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The São Paulo State's goods and service value added tax (ICMS VAT) and the state sales and use tax in the United States of America (US SUT): a comparative essay.

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1 INTRODUCTION

Our main objective in the present essay is to address the important aspects of the sales and use tax system adopted in the United States of America at the state level, hereinafter referred simply as US SUT, and the value added tax levied on consumption adopted in the Brazilian states, specifically in São Paulo state, that will be identified simply by the acronym ICMS VAT. We expect to achieve this goal using as little tax jargon as possible, so that a broader range of readers can profit from the ideas discussed within.

Also, law concepts and regulations regarding the American taxation system and the Brazilian one shall be used to a minimum extent, not to overwhelm the reader leading to additional confusion that the subject, by its own nature, has enough of already.

Through the analysis of US SUT and ICMS VAT tax structures, their changes in the course of history, their advantages and disadvantages, and drawing our conclusions not only on theory but also on empirical data and facts, we expect to propose recommendations for the ICMS VAT that could improve its mechanics and lessen the overall burden on both tax administrations and taxpayers.

Although the taxes analysed are somewhat different in their nature, we believe that they share similar problems arising from the federalist government system applied in both countries, some of which seem less harmful in the American tax system.

Keywords: tax system, consumption tax, value added tax, retail tax, federalism, subnational taxation, VAT, subnational VAT.

2 BASIC ASPECTS OF ICMS VAT AND US SUT

As we begin our study on two of the most commonly used tax systems based upon consumption, the first task is to explain them briefly and state their differences and eventual similarities.

A sound definition on tax on consumption is presented by Schenk and Oldman (“Value Added Tax – A comparative approach” – Cambridge University Press 2007) as “tax on goods and services that are acquired by individuals for their personal use or satisfaction”, and generally “does not include goods and services that are physically used or incorporated by business in the production or distributions of goods or in the rendition of services”, also known as business inputs.

Taxes on consumption, for the purpose of this work, are those taking the ad valorem tax form (even though the ICMS VAT has a particular characteristic that will be explained later), meaning taxes expressed as a percentage of the sales price or assessed value. For the sake of distinction we will discuss the case of excise taxes, usually computed on a per unit method, as little as needed.

In the dawn of the consumption taxation era, especially in Europe, governments started to impose tax on business turnover, directly computed over gross receipts. This incipient tax on consumption, levying the tax on all sales, led to a phenomenon often referred to as cascading, pyramiding or simply tax-on-tax: As the inputs of a given business already have been taxed upon their selling from the supplier to this business, when the latter sells its products taxes are collected again, on top of the amount already exacted. The taxation theory baptised this outcome as a “*cascading effect*”, and the taxes showing such behaviour are called *cumulative taxes*.

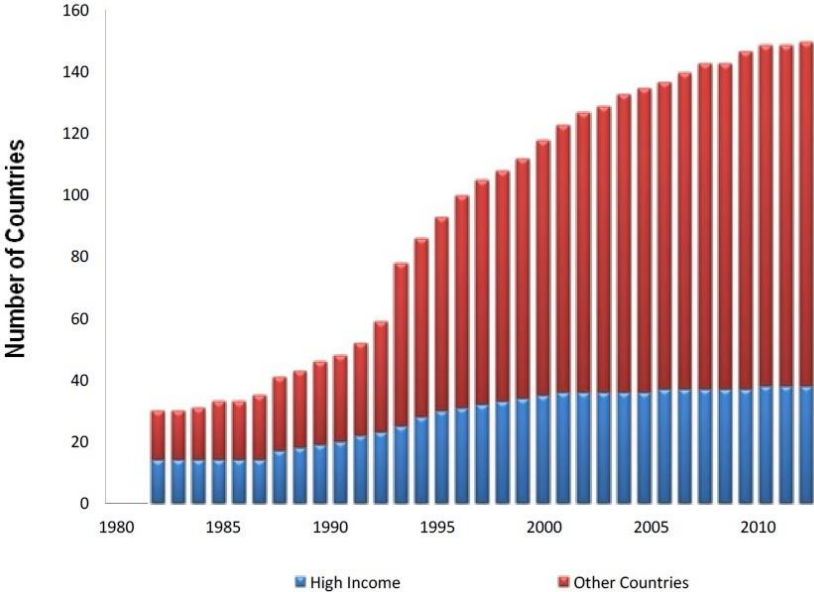
Because of the cascading effect of the so called cumulative taxes, businesses are induced by the tax itself to vertically integrate its operations. This is an highly undesirable effect from an economic point of view especially when spread over an economy, due to the high coordination costs, difficulty in switching from suppliers, lack of quality control

especially in the early stages of production, stronger tendency to monopolization of markets, and less opportunities for economies of scale, among others.

In the early 1920s, the history of consumption taxes changed. The early value added tax ideas brought up by an entrepreneur of high calibre named Dr. Wilhelm von Siemens, would forever separate the realm of single stages cascading consumption taxes (such as the US SUT) from that of multistages value added taxes (as the ICMS VAT). However, the value added tax had to wait roughly another 30 years to become a reality through the hands of a French tax official, Maurice Lauré, that implemented the first VAT in 1954.

Brazil was one of the first countries that adopted the system at its very early stage, through an amendment to the Constitution at the end of 1965. This amendment then led to the creation of the National Tax Code in 1966. (Law 5,172 published in 10/25/1966). Brazil remains today one of the few countries having a VAT tax levied at a subnational level. (India and Canada are other examples). After almost fifty years, the Brazilian states VAT has been disfigured to the extent it can barely be called a value added tax, proving that a new tax reform is urgent.

Today, VAT adoption has spread all over the globe:



(Source: OECD – www.oecd.org – Global Forum on VAT)

After this brief tax history, necessary to demonstrate that both taxes discussed share the same root in the need to tax consumption, we move to define the US SUT as a cumulative (thus imposing taxes on previously levied amounts) ad-valorem consumption tax, levied on the sales of goods and services by 45 American states and the District of Columbia. Five American states have no US SUT, although in these states local taxes are imposed. The rate of the SUT has a wide variation, and the tax is imposed at the retail level. There are exemptions in the SUT system, for example typical transactions where the tax should be due, but is not charged, such as inputs bought by businesses, purchases made by entities holding a certificate of exemption as in the case of charitable or religious entities, and purchase of food and prescription medicine for equity and social purposes. The use tax portion of the US SUT is simply put, the sales tax due and not paid by a seller from another state, imposed on the buyer by the law of its residing jurisdiction.

The ICMS VAT is a multi-staged ad-valorem value added consumption tax levied on sales of goods (including electricity) and services (transport and freight extending farther than the municipality, communications and all other services not taxed at the municipality level). As all value added taxes, the ICMS VAT prevents the cascading effect by means of allowing the companies to offset their VAT tax liability with VAT credits accrued when they pay for the inputs of their production. If credits exceed the liability (typically the case for exports, which are exempt from the ICMS VAT), a refund is provided under certain circumstances and a formal request to the tax authority.

São Paulo state's ICMS VAT, as part of the Brazilian tax system, faces great challenges related to sub-national value added tax, especially due to cross-border trade internal to the nation and between registered businesses that claim against the state credits accrued in other states. Several times these credits have doubtful legitimacy, are beyond possible checking or simply are bad credits resulting from fraud.

3 US SALES AND USE TAX:

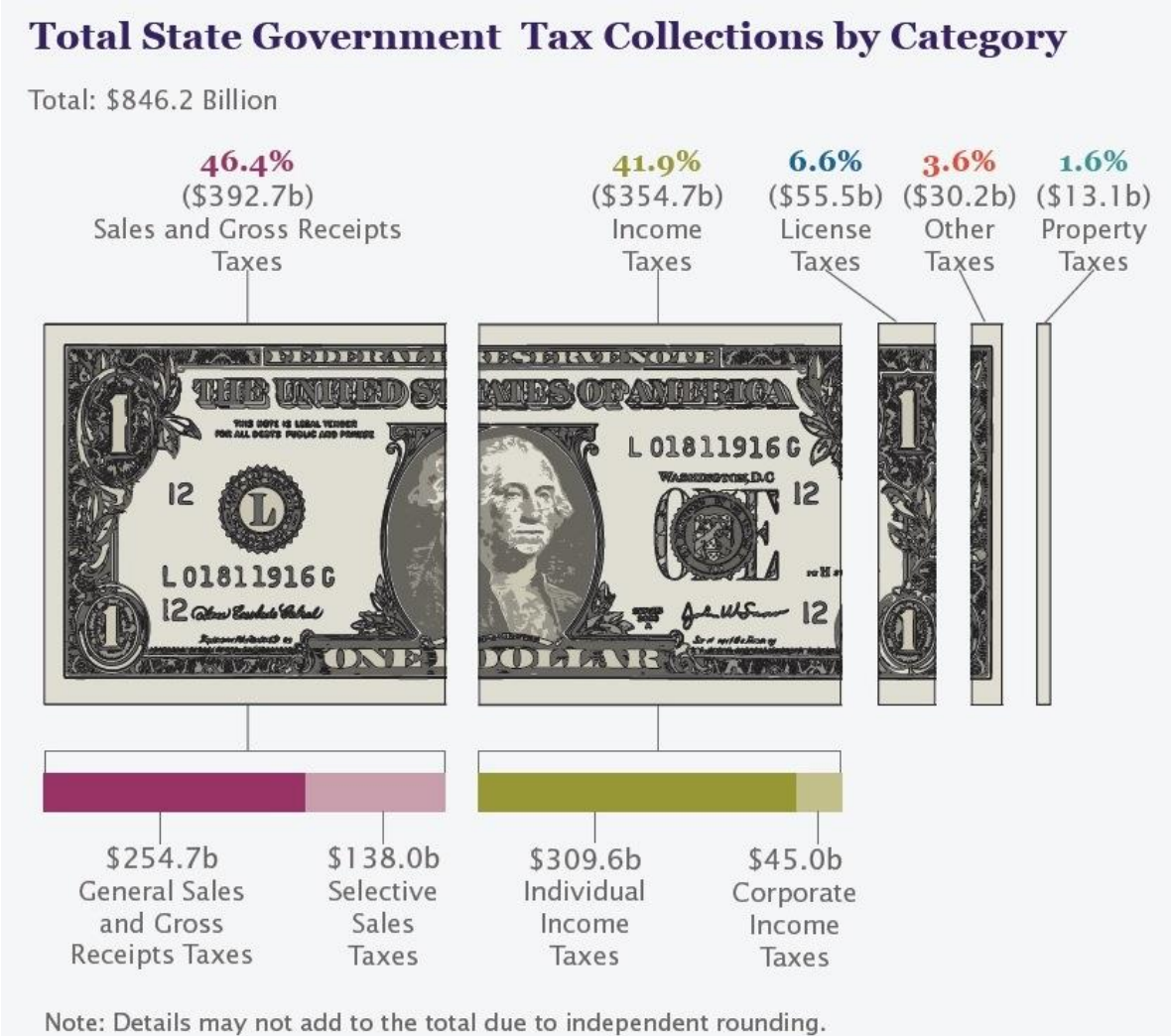
3.1 History and current trends in US SUT

American states Sales and Use Tax is considered today one of the most important sources of revenue for the states, if not the main source. The American model of a retail sales tax was used in many countries prior to the widespread adoption of value added tax, but it is important to consider some important differences between a general consumption tax and the US SUT.

