Tributário). Lima: Ed. Chavín, 1987. ARAÚJO FALCÃO, Amílcar de. *Fato Gerador da Obrigação Tributária*. 6ª Ed., Forense, 2009. ARAÚJO FALCAO, Amílcar de. *El hecho generador de la obligación tributaria* (Traduzido por Carlos M. Giuliani Fonrouge). Buenos Aires: Depalma, 1964.

³⁰ CARVALHO, Paulo de Barros. *Direito Tributário – Fundamentos Jurídicos da Incidência*. 7. ed., São Paulo: Saraiva, 2009. CARVALHO, Paulo de Barros. *Derecho Tributario – Fundamentos jurídicos de la incidencia*. Buenos Aires: Ed. Rodolfo Desalma, 2002. CARVALHO, Paulo de Barros. *Derecho Tributario – Fundamentos jurídicos de la incidencia*. 2. ed.. Buenos Aires: Ed. Rodolfo Depalma, 2004. CARVALHO, Paulo de Barros. *Diritto Tributario*. 1. ed. Bolonha: CEDAM Casa Editrice Dott. Antonio Milani, 2004. CARVALHO, Paulo de Barros. *Curso de Direito Tributário*. 21ª ed.. São Paulo: Saraiva, 2009. CARVALHO, Paulo de Barros. *Curso de Derecho Tributario*. Madrid: Marcial Pons, 2007.

³¹ CARVALHO, Paulo de Barros. Propuesta de modelo interpretativo para el derecho tributario. *Revista de Tributación*, 2007, v. 8, p. 9-23. CARVALHO, Paulo de Barros. La Interdisciplinariedad y la Autonomía del Derecho: delimitación del contenido del hecho jurídico. *Mundo Fiscal*, 2007, v. 2, p. 13-20. CARVALHO, Paulo de Barros. "Obligación tributaria: definición, acepciones, estructura interna y límites conceptuales". In: QUIÑONES, Lucy Cruz de; GUEVARA, Sofía Regueros de Ladrón de; CARRERO, Germán Pardo; GUTIÉRREZ, Fabio Londoño (Org.). *Lecciones de Derecho Tributario inspiradas por un Maestro - Tomo I*. 1a. ed. Bogotá: Universidad del Rosario, 2010, p. 493-511. CARVALHO, Paulo de Barros. El absurdo de la interpretación económica del "hecho generador". Derecho y su autonomía. La paradoja de la interdisciplinariedad. *Revista Enciclopédica Tributaria*, Santa Fé, 2010, Opciones, p. 48 -

Another group of authors, despite not having their works translated, may also be found in libraries of Latin countries and are even indicated as literature for courses on tax law, among which is possible to highlight Rubens Gomes de Sousa and his *Estudos de Direito Tributário*, the work *Limitações Constitucionais ao Poder de Tributar* from Aliomar Baleeiro (UERJ) and Alfredo Alfredo Becker and his work *Teoria Geral do Direito Tributário*³².

The contribution of Heleno Taveira Tôrres and Luís Eduardo Schoueri

Luis Eduardo Schoueri (USP and Universidade Mackenzie) is noteworthy in light of the numerous publications written overseas, referring to Brazilian tax law and international tax law³³.

Heleno Taveira Tôrres (USP) publications are also relevant because, as well as organising books abroad, he has also contributed with articles therein and in works from other authors or events³⁴.

60. CARVALHO, Paulo de Barros. La interpretación en materia tributaria. *Revista Enciclopédica Tributaria*, México, 2010, Opciones Legales Fiscales, p. 42 - 55.

³² DE SOUSA, Rubens Gomes. *Estudos de direito tributário*. São Paulo: Ed. Saraiva, 1950. BALEEIRO, Aliomar. *Limitações Constitucionais ao Poder de Tributar*. 1951. BECKER, Alfredo. *Teoria geral do direito tributário*. São Paulo: Ed. Saraiva, 1963.

³³ SCHOUERI, L. E.; TERSI, V. F. Verrechnungspreise - Änderungen in der brasilianischen Einfuhrwiederverkaufspreismethode. *Internationales Steuerrecht*, 2010, v. 5/10, p. 15-16. SCHOUERI, L. E.. Emerging markets in the new economic order: international tax issues (Relatório do III Congresso Brasileiro de Direito Tributário Internacional do IBDT). *Direito Tributário Atual*, 2009, v. 23, p. 7-10. SCHOUERI, L. E.; TERSI, V. F.. Bald Bestätigung der Wiener Vertragskonvention 1969 - neue Auslegung der DBA bei brasilianischen Gerichten? *Internationales Steuerrecht*, 2009, v. 17/09, p. 73-74. SCHOUERI, L. E.; TERSI, V. F.. Jurisdiktion mit begünstigter Besteuerung und Steuerprivilegierte Systeme. *Internationales Steuerrecht*, 2008, v. 21/08, p. 62-63. SCHOUERI, L. E. (National Report). "Brazil". In: LANG, Michael; PISTONE, Pasquale. (Org.). *The EU and Third Countries: Direct Taxation*. 1 ed. Viena: Linde, 2007, p. 639-681. SCHOUERI, L. E.. Tax Treatment of Index Participation Units. *Derivates & Financial Instruments - International Tax Perspectives*, Reino Unido, 2004, v. 6, n. 1, p. 28-29. SCHOUERI, L. E.. Application of the Resale Price Method. *International Transfer Pricing Journal*, Amsterdã, 2004, v. 11, n. 6, p. 264-271. SCHOUERI, L. E.. Beendigung des kumulativen Effekts bei PIS-Abgabe. *Internationales Steuerrecht*, München, 2003, v. 3, p. 8. SCHOUERI, L. E.; BORGES, A. S.. Tax treatment of securitizations of receivables. *Derivatives & Financial Instruments*, Amsterdã, 2003, v. 5, n. 1, p. 10-13. SCHOUERI, L. E.. Die Brasilianischen Regeln zum Transfer Pricing: Grundsätzliche Überlegungen für Unternehmen mit Deutschem Kapital. *Brasil-Alemanha em Revista*, São Paulo, 1999, p. 61-62. SCHOUERI, L. E.; VASCONCELLOS, R. F.. Share Buy-Backs by Listed Companies from Individual Minority Shareholders. *ET - European Taxation*, Amsterdã, 1998, v. 38, n. 11/12, p. 383-384. SCHOUERI, L. E.. «Share Buy-Backs by Listed Companies from Individual Minority Shareholders». In: International Bureau of Fiscal Documentation. (Org.). *Share Buy-Backs by Listed Companies from Individual Minority Shareholders*. Amsterdã: IBFD, 2002, p. 69-74. SCHOUERI, L. E.. "Reflexiones sobre la pratica de Treaty Shopping". In: Consejo Profesional de Ciencias Economicas de la Capital Federal. *Sexto Congreso Tributario. Trabajos de Investigacion*. San Miguel de Tucuman: 1998, p. 468-485.

