

## TYOLOGY OF LEGAL REGULATION OF VALUE-ADDED TAXATION IN THE BRICS STATES

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<https://doi.org/10.21684/2412-2343-2022-9-2-145-162>

*Value-added taxation (VAT) is an essential component of the financial system of any modern state, which determines the attention of the legislator to the development of its legal regulation, as well as the subject of this article. The processes of transformation of VAT legal regulation systems that are observed in the BRICS countries (the People's Republic of China, the Republic of India, the Federal Republic of Brazil, the Russian Federation, and the Republic of South Africa) demonstrate the greatest activity in this area of legal relations. The task of studying such changes, which makes it possible to identify common features and individual features of various types of legal regulation of value-added taxation, is solved on the basis of an integrated assessment of the characteristics of the tax redistribution of value added. Based on the results of their research, the types of legal regulation of VAT in the BRICS countries are identified and the place that the Russian model of legal regulation of VAT occupies in this classification is determined.*

*Keywords: BRICS; VAT; GST; legal regulation of value added taxation; turnover tax.*

**Recommended citation:** Dmitry Bachurin, *Typology of Legal Regulation of Value-Added Taxation in the BRICS States*, 9(2) BRICS Law Journal 145–162 (2022).

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## Introduction

The prospects for the development of the state are determined, first and foremost, by the definition of the right policy and the quality of management provided by the development of appropriate forms of legal regulation.<sup>1</sup>

The study of the models of VAT legal regulation that have existed in Russia and South Africa for a long time, as well as those that have been developed during the period of active reform in recent years in China and India, leads to the conclusion that such a legal instrument is primarily correlated with specific socio-economic practices localized in different national and public entities.

The research approach used in the proposed work employs a comparative legal analysis of changes in the legal regulation of value added taxation in the People's Republic of China, the Republic of India, the Republic of South Africa, the Federal Republic of Brazil and the Russian Federation. Based on its results, a detailed typology of the models of legal regulation of VAT in the BRICS countries should be formed, each of which has pronounced features of legal regulation, creates its own unique type of economic and legal impacts, its own social activity, and also determines the place and features of the Russian model of legal regulation of VAT in the existing variety of national models of the BRICS states.

The results of the study should provide a sufficient normative, empirical and conceptual basis for a scientifically reasoned platform of basic knowledge to put forward proposals for legal improvements to the legal mechanism of VAT and the regulatory apparatus of the legal regulation of value-added taxation in the Russian Federation as well as in the other BRICS states.

## 1. Modern Types of Legal Regulation of VAT

As types of VAT legal regulation, it is possible to consider legally defined combinations of financial and legal means, specially structured depending on their

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<sup>1</sup> Стадвелл Д. Азиатская модель управления: удачи и провалы самого динамичного региона в мире [Joe Studwell, *Asian Model Management: Successes and Failures of the Most Dynamic Region in the World*] 403 (2017).

focus on targeted (fiscal-oriented and (or) socially-oriented) impact on the behavior of subjects of public relations in the field of value-added taxation.

Their classification is based on an integrated criterion that includes the following indicators: (a) constitutionally expressed principles and rules for the distribution of property and value added created in the company, defining the characteristics of tax administration and the target direction of VAT revenues; (b) availability of tax benefits and exemptions; (c) the amount of the basic tax rate.

The classification of the most pronounced types of legal regulation of VAT in modern world practice allows us to identify both common features and individual features of models of such regulation:

- The Western European model (socially-oriented) is characterized by a socially-oriented distribution of VAT, a high tax rate and the availability of tax benefits and exemptions;

- The Eastern European model (fiscally-oriented) is characterized by a fiscally-oriented distribution of VAT, a high tax rate and the availability of tax benefits and exemptions;

- The New Zealand model (universal) is based on a socially-oriented distribution of VAT, a low tax rate and a lack of tax benefits and exemptions;

- The neutral model is a fiscally-oriented distribution of VAT, a low tax rate and the availability of tax benefits and exemptions.

In the proposed classification, the main question is to what extent the actual legal regulation of VAT corresponds to objective public needs combined with the interests of economic efficiency.

The evaluation of the results of the legal regulation of value-added taxation indicates that the regulatory Western European model is applied in the conditions of modern high-tech production in the paradigm of the inseparable unity of the material and ethical structures of the modern Western European state and their connection with the basic political and legal ideas - the idea of property and the idea of the common good. The effects of social correction, economic integration and inhibition of the processes of capital expansion generated by its application have a positive impact on social development in each of the socially oriented states of Europe.

The legal regulation of value-added taxation, which operates within the constraints of a fiscally-oriented model and to which the legal regulation of VAT in the Russian Federation can be attributed, eventually becomes an instrument of financial and legal deterrence for countries with reformed economies whose governments are addicted to excessive VAT taxation. Such a VAT places a heavy tax burden on labor-intensive industries, suffocating and restraining economic development and effectively becoming yet another tax on the poor.