First, US SUT has a much smaller tax base than a theoretical consumption tax, due to many exemptions. These exemptions are created by the tax authority aiming to solve some drawbacks of the US-SUT such as its regressive character (i.e. unfairness with respect to imposing an unbearable burden to the poorest), its enforcement and compliance issues (difficulties do comply, collect and enforce – on the taxpayer side as well as on the tax authority side), and its negative effect of the cost of inputs to businesses. Exemptions, even though justifiable, reduce the tax base eliminating consumption transactions that should otherwise be taxed such as services, food, clothing, and drugs. It must be pointed out that due to the political influence of powerful business groups, many unfounded exemptions are created, eroding the tax base beyond acceptable levels.

At this point it is relevant to explain that the American taxation system relies on selective retail taxes on consumption, the excise taxes being the most outstanding one. Excise taxes are simply put, those taxes applied to particular products (such as alcohol, tobacco, gasoline) and are usually computed as per-unit value instead of an ad valorem rate. For instance, excise taxes on cigarettes are calculated in cents per package, and those on gasoline are assessed in cents per gallon. As per our understanding, excise taxes are especially important to compensate for negative externalities in the economy, and also could be used to mitigate the regressive aspects of consumption taxes, if levied over luxury items.

Even though the US Census Bureau infographic reproduced below shows total revenue of taxes levied on consumption including selective sales taxes (such as excise taxes on tobacco or alcoholic beverages) on the total amount, the importance of the US SUT is still beyond a shadow of a doubt. From the recent US Census Data, US SUT accounts today for nearly one third of total states' revenue (30.1%), and when computed together with the selective sales taxes, constitutes slightly less than half of the total revenue.

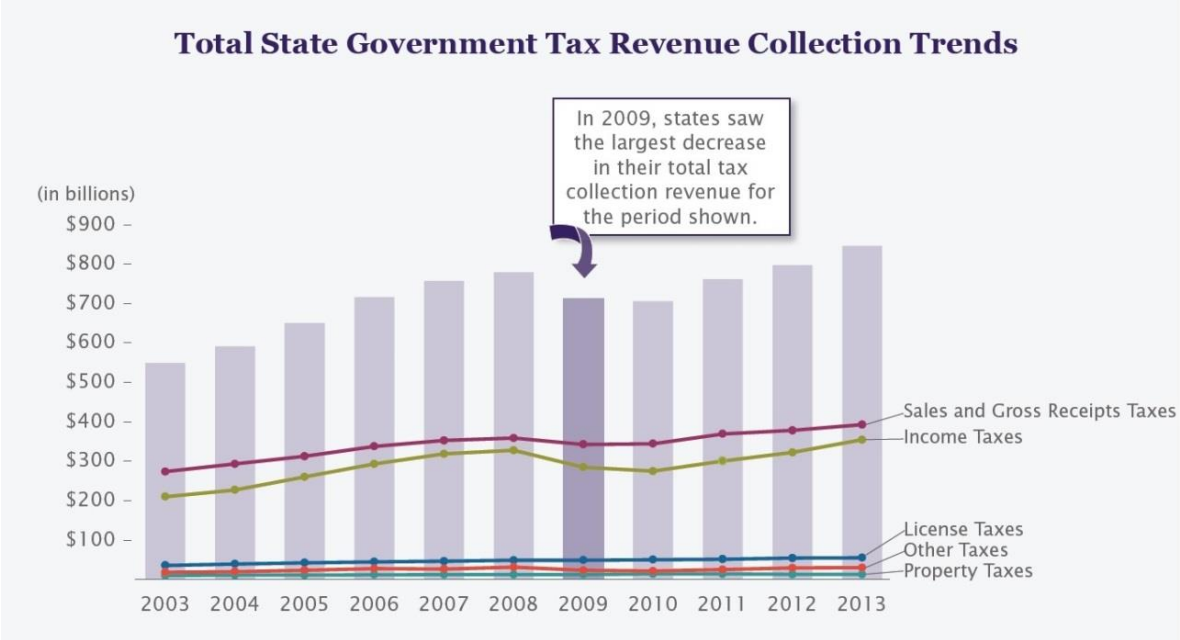


(Source US Census Bureau: www.census.gov)

From a historical perspective, the US SUT has its origin in the early 1930s, as the years following the great depression had states struggled to find a way to finance themselves during that time, and compensate the revenue losses from other types of taxes

that occurred during the Great Depression. Since then, SUT remained extremely important for the governments of most states, mainly because it is a non-income based method of taxation. Only five states do not levy a general tax across the whole state: New Hampshire, Oregon Montana, Alaska and Delaware.

The infographic below depicts the importance of the US SUT tax in coping with the budgetary demands of the American states:



(Source US Census Bureau: www.census.gov)

The SUT system in the US is a rather complex one, especially considering the existing lack of coordination between jurisdictions. However, efforts have been conducted recently to try solving this matter. One important step has been the SSUTA – Streamlined Sales and Use Tax Agreement, that is trying to reduce the cost and administrative burdens on the collection of the sales tax, addressing the issues that arise from retailers operating in multiple states, along with those operating as remote sellers without the so called “physical presence” in the buyer’s state. The nexus concept and the issues arising from the Supreme Court decision in the famous *Quill v. North Dakota* case will be discussed further in the text.

SSUSTA resulted from the Streamlined Sales and Tax Project (SSTP) led by the National Governor’s Association (NGA) and the National Conference of State Legislatures

(NCSL) in the fall of 1999 to simplify sales tax collection. Leaders from the NGA and NCSL are members of the Advisory Commission on Electronic Commerce that was created when the Internet Tax Freedom Act was passed. This commission was convinced that sales tax dating back to 1930 would not be appropriate for the reality of the 21st century. So the “commission” urged tax administrators to develop a simpler, business-friendly sales tax system, by means of tax law simplification, better administrative procedures and with the use of technology the goals pursued regarding the simplification of the system are uniform tax definitions, uniform and simpler definitions, uniform and simpler exemption administration and rate simplification.

3.2 Tax base, taxable sales and purchases, rates, collection and compliance in the US SUT

Taxable base, or simply SUT tax base, refers to the amount over which rates are applied to calculate the tax amount due. However SUT tax bases in the American system do not equal the total consumption expenditures, and as previously mentioned, this is an important difference between the American tax model and the general consumption tax model presented by taxation theory.

In recent years some factors have caused severe change in the taxable base, all of them related to misuse of tax administration policies or simply to dramatic changes on the economic environment. These factors include attempts to tax services, abusive political use of exemptions, and technological changes (including online sales of goods and services, usually in cross-state operations). SUT has been especially vulnerable to base erosion due to the growth of internet commerce, and policymakers are pursuing improvements in the tax structure to achieve the goals of economic efficiency, equity and simplicity.

As a result, several states have expanded their base towards taxation of small services, but have left exempt important industries such as healthcare, construction, and professional services, leading to losses of significant revenue. Brazilian states and American ones alike, apply the same rule that goods are always taxed unless otherwise noted, whereas services are exempt unless they are specifically enumerated. The discussion remains as to which services should be taxed, because in both countries there is consensus

about the importance to tax services and raise state revenues with a broader tax base while maintaining a low tax rate.

Also, states offer incentives on certain groups or businesses or people, creating tax exemptions on normally taxable items, either on a permanent or temporary basis.

It is our opinion that tax exemptions on the US SUT, regardless if established having in mind an equity concern or to encourage business location decisions, ought to be avoided because they have severe undesirable effects on the neutrality of the tax and they are not by any means a proper path to seek equity or to mitigate the regressive nature of an indirect tax, especially a consumption one.

Moreover, due to the lack of the credit framework provided by the value added tax model, the US SUT tax system uses general exemptions for production inputs (business purchases), although none of the states completely exempt all business purchases from US SUT. These exemptions usually take place on purchases of materials used in production, utilities expenses, manufacturing equipment and machinery and even research and development. The exemption method will be treated further ahead, as we will discuss the methods to avoid the cascading of a tax.

Regardless of existing consensus in taxation theory on the undesirable effects of the misuse of exemptions, tax administrations in the US as well as in Brazil face a serious challenge to maintain tax base, standing against powerful lobbyist, and keeping tax rates as low as possible. It must be clearly understood that giving in to excessive exemptions and establishing higher rates to compensate for the loss in tax revenues is a path that will lead to certain loss in revenues and increase in tax complexity.

Having discussed the tax base issues, it is important to understand the US SUT as a dual mechanism, or a system with two components. The first and widely known is the retail sales tax, or simply sales tax. The second is the compensating use tax (in short just use tax). But both are imposed on the same tax base, but in different circumstances.

The sales tax are typically ad valorem and are levied over the final selling price of taxable goods and services, and state and local laws require the in state retailers to collect and remit the tax to the respective tax authority, as long as they have nexus with such

jurisdiction, (i.e. some minimal physical presence), according to the US Supreme Court decision in the Quill vs North Dakota case.

The use tax could be defined as a mechanism created to impose equal responsibility to vendor from states other than the local jurisdiction one. In that case items purchases outside but consumed within a given jurisdiction are taxed by the local authority as long as they have not been originally subject to sales tax, or have been taxed under a lower tax rate. Interestingly, the amount due in this case is the result of the differential, lower tax rate in a very similar mechanism applied in the Brazilian state tax system. In the Brazilian case, as states provide credit for taxes paid in other states, consumers are typically responsible for paying a similar use tax on goods purchased out of state.