³⁴ TÔRRES, Heleno Taveira. *Derecho tributário y derecho privado: autonomía privada, simulación y elusión tributaria*. Buenos Aires: Marcial Pons, 2008. UCKMAR, Victor (Org.); ALTAMIRANO, Alejandro (Org.); TÔRRES, Heleno Taveira (Org.). *Impuestos sobre el comercio internacional*. 2. ed. Buenos Aires: Marcial Pons, 2008, 1120 p.. PISTONE, Pasquale (Org.); TÔRRES, Heleno Taveira (Org.). *Estudios de derecho tributario e internacional: homenaje latinoamericano a Victor Uckmar*. Buenos Aires: Abaco, 2005. 983 p.. TÔRRES, Heleno Taveira (Org.); PINTO,

3) Civil Law

Civil law is a branch of law which has most influences over others, with a number of relevant articles indicating its standards. This characteristic results in few articles specifically about civil law.

3.1) Clovis Bevilacqua and the Civil Code of 1916

Fabiana Lopes (Org.); SALIBA, Ricardo Bertolozza (Org.). *Leis complementares em matéria tributária aspectos práticos atuais*. Barueri: Manole, 2003, 390 p.. UCKMAR, Victor (Org.); ALTAMIRANO, Alejandro (Org.); TÔRRES, Heleno Taveira (Org.). *Impuestos sobre el comercio internacional*. Buenos Aires: Abaco, 2003. 1112 p.. TÔRRES, Heleno Taveira. “La territorialidad en los impuestos directos y la Medidas contra evasión e elusión fiscal internacional”. In: UCKMAR, Victor; ALTAMIRANO, Alejandro C.; TÔRRES, Heleno Taveira (Org.). *Impuestos sobre el comercio internacional*. 2 ed. Buenos Aires: Marcial Pons, 2008, v. IX, p. 907-940. TÔRRES, Heleno Taveira. “La territorialidad en los impuestos directos y la fiscalidad de no-residentes en Brasil”. In: UCKMAR, Victor; ALTAMIRANO, Alejandro C.; TÔRRES, Heleno Taveira (Org.). *Impuestos sobre el comercio internacional*. 2 ed. Buenos Aires: Marcial Pons, 2008, v. IV, p. 405-436. TÔRRES, Heleno Taveira. “El derecho internacional tributario: tratados y disposiciones nacionales calificación y aplicación de los tratados de doble tributación internacional”. In: PISTONE, Pasquale; TÔRRES, Heleno Taveira. (Org.). *Estudios de derecho tributario e internacional: homenaje latinoamericano a Victor Uckmar - v. 2*. Buenos Aires: Abaco, 2005, p. 871-901. TÔRRES, Heleno Taveira; BERNARDES, Flávio Couto. “Sistemas de recaudación de tributos en América Latina y principios constitucionales”. In: SERRANO, Fernando Antonio (Org.). *Recaudación ejecutiva y hacienda local*. Madrid: Thomson-Civitas, 2008, v. IX, p. 327-401. TÔRRES, Heleno Taveira. “Transação em matéria tributária e os limites da sua revisão administrativa”. In: NOVOA, César García; JIMÉNEZ, Catalina Hoyos. (Org.). *El tributo y su aplicación: perspectivas para el siglo XXI en homenaje al L Aniversario del Instituto Latinoamericano de Derecho Tributario*. Buenos Aires: Marcial Pons, 2008, v. 2, p. 1757-1788. TÔRRES, Heleno Taveira. “La situación actual de los derechos y garantías de los contribuyentes en las haciendas locales en América Latina”. In: SERRANO, Fernando Antonio. (Org.). *El estado actual de los derechos y de las garantías de los contribuyentes en las haciendas locales*. Madrid: Thomson-Civitas, 2007, v. 33, p. 1379-1426. TÔRRES, Heleno Taveira. “El principio de no discriminación tributaria”. In: FAJARDO, Juan Pablo Godoy (Org.). *Estudios de derecho internacional tributario: los convenios de doble imposición*. Santa Fé de Bogotá: Instituto Colombiano de Derecho Tributario, Legis, 2006, p. 451-486. TÔRRES, Heleno Taveira (Co-autor). “La fiscalidad de las inversiones españolas en Brasil”. In: LAPATZA, J.J. Ferreiro; GONZÁLEZ, Luis M. Alonso (Org.). *La fiscalidad de las inversiones españolas en Brasil*. Madrid: Marcial Pons, 2006, p. -. TÔRRES, Heleno Taveira. “Pruebas y presunciones en materia tributaria y sua aplicabilidade en los casos de simulación”. In: *Temas de derecho tributario y de derecho público: libro homenaje a Armando Zolezzi Möller*. Lima: Palestra, 2006, v. IV, p. 517-535. TÔRRES, Heleno Taveira; CALIENDO, Paulo. “La imposición del comercio electrónico en Latinoamérica”. In: OSOREY, Rubén O.. (Org.). *Tributación de los negocios efectuados por medios electrónicos*. Buenos Aires: Laley, 2005, v. 2, p. 15-40. TÔRRES, Heleno Taveira. “La plurimposizione internazionale, i trattati e le misure unilaterali”. In: Victor Uckmar. (Org.). *Diritto tributario internazionale*. 3 ed. Padova: CEDAM, 2005, v. VIII, p. 223-269. TÔRRES, Heleno Taveira. “La autonomía financiera de los municipios en el derecho brasileño”. In: CASADO OLLERO, Gabriel. (Org.). *La financiación de los municipios: experiencias comparadas*. Madrid: Dykinson, 2005, p. 125-156. TÔRRES, Heleno Taveira. “Italy-Brazil tax treaty: the brazilian perspective”. In: GARBARINO, Carlo; VAN RAAD, Kees. (Org.). *Le convenzioni dell Italia in materia di imposte su reddito e patrimonio*. Milano: Egea/Giuffrè, 2002, p. 596-612. TÔRRES, Heleno Taveira. “L’impresa nel diritto tributario internazionale”. In: Vincenzo Buonocore. (Org.). *Trattato di diritto commerciale*. Turim: Giappichelli, 2002, p. -. TÔRRES, Heleno Taveira. “El derecho interno frente a los convenios de Doble Imposición (CDI). El problema de las fuentes (derecho interno vx derecho internacional). Adecuaciones del derecho interno a los CDI (los retos del derecho interno, la jurisprudencia y la doctrina). Dificultades que se encuentran en el derecho interno (ley, jurisprudencia y doctrina) para la debida aplicación de los CDI. Problemas concretos”. In: *32ª Jornadas Colombianas de Derecho Tributario*. Bogotá: Instituto Colombiano de Derecho Tributario, 2008, v. i. p. 423-580. TÔRRES, Heleno Taveira. “Derechos y garantías constitucionales en el sistema tributario municipal”. In: *Seminarios de Derecho Constitucional Tributario*. México: Suprema Corte de Justicia de la Nación, 2007, v. i. p. 171-250. TÔRRES, Heleno Taveira. “La autonomía financiera de los municipios en el Derecho Brasileño”. In: *VI Congreso de la Unión Iberoamericana de Municipalistas - Anais*. Madri: Cuadernos de Documentación e Información Municipal, 2003, v. 46, p. 1605-1632.