In fact, the universal model of legal regulation of value-added taxation in New Zealand, serves as an example for the design of modern legislation in India and China. The absence of tax benefits and exemptions in the New Zealand Goods and

Services Tax (GST) ensures that tax collection is nearly 100% (C – coefficient – 1). VAT collection in the European Union is 60% (C – coefficient – 0.6). In this regard, the Organisation for Economic Co-operation and Development (OECD) Financial Affairs Committee has recommended legal innovations in the legislation on GST of New Zealand in the development of prospective legal regulation of value-added taxation in OECD countries.

The analysis of the typology of VAT legal regulation also leads to the conclusion that if the purpose of the projected value-added taxation model in a developing country is socio-economic growth, then a universal model should serve as a guideline for its changes.

If we recognize that the regulation of relations is always established by people with the help of the state, then the constitution (basic law) of the country invariably acts as a starting point for the legalization of the rules of social interaction in the field of tax redistribution.

## **2. Integral Assessment of the Characteristics of the Tax Redistribution of Added Value in the BRICS Countries**

Value-added taxation acts as the most important financial and legal regulator of the socio-economic development of the country. Its basic characteristics are formed on a constitutional basis. As a result, the terms of reference for the development of legislative regulation of tax redistribution of added value should first reflect the relevant provisions of the basic law of the state.

Among the constitutional provisions that have the greatest impact on specific procedures for the legal regulation of VAT, it is necessary to highlight the norms that determine the priorities of the state in matters of property and its redistribution in society, as well as ways of managing and improving the efficiency of the national economy.

### **2.1. VAT Legal Regulation in China**

The Constitution of the People's Republic of China states that the basis of the socialist economic system is socialist public ownership of the means of production, that is, public property and collective property of the working masses (Art. 6 of the Constitution of the People's Republic of China). The State guarantees the strengthening and development of the economic sector based on state ownership (Art. 8 of the Constitution of the People's Republic of China).

The Basic Law of the People's Republic of China declares the non-social sector of the economy (individual and private farms) to be an important component of the socialist market economy (Art. 11 of the Constitution of the People's Republic of China), and thus prioritizes socialist public property, while prohibiting any organizations or individuals from appropriating or undermining state and collective property (Art. 12 of the Constitution of the People's Republic of China).

If socialist public property in the People's Republic of China is "sacred and inviolable" (Art. 12 of the Constitution of the People's Republic of China), then private property is only 'inviolable', and the state can requisition or use it in accordance with the law, as well as pay compensation if there are public needs (Art. 12 of the Constitution of the People's Republic of China).

The fundamental task of the State is to concentrate its efforts on socialist modernization (Preamble of the Constitution of the People's Republic of China).

The Chinese state steadily increases labor productivity and economic efficiency, developing the productive forces of society by increasing the activity and technical level of workers, spreading advanced science and technology, improving economic management systems and enterprise management, implementing various forms of socialist responsibility and improving labor organization (Art. 14 of the Constitution of the People's Republic of China).

A distinct feature of the modern Chinese regulation of economic relations is the preservation of the state planning function, which applies to all enterprises of the Chinese economy – state, collective, private, as well as mixed forms of ownership.

Rationally distributing the means of accumulation and consumption, the state takes into account state, collective and personal interests, gradually improving the material and cultural life of the people on the basis of the development of production (Art. 14 of the Constitution of the People's Republic of China). The state is improving macro-regulation (Art. 15 of the Constitution of the People's Republic of China).

A system is maintained in which the distribution of labor dominates in coexistence with other distribution methods (Art. 6 of the Constitution of the People's Republic of China).

State-owned enterprises exercise democratic governance through meetings of workers' and employees' representatives, among other forms (Art. 16 of the Constitution of the People's Republic of China).

Collective economic organizations have the right to independence, to independently conduct economic activities, carry out democratic governance, elect and remove management personnel and to resolve important issues of economic management (Art. 17 of the Constitution of the People's Republic of China).

A systematic interpretation of the norms of the Constitution of the People's Republic of China leads to the conclusion that the socio-economic structure of the Chinese state is based on the dominance of public interests, and the scope of private property rights is enclosed within the boundaries established by the state.