In the centre of the discussions regarding the sales and use tax, stands out the famous Quill vs. North Dakota case that is explained below.

In 1992 the U.S. Supreme Court said in Quill vs. North Dakota that Congress has the power under the Commerce Clause to create a level playing field for local merchants. So Quill Corp. vs. North Dakota became an important United States Supreme Court ruling concerning taxation. Quill Corporation, an office supply retailer (selling office equipment and stationery) incorporated in Delaware without physical presence in North Dakota (neither a sales force, nor a retail outlet) had a licensed computer software program that some of its North Dakota customers used for checking Quill's current inventories and placing orders directly (the company sold through catalogues, flyers, advertisements in national periodicals, and telephone calls as well). North Dakota attempted to impose a use tax on Quill, which was struck down by the Supreme Court. The North Dakota Office of State Tax Commissioner was unsuccessful forcing Quill to collect and pay use tax on sales shipped into the state and delivered through post and common carrier.

Through this decision, the Supreme Court ruled that a business must have a physical presence in a state for that state to require it to collect sales taxes. However, the court explicitly stated that Congress can overrule the decision through legislation which has not occurred so far.

After the Supreme Court decision, that considered the tax compliance burden for remote vendors to be excessive, although the use tax mechanism embodied in the US SUT has its conceptual beauty, aiming to prevent residents from avoiding the payment of the sales tax locally by purchasing items over the phone or online, the use tax has proven to be almost impossible to enforce, with the exception of some few business purchases.

US SUT rates vary across the USA As we can see in the table below, but in general their magnitude is still quite low when compared to Brazilian tax rate on consumption, that can reach 25% or even more:

State	State Tax Rate	Rank	Avg. Local Tax Rate(a)	Combined Rate	Rank	State	State Tax Rate	Rank	Avg. Local Tax Rate(a)	Combined Rate	Rank
AL	4.00%	38	4.51%	8.51%	6	OK	4.50%	36	4.22%	8.72%	5
AK	None	46	1.69%	1.69%	46	OR	None	46	None	None	47
AZ	5.60%	28	2.57%	8.17%	9	PA	6.00%	16	0.34%	6.34%	32
AR	6.50%	9	2.69%	9.19%	2	RI	7.00%	2	None	7.00%	21
CA (b)	7.50%	1	0.91%	8.41%	8	SC	6.00%	16	1.19%	7.19%	17
CO	2.90%	45	4.49%	7.39%	15	SD (c)	4.00%	38	1.83%	5.83%	40
CT	6.35%	11	None	6.35%	31	TN	7.00%	2	2.45%	9.45%	1
DE	None	46	None	None	47	TX	6.25%	12	1.90%	8.15%	11
FL	6.00%	16	0.62%	6.62%	29	UT (b)	5.95%	26	0.73%	6.68%	28
GA	4.00%	38	2.97%	6.97%	23	VT	6.00%	16	0.14%	6.14%	34
HI (c)	4.00%	38	0.35%	4.35%	45	VA (b)	5.30%	31	0.33%	5.63%	41
ID	6.00%	16	0.03%	6.03%	36	WA	6.50%	9	2.38%	8.88%	4
IL	6.25%	12	1.91%	8.16%	10	WV	6.00%	16	0.07%	6.07%	35
IN	7.00%	2	None	7.00%	21	WI	5.00%	33	0.43%	5.43%	44
IA	6.00%	16	0.78%	6.78%	27	WY	4.00%	38	1.49%	5.49%	43
KS	6.15%	15	2.00%	8.15%	12	DC	5.75%	(27)	None	5.75%	(41)
KY	6.00%	16	None	6.00%	37						
LA	4.00%	38	4.89%	8.89%	3						
ME	5.50%	29	None	5.50%	42						
MD	6.00%	16	None	6.00%	37						
MA	6.25%	12	None	6.25%	33						
MI	6.00%	16	None	6.00%	37						
MN	6.875%	7	0.31%	7.19%	18						
MS	7.00%	2	0.004%	7.00%	20						
MO	4.225%	37	3.36%	7.58%	14						
MT (d)	None	46	None	None	47						
NE	5.50%	29	1.29%	6.79%	26						
NV	6.85%	8	1.08%	7.93%	13						
NH	None	46	None	None	47						
NJ (e)	7.00%	2	-0.03%	6.97%	24						
NM (c)	5.125%	32	2.14%	7.26%	16						
NY	4.00%	38	4.47%	8.47%	7						
NC	4.75%	35	2.15%	6.90%	25						
ND	5.00%	33	1.55%	6.55%	30						
OH	5.75%	27	1.36%	7.11%	19						

(a) City county and municipal rates vary. These rates are weighted by population to compute an average local tax rate.

(b) Three states levy mandatory, statewide, local add-on sales taxes at the state level: California (1%), Utah (1.25%), and Virginia (1%). We include these in their state sales tax.

(c) The sales taxes in Hawaii, New Mexico, and South Dakota have broad bases that include many business-to-business services.

(d) Due to data limitations, table does not include sales taxes in local resort areas in Montana.

(e) Some counties in New Jersey are not subject to statewide sales tax rates and collect a local rate of 3.5%. Their average local score is represented as a negative.

Source: Sales Tax Clearinghouse; Tax Foundation.

(State and Local Sales Tax Rates as of 1st January 2014)

The rate of tax in most cases is a single one, imposed across the state. And this is probably the main reason why the state tax system is considerably straightforward

compared to the SP state one. Even though there are local taxes levied along with the state tax, the single tax rate on the state's side is an important feature of the American system, leading to a simpler compliance with resulting lower costs. Some states still have lower rates on specific transactions, but in exceptional cases.

Nevertheless the American system is quite non-uniform and complex, because of the combined state and local jurisdictions imposing taxes that create an array of different tax rates, and occasionally different tax bases as well, which is of special concern for business taxpayers operating in more than one jurisdiction.

This local governments, mainly cities and counties (local municipalities), impose an additional SUT rate in addition to the state tax rate, and this has started almost together with the state tax itself. Although it is not the purpose of this work to discuss the local tax in depth, we will address its issues if they are relevant to the understanding of the SUT. We will demonstrate how the local tax is computed, using the New York state as a proxy for the American taxation model.

American states have been raising taxes as a result of an ever narrowing tax base. Nevertheless, some factors limit this upward movement: Americans have a strong tax aversion sentiment that comes from the colonial period and the taxes imposed by the British crown. Also there is considerable competition from neighbouring states that apply lower taxes, especially when one considers the ever growing on-line commerce. And it is a broad consensus that SUT suffers from the inherent complexity of applying an archaic tax structure to an increasingly mobile economy thus incurring in huge loss due to the growth of remote sales.

Some argue that, after the Quill vs North Dakota case, there is reasons to believe that Congress will be more amenable to granting nexus (and so overruling the Supreme Court decision) if states lower their compliance burdens, and this would be pushing states toward simplifying their tax burden overall.

As long as retailers have physical presence within a state (i.e. nexus) they are required to collect and remit sales taxes. In that sense, retailer charges the customer at the point of sale, collecting the tax immediately and then remitting the amount to the state

according to a payment schedule. In this case compliance is made easier to ensure because of the indirect nature of the tax, and consumers do not take part at the process.

The collecting process of the use taxes is somewhat different. In such case, states require both individual taxpayers (i.e. a person, a consumer) and business taxpayers (i.e. a retail store) to assess, calculate and report the use tax to the appropriate authority. Business taxpayers that are routinely audited for compliance with both sales and use tax, tend to comply. On the other hand individual taxpayers compliance has been somewhat difficult to achieve. Huefner and Hibschieler relate the low compliance levels to “little awareness of the tax obligation, no clear mechanism to pay it, and no effective means of administration and enforcement by the state”.

The lack of compliance on the use tax has not become a relevant issue until the boom in electronic commerce over the internet across states, countries and continents, which has been a challenge for all tax authorities around the world. And surely an even more pressing theme for countries such as the United States of America or Brazil, where states are free to establish different levels of taxation.

Just to show the importance of e-commerce, according to US Census Bureau U.S. manufacturers reported e-commerce shipments were \$3.0 trillion in 2012, up 10.5 percent from a revised \$2.7 trillion in 2011. Total shipments were \$5.8 trillion in 2012, up 5.0 percent from a revised \$5.5 trillion in 2011. U.S. merchant wholesalers including manufacturers’ sales branches and offices (MSBOs) reported total e-commerce sales of \$1.8 trillion in 2012, up from a revised \$1.7 trillion in 2011—an annual increase of 5.5 percent. Total sales increased by 5.0 percent to \$6.8 trillion in 2012 from a revised \$6.5 trillion in 2011. U.S. retailers reported e-commerce sales were \$227 billion in 2012, up 14.7 percent from a revised \$198 billion in 2011. Total sales increased by 5.1 percent to \$4.3 trillion in 2012 from a revised \$4.1 trillion in 2011.

In spite of the states’ effort, evidence is abundant showing that the vast majority of taxpayers are non-compliant when it comes to report and pay the use tax. Some will argue that compliance will remain extremely low due to very limited possibilities for detection, while others believe that such tax is simply impossible to enforce. Our opinion is that unless

there is a common tax authority in charge of cross-state transactions (the federal government, for instance) there will be no easy way out of the problem.

3.3 US SUT tax administration

American states face several challenges to accomplish the task of tax administration. First, there is huge and growing number of businesses that have to file US SUT tax returns, most of them quite small, which limits audit to not more than mathematical checks. Second, exemptions increase the tax administration burden, as they vary from tax free situations to fully taxed ones, auditors having to tell one from the other.

Telling whether a given business used an exemption rule correctly, using a valid exemption certificate or selling a product to which the tax law grants such treatment is also considerable complicated in practice. And sometimes would require to trace a given sold item to its final destiny, to make sure it has been applied as a input in exempt businesses, until finally subject to taxation in the last sale operation to its final consumer.

Of course a broad base with a single rate would be easier to administer not only for businesses but also to tax administration, but in the United States and in Brazil alike, reality is a system with multiple and partial exemptions. Empirical literature on taxation of consumer purchases advocate that even if states continue to tax business-to-business operations, a broader base with lower uniform rates would be more efficient and would encourage economic growth.