"*Clovis Bevilaqua is a monument in the history of Brazilian law.*" That was the first sentence indicated by Anyda Marchant in her article of 1945 entitled *Clovis Bevilaqua and the Brazilian Civil Code*³⁵. Clovis Bevilaqua was responsible for preparing the draft of the Civil Code that would be enacted in 1916, after projects not implemented successively developed by Augusto Teixeira de Freitas, Nabuco de Araújo, Felício dos Santos e Coelho Rodrigues³⁶.

The author of the Civil Code was invited in January 1899 by Epitácio Pessoa for the elaboration of the Code, having started its work in March and ended in November of that year³⁷. In the following year the draft proposal went to Congress, and was approved by the Chamber in 1902, but in the Senate, Ruy Barbosa presented numerous objections, which resulted in considerable delay in its discussion for further approval. It was only in 1916 that it was promulgated to come into force in the following year³⁸.

The importance of the Civil Code in its time can be shown by the transcript of the words of Article Anyda Marchant said:

"It's a conservative document, but its virtues have been frequently enumerated: it is concise, sufficiently general and flexible, comprehensive, and, above all, practical. It has been described as "occupying a place in the very first rank of civil legislation in Latin America," and as a necessary model for other countries about to revise their civil law, since it is sound "in methodology, in technical structure, in science, and in the modern liberal tendencies." The interest it aroused outside Brazil is exemplified by the fact that French, English and German translations appeared within a few years after its adoption. The Brazilian civil law has not remained static since 1916, but the framework created for it by Bevilaqua gave coherence to the structure and permitted scope for further development." (MARCHANT, Anyda. *Clovis Bevilaqua and the Brazilian Civil Code*. In: *Michigan Law Review* vol. 43. p. 974/975)

³⁵ Anne Nelson Yarborough De Armond Marchant. MARCHANT, Anyda. *Clovis Bevilaqua and the Brazilian Civil Code*. *Michigan Law Review*, abril de 1945, Vol. 43, No. 5, p. 970-975.

³⁶ *Ibidem*, p. 972. *The Civil Code of Brazil: being Law No. 3,071 of January 1, 1916, in effect January 1, 1917, with the corrections ordered by Law No. 3,725, of January 15, 1919, Promulgated July 13, 1919. Diário Oficial, vol. LXVII, Issue 159* (tradutor Joseph Wheless). Thomas Law Book Co., 1920, p. xiv/xv.

³⁷ MARCHANT, Anyda. *Op. cit.*, p. 972.

³⁸ *Ibidem*, p. 973/974.

The Civil Code of 1916 was translated into English - and recently reprinted -, French and German³⁹.

3.2) Private property

The enhancement and protection of private property by the capitalist regime resulted in a specific interest on the treatment given to the topic by the Brazilian civil law, particularly on the real property aspect.

In this context, it was highlighted the key aspects of the law of real property in the country with an indication of the protection system based on the record of the description of the area corresponding to the property and the indication of its specific holder before a public notary, including all transfers made and their former owners⁴⁰. This procedure aims at ensuring the safety of the owner and the acquirer by allowing the requests to the notary authority in order to issue a certificate with the historical aspects of the property.

However, maintenance of privately owned property is not absolute. Brazilian legal system, given the socio-economic context of the country, provides a possibility of misappropriation, for instance, as a result of the agrarian reform⁴¹. The socio-economic factors of the country still result in some risk of occupation by third parties and consequent loss of the property by adverse possession if no protective measure is taken by the owner⁴².

The article *Brazilian Marital Property: The Dwindling Community* has also emphasized private property in marital life in face of the regime of community of property,

³⁹ *The Civil Code of Brazil: being Law No. 3,071 of January 1, 1916, in effect January 1, 1917, with the corrections ordered by Law No. 3,725, of January 15, 1919, Promulgated July 13, 1919. Diário Oficial, vol. LXVII, Issue 159* (tradutor Joseph Wheless). Thomas Law Book Co., 1920, 438 p.. Available in <http://www.archive.org/details/civilcodebrazil00wheigoog>. *The Civil Code of Brazil, Being Law No. 3,071 of January 1, 1916: With the Corrections Ordered by Law No. 3,725 of January 15, 1919, Promulgated July 13, 1919.* Thomas Law Book Co., 1920, General Books LLC, 2010 (Reimpressão), 256 p..