Constitutional and legal principles are further developed in the normative and practical activities of the authorities of the People's Republic of China, with the goal of resolving the problem of balancing the task of economic modernization with the social needs of the people.<sup>2</sup>

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<sup>2</sup> Кеннеди П. Взлеты и падения великих держав: экономические изменения и военные конфликты в формировании мировых центров власти с 1500 по 2000 г. [Paul Kennedy, *The Rise and Fall of*

The decision of the XVIII CPC Congress of 8 November 2012 on the major transformation of the Chinese growth model by switching to stimulating domestic consumption is accompanied by a territorial and sectoral expansion of the scope of VAT legal regulation. In assessing the ongoing changes, the Chinese authors argue that the tax policy of modern China is based on the principle of ‘efficiency priority with due regard for fairness’, which means that the leadership of the People’s Republic of China gives more preference to social justice than economic efficiency.<sup>3</sup>

In October 2017, at the XIX Congress of the CPC, Xi Jinping put forward a 50-year program of socio-economic transformations of Chinese society, which will be implemented in three stages (2017–2020, 2021–2035, 2035–2049). The main task of the first stage is to overcome poverty and “build a moderately prosperous society in all respects,” namely the middle-income society “*Xiaokan*.” Its political and legal support shall be carried out on the basis of strict observance of the principle of “the combination of the rule of law and the rule of virtue.”<sup>4</sup>

The socio-economic system of the People’s Republic of China is becoming more efficient than the Anglo-Saxon center of the previous world economic system, which no longer generates development processes. Adhering to the socialist ideology, China makes use of the advantages of both planned and market economies. In fact, this is a qualitatively new system of industrial relations and institutions, in which additional development opportunities are created on the basis of a combination of state strategic planning and regulation with market self-organization.

The system of state institutions ensures: (a) the dominance of the public sector in the economy and finance, which maintains a stable and balanced infrastructure and resource base; (b) the development of market mechanisms, directing them to improve the welfare of the entire society and (c) clear guidelines for the development of private entrepreneurship, minimizing the possibility of creating dangerous imbalances in order to obtain excess profits.

The comprehensive nature of the planned changes in Chinese society determines the corresponding large-scale transformations in the legal regulation of value-added taxation.

The normative acts of the current stage of VAT tax reform are imbued with the desire to improve the situation of taxpayers. The main measures are aimed at “reducing permits and convenience for people,” limiting tax enforcement, improving the quality of the taxation environment.

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*the Great Powers: Economic Change and Military Conflict in the Formation of the World’s Centers of Power From 1500 to 2000*] 607 (2020).

<sup>3</sup> Gao Peiyong & Ma Jun, *China: Toward the New Stage of Improving its Tax System*, 1(2-3) J. Tax Reform 145 (2015).

<sup>4</sup> Xi Jinping’s Report at the 19<sup>th</sup> CPC National Congress, China Daily, 4 November 2017 (Feb. 20, 2022), available at [https://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content\\_34115212.htm](https://www.chinadaily.com.cn/china/19thcpcnationalcongress/2017-11/04/content_34115212.htm).

In 2017–2019, the PRC implemented a reform of tax rates, which objectively acts as the central point of changes in the legal regulation of VAT. As a result of the gradual reduction of VAT, a three-tier structure of rates for ordinary payers has been formed (13%, 9% and 6%). The announcement of the Ministry of Finance of the People's Republic of China, the Main Tax Administration of the People's Republic of China and the Main Customs Administration of the People's Republic of China No. 39 dated 20 March 2019<sup>5</sup> establishes that the 13 percent rate is declared the main (general) VAT rate, but at the same time, a significant number of business transactions are taxed at the rates of 6 percent and 9 percent.

In 2020–2021, the implementation of a phased tax reduction policy continued, covering the provision of various value-added tax benefits for small taxpayers. The results of this policy are presented in table 1. Within its framework, the reduction of the VAT rate from 3 percent to 1 percent for individual industrial and commercial households has been extended until 31 December 2021.

The reduction of the VAT threshold for small taxpayers from 100,000 yuan per month to 150,000 yuan is considered the most important structural measure in the field of legal regulation of value-added taxation.<sup>6</sup>

According to the report of the State Council of the People's Republic of China for 2020, large-scale tax cuts combined with the improvement of institutional mechanisms have reduced the fiscal burden of economic entities by more than 2.6 trillion yuan during 2020,<sup>7</sup> with VAT revenue accounting for more than 60 percent of the collection of total taxes in the People's Republic of China. The central budget and local budgets each receive 50 percent of the VAT receipts, which are sent to the central budget and local budgets in equal shares of 50 percent.

The task of improving the modern taxation system is focused on supporting and stabilizing the manufacturing industry, consolidating production chains and further optimizing value-added taxation.

To this end, Chapter 21 "Creating a Modern Tax and Financial System" of the fourteenth five-year plan of the National economic and Social development of the People's Republic of China and the Plan of Long-term Goals for 2035 provides for the

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<sup>5</sup> Announcement of the Ministry of Finance and Taxation of the People's Republic of China and the General Customs Administration of the People's Republic of China, No. 39 dated 20 March 2019 "On Deepening the Policy Related to the Reform of Value Added Tax" (Feb. 20, 2022), available at <http://www.chinatax.gov.cn/chinatax/n810341/n810755/c4559725/content.html>.