In order to demonstrate the main characteristics of the US SUT system, we enclosed below a sample of the NY tax authority tax return form used for the monthly filers, as this is the only situation comparable to the ICMS VAT case. This will be important in demonstrating the main difference between the two systems. (In US it is still possible to file in a non-electronic form, for the ICMS VAT model we will use the actual result of the tax returns filled, extracted from an Internet-based software)

It is evident that relying on a rate that in principle is not related on the kind of product sold, simplifies the tax return. The business will basically separate taxable sales from non-taxable sales then it will declare taxable purchases (the use tax portion of US

SUT) and afterwards it will apply the current rate of the SUT. This rate will eventually be different from one local jurisdiction to another, due to local taxes, but for a given business it will be fixed.



New York State Department of Taxation and Finance

Part-Quarterly (Monthly) ST-809

New York State and Local Sales and Use Tax Return for Part-Quarterly (Monthly) Filers

October 2014						
Tax period						
October 1, 2014 – October 31, 2014						

November 2014						
S	M	T	W	T	F	S
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

0815

20 Due date:
Thursday, November 20, 2014
You will be responsible for penalty and interest if your return and any payment due is not electronically filed or postmarked by this date.

Sales tax identification number	
Legal name (print ID number and legal name as it appears on the Certificate of Authority)	
DBA (doing business as) name	
Number and street	
City, state, ZIP code	

Mandate to use Sales Tax Web File - Most filers fall under this requirement; see Form ST-809-I.

No tax due? Enter your gross sales and services in box 1 of Step 1 below; enter *none* in boxes 2 and 3. You **must** file by the due date even if no tax is due. **There is a \$50 penalty for late filing of a no-tax-due return.** See **1** in instructions.

Has your address or business information changed? If so, visit our Web site (see *Need help?* in Form ST-809-I) and see the change my address option for further instructions, or mark an **X** in the box to the right and enter new mailing address above. See **2** in instructions.

Complete Step 1 or Step 2, but not both. See 3 in instructions.

Step 1 of 3 Long method of calculating tax due

1 Enter total gross sales and services (to nearest dollar; see 4 in instructions)	1		.00
2 Enter total taxable sales and services (to nearest dollar; see 5 in instructions)	2		.00
3 Enter total purchases subject to tax (to nearest dollar; see 6 in instructions)	3		.00
4 Sales and use tax (see 7 in instructions)	4		
5 Credit for prepaid sales tax (see 8 in instructions)	5		
6 Net tax due (subtract box 5 amount from box 4 amount)	6		
7 Credits not identified (attachments required, see 9 in instructions)	7		
8 Advance payments (see 10 in instructions)	8		
9 Add box 7 amount to box 8 amount	9		
10 Sales and use tax due (subtract box 9 amount from box 6 amount)	10		
11 Penalty and interest (see 11 in instructions)	11		
12 Amount due (add box 10 amount to box 11 amount; see 12 in instructions)	12		
Pay this amount			

Step 2 of 3 Short method of calculating tax due

1 Comparable quarter of previous year (see 13 in instructions)*	1		
2 Tax due (one-third of box 1 amount)	2		
3 Credit for prepaid sales tax (see 14 in instructions)	3		
4 Net tax due (subtract box 3 amount from box 2 amount)	4		
5 Credits not identified (attachments required, see 15 in instructions)	5		
6 Advance payments (see 16 in instructions)	6		
7 Add box 5 amount to box 6 amount	7		
8 Sales and use tax due (subtract box 7 amount from box 4 amount)	8		
9 Penalty and interest (see 17 in instructions)	9		
10 Amount due (add box 8 amount to box 9 amount; see 18 in instructions)	10		
Pay this amount			

*Include short method adjustment in box 1 (see *Short method adjustment* on page 3 of instructions.)

For office use only

Locality _____ Adjustment \$ _____

Sales tax identification number

0815

Part-Quarterly (Monthly)

Step 3 of 3 Sign and mail this return

Please be sure to keep a completed copy for your records.

Must be postmarked by Thursday, November 20, 2014, to be considered filed on time. See below for complete mailing information.

Third – party designee	Do you want to allow another person to discuss this return with the Tax Dept? (see instructions) Yes <input type="checkbox"/> (complete the following) No <input type="checkbox"/>	
	Designee's name	Designee's phone number ()
	Designee's e-mail address	

Printed name of taxpayer _____ Title _____

Taxpayer's e-mail address _____

Signature of taxpayer _____ Date ____ - ____ Daytime telephone () _____

Printed name of preparer's firm (or yours if self-employed) _____ Firm's employer identification number* _____

Preparer's address _____ Preparer's PTIN* _____

Preparer's e-mail address _____ Preparer's NYTPRIN* _____

Signature of preparer, if other than taxpayer _____ Daytime telephone () _____

*See 20 in instructions



Where to file your return and attachments

Web File your return at www.tax.ny.gov (see instructions).
 (If you are not required to Web File, mail your return and attachments to: NYS Sales Tax Processing, PO Box 15168, Albany NY 12212-5168)

If using a private delivery service rather than the U.S. Postal Service, see 20 in instructions for the correct address.

Make check payable to **New York State Sales Tax.**

David Sample 100 Elm Street Albany, NY 12203	2971 DATE November 10, 2014
PAY TO THE ORDER OF New York State Sales Tax \$ <u>IX,XXX.XX</u>	
(your payment amount) DOLLARS	
First State Bank	
00-0000000 ST-809 10/31/14 <i>David Sample</i>	

↑ Don't forget to write your sales tax ID#, ST-809, and 10/31/14. ↑ Don't forget to sign your check

Need help?

See Form ST-809-I, *Instructions for Form ST-809.*

As previously stated, the taxpayer can apply the tax rate due at its jurisdiction by checking on the publications provided by the tax authority, and thus apply the rate to its taxable totals (sales and purchases).

Below we enclosed one of the publications issued by the New York tax authority, where the taxpayer can follow up on the total local sales taxes in order to comply with the tax law.

It is clear that even for businesses opting to provide their tax return in a paper form, instead of an electronic form, it is relatively straightforward to comply.



New York State Sales and Use Tax Rates by Jurisdiction
Effective February 1, 2014

The following list includes the state tax rate combined with any county and city sales tax currently in effect and the reporting codes used on sales tax returns. Jurisdictions whose rates or codes have changed from the previous versions are noted in **boldface italics**.

New York City comprises five counties. These counties are also boroughs whose names are more widely known. The counties, with borough names shown in parentheses, are Bronx (Bronx), Kings (Brooklyn), New York (Manhattan), Queens (Queens), and Richmond (Staten Island).

Reporting codes, rather than ZIP codes, should be used for identifying customer location. (Postal zones usually do not coincide with political boundaries, and the use of ZIP codes for tax collection results in a high degree of inaccurate tax reporting.) Use our Sales Tax Jurisdiction and Rate Lookup Service on our Web site at www.tax.ny.gov to determine the correct local taxing jurisdiction, combined state and local sales tax rate, and the local jurisdictional reporting code to use when filing New York State sales tax returns.

For sales tax rates previously in effect, see Publication 718-A, *Enactment and Effective Dates of Sales and Use Tax Rates*.

County or other locality	Tax rate %	Reporting code	County or other locality	Tax rate %	Reporting code	County or other locality	Tax rate %	Reporting code
New York State — only	4	0021	Herkimer	8¼	2121	St. Lawrence	8	4091
Albany	8	0181	Jefferson	7¾	2221	Saratoga—except	7	4111
Allegany	8½	0221	<i>*Kings (Brooklyn)—see New York City</i>		Saratoga Springs (city)	7	4131	
<i>*Bronx—see New York City</i>			Lewis	8	2321	Schenectady	8	4241
<i>*Brooklyn—see New York City</i>			Livingston	8	2411	Schoharie	8	4321
Broome	8	0321	Madison—except	8	2511	Schuyler	8	4411
Cattaraugus—except	8	0481	Oneida (city)	8	2541	Seneca	8	4511
Olean (city)	8	0441	<i>*Manhattan—see New York City</i>		<i>*Staten Island—see New York City</i>			
Salamanca (city)	8	0431	Monroe	8	2611	Steuben—except	8	4691
Cayuga—except	8	0511	Montgomery	8	2781	Corning (city)	8	4611
Auburn (city)	8	0561	<i>*Nassau</i>	8%	2811	Hornell (city)	8	4641
Chautauqua	7½	0651	<i>*New York (Manhattan)—see New York City</i>		<i>*Suffolk</i>	8%	4711	
Chemung	8	0711	<i>*New York City</i>	8%	8081	Sullivan	8	4821
Chenango—except	8	0861	Niagara	8	2911	Tioga	8	4921
Norwich (city)	8	0831	Oneida—except	8¾	3010	Tompkins—except	8	5081
Clinton	8	0921	Rome (city)	8¾	3015	Ithaca (city)	8	5021
Columbia	8	1021	Utica (city)	8¾	3018	<i>Ulster</i>	8	<i>5111</i>
Cortland	8	1131	Onondaga	8	3121	Warren—except	7	5281
Delaware	8	1221	Ontario	7½	3211	Glens Falls (city)	7	5211
<i>*Dutchess</i>	8%	1311	<i>*Orange</i>	8%	3321	Washington	7	5311
Erie	8¾	1451	Orleans	8	3481	Wayne	8	5421
Essex	8	1521	Oswego—except	8	3501	<i>*Westchester—except</i>	7%	5581
Franklin	8	1621	Oswego (city)	8	3561	*Mount Vernon (city)	8%	5521
Fulton—except	8	1791	Otsego	8	3621	<i>*New Rochelle (city)</i>	8%	6861
Gloversville (city)	8	1741	<i>*Putnam</i>	8%	3731	<i>*White Plains (city)</i>	8%	6513
Johnstown (city)	8	1751	<i>*Queens—see New York City</i>		<i>*Yonkers (city)</i>	8%	6511	
Genesee	8	1811	Rensselaer	8	3881	Wyoming	8	5621
Greene	8	1911	<i>*Richmond (Staten Island)—see New York City</i>		Yates	8	5721	
Hamilton	8	2011	<i>*Rockland</i>	8%	3921			

*Rates in these jurisdictions include % imposed for the benefit of the Metropolitan Commuter Transportation District.