⁴⁰ ALSTON, Lee J.; LIBECAP, Gary D.; SCHNEIDER, Robert. The Determinants and Impact of Property Rights: Land Titles on the Brazilian Frontier. *Journal of Law, Economics, & Organization*, abril de 1996, Vol. 12, No. 1, p. 25-61.

⁴¹ MARTIN, John C.. Bringing Dead Capital to Life: International Mandates for Land Titling in Brazil. *Boston College International and Comparative Law Review*, 2008, vol. 31, p. 121-136. MITCHELL, Kristen. Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem. *N.Y. Law School Journal of International & Comparative Law*, 2003, vol. 22, p. 557.

⁴² MEYERSON, Frederick AB.. A Comparative Analysis of Land Preservation Incentives: Brazil and the United States, *Columbia Journal of Transnational Law*, 1984, vol. 22, p. 389. CUNHA, Alexandre dos Santos. Informal Land Subdivision and Real Estate Regularization: A Comparative Study between Colombia and Brazil. *University of Miami Inter-American Law Review*, 2008-2009, vol. 40, p. 315. PINDELL, Ngai. Finding a Right to the City: Exploring Property and Community in Brazil and in the United States. *Vanderbilt Journal of Transnational Law*, março de 2006, Vol. 39, n. 02.

and makes a brief description of other wedding arrangements provided in the old Civil Code⁴³.

3.3) The Civil Code of 2002

In 1969, Miguel Reale, who has numerous publications abroad, was named supervisor of the Commission of Revision and Elaboration of the Civil Code, which counted, as collaborators, with José Carlos Moreira Alves (General Part), Agostinho de Arruda Alvim (Law of Obligations) Sylvio Marcondes (Business Law), Ebert Vianna Chamoun (Property Law), Clóvis do Couto e Silva (Family Law) and Torquato Castro (Law of Succession)⁴⁴. In 1970, the design of the new Civil Code was ready, but only in 2002 after the original project has undergone numerous changes it was signed into law⁴⁵.

The Civil Code of 2002 revoked part of the Commercial Code and now provides on Corporate Law, specially the corporate types, except that the corporation remains regulated by a special law, and has replaced the old term private company with limited liability by the new limited-liability company⁴⁶. The associations remained regulated by the Civil Code and other applicable laws thereto for purposes of exemption or immunity depending on the case⁴⁷.

⁴³ CONNER, Richard L.. Brazilian Marital Property: The Dwindling Community. *American Journal of Comparative Law*, 1975, Vol. 23, n. 4, p. 705-728.

⁴⁴ REALE, Miguel. "Situation de la théorie de l'État dans les domaines de la connaissance juridique" (Tradução ao francês a cargo de Jacques Douchez). In: ROUBIER, Paul. *Extraits des Mélanges*. 1953. REALE, Miguel. *Filosofia del diritto* (Tradução ao italiano a cargo de Luigi Bagolini e G. Ricci). Torino: Giappicelli, 1956. REALE, Miguel. *Il diritto come esperienza* (Tradução ao italiano a cargo de Domenico Coccopalmerio). Milano: Giuffrè, 1973. REALE, Miguel. *Teoría tridimensional del derecho*. 1ª edição. (Tradução a cargo de J. A. Sardina-Páramo). Santiago de Compostela: Imprenta Paredes, 1973. REALE, Miguel. *Teoría tridimensional del derecho* (tradução a cargo de Juan Antonio Sardina-Páramo). 2ª edição. Valparaíso: Edevel, 1978. REALE, Miguel. *Teoría tridimensional del derecho* (tradução e introdução a cargo de Ángeles Mateos García). 3ª edição. Madrid: Tecnar, 1997. REALE, Miguel. *Fundamentos de derecho* (Tradução ao espanhol a cargo de Julio A. Chiappini). Buenos Aires: Depalma, 1976. REALE, Miguel. *Introducción al derecho* (tradução a cargo de Brufau Prats). 1ª edição. Madrid: Pirámide, 1976. REALE, Miguel. *Introducción al derecho*. 2ª edição. 1977. REALE, Miguel. *Introducción al derecho*. 6ª edição. 1983. REALE, Miguel. *Introducción al derecho*. 10ª edição. 1992. REALE, Miguel. *Filosofia del derecho* (Tradução ao espanhol a cargo de Angel Herreros). Madrid: Pirámide, 1979. REALE, Miguel. *Experience et culture: fondement d'une théorie générale de 'expérience* (traduzido por Giovanni Dell'Anna). Bordeaux: Biere, 1990. REALE, Miguel. "Moral Damages in Brazilian Law". DOLINGER, Jacob; ROSENN, Keith S. (organizadores). *Panorama of Brazilian Law*. 1992, p. 121-139.

⁴⁵ Information Available in the website www.miguelreale.com.br. FACHIN, Luiz Edson. Le juriste de demain et la connaissance du code civil. L'avenir de la codification en France et en Amérique latine. Palais du Luxembourg, 2 et 3 avril 2004. Available in http://www.senat.fr/colloques/colloque_codification/colloque_codification_mono.html. Access on August 22nd, 2011.

⁴⁶ POULTER, Matthew S.. My Client's Going to Brazil: A U.S. Practitioner's Guide to Brazilian Limitadas under the New Civil Code. *Southwestern Journal of Law and Trade in the Americas*, 2005, Vol. 11, n. 1, p. 133-170.

⁴⁷ LOPES, Laís Vanessa carvalho de Figueiredo. Compendium of Third Sector Legislation – Analysis of the Existing Laws and Regulation in Brazil. *International Journal of Civil Society Law*, 2003, p. 8-18.

The Civil Code of 2002 was translated into English, but released only in Brazil, and French in work organized by Arnaldo Wald (UERJ)⁴⁸.