<sup>6</sup> 财政部 税务总局关于明确增值税小规模纳税人免征增值税政策的公告财政部 税务总局公告2021年第11号2021-3-31 [Announcement No. 11 of 31 March 2021, The State Tax Administration of the Ministry of Finance to Clarify the Policy of the Exemption from VAT for Small Taxpayers of Value Added Tax] (Feb. 20, 2022), available at <http://www.chinatax.gov.cn/chinatax/n359/c5162930/content.html>.

<sup>7</sup> 政府工作报告2021年3月5日在第十三届全国人民代表大会第四次会议上国务院总理 李克强 [Report on the Work of the Government Prime Minister State Council Li Keqiang at the Fourth Session of the Thirteenth National People's Congress Representatives on 5 March 2021] (Feb. 20, 2022), available at <http://www.gov.cn/zhuanti/20211hfgzbg/index.htm>.

task of improving the legal regulation of tax rates, the volume of tax exemptions, calculation and payment of VAT.<sup>8</sup> One such measure is the planned reduction in the rates of value-added tax levied on services to 6%–9%.

It should be noted that measures to reduce the fiscal burden of taxpayers are complemented by credit development mechanisms. Today, China is confidently leading the world in terms of the monetization of the national economy, with more than \$30 trillion in the accounts of Chinese individuals and legal entities at the start of 2021.

To summarize, the Chinese model of VAT legal regulation is increasingly acquiring the features of a socially-oriented type of value-added taxation, with low tax rates and consistent restrictions on tax benefits and exemptions.

## **2.2. VAT Legal Regulation in India**

In many ways, India uses economic institutions and management mechanisms comparable to those used in China, resulting in the creation of its own convergent management system, the main goal of which is to improve the standard of living of the population. Its integral world economic structure is being created on a democratic basis.

The Constitution of the Republic of India enshrines the primacy of public interests over private ones, proclaiming it as a fundamental duty of the State “to ensure a social order conducive to the welfare of the people” (Art. 38 of the Constitution of India).

The Constitution of the country declares India as a Sovereign Socialist Secular Democratic Republic (Preamble of the Constitution of India)<sup>9</sup> in its first line, and it states that “social, economic and political justice determines the essence of all institutions in which the life of the nation is embodied” (Art. 38 of the Constitution of India).

In India, the dogma that taxes must comply with constitutional norms is consistently expressed. The provisions of the Constitution of India institutionally orient the State to ensure and harmonize public interests.

The State strives to minimize income inequality and eliminate inequalities in status, conditions and opportunities among individuals and groups of the population (Art. 38 of the Constitution of India).

The State pursues a policy aimed at ensuring that property and control over the material resources of society are distributed in such a way as to best serve the

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<sup>8</sup> 中华人民共和国国民经济和社会发展第十四个五年规划和2035年远景目标纲要 [The Fourteenth Five-Year Plan of the National Economic and Social Development of the People's Republic of China and the Plan of Long-Term Goals for 2035] (Feb. 20, 2022), available at [http://www.gov.cn/xinwen/2021-03/13/content\\_5592681.htm](http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm).

<sup>9</sup> The words “secular” and “socialist” were added to the preamble of the Constitution of India by the 42<sup>nd</sup> Amendment Act during the State of emergency in 1976. Конституция Индии // Википедия [Constitution of India, Wikipedia] (Feb. 20, 2022), available at [https://ru.abcdef.wiki/wiki/Constitution\\_of\\_India](https://ru.abcdef.wiki/wiki/Constitution_of_India).



common good, and the functioning of the economic system does not lead to the concentration of wealth and means of production to the detriment of the common interests (Art. 39 of the Constitution of India).

The Constitution of India provides legal guarantees for taxpayers and the proper use of tax revenues:

- Taxes are established only on the basis of the law. No tax is imposed or levied except by virtue of law (Art. 265 of the Constitution of India);
- Persons may not be deprived of property except by the authority of the law (Art. 300A of the Constitution of India);
- The protection of public property is the duty of every citizen of India (Art. 51A of the Constitution of India).

Measures have been declared to ensure the participation of employees in the management of enterprises, institutions and other organizations in industry (Art. 43A of the Constitution of India).

Adherence to the constitutionally formulated doctrine of “materiality,” which presupposes the productive care of the state to solve vital problems of citizens,<sup>10</sup> is quite clearly manifested in the sphere of legal regulation of value-added taxation.

Historically, a wide range of regional and social interests has led to the need to develop a mechanism for common goal-setting, taking into account the diversity and conflicting positions of various groups in Indian society. Many experts consider the country to be fragmented and more akin to a confederation. For example, the Dravidian Southerners in Kerala have favored communists for more than half a century, while the Sikh Northerners in Punjab are ruled by nationalists. Dravidians and Sikhs speak different languages, have different appearances and think differently.<sup>11</sup>

The solution was found in the form of the creation of a special constitutional body for the legal regulation of value-added taxation, whose members represent not only the interests of the central government, but also all the interests of all the states of the country separately. The Goods and Services Tax (GST) Council consists of 30 members: 29 finance ministers from across India, and the Minister of Finance of the country serving as the Chairman.