Obviously the bookkeeping is simpler than the ICMS VAT because there is less control of the inputs, even though some credits can be claimed. An extract of the Tax Bulletin demonstrating the minimum requirements regarding recordkeeping is below.

Recordkeeping Requirements for Sales Tax Vendors

Introduction

If you are registered for purposes of New York State's sales tax you are a trustee of New York State and you have a responsibility to collect the proper amount of sales tax from your customers and to remit the tax you have collected with your timely filed sales tax return.

As a registered sales tax vendor, you are required to keep accurate records of all sales and purchases that you make. Keeping detailed records of your business operation will help you prepare accurate and complete sales tax returns. Detailed records will also serve as documentation of the accuracy of your returns if you are audited.

While this bulletin does not provide an exhaustive list of the records you must keep, it does give an overview of those records and references to more resources on recordkeeping requirements.

Recordkeeping rules

When you file a sales tax return, it must show:

- total sales,
- taxable sales,
- purchases by the business subject to tax on which no tax was paid to the seller,
- credits (if any),
- sales and use taxes due for each locality, and
- any other special taxes due.

All of your records must be dated and kept in good order. Your records must provide sufficient detail to independently determine the taxable status of each sale and the amount of tax due and collected. You must be able, through your records, to connect an exempt sale to a particular purchaser to the exemption certificate you have on file for that sale or purchaser. If you issue an exemption certificate when you make a purchase, you must maintain a record of the purchase and be able to prove the exempt use.

What records to keep

Sales records

You must keep records of every sale, the amount of the sale, and the sales tax on the sale. You must retain a true copy of each:

- sales slip, invoice, receipt, contract, statement, or other memorandum of sale;
- guest check, hotel guest check, receipt from admissions such as ticket stubs, receipt from dues; and
- cash register tape and any other original sales document.

If no written document is given to the purchaser, you must keep a **detailed** daily record of all cash and credit sales in a daybook or similar journal. Ask your accountant for help if you aren't sure how to do this.

If you sell both taxable and nontaxable goods or services, you must identify which of the items you sell are subject to sales tax and which are not on the invoice or receipt. For example, a cash register tape must list each item sold with enough detail to determine whether that item is subject to sales tax. You must always separately state the amount of sales tax due on the invoice or receipt that you give your customer. For more information, see Tax Bulletin [Taxable Receipt \(TB-ST-860\)](#).

If you deliver the product or service to a place other than your place of business, you must maintain records that prove where delivery took place. A special rule applies to motor vehicles, trailers, and certain boats. For more information, see [Publication 750, A Guide to Sales Tax in New York State](#).

Purchase records

Records must be maintained to establish the taxable status of all purchases of property or services. Purchase records should include records related to:

- purchases subject to state and/or local taxes,
- purchases for resale (e.g., inventory and raw materials), and
- purchases exempt from state and/or local taxes for reasons other than for resale.

Purchase records must substantiate all your expenses and your cost of goods sold. These records should also show that your business's purchases bear a reasonable relationship to your business's sales.

You should also keep any other record or document that, given the nature of your business, would be necessary to prove that you have collected and paid the proper amount of sales or use tax due.

Point-of-Sale (POS) systems

POS systems are utilized to record sales to a business's customers. In many ways, POS systems take the place of a traditional cash register. If your business uses a POS system, you must comply with the rules and requirements outlined in this section.

When using POS systems, all sales and transactions are made through a computer system. The system records what you're selling, the selling price, and the quantity sold. Then it calculates the total due, including tax, and tells you how much change is due. The system should record every sale and track all transactions.

POS system sales records to be kept

Each POS transaction record must provide enough detail to independently determine the taxability of each sale and the amount of tax due and collected. Detailed information required for each sales transaction includes, but is not limited to the:

- individual item(s) sold,
- selling price,
- tax due,
- invoice number,
- date of sale,
- method of payment, and
- POS terminal number and POS transaction number.

Summary documents should be designed so that the details underlying the documents, such as invoices and vouchers, may be identified and made available upon request.

Any additional reports and schedules relating to the preparation of the tax return must be maintained and made available upon request.

At this point, we believe we have covered the broad lines of the US SUT system, making it possible to compare its mechanics to the ICMS VAT system, to which we will devote our efforts now.

4 SÃO PAULO STATE GOODS AND SERVICE VALUE ADDED TAX (ICMS VAT)

4.1 History and current trends in the São Paulo state ICMS VAT.

As part of the Federative Republic of Brazil, the State of São Paulo is allowed under the Constitution to levy taxes on consumption. The Brazilian Constitution differently than the American one, is much more detailed, establishing several rules to limit and control the freedom of States to create new taxes, or to change the existing ones. Presently, the ICMS VAT has to comply with the following conditions, as determined by the article 155: it has to be non-cascading or non-cumulative and it can only be levied over any operation where goods are sold or transferred (referred in the Brazilian law as circulation of goods), over transport services between cities and states, over communications and over electricity bills. The Constitution tax chapter has other technical aspects, but they are not essential to our analysis and thus lay outside the scope of this essay.

The ICMS VAT system applied today by the São Paulo state has evolved since the beginning of VAT history, as we mentioned before, as a result of Brazil's pioneer position in the adoption of the VAT worldwide in 1965. Sadly these changes have created increasing problems in the economy, and the situation has worsened with frustrated attempt to reform the tax system over the course of the last almost 50 years.

The ICMS VAT in its origin was intended to address the problem of practical tax barriers created by the different sales taxes levied on interstate sales in the pre ICMS VAT era. At that time, with different rates among states and a cascading tax scheme, free movement of goods in the country was impossible. Pursuing equity in revenue collection among states, the ICMS VAT was a reasonable solution, as the mechanics of the tax, allowed that part of the revenue remains in the poorer states when operations were performed between registered businesses. Simply put considering that the mechanics of the value added tax will be detailed ahead in the text, the less developed states, when selling goods to the wealthier portions of Brazil levy the tax at a slightly higher rate when compared to the same operation occurring in opposite direction. As the invoice based

credit method allows the registered businesses in all states to claim this tax previously paid and informed in the seller's invoice, the wealthier states bear a higher burden when compared to the poorer regions.

After successive changes, the ICMS VAT has been transformed entirely. Its characteristics today hardly resemble those of a pure VAT system. The states in a desperate quest to raise revenue, created several exceptions to the ideal VAT, in such a way that today the state's tax systems has along with a VAT tax , a single stage tax over production (calculated and imposed at the factory level and based on a method of tax anticipation on future retail operations whose value is defined upon mark-up percentages set by the tax authority), and single stage taxes on oil product (such as gasoline and diesel), electricity and communications consumption.

Clóvis Panzarini, a former head of the São Paulo state tax authority, stated in his articles published in 2010 and in 2014 that the ICMS VAT, as part of the Brazilian taxation system, was aiming to increase taxation regardless of its cost to society and its burden to the companies, harming the competitiveness of the Brazilian economy and ultimately driving low overall GDP growth and even diminishing the industry size as a whole. He defends the idea that a healthy increase in government revenue has to arise from economic growth rather than from hikes in rates.

Especially regarding the ICMS VAT, Panzarini states that due to intense competition among Brazilian states to increase revenue, the same states have transformed completely the consumption value added tax, now widely turned into a single-stage tax through the adoption of the mechanism of anticipation of the final tax due at the retail level, by a complex calculation of the expected value added margin along the supply chain. The mechanism intended to be used as an exception in highly concentrated industries (cement for instance) has been widely spread in São Paulo state, its burden bore by industries that have to use capital to pay the state's tax much earlier and through an estimated method that assumes a future event (the final good's sale) as certain along with its final price. The system whose literal translation in English would be "tax substitution" is really a means to

transform the ICMS VAT in a single staged tax on production, rather than a multistage one on consumption.

Panzarini finally describes the present ICMS VAT as a cumulative, complex and inefficient monster that represents the joy of the competing foreign firms in the Brazilian consumption market.

Despite its problems the ICMS VAT has an important role in the São Paulo state, as the recent reports show that it accounts for 84% of the state's tax revenue, raising R\$114 billion alone. (http://www.fazenda.sp.gov.br/relatorio/2014/janeiro/analise_receita.asp) São Paulo state is by far the most economically developed state in Brazil, and concentrating roughly a fifth of the Brazilian population, and as a result the state's ICMS VAT collected accounts for a significant amount of the total ICMS VAT in the country, usually over 30% of national amount.