Articles organized

Arnaldo Wald (UERJ) and Camille Jauffret-Spinosi have organised the work *Le droit brésilien d'hier, d'aujourd'hui et de demain* launched in 2005 on the occasion of the year of Brazil in France, which contains the legal history of Brazil written by René David, also counting with the participation of several authors such as Véra Maria Jacob de Fradera who highlighted the general part of the Civil Code of 2002⁴⁹.

In the following year it was published the book *Introduction au droit brésilien* organised by Domingos Paiva de Almeida, where in specific chapters, Edouard Lemoalle dealt with civil law and Samira Otto handled business law⁵⁰.

In 2010, Michel Storck, Gustavo Vieira da Costa Cerqueira and Thales Morais da Costa organised the book *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare* where many authors emphasised the Brazilian law applicable to contracts in general including some specific types, in addition to the disregard of legal entity⁵¹.

⁴⁸ ROSE, Leslie. *O Código Civil Brasileiro em Inglês - The Brazilian Civil Code in English*. Renovar, 2008. WALD, Arnaldo (organizador). *Code civil brésilien - Edition bilingue brésilien-français*. Société de Législation Comparée, 2009.

⁴⁹ WALD, Arnaldo e JAUFFRET-SPINOSI, Camille (organizadores). *Le droit brésilien d'hier, d'aujourd'hui et de demain*. Société Législation Comparée, 2005, 538 p.. FRADERA, Véra Maria Jacob de. "La Partie Générale du Code Civil". In: Arnaldo Wald; Camille Jauffret-Spinosi. (Org.). *Le Droit brésilien hier, aujourd'hui et demain*. Paris, 2005, v. , p. -.

⁵⁰ ALMEIDA, Domingos Paiva de (organizador). *Introduction au droit brésilien*. L'Harmattan, 2006, 508 p..

⁵¹ PIGNATTA, Francisco Augusto. "Le droit brésilien des contrats Quelques différences par rapport au droit français". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. OERTEL, Roberta Ribeiro. "Les clauses d'exclusivité dans le contrat de concession commerciale en droit français et en droit brésilien". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. PINTO, Bibiana Graeff Chagas. "L'interdiction des clauses abusives dans les contrats de consommation en France et au Brésil". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. CERQUEIRA, Gustavo Vieira da Costa. "Lever le voile social. Regards croisés en droit des sociétés français et brésilien". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. MICHEL, Adriana Jacobi. "Les limites contractuelles dans les relations hors mariage en droit français et en droit brésilien". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; DA COSTA, Thales Morais (organizadores). *Les frontières entre liberté et interventionnisme en droit français et en droit brésilien - Études de droit compare*. L'Harmattan, 2010. CERQUEIRA, Gustavo Vieira da Costa. Defective Performance in Contracts for International Sale of Goods: A comparative analysis between the Brazilian Law and the 1980 United Nations Convention on Contracts for the International Sales of Goods. In: *Pace International Law Review. Review of the Convention on Contracts for the International Sale of Goods (CISG) 2005-2006*, European Law Publishers, p. 23 a 84. Available in <http://www.cisg.law.pace.edu/cisg/biblio/cerqueira.html>.

Some authors of highlight

Arnoldo Wald (UERJ) stands out for several individual and group works in which he features in foreign languages, which are not limited to civil law, also including comparative law and arbitration⁵².

Gustavo José Mendes Tepedino (UERJ) has published abroad on topics such as the impact of Mercosul on Brazilian private law, the civil responsibility of doctors,

⁵² WALD, Arnoldo. *Influence du droit français sur le droit brésilien dans le domaine de la responsabilité civile*. Rio de Janeiro: Dasp, 1953. WALD, Arnoldo. La réforme du droit brésilien. *Revue internationale de droit comparé*, Vol. 14, N°4, Octobre-décembre 1962, p. 713-723. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1962_num_14_4_13475. Access on August 22nd, 2011. WALD, Arnoldo. La protection des droits individuels au Brésil. Le “mandado de segurança”. *Revue internationale de droit comparé*, Vol. 16, N°2, Avril-juin 1964, p. 307-317. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1964_num_16_2_13938. Access on August 22nd, 2011. WALD, Arnoldo. Brésil. *Revue internationale de droit comparé*, Vol. 17, N°3, Juillet-septembre 1965, p. 633-637. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1965_num_17_3_14330. Access on August 22nd, 2011. WALD, Arnoldo. La conversion de la dette brésilienne en investissements: The conversion of the Brazilian debt into investments. *Revue de droit des affaires internationales*, No 2, 1990, p. 231-244. WALD, Arnoldo. La nouvelle législation brésilienne relative au régime des concessions de services publics. *Revue internationale de droit comparé*. Vol. 48, N°1, Janvier-mars 1996, p. 65-91. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1996_num_48_1_5214. Access on August 22nd, 2011. WALD, Arnoldo. Le droit comparé au Brésil. *Revue internationale de droit comparé*, Vol. 51, N°4, Octobre-décembre 1999, p. 805-839. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_1999_num_51_4_18182. Access on August 22nd, 2011. WALD, Arnoldo. L'homme, le juriste, le professeur. *Revue internationale de droit comparé*, Vol. 52, N°1, Janvier-mars 2000, p. 18-23. Available in http://www.persee.fr/web/revues/home/prescript/article/ridc_0035-3337_2000_num_52_1_18133. Access on August 22nd, 2011. WALD, Arnoldo; Wald e SCHELLENBERG, P.. L'efficacité de la clause compromissoire au Brésil. *Revue de l'arbitrage*, 2000, n° 3, p. 429-446. WALD, Arnoldo; SCHELLENBERG, P.; ROSENN, K.S.. Some controversial effects of the new Brazilian Law. *Inter-American Review*, 2000, p. 224-. WALD, Arnoldo. “Le régime de l'union stable en droit brésilien: la situation des concubins”. In: *Mélanges en l'honneur de Henri-Robert Schüpbach*, 2000. WALD, Arnoldo. “La Responsabilité personnelle du directeur de banque en droit brésilien”. In: LOUSSOUARN, Y.; CHAMPAUD, Cl.. *Études offertes à Roger Houin: problèmes d'actualité posés par les entreprises*. Dalloz-Sirey, 1985, p. 151-165. WALD, Arnoldo. L'évolution de la législation brésilienne sur l'arbitrage (1996-2001). *International Chamber of Commerce (ICC) Bulletin*, 2001, Vol. 12, No. 2, p.44-. WALD, Arnoldo. [La ratification de la Convention de New York par le Brésil](#). *Revue de l'Arbitrage*, 2003, n. 1, p. 91-102. WALD, Arnoldo. Les nouveaux codes de l'Amérique latine: le code brésilien. *L'avenir de la codification en France et en Amérique latine*. Palais du Luxembourg, 2 et 3 avril 2004. Available in http://www.senat.fr/colloques/colloque_codification/colloque_codification_mono.html. Access on August 22nd, 2011. WALD, Arnoldo; LEMOALLE, Edouard. “Le Droit Brésilien des Concessions de Services Publics et des Partenariats Publics-Privés”. In: WALD, Arnoldo; JAUFFRET-SPINOSI, Camille (organizadores). *Le Droit brésilien hier, aujourd'hui et demain*. Société de législation comparée, 2005. WALD, Arnoldo. “Doit-on repenser les “familles juridiques”?” In: *De tous horizons, Mélanges Xavier Blanc-Jouvan*, Paris, Société de législation comparée, 2005. WALD, Arnoldo. [Les récents progrès de la jurisprudence brésilienne en matière d'arbitrage commercial international](#). *Association Suisse de l'Arbitrage (ASA) Bulletin*, vol. 24, n. 2, 2006, p. 206-215. WALD, Arnoldo. Recents Trends in Project Finance – Project Finance Perspective and Infrastructure Projects in Brazil. *UIA Congress – Banking Law Commission*, Brazil, 2006. Available in http://congres.uianet.org/fileadmin/user_upload/UIA/WALD_Arnoldo_-_GB.pdf. WALD, Arnoldo. La résolution, par l'arbitrage, des conflits entre l'administration publique et les entreprises privées en droit brésilien. *Cahiers de l'arbitrage*, Gazette du Palais, July 13/17, 2007, p. 6-16. Available in http://www.cvppartners.ch/pdf/Cahiers_Arbitrage_2007_2.pdf. Access on August 22nd, 2011. FAUVARQUE-COSSON, Bénédicte; WALD, Arnoldo. *L'arbitrage en France et en Amérique latine à l'aube du XXI^e siècle - Aspects de droit comparé*. Société de législation comparée, 2008, 422 p.. WALD, Arnoldo; KALICKI, J.. [The Settlement of Disputes between the Public Administration and Private Companies by Arbitration under Brazilian Law](#). *Journal of international arbitration*, v. 26, no. 4, 2009, p. 557-578.