In its activities, the GST Council applies a management method based on consensus and agreement.<sup>12</sup> This approach makes it possible to link the interests of the population of the country, creating the possibility of synergetic consideration of a variety of views in a multicultural economy.

The Constitution of India establishes a special procedure for the creation of the GST Council (para. 1 of Art. 279A) and its decision-making (paras. 7 and 9 of Art. 279A).

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<sup>10</sup> Льюис Э. Без оглядки на богов: взлет современной Индии [Edward Lewis, *Without Regard to the Gods: The Rise of Modern India*] (2009).

<sup>11</sup> Ландау А. Краткая история Индии [Alexander Landau, *A Brief History of India*] 573 (2020).

<sup>12</sup> K. Mitra Subrata, *Politics in India: Structure, Process and Policy* 121 (2014).

It is fundamentally important that the work of the GST Council is based on the constitutionally mandated principle of coordinating the structure of the GST with the goals of developing the national market of goods and services (cl. 6 of Art. 279A of the Constitution of India). In particular, on the basis of paragraph 4 of Article 279A of the Constitution of India, the Council determines: goods and services that can be taxed or exempt from goods and services tax; model laws on GST; principles of collection and distribution of GST levied on supplies in the course of interstate trade; principles governing the place of delivery; threshold limit of turnover; tax rates, including minimum rates, as well as rates for a specific period to collect additional resources.

Unlike many other countries with economies in transition, the Indian elite refuses to directly transfer foreign standards and management technologies, instead carefully studying possible options in the context of their own identity, and refusing to allow risky decisions that disrupt the established way of social life.

The legal regulation of value-added taxation is being formed as part of the 2017–2020 reform, the purpose of which is not to solve narrowly focused tasks of fiscal efficiency but to focus on a long-term strategy for the socio-economic structure of Indian society.

It is no coincidence that the new Indian tax on goods and services<sup>13</sup> is characterized by flexibility, practicality and social orientation. The latter characteristic stems directly from the 42<sup>nd</sup> Amendment to the Constitution of India, which defines the construction of a socialist republic as one of the goals of social development.

Taking into account the preferential application of the 12 percent tax rate in the five-step line of tax rates (0%, 5%, 12%, 18%, 28%), allows us to attribute this type of value-added taxation to the model of predominantly socially-oriented value-added taxation, which does not restrain the development of the economy and does not have a critically significant impact on labor. It should be pointed out that the Indian legislator recognizes the fact that labor contracts are subject to value-added taxation and sets a flat 12 percent rate for them, regardless of the types of goods and services produced by employees.

### **2.3. VAT Legal Regulation in Brazil**

As the basic principle of the organization of economic order, the Constitution of the Federal Republic of Brazil establishes the principle of social justice, combining freedom of initiative with the growth of the value of human labor (Art. 145 of the Constitution of Brazil).

Interference in economic activity and monopolization of certain industries are justified on the basis of public interest, and its scope is limited by the fundamental rights provided by the Constitution (Art. 146 of the Constitution of Brazil).

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<sup>13</sup> Central Goods and Services Tax Act, 2017 (Feb. 20, 2022), available at <https://www.indiacode.nic.in/bitstream/123456789/15689/1/a2017-12.pdf>.

The law restricts any abuse of economic power when the goal is to dominate the national market, eliminate competition and arbitrarily increase profits (Art. 148 of the Brazilian Constitution).

The use of property is conditioned by public welfare. The law should promote a fair distribution of property with the provision of equal opportunities for all (Art. 147 of the Brazilian Constitution).

Usury in all its forms is punishable by law (Art. 154 of the Brazilian Constitution).

The Law establishes the regime of financial institutions (Art. 149 of the Brazilian Constitution) and creates specialized credit institutions to assist agriculture and cattle breeding (Art. 150 of the Brazilian Constitution).

Financial state control and revision of tariffs for the services of concessionaire enterprises are carried out in such a way that the income of concessionaires does not exceed the fair income from capital (Part V of the Brazilian Constitution).

The worker must have a mandatory and direct participation in the income of the enterprise (Art. 157 of the Brazilian Constitution).

The minimum wage must meet, taking into account the conditions of each district, the normal needs of the worker and his family (Art. 157 of the Brazilian Constitution).

The Constitution establishes the practice of dividing the taxation of turnover into separate taxes administered by different levels of government. The main tax, VAT (ICMS), is administered by the states (Art. 15 of the Brazilian Constitution). The responsibilities of the center include the establishment of a consumption tax, from which items classified by law as a necessary minimum for people with limited economic opportunities (household items, clothing, food, medical care items) are exempt.