STATES	JAN/13	FEB/13	MAR/13	APR/13	MAY/13	JUN/13	JUL/13	AUG/13	SEP/13	OCT/13	NOV/13	DEC/13	TOTAL
Acre	0,2%	3,2%	0,2%	0,3%	0,2%	0,2%	0,2%	0,2%	0,2%	0,2%	0,0%	0,0%	0,4%
Amazonas	1,8%	1,9%	1,9%	2,0%	2,0%	1,8%	2,2%	2,1%	2,2%	2,2%	2,4%	2,4%	2,1%
Pará	2,2%	2,1%	2,0%	2,0%	2,0%	1,9%	2,1%	2,2%	2,1%	2,0%	2,5%	2,5%	2,2%
Rondônia	0,8%	0,7%	0,7%	0,7%	0,8%	0,7%	0,8%	0,8%	0,7%	0,7%	0,7%	0,8%	0,8%
Amapá	0,2%	0,2%	0,2%	0,2%	0,2%	0,2%	0,2%	0,2%	0,2%	0,0%	0,2%	0,1%	0,2%
Roraima	0,2%	0,1%	0,1%	0,2%	0,2%	0,1%	0,1%	0,1%	0,1%	0,1%	0,1%	0,1%	0,1%
Tocantins	0,4%	0,4%	0,4%	0,4%	0,4%	0,5%	0,5%	0,5%	0,5%	0,5%	0,5%	0,5%	0,5%
Maranhão	1,3%	1,3%	1,2%	1,1%	1,1%	1,0%	1,2%	1,3%	1,2%	1,1%	1,2%	1,1%	1,2%
Piauí	0,7%	0,8%	0,7%	0,7%	0,7%	0,7%	0,7%	0,8%	0,7%	0,7%	0,8%	0,7%	0,7%
Ceará	2,4%	2,4%	2,3%	2,3%	2,2%	2,1%	2,3%	2,5%	2,5%	2,4%	2,4%	2,3%	2,4%
Rio Grande do Norte	1,1%	1,1%	1,1%	1,1%	1,1%	1,0%	1,1%	1,1%	1,1%	1,1%	1,1%	1,1%	1,1%
Paraíba	1,2%	1,1%	1,0%	1,0%	1,0%	1,0%	1,2%	1,0%	1,0%	1,0%	1,0%	1,2%	1,1%
Pernambuco	3,5%	3,2%	3,1%	3,1%	3,1%	2,9%	3,3%	3,2%	3,0%	3,1%	3,3%	3,2%	3,3%
Alagoas	0,9%	0,8%	0,7%	0,7%	0,7%	0,6%	0,7%	0,8%	0,7%	0,7%	0,7%	0,7%	0,8%
Sergipe	0,8%	0,7%	0,7%	0,7%	0,7%	0,6%	0,7%	0,7%	0,7%	0,6%	0,7%	0,6%	0,7%
Bahia	5,2%	4,5%	3,9%	4,5%	4,6%	4,1%	4,3%	4,6%	4,2%	4,5%	6,0%	5,1%	4,7%
Minas Gerais	10,0%	9,6%	9,5%	9,6%	9,5%	8,8%	9,8%	10,0%	9,7%	10,1%	9,7%	9,9%	10,0%
Espírito Santo	2,9%	2,4%	2,3%	2,4%	2,3%	2,2%	2,3%	2,4%	2,3%	2,5%	2,3%	2,2%	2,4%
Rio de Janeiro	9,1%	8,7%	9,1%	8,7%	8,1%	8,4%	7,9%	7,9%	8,8%	8,9%	8,6%	8,4%	8,8%
Paraná	5,8%	5,1%	5,4%	5,4%	5,3%	5,1%	5,8%	5,5%	5,4%	5,3%	5,6%	6,7%	5,8%
Santa Catarina	4,1%	3,7%	3,8%	3,8%	3,8%	3,5%	3,7%	3,8%	3,8%	3,6%	4,1%	4,5%	3,9%
Rio Grande do Sul	6,7%	6,4%	6,4%	6,7%	6,6%	6,0%	6,5%	6,7%	6,3%	6,6%	6,9%	7,0%	6,7%
Mato Grosso	2,0%	2,0%	2,2%	2,2%	2,0%	1,9%	2,1%	2,1%	2,0%	2,0%	2,0%	2,0%	2,1%

Mato Grosso do Sul	1,8%	1,8%	2,0%	1,8%	1,8%	1,7%	1,9%	1,9%	1,8%	1,8%	1,8%	1,7%	1,9%
Goiás	3,3%	3,2%	3,2%	3,2%	3,3%	3,1%	3,3%	3,3%	3,2%	3,9%	3,2%	3,6%	3,4%
Distrito Federal	1,8%	1,5%	1,9%	1,7%	1,7%	1,5%	1,6%	1,6%	1,7%	1,7%	1,8%	1,8%	1,7%
São Paulo	29,8%	30,9%	34,0%	33,6%	34,4%	38,5%	33,3%	32,8%	33,8%	32,5%	30,2%	31,0%	30,9%
BRASIL	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%

(Source: CONFAZ.)

4.2 The ICMS VAT credit mechanism, taxable sales and rates, and tax base in the São Paulo's ICMS VAT:

The ICMS VAT is a value added tax on consumption, computed by means of a credit-subtraction method based on invoices. This has led to referring to ICMS VAT as a credit-invoice VAT. The idea, quite simple at first glance, can lead to considerable difficulties in tax compliance and tax administration. The tax payer, in order to calculate the total tax due in a given time period (usually a month) uses all the credits reported in the invoices from his input providers to offset the tax due on his taxable sales. Net ICMS VAT liability is simply the result of subtracting the input credits on purchases from the output tax on sales.

The first issue resulting from the method is a complex bookkeeping to report all the credits from inputs purchased. Those credits do not decay or become void at a fixed term, and once they are registered on the inputs books the tax authority has no more than 6 years to challenge its validity. After that period they are considered valid and beyond discussion. The second issue is that these credits reported in the invoices are subject to the validity of the invoice itself. An invoice to be considered valid must satisfy certain conditions that basically tend to ensure that the credit they bear has its origin in a fully paid ICMS VAT from the previous operations. As a result, taxpayers and tax authority have to dedicate resources, both labour and capital, to ensure that the credits claimed and audited are lawful.

Taxpayers, from their perspective, have difficulties to ensure that they are buying from compliant registered businesses, as many times they rely on outdated information from the tax authority, as the databases are corrected and updated much slower than needed. This leads to businesses frequently engaging in commercial operations and buying

inputs from providers whose invoices are non-compliant and therefore unacceptable for claiming the credit.

Moreover, in a true war to attract investment to the state, many tax authorities create granted credits based on state laws, rather than on inputs purchases, to lower the ICMS VAT liability artificially. Those credits that disobey not only the federal law, but also the Constitution, are revoked by São Paulo tax authority, leading to the imposition of heavy fines to the state's businesses buying from providers from out of state that are favoured by illegal credits.

This is a complex matter deserving a more in-depth study, but for the goals of the present work, it is enough to say that relevant insufficient ICMS VAT payment and collection due to fraud or simple errors derive much more from unusable and unlawful credits, than from lack of output ICMS VAT omitted or miscalculated on taxable sales.

As far as taxable sales and rates are concerned, the ICMS VAT is cumbersome. Not only it has several different rates, but also some goods and services have their values reduced before applying the general rate, leading to additional artificial rates. The ICMS VAT has rates of 4%, 7%, 12%, 18%, 25%, among others, varying upon the kind of good or service sold, upon destination state, upon nature of purchaser (registered business or final consumer). On the mentioned reduced taxable amounts, the state's tax code devotes 69 articles to products and services ranging from aircraft to parenteral solutions, thus creating for these products lower artificial tax rates, by changing the tax base.

The rate itself is unclear to the vast majority of the public. That is due to a definition of the ICMS VAT stating that the tax is part of the taxable amount. The ICMS VAT liability in each operation is calculated applying the tax rate over the final price of a product plus the tax itself. This creative yet complicated system results in real tax rate higher than the nominal one. Applying the concept, in a product which the final price, with tax included is R\$100.00 and the ICMS VAT tax rate is 18%, the ICMS VAT liability would be R\$18.00. The real product price without tax is just R\$82.00. The real tax rate then is equal to R\$18.00 divided by R\$82.00, or 21.95%.

Finally, to complicate things even further, a system meant to be used just in very special situations has become almost the rule of play in the ICMS VAT realm. The anticipation of the tax due at the end of the supply chain charged on the beginning of it. The tax authority in such cases defines a value added margin using statistics and imposes the tax by applying the rate on the good price multiplied by the value added percentage. In other words the state can raise the tax rate artificially just by raising the expected margin. This leads to other negative outcomes, two of the most important being the encouragement to evade the tax (because in such one step collection process, the tax due over all the supply chain is imposed in a single moment and thus the benefit from a successful evasion scheme is much larger), and the excessive burden imposed on fewer tax payers. As we write about this issue another fraud aiming products pertaining to this group of goods has been identified by tax inspectors in the state of São Paulo. Early reports state that the so called Eclipse Operation has found the evasion scheme to have avoided the payment of ICMS VAT in excess of 70 million dollars

As far as tax base is concerned, the ICMS VAT is levied over goods and some services provided by the taxpayer, as explained previously. Also it is levied over oil based fuels, communications and electricity, and the latter three have a huge importance in the state's revenue, being considered "blue chips" of ICMS VAT and accounting for over one fourth of the total collected.

This concentrated tax revenue actually helps to explain why tax base in the ICMS is continuously being eroded, as several exemptions are created and services that should be broadly taxed as part of the ICMS VAT are taxed by the municipalities due to constitutional rules, and state's government relies on growing revenue from the called blue chips to compensate for not broadening the tax base.

Exemption is a serious issue because as a whole they raise the cost of tax administration and compliance, mainly because of the complex identification of exempt situations, that might be established due to the nature of the product, the nature of the operation (goods sent to a showroom for instance) or depending on characteristics of the parties involved in the commercial relationship. Also, exemptions might lead consumers and businesses to choose non-taxed operations over taxed ones, or to change their buying and

investment priorities according to certain exemptions. All the effects combined lead to an undesirable effect of the tax that compromises its neutrality.

4.3 São Paulo ICMS VAT collection, compliance and tax administration:

As one can expect, ICMS VAT tax inspection and administration is extremely complicated. São Paulo state has an advanced electronic tax return system aiming to simplify the accountant's task, but as we can infer from the reports seen below, complying with the ICMS VAT is a challenge.

Intending to point out the major characteristics of the tax, we enclosed just the main four forms of the tax return. The first one is an index of all the information provided by the tax payer. The most important reports are numbers 2, 3, 10 and 14. The ICMS VAT net liability is computed in the report number 10. On one side, all inputs purchased by the business are informed and organized in groups according to the nature of the operation and the origin of the purchase (such as raw material inputs, stock for sale, electricity applied in the production process, and so on) and all accounted credits claimed are meticulously registered, together with the value of inputs. On the other side, all taxable sales are reported and arranged and the ICMS VAT tax due is computed, considering all the tax rules mentioned before, such as the nature of the operation, the destination (if inside the state, within the country, or for export), the correct rate to be applied and the value of the operation to be considered in the computing process. So far we have just mentioned the main report and its accessories. But the whole process has to be done one second time if the business operates with good that have the ICMS VAT tax anticipated, as per the framework we have already described. This is a true additional tax return, number 14, that has another inputs and outputs report, this time related only with the anticipated tax.