consumers' protection, property law in the Civil Code of 2002, as well as contracts celebrated by consumers and breach of contract⁵³.

Véra Maria Jacob de Fradera (UFRGS) also has relevant publications abroad, having written about the contractual breach on the Civil Code of 2002, the current state of family law in Brazil, civil and pre-contractual responsibility, the use of arbitration in order to solve available property rights, the importance of comparative law and Mercosul⁵⁴.

4) Intellectual Property Law

Intellectual property is the object of great interest abroad. Developed countries are those that invest the most in research and development and consequently obtain more technologies entitled to protection. In this context, such countries are not just interested in the treatment given to the subject by others, but also try to enforce the protection regime they deem best suited to their interests.

⁵³ TEPEDINO, Gustavo. J. M.. "L'impatto del mercosul sul diritto privato brasiliano: prospettive di armonizzazione nei rapporti di consumo". In: *Diritto privato comunitario - Fonti, principi, obbligazioni e contratti (a cura di Vito Rizzo) - Atti del convegno sul diritto privato comunitario*. Napoli: 1997, p. 137-148. TEPEDINO, Gustavo. J. M.. "Tecniche Legislative ed Interpretative Nell'armonizzazione del Diritto Privato Comunitario: L'esperienza del Mercosul". In: Celso Albuquerque Mello. (Org.). *Anuário: direito e globalização*. Rio de Janeiro: Renovar, 1999, p. 263-276. TEPEDINO, Gustavo. J. M.. "La responsabilité médicale dans l'expérience brésilienne". In: *Journées Panaméennes da Association Henri Capitant*. Cidade do Panamá: Journées Panaméennes da Association Henri Capitant, 1999. TEPEDINO, Gustavo. J. M.. "Tutela del Consumatore e il Nuovo Codice Civile nella Recente Esperienza Brasiliana". In: CAVAZZONI, Gianfranco; DI NELLA, Luca; MEZZASOMA, Lorenzo; RIZZO, Vito. (Org.). *Il Diritto dei Consumi: Realtà e Prospettive*. Napoli: Edizioni Scientifiche Italiane, 2008, p. 713-736. TEPEDINO, G. J. M.. "Il Mercosul e i rapporti di consumo. Marce e contromarce nell'integrazione giuridica dell'America Latina". In: Pietro Perlingieri; Lucia Ruggeri. (Org.). *Diritto privato comunitario*. Napoli: ESI, 2008, p. 227-240. TEPEDINO, Gustavo. J. M.. "Rapporti contrattuali e tutela del consumatore nell'esperienza brasiliana". In: ANDENAS, Mads; ALABART, Silvia Diaz; MARKESINIS, Sir Basil. (Org.). *Liber Amicorum Guido Alpa: Private Law Beyond the National Systems*. Londres: The British Institute of International & Comparative Law, 2007, v. .p. 926-936. TEPEDINO, Gustavo. J. M.. "Les Droits Réels dans le Nouveau Code Civil". In: WALD, Arnold e JAUFFRET-SPINOSI, Camille (Org.). *Le Droit Brésilien D'hier, D'aujourd'hui et de Demain*. Ste Legislation Comparée, 2005, p. -. TEPEDINO, Gustavo. J. M.. "Les Contrats de Consommation au Brésil". In: WALD, Arnold e JAUFFRET-SPINOSI, Camille (Org.). *Le droit brésilien d'hier, d'aujourd'hui et de demain*. Ste Legislation Comparée, 2005, p. -. TEPEDINO, Gustavo. J. M.. "La rupture du contrat". In: *Anais Henri Capitant*. Henri Capitant, 2005.