A review of the Brazilian media shows that the discussion of VAT reform is taking place in an environment of change under the traditional slogan of the old democracies: "there is no taxation without representation." In Brazilian society, in contrast to the widespread resistance to changes in value-added taxation in India (2016–2017), a broad political consensus has been reached in assessing the current tax system as unfair, regressive and harmful to the Brazilian economy. The authors of the publications state that the reforms proposed in the interests of business, investment and growth are correct, taking into account the economic downturn caused by the sudden global COVID-19<sup>14</sup> pandemic, and that they are being prepared in an open and transparent manner with the goal of widespread acceptance by the majority of citizens.

The most recent the legislative draft (AC 45/2019), which originated with the Center for Tax Citizenship (*Centro de Cidadania Fiscal (CCiF)*), calls for the gradual

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<sup>14</sup> Romero J.S. Tavares, *Foreword: Assessing Brazil's Tax Landscape in 2020*, *International Tax Review*, 30 March 2020 (Feb. 20, 2022), available at <https://www.internationaltaxreview.com/article/b1ky4qkvpy-c4pd/foreword-assessing-brazils-tax-landscape-in-2020>; Guilherme Giglio & Marcelo Natale, *The Long-Expected Brazilian Tax Reform – Objectives, Challenges and Pitfalls*, *International Tax Review*, 30 March 2020 (Feb. 20, 2022), available at <https://www.internationaltaxreview.com/article/b1ky5my4sl0zqx/the-long-expected-brazilian-tax-reform-objectives-challenges-and-pitfalls>.

replacement of five taxes (PIS, Cofins, IPI, ICMS and ISS) with a type of VAT called *Imposto sobre bens e Serviços (IBS)*, which is a goods and services tax.

According to the draft, IBS will have the following characteristics: (a) a broad tax base, including the turnover of tangible and intangible goods, services and rights; (b) exclusion of classification of goods and services into several categories; (c) taxation at the point of destination; (d) exclusion of tax benefits and special regimes.

The IBS should unify the tax competencies of various levels. It provides for the adoption of a constitutional amendment to create a special tax authority in the form of a National Committee for the Management of IBS, responsible for the collection and distribution of tax revenues between the three levels of government (federal center, states and municipalities). The project calls for borrowing from India's experience in creating a special constitutionally authorized authority with broad powers in the field of taxation of goods and services. It is assumed that the political and financial autonomy of the government entities will be ensured by the possibility of changing the rate in relation to the federal, regional or municipal parts of the tax. The total range of IBS rates, ranging from 20 percent to 25 percent, is currently being discussed.<sup>15</sup>

Based on the discussed characteristics of the future tax, it is possible to predict the formation of a socially-oriented model of value-added taxation with a high tax rate and no tax benefits. Among the various types of value-added taxation systems in use around the world, the Canadian model is most similar to the Brazilian type of VAT regulation, in which priority is also given to the sub national (regional) level of taxation.

#### **2.4. VAT Legal Regulation in South Africa**

The Constitution of the Republic of South Africa declares the Bill of Rights (Ch. 2 of the Constitution of South Africa) to be the "cornerstone" of democratic values. Public goals and interests are affected in the context of imposed restrictions. Article 25 of the Constitution of South Africa, in particular, prohibits arbitrary deprivation of property and notes that property can be alienated only in accordance with the law of general application for public purposes or in the public interest. The amount of compensation for withdrawal must be decided by the affected parties or by the court. It should reflect a fair balance between the public interests and the interests of the victims, taking into account all the circumstances.

The Constitution contains a detailed provision that the law should provide for a fair distribution of income received at the national level among national, provincial and local spheres of government (Art. 214 of the Constitution of South Africa).

It can be concluded that by paying considerable attention to individual human and civil rights and freedoms, the Constitution of South Africa bypasses the tasks of social development and multiplication of the common good.

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<sup>15</sup> Henrique Erbolato, *Brazilian Tax Reform – Framework and What to Expect*, Bloomberg Tax, 22 January 2020 (Feb. 20, 2022), available at <https://news.bloombergtax.com/daily-tax-report-international/brazilian-tax-reform-framework-and-what-to-expect>.

There are fairly serious underlying reasons for the significant differences between the South African VAT law<sup>16</sup> and the VAT legislation of other BRICS countries and the European Union. In particular, these include measures to ensure the fulfillment of tax obligations. The study of international experience shows that such broad interim measures are not used in the other BRICS countries, or in the EAEU countries, the European Union and the member states of the Gulf Cooperation Council. There are no provisions in the tax legislation of these states to ensure the fulfillment of current VAT obligations such as depositing of funds by taxpayers who have previously committed tax violations or non-payment of VAT, and requiring participants, members, shareholders or trustees controlling the activities of a legal entity to enter into a surety agreement for these obligations.