NOVA GIA

versão 1.0.0 - 10/09/2014



Consulta: Completa

IMPRESSÃO DE RELATÓRIOS					
Contribuinte					
Inscrição Estadual	CNPJ	CNAE	Regime	Substituição Tributária	Responsável pelo Envio /Categoria
Tipo da GIA	Referência	Protocolo	Controle	Controle Conta Fiscal	Data Entrega
Substitutiva / Aprovada	09/2014	49559838	226466589	226466589	06/11/2014 11:23:15

Opções de Relatórios
1 - Cadastro de contribuinte
2 - CFOPs Entradas
3 - CFOPs Saídas
4 - GINTER - Entradas
5 - GINTER - Saídas
6 - ZFM/ALC
7 - DIPAM B - Código 1
8 - DIPAM B - Código 2
9 - DIPAM B - Código 3
10 - Apuração do ICMS - Operações Próprias
11 - Recebimento de Crédito Acumulado (Subitens 007.04 a 007.07) Operações Próprias - até 31 de março de 2010.
12 - Centralização de Imposto (Subitens 002.18, 002.19, 002.26, 007.29, 007.30 e 007.48) Operações Próprias
13 - Ressarcimento do ICMS Retido por ST (Subitens 002.10 e 002.11) Operações Próprias
14 - Apuração do ICMS - Substituição Tributária
15 - Ressarcimento do ICMS Retido por ST (Subitens 007.01 e 007.02) ST-11
16 - Registros de Exportação
17 - Movimentação de Crédito Acumulado - a partir de 1 de Abril de 2010.

(Sample ICMS VAT Tax Return Reports Index)



NOVA GIA

versão 1.0.0 - 10/09/2014



Relatório: Apuração do ICMS - Operações Próprias

Apuração do ICMS - Operações Próprias					
Contribuinte					
Inscrição Estadual	CNPJ	CNAE	Regime	Substituição Tributária	Responsável pelo Envio /Categoria
Tipo da GIA	Referência	Protocolo	Controle	Controle Conta Fiscal	Data Entrega
Substitutiva	09/2014	49559838	226466589	226466589	06/11/2014 11:23:15

Débito do imposto			
001	Por saídas com débito do imposto	051	1.783.674,03
002	Outros débitos	052	109.335,30
003	Estorno de crédito	053	1.547.732,35
005	Subtotal (051+052+053)	055	3.440.741,22
Crédito do imposto			
006	Por entradas com crédito do imposto	056	8.917.952,15
007	Outros créditos	057	259.787,03
008	Estorno de débito	058	0,00
010	Subtotal (056+057+058)	060	9.177.739,21
011	Saldo credor do período anterior	061	328.087.610,72
012	Total (060+061)	062	337.264.949,93
Apuração dos saldos			
013	Saldo devedor (055+062)	063	0,00
014	Exclusões	064	0,00
015	Impostos a recolher (063+064)	065	0,00
016	Saldo credor a transportar (062+055)	066	333.824.208,20

DATA DE PROCESSAMENTO: 10/11/2014 17:30:51

ATENÇÃO - O recebimento, pela Secretaria da Fazenda, da Guia de Informação e Apuração do ICMS - GIA não implica homologação das informações e valores dela constantes, uma vez que são de responsabilidade do contribuinte e nos termos do artigo 255 do Regulamento do ICMS, aprovado pelo Decreto 45.490/00, a qualquer momento, o fisco poderá exigir sua comprovação, bem como alterá-los.

(Report stating ICMS VAT net tax liability, resulting from tax levied over outputs minus credits per inputs claimed.)