⁵⁴ FRADERA, Véra Maria Jacob de. "La Rupture du Contrat dans le nouveau Code Civil brésilien". In : *Journées Henri Capitant de Rio de Janeiro e São Paulo*. Rio de Janeiro/São Paulo: 2008, v. XXII, p. 695-712. FRADERA, Véra Maria Jacob de. Evolución y estado actual del derecho de familia en Brasil. *Revista do Direito da Universidade de Santa Cruz do Sul*, Santa Cruz do Sul, n. jan/jun 1999, p. 111-ss.. FRADERA, Véra Maria Jacob de. "La responsabilité". In: Association Henri Capitant. (Org.). *Aspects Nouveaux, Travaux de l'Association Henri Capitant, Journées panaméennes*. Paris: 2003, v. L, p. 217-220. FRADERA, Véra Maria Jacob de. "Visión comparativa de la responsabilidad y el daño precontractual en la Argentina y en el Brasil". In: GHERSI, Carlos Alberto (Org.). *Derecho Privado Económico*. Buenos Aires: 2000, p. -. FRADERA, Véra Maria Jacob de. "La utilización del arbitraje privado para la solución de litigios relativos a derechos patrimoniales disponibles". In: GERSCOVITCH, Carlos (Org.). *Derecho bancario y financiero moderno*. Buenos Aires: 1999, p. 243-265. FRADERA, Véra Maria Jacob de. "Le rôle du droit comparé dans l'avènement du droit européen". The Role of comparative law in the Emergence of European Law (14-15 avril 2000), 2003, Lausanne. *Revue Internationale de Droit Comparé n° 2*. Zurich, Schulthess, 2000, p. 484-486. FRADERA, Véra Maria Jacob de. "Langue et Droit au Mercosur". In: JAYME, Erik (Org.). *Langue et Droit*. Bruxelles, 2000, p. -.

Intellectual property has therefore assumed an essential condition to guarantee the right to exclusive use by the owner of intangibles such as trademarks and patents⁵⁵. In this context, the violation of such property or right of exclusive use by a third party may result in lawsuits which have been increasing in Brazil⁵⁶.

Since the nineteenth century, Brazil is part of international treaties referring the protection of different kinds of intellectual property rights and in 1915 the article *The Basis of Property Right in the Trademarks in Brazil* was published, which was the first of many others on the theme⁵⁷.

⁵⁵ BARBOSA, Denis Borges. El concepto juridico de know how. *Revista de Derecho Industrial*, Buenos Aires, 1981. LEONARDOS, Luiz. "El derecho sobre la invención como derecho de propiedad". In: *Derecho de la propiedad industrial: Homenaje a la Ley de Marcas de 1889: Conmemoración de los 25 años de la fundación de la APAPI (Asociación Paraguaya de Agentes de la Propiedad Industrial, A.P.A.P.I.)*. Assunção: APAPI, 1989. TINOCO SOARES, "José Carlos. Patentes vs. Concurrencia desleal". In: *Derecho de la propiedad industrial: Homenaje a la Ley de Marcas de 1889: Conmemoración de los 25 años de la fundación de la APAPI (Asociación Paraguaya de Agentes de la Propiedad Industrial, A.P.A.P.I.)*. Assunção: APAPI, 1989. BARBOSA, Denis Borges. TRIPs Art. 7 and 8, FTAs and Trademarks. 2006. Available in SSRN: <http://ssrn.com/abstract=889107>. BARBOSA, Denis Borges; CHON, M.; VON HASE, Adrès Moncayo. Slouching Towards Development in International Intellectual Property. *Michigan State Law Review*, 2008, Vol. 2007, No. 1, p. 71-143. SOARES, José Carlos Tinoco. *Tratado de propiedad industrial de las Américas: marcas y congéneres*. Buenos Aires: Lexis Nexis, 2006. TUSTIN, John. Traditional Knowledge and Intellectual Property in Brazilian Biodiversity Law. *Texas Intellectual Property Law Journal*, 2006, Vol. 14, n. 2, p. 131-166. BASSO, Maristela; GOLD, E. Richard. "Toward a new era of Intellectual Property: from confrontation to negotiation". In: *A Report from the International Expert Group on Biotechnology, Innovation and Intellectual Property*. Montreal: McGill-CIPP-TIP, 2008. v. 1, p. -. BASSO, Maristela; RODRIGUES JÚNIOR, Edson Beas. Free Trade Agreements, UPOV and Plant Varieties (Chapter 7). In: HEATH, Christopher; SANDERS, Anselm Kamperman. (Org.). *Intellectual Property & Free Trade Agreements (International Intellectual Property Law Series)*. Oregon: Hart Publishing, 2007, p. 171-210. LYRIO, Alexandre. "The Development of IP Law in Brazil". BHERING, Pedro. "Successfully Wielding IP Law in Brazil". PIMENTA, Luiz Edgard Montauray. "The Changing Face of IP Law in Brazil". KUJAWSKI, Fabio Ferreira; PEREIRA, Flávia Rebello. "Meeting New Challenges in Brazilian IP Law". SIEMSEN, Peter Dirk; DE LIMA, Rafael Dias. "Updates from Brazil on Central and South American IP Law". In: *IP Client Strategies in Central and South America: Leading Lawyers on Building Client Relationships, Understanding the Impact of Recent Cases and Developments, and recognizing Regional Influences on Intellectual Property Law (Inside the Minds)*. Thomson West, 2009, 436 p.. DUNAGAN, Megan. Bioprospection versus Biopiracy and the United States versus Brazil: Attempts at Creating an Intellectual Property System Applicable Worldwide When Differing Views are Worlds Apart - and Irreconcilable. *Law and Business Review of the Americas*, 2009, Vol. 15, n. 3, p. 603-630. MORAIS, Gustavo de Freitas. Legal aspects involving protection of plants in Brazil. *Revista Mitteilungen der deutschen Patentanwälte*, 2009. BASSO, Maristela; RODRIGUEZ JUNIOR, Edson Beas. *Intellectual Property Law in Brazil*. Kluwer, 2010, 192 p..