According to a comparative legal analysis, the current legislation of South Africa in the field of VAT includes a sufficiently meaningful expression of the principles of universality and neutrality in its fundamental basis, but it falls short of the level of legal, economic and organizational optimality demonstrated by universal taxation of goods and services in New Zealand and Australia.

In general, we should agree with the authors who, in their research, describe VATs in South Africa as a moderately regressive fiscal instrument and a fairly effective source of government revenue.<sup>17</sup>

### **2.5. VAT Legal Regulation in Russia**

The Constitution of the Russian Federation declares the individual rights and freedoms of man and citizen to be of supreme importance (Art. 2 of the Constitution of the Russian Federation). They determine the meaning, content and application of laws, as well as the activities of the legislative and executive authorities (Art. 18 of the Constitution of the Russian Federation) in the context of the ban on the establishment of a state or mandatory ideology in the country (Art. 13 of the Constitution of the Russian Federation).

The Constitution of the Russian Federation provides legal guarantees for owners and taxpayers:

- Everyone is obliged to pay legally established taxes and fees (Art. 57 of the Constitution of the Russian Federation);
- Private, state, municipal and other forms of property equally recognized and protected by the state (Art. 8 of the Constitution of the Russian Federation); this also applies to land and other natural resources (Art. 9 of the Constitution of the Russian Federation);

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<sup>16</sup> Value-Added Tax Act 89 of 1991 (Feb. 20, 2022), available at <https://www.golegal.co.za/wp-content/uploads/2016/12/Value-Added-Tax-Act-89-of-1991.pdf>.

<sup>17</sup> Delfin S. Go et al., *An Analysis of South Africa's Value Added Tax*, Policy Research Working Paper No. 3671, The World Bank (2005) (Feb. 20, 2022), available at <https://openknowledge.worldbank.org/handle/10986/8630>.

- The ownership, use and disposal of land and other natural resources are carried out freely by their owners (Art. 36 of the Constitution of the Russian Federation);
- Compulsory alienation of property for state needs may be carried out only on condition of prior and equivalent compensation (Art. 35 of the Constitution of the Russian Federation).

The Constitution of the Russian Federation practically does not address the idea of public goals and interests. Constitutional provisions are primarily shaped by the paradigm of the interests of the state and the individual. In particular, this approach is defined by Article 55 of the Constitution of the Russian Federation, which stipulates that

human and civil rights and freedoms may be restricted by federal law only to the extent necessary in order to protect the foundations of the constitutional system, morality, health, rights and legitimate interests of other persons, ensuring the defense of the country and the security of the state.

As a result, the paradigm of legal regulation of VAT in the Russian Federation and the Republic of South Africa is formed primarily within the framework of competition between the interests of taxpayers and the state, while the relations of cooperation and constructive policies of joint efforts aimed at developing and achieving common goals and multiplying the common good fade into the background.

### **3. Typology of Models of VAT Legal Regulation in the BRICS States**

The proposed classification allows us to evaluate individual legal forms of VAT and the ways in which they can be used to improve the legal regulation of taxation in the Russian Federation.

Based on the analysis of the international VAT phenomenology of the BRICS states, separate models of legal regulation of value added taxation are identified: the Chinese model (socially oriented); the Indian model (socially oriented); the Brazilian project model (socially oriented); the Russian model (fiscally oriented) and the South African model (fiscally oriented).

It is necessary to highlight the functional features of the models above after studying their characteristics.

The effect of the regulatory-static function of legal regulation by value-added taxation, the main purpose of which is to consolidate the established order of public relations, is expressed in all five models under consideration.

The regulatory-dynamic function of legal regulation by value-added taxation, reflecting the need for legal influence on the subsequent process of social development, is most positively expressed in socially-oriented models of legal

regulation of VAT, as compared to fiscally-oriented models, in which the emergence of the effects of restraining socio-economic development is noted.

The typology of the models of legal regulation of VAT in the BRICS states is created, taking into account the most significant parameters relevant to the classification applied in the first part of this work to the entire phenomenology of legal regulation of VAT of foreign countries.

The target orientation of the use of VAT receipts has been adopted as the leading criterion of the proposed systematization, as determined by taking into account the principles and rules for the distribution of property and value added created in the company, established in the Basic Law of the state, as well as the practices of such distribution implemented in the company.

**Table 1: Typology of models of legal regulation of VAT in the BRICS states (as of 2020–2022)**

	MODELS OF LEGAL REGULATION OF VAT				
Parameters of legal regulation	Chinese model (socially oriented)	Indian model (socially oriented)	Brazilian model (project) of a socially-oriented orientation	Russian model (fiscal-oriented)	South African model (fiscal-oriented)
By the size of the basic tax rate	Low bid VAT (13%)	Low bid VAT (12%)	High bid VAT (20% – 25%)	High bid VAT (20%)	Average rate VAT (15%)
By the availability of benefits and exemptions	Availability of benefits and exemptions	Availability of benefits and exemptions	Lack of benefits and exemptions	Availability of benefits and exemptions	Minimum benefits and exemptions
According to the target orientation of the distribution of VAT receipts	Socially-oriented VAT distribution	Socially-oriented VAT distribution	Socially-oriented VAT distribution	VAT receipts cover the total budget expenses	VAT receipts cover the total budget expenses

An analysis of the legal regulation of value-added taxation in the BRICS countries allows us to conclude that their current models do not represent an example of economically balanced legislation and are at the stage of gradual, step-by-step improvement.