⁵⁶ DANNEMANN, Gert Egon. "International Patent Litigation – BRAZIL". In: *International Patent Litigation: A Country-by-Country Analysis*. BNA Books, 2003. BARBOSA, Denis Borges; BARBOSA, Ana Beatriz Nunes. IP Protection & Litigation in Brasil. In: Editor. (Org.). *International Intellectual Property Law: A Country-by-Country Look at IP Protection & Litigation in Major Markets Around the Globe*. Dublin, Irlanda: Aspatore, Inc, 2005, p. -. PHILIPP, Fernando Eid; TAKEISHI, Guilherme Toshihiro. A Patent applicant's right to sue. *Latin Lawyer: the business law resource for Latin America*, London. Available in: < <http://www.latinlawyer.com/news/article/41030/a-patent-applicant-8217s-right-sue/>>. Access on October 7th, 2010.

⁵⁷ REGISTER, Layton B.. The Basis of the Property Right in Trademarks in Brazil. *University of Pennsylvania Law Review and American Law Register*, 1915, Vol. 63, No. 9, p. 876-892. LEONARDOS, Thomas. On protection of notorious marks in Brazil. *The Trademark Reporter* 1981, Vol. 71, n. 5, p. 576-580. DANIEL, Denis Allan. Trademark Policy in Brazil under the Second Basic Plan for Scientific and Technological Development. *The Trademark Reporter*, mai-junho 1976, Vol. 66, n. 3, p. 173-182. SIEMSEN, Peter Dirk. [La protection des marques contre la contrefaçon au Brésil](#). *La Propriete Industrielle*, 1982, Vol 98, No 11, p 353-357. SIEMSEN, Peter Dirk. [Protection of trademarks against counterfeiting in Brazil](#). *Industrial Property*, 1982 Vol 21, No 11, p. 317-320. SIEMSEN, Peter Dirk. [Patent and trademark infringements in Brazil](#). *International Review of Industrial Property (IIC)*, 1984, Vol 15, No 4, p. 443-454. GUSMÃO, Jose Roberto d’Affonseca. Protection de la marque notoire au Brésil, La: application du dispositif conventionnel (art. 6 BIS) et de la loi interne. *Revue Internationale de la Propriété Industrielle et Artistique*, Paris, junho de 1988, n. 152, p .64-74. GUSMÃO, José Roberto d’ Affonseca. *L’Acquisition du droit sur la marque au Brésil*. Paris:

The foreign interest in Brazilian intellectual property law, however, has become more relevant exactly when the procedures and protection by Brazilian law stopped following the parameter of the developed countries. This change began in the 1960s⁵⁸.

At that time, transfer of technology had become the object of increasing state control, with orderings between companies of the same group of certain contracts involving transferring of technology being forbidden, and, in the following decade, the newly created National Institute of Industrial Property - INPI started to impose numerous obligations and contractual clauses which favored Brazilian companies⁵⁹. It was the policy of importing technology at the lowest cost.

Despite the change in this policy in the 1990s, some criticisms still remain regarding Brazilian treatment given to the theme. The main aspect is the bureaucracy in which each contract of foreign technology transfer must be registered before the National Institute of Industrial Property - INPI and the Central Bank of Brazil - Bacen for remittance of royalties abroad, with the procedure and celerity of the former organ on the analysis of the rights to be protected and such contracts being extremely criticised⁶⁰.

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⁵⁸ BARNES, William Sprague. *Technology Transfer Rules: A Study in Comparative Law*. *Boston College International and Comparative Law Review*, inverno de 1979, Vol. 3, n. 1, pp. 1-28. ROWLAND, Walter S.. Foreign Investment in Brazil: A Reconciliation of Perspectives. *Journal of International Law and Economics*, 1979, Vol. 14, n. 1, pp. 39-62. BARBOSA, Denis Borges. El comercio de Tecnología: aspectos jurídicos, transferencia, licencia y know how. *Revista de Derecho Industrial*, Buenos Aires, 1988, v. 30.

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Other significant consequences of the policy initiated in the 1960s occurred in regard to the protection of intellectual property rights, with foreign indignation, specially from the United States, by the lack of legal provisions for the protection of software and pharmaceutical patents.

As a result of the ineffective protection by Brazilian legislation, specially to American standards, of computer softwares and yet the limitation of access to the foreign market, softwares from U.S. companies began to be commercialized illegally in the country, and the lack of adequate protection have led to piracy. Only in the 1980s, when the United States began to threaten Brazil with trade retaliations, was when software protection was gradually instituted resulting in the opening of the domestic market for foreign companies⁶¹.

With regard to pharmaceutical patents, there was no protection for products and later for pharmaceutical procedures, which resulted in the use of these products and procedures rather than investment in research and development in Brazil. Only after new threat from the United States and the entering of Brazil in *Trade Related Aspects of Intellectual Property Rights - TRIPS* with the later enactment of the Code of Industrial Property of 1996, pharmaceutical patents were protected again⁶². Currently the new foreign stir with Brazil refers to the compulsory licensing of these products⁶³.

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In relation to Brazilian legislation regarding intellectual property, the website of *World Intellectual Property Organization - WIPO* offers search engine of countries (<http://www.wipo.int/clea/en/>) and contains some Brazilian standards on the subject translated in English.

5) Conclusion

On tax law it has been highlighted works published in eight countries, specially the United States, Holland and Germany. Dozens of authors, domestic and foreign, wrote about Brazilian tax law since 1950, initially only for foreign direct investment in Brazil and knowledge of the tax system. However, more recently, some national authors have distinguished themselves with successive publications of more doctrinal content and not just expository of Brazilian law.

Under civil law was found a reduced number of specific items because such branch, by having many of the general contours of the Brazilian legal system, is used as the basis for works which does not always constitute a study of civil law. Still, specially in France, Italy and the United States it is possible to find publications on Brazilian civil law.

Regarding intellectual property is in the United States that most of works are concentrated due to the country being the largest investor in research and development worldwide, in addition to being the main exporter of technology, which results in enormous interest on the topic.

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