This is mainly characteristic of the actively developing VAT legal structures of India and China, which are focused on achieving the greatest possible balance of private and public interests.

Such a balance of interests is aimed at the creative multiplication of the common good while steadily reducing the level of poverty.

Despite the accomplishments, such as the adoption of a single tax form that replaced several tax payments from turnover, as well as the reduction of the basic tax rate, difficulties in legislative improvement of VAT are evident. It was not possible to overcome the multiplicity of tax benefits and exemptions, the provision of which is associated with fiscal support for the economic activities of certain categories of taxpayers. The legal regulation of the rules of tax deductions from the tax base presents a significant challenge.

The priority of the legal regulation of VAT in Russia and South Africa is the fiscal interest of filling the budget. As a result, the main vector of impact of the legal regulation of value added taxation in these states is aimed at the fullest possible control of the tax base and effective tax administration.

The fiscal interests of the state do not motivate the legislature to take action to improve the legal structure of the tax, as evidenced by the elimination of excessive taxation of VAT payers through a reduction in the number of tax benefits and exemptions, as well as a reduction in the tax rate. On the other hand, recent changes in VAT legislation indicate the opposite processes: (a) in 2018, despite a reduction in the main tax rates in India and China, there was an increase in the tax rate from 14 percent to 15 percent in the Republic of South Africa and from 18 percent to 20 percent in the Russian Federation; (b) the number of tax benefits and exemptions for certain categories of taxpayers is gradually expanding; (c) the tax exemption of value added generated in the financial sector of the economy still remains.

Such an approach increases the tax burden for ordinary VAT payers, both through an increase in the tax rate and through the shifting of the tax burden of preferential categories of economic entities receiving VAT exemption.

Currently, the Russian Federation does not meet the political, legal and socio-economic conditions for the use of VAT: (a) there is insufficient redistribution of added value to the social sectors of the national economy. The spheres of education, health care and culture are not being modernized, but are instead financed according to the "residual principle"; (b) the extremely low technological level of material production remains; (c) entrepreneurial activity is accompanied by high risks of losing property. The very fact of conducting financial and economic activities in the sphere of the effects of legal regulation of VAT can increase such risks to critical levels.



A comprehensive scientific and practical analysis of the legal regulation of value-added taxation in other countries suggests that if the task of such regulation in the Russian Federation is determined by economic growth based on the restoration and recovery of productive forces, then a universal VAT model with a socially oriented VAT distribution, a low or average tax rate, and the absence of tax benefits and exemptions should become the target for its improvement.

Today, the main vector of reforms of the legal regulation of value-added taxation in the BRICS countries, namely China, India and Brazil lies in this direction.

### **Conclusion**

The analysis shows that the modern legal regimes of value added taxation in the BRICS countries are shaped by a variety of historical and political-legal realities. These conditions, in fact, predetermine the specific principles and rules for the distribution of property and added value created in society, which are established in the constitutions of states.

Based on these circumstances, as well as on the accepted practices of such public distribution, two groups of BRICS states can be distinguished, which implement significantly different strategies for improving the legal regulation of value-added taxation.

In the first group of BRICS states (the Republic of India and the People's Republic of China), the main feature is the fact that this type of taxation acts not only as a fiscal component of social reconstruction programs, but also as a financial and legal instrument that provides ample opportunities for socio-economic development. The project's approach to improving the legal regulation of value added taxation is based on the desire to steadily expand the tax base, which ensures the sufficiency of budget revenues when applying a relatively low tax rate.

The second group of BRICS states (the Russian Federation and the Republic of South Africa) is distinguished by their long-standing legislation on value-added taxation, which focuses primarily on the fiscal interests of the state. They are characterized by the establishment of higher tax rates with a wide number of tax benefits and exemptions extended to non-productive sectors of the economy (including the financial services sector).

It appears that the optimal solution in this area of legal regulation for the developing economies of the Russian Federation and the Republic of South Africa may be the transition to a universal VAT model, which fairly evenly distributes the tax burden among all economic entities on the basis of universality, neutrality and fairness of value-added taxation.

## Acknowledgements

The reported study was funded by RFBR, project number 20-011-00353, "Research of Modern Reforms of Legal Regulation of Value-Added Taxation in the BRICS Countries: New Challenges, Mechanisms and Trends of Formation".

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