NOVA GIA

versão 1.0.0 - 10/09/2014

Relatório: Apuração do ICMS - Operações Próprias - Detalhes Campo 051

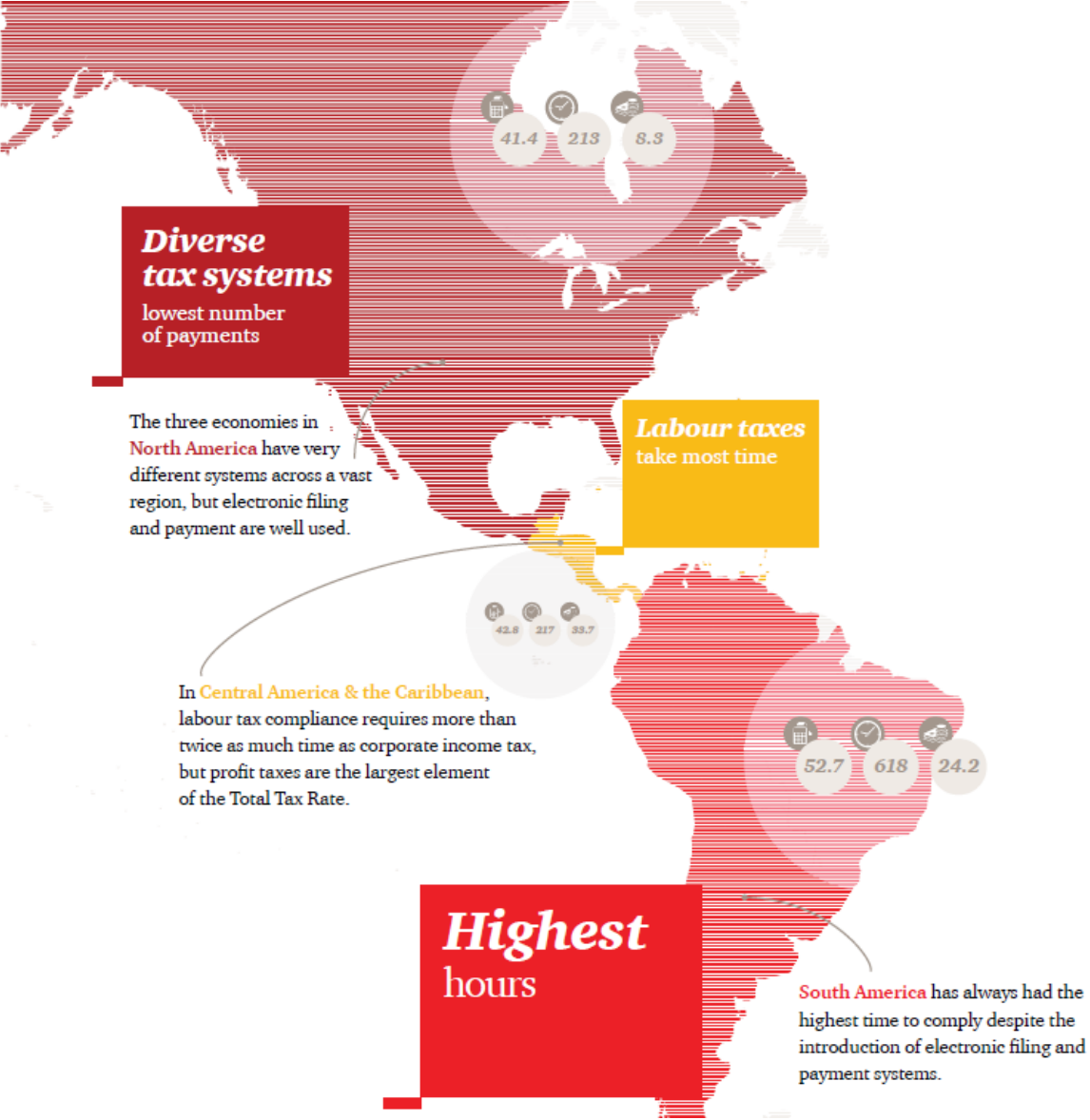


Apuração do ICMS - Operações Próprias - Detalhes Campo 051								
Contribuinte								
Inscrição Estadual	CNPJ	CNAE	Regime	Substituição Tributária	Responsável pelo Envio / Categoria			
		1011-2/01	824	Sim				
Tipo da GIA	Referência	Protocolo	Controle	Controle Conta Fiscal	Data Entrega			
Substitutiva	09/2014	49559038	226466509	226466509	06/11/2014 11:23:15			
CFOP	Valores Contábeis	ICMS - Valores Fiscais				Imposto Retido por Substituição Tributária		Outros Impostos
		Operações com débito do imposto	Operações sem débito do imposto	Imposto Retido por Substituição Tributária	Outros Impostos			
		Base de Cálculo	Imposto Debitado	Isentas / Não tributadas	Outras	Substituto	Substituído	
Saídas ou aquisições de prestação de serviços do Estado								
5.101 a 5.125 Vendas de produção própria ou de terceiros								
5.101	19.308.984,86	629.323,60	113.278,65	17.835.934,76	823.724,50	0,00	0,00	0,00
5.102	4.204.133,09	291,04	53,29	3.300.334,08	983.487,97	0,00	0,00	0,00
5.108	397.298,23	0,00	0,00	397.298,23	0,00	0,00	0,00	0,00
5.151 a 5.156 Transferências de produção própria ou de terceiros								
5.151	17.931.026,38	20.557,99	3.700,44	14.349.768,39	3.560.700,00	0,00	0,00	0,00
5.152	1.215.336,24	337.697,42	60.755,55	877.638,92	0,00	0,00	0,00	0,00
5.201 a 5.210 Devoluções de compras para industrialização, comercialização ou anulções de valores								
5.201	14.170,00	0,00	0,00	0,00	14.170,00	0,00	0,00	0,00
5.202	35.438,86	0,00	0,00	0,00	35.438,86	0,00	0,00	0,00
5.501 a 5.503 Remessas para formação de lote e com fim específico de exportação e eventuais devoluções								
5.501	93.085.700,23	0,00	0,00	89.619.135,19	4.266.565,04	0,00	0,00	0,00
5.502	2.986.890,53	0,00	0,00	2.986.890,53	0,00	0,00	0,00	0,00
5.551 a 5.557 Operações com bens de ativo imobilizado e materiais para uso ou consumo								
5.551	55,00	0,00	0,00	0,00	55,00	0,00	0,00	0,00
5.552	7.119,44	189,04	34,17	0,00	6.929,60	0,00	0,00	0,00
5.557	28.206,24	0,00	0,00	27.806,24	400,00	0,00	0,00	0,00
5.901 a 5.949 Outras saídas de mercadorias ou prestações de serviços								
5.901	17.187.680,35	0,00	0,00	0,00	17.187.680,35	0,00	0,00	0,00
5.909	41.010,00	0,00	0,00	41.010,00	0,00	0,00	0,00	0,00
5.913	2.630,19	0,00	0,00	0,00	2.630,19	0,00	0,00	0,00
5.915	256.173,00	0,00	0,00	0,00	256.173,00	0,00	0,00	0,00
5.920	108.760,00	0,00	0,00	108.760,00	0,00	0,00	0,00	0,00
5.921	3.200,00	0,00	0,00	0,00	3.200,00	0,00	0,00	0,00
5.922	3.355.584,00	0,00	0,00	0,00	3.355.584,00	0,00	0,00	0,00
5.923	562.501,24	0,00	0,00	562.501,24	0,00	0,00	0,00	0,00
5.924	30.483,97	0,00	0,00	0,00	30.483,97	0,00	0,00	0,00
5.946	7.452.548,28	62.729,52	10.598,96	6.759,85	7.383.058,51	0,00	0,00	0,00
SubTotal	171.015.110,23	1.050.791,81	188.442,16	130.133.837,43	39.830.480,99	0,00	0,00	0,00
Saídas ou aquisições de prestação de serviços de outros Estados								
6.101 a 6.125 Vendas de produção própria ou de terceiros								
6.101	14.093.978,01	9.810.135,86	1.030.310,66	5.083.742,15	0,00	0,00	0,00	0,00
6.102	3.367.793,78	3.151.539,22	376.283,24	2.216.254,56	0,00	0,00	0,00	0,00
6.107	945,02	945,02	170,10	0,00	0,00	0,00	0,00	0,00
6.112	30.639,97	12.273,59	1.472,83	18.410,38	0,00	0,00	0,00	0,00
6.151 a 6.156 Transferências de produção própria ou de terceiros								
6.151	90.456,61	213.063,33	21.101,87	88.391,28	0,00	0,00	0,00	0,00
6.152	1.846.563,56	1.712.493,96	134.441,63	134.069,60	0,00	0,00	0,00	0,00
6.210 a 6.210 Devoluções de compras para industrialização, comercialização ou anulções de valores								
6.201	30.623,37	17.965,75	4.155,50	12.856,62	0,00	0,00	0,00	0,00
6.206	28.929,13	0,00	0,00	0,00	28.929,13	0,00	0,00	0,00
6.208	22.293,07	13.004,22	1.560,49	9.288,85	0,00	0,00	0,00	0,00
6.401 a 6.413 Saídas de mercadorias sujeitas ao regime de substituição tributária								
6.401	21.936,54	14.154,46	1.698,54	10.110,46	0,00	3.691,62	0,00	0,00
6.403	420.246,38	212.771,60	25.532,59	151.981,79	0,00	35.492,99	0,00	0,00
6.501 a 6.505 Remessas para formação de lote e com fim específico de exportação e eventuais devoluções								
6.501	26.500,00	0,00	0,00	26.500,00	0,00	0,00	0,00	0,00
6.551 a 6.557 Operações com bens de ativo imobilizado e materiais para uso ou consumo								
6.552	606,22	606,22	72,75	0,00	0,00	0,00	0,00	0,00
6.557	4.939,30	0,00	0,00	0,00	4.939,30	0,00	0,00	0,00
6.901 a 6.949 Outras saídas de mercadorias ou prestações de serviços								
6.901	37.915,00	0,00	0,00	37.915,00	0,00	0,00	0,00	0,00
6.911	335,48	312,36	37,48	223,12	0,00	0,00	0,00	0,00
6.912	500,00	0,00	0,00	0,00	500,00	0,00	0,00	0,00
6.920	100.100,10	0,00	0,00	50.554,10	49.546,00	0,00	0,00	0,00
6.949	332.032,30	3.957,17	393,79	0,00	328.075,13	0,00	0,00	0,00
SubTotal	23.474.696,94	15.163.224,76	1.595.231,87	7.840.298,01	411.989,56	59.184,61	0,00	0,00
Saídas ou aquisições de prestação de serviços do Exterior								
7.101 a 7.127 Vendas de produção própria ou de terceiros								
7.101	107.598.167,41	0,00	0,00	107.598.167,41	0,00	0,00	0,00	0,00
7.102	2.193.509,03	0,00	0,00	0,00	2.193.509,03	0,00	0,00	0,00
7.930 a 7.949 Outras saídas de mercadorias ou prestações de serviços								
7.949	77,70	0,00	0,00	0,00	77,70	0,00	0,00	0,00
SubTotal	109.792.154,14	0,00	0,00	107.598.167,41	2.193.586,73	0,00	0,00	0,00
Total	304.281.961,31	16.214.016,57	1.783.674,03	245.572.302,85	42.436.457,28	59.184,61	0,00	0,00

(Taxable output report, arranged according to several criteria with operation's values and amount of tax due.)

This report, entitled “Paying Taxes 2014: The global picture” compares the different parts of the globe in terms of tax burden, using total tax rate, number of payments and time to comply as proxy to the tax system complexity.

In the infographic reproduced below, the average time to comply with taxes in South America is almost three times that of North America.



Brazil has the highest number of hours to comply, and it is ten times the average global time calculated by the report. An expected result, specially taking into consideration the that the complexity of the São Paulo state’s ICMS VAT has other 26 states equally

complex systems, to which businesses having operations in any of them have to comply as well.

The global average result for each sub-indicator			
Tax type	Total Tax Rate (%)	Time to comply (hours)	Number of payments
Profit taxes	16.1	71	3.3
Labour taxes & contributions	16.3	96	10.4
Other / Consumption taxes	10.7	101	13.0
Total	43.1	268	26.7
Lowest	8.2	12	3.0
Highest	283.2	2,600	71.0

Source: PwC *Paying Taxes 2014* analysis

5 US SUT AND ICMS VAT: COMPARING THE CONSUMPTION TAX SYSTEMS

5.1 Tax rate, tax computation and tax assessment

The US SUT profits from two major characteristics that greatly simplify the businesses' life as far as compliance is concerned.

First of all, its rates do not vary as widely as in the ICMS VAT, and even when they vary, most of the changes come from the place where the seller is located (jurisdiction), when compared to other places. In another words, if there is no applicable exemption the US SUT rate is almost always fixed. Businesses can then foresee in a simpler manner the tax burden they will be subject to. Calculating the tax is straightforward and there is no need to complex bookkeeping to control sales at the product level, as the total sales figure is sufficient. It is not always necessary to control destination of goods sold, because tax rates do not change according to the location of the buyer, as in the ICMS VAT.

Secondly, a strict control of inputs is not needed, mainly because businesses do not claim credit on a product and invoice basis, and additionally, they do not carry such credits from one month to the next and so on indefinitely as it would happen in an value added tax.

The value added tax by its own nature demands a much more complex control of inputs, its credits and outputs and its debit as to compute total net liability. But ICMS VAT in São Paulo state with its various tax rates and having a reduced tax base for several cases, leads to more undesirable complexity.

OECD in a publication named "International VAT/GST guidelines" from April 2014 presents recommendations based on the experience of the largest group of countries adopting VAT taxes. The study focus on five generally accepted principles, but three of them are of special relevance to our discussion:

- **Neutrality**, which makes taxation neutral and equitable regardless of the form of commerce, resulting in business decisions solely motivated by economic rather than tax considerations.

- **Efficiency**, leading to minimal compliance costs for businesses and administrative costs for the tax authorities.

- **Certainty and simplicity**, meaning that the tax rules must be clear and simple to understand, in order to allow taxpayers to anticipate the tax consequences in advance of a transaction.

Tax rate complexity in the ICMS VAT in São Paulo does not take into account any of these principles in the necessary depth and breadth, leading to the conclusion that, even though a value added tax deriving from a staged collection process will never be as simple as a the US SUT, there is much opportunities to optimization of the São Paulo's system, which can be achieved for instance by having a single tax rate, and no exemptions at all.

For the sake of transparency on the tax calculation, the ICMS VAT ought to be improved, as the confusing mechanism of having the value of the tax be part of the good sold, over which the tax rate is applied can easily be abandoned. The buyer has the right to be clearly informed that if the rate of a given tax is 18%, the total cost of acquisition has to equal 118% of the price of the good. And not 121.95% as in the example we have discussed before. By adopting a method that is equivalent to the one applied by the US SUT, the principles promoted by OECD, especially certainty and simplicity would be embraced.

There is still an interesting issue to be addressed, if one compares the Brazilian Confaz (a committee formed by representatives of the 27 Brazilian states to discuss special tax breaks, tax benefits and rates) and the SSUSTA. While the former spends time adding complexity to the tax system by means of establishing new exemptions or reducing the taxable amount for some products, which according to the Brazilian law framework is subject to unanimous approval by all states, the latter was conceived to spread uniformity across the American states that take part in it. The Brazilian Confaz could play a decisive role in discussing and implementing the urgent tax reforms, but rather than pursuing that goal, has concentrated in short term counterproductive tax changes.

5.2 The cascading effect and the critical issues of the credit-invoice system:

In the US SUT system, exemption is used as a means to avoid the perverse effects of taxation of business-to-business transactions. These malicious effects include the incentive to vertically integrate, bringing the productions of all intermediate products into the company's structure, thus avoiding taxation on inputs. Moreover, actual tax rate becomes much higher, depending on the degree of the cascading effect of tax levied over previously paid tax on inputs and intermediate products. This causes serious distortions on the tax system, preventing tax administration to assess correctly the vertical and horizontal equity of the tax structure.

For that reason, considering that the US SUT lacks the typical credit mechanism of a VAT that avoids the cascading effect, in theory all business-to-business should be exempted. This is sometime achieved through using exemption certificates, which in theory is a good solution but sometimes has led to unscrupulous taxpayers to create fake businesses, or to make household purchases through legitimate businesses, all to pursue tax evasion and abusive tax planning.

The reasoning for exemption in this case starts with the conceptual basis of the tax - the sales tax is intended to be levied on consumption. Businesses produce, rather than consume (though they may use inputs in the process of producing). It is reasonable to presume that everything businesses purchase is necessary to produce and sell their product, regardless of whether the firm is a manufacturer, wholesaler, retailer, or service provider, so those transactions do not fit within the conceptual framework of a consumption tax.

Taxation of business purchases cascades into higher taxes on the final product. The extent of cascading depends on the complexity of the production process (how many levels of production a good or service goes through), the tax treatment of the various business inputs, and the propensity to vertically integrate in the industry.

As a result, today most states allow exemptions on sales intended for resale, on manufacturing equipment, on raw materials and component that will become part of a manufactured product. Sometimes in non-obvious purchases such as computers for accounting or stationery and desks exemption is not granted

At this point it is important to remember that in the ICMS VAT case, due to several postponements that prevent a particular Brazilian law to become effective, claiming credits originated from taxes previously levied on goods intended for use and consumption by businesses and unrelated to the output of the company are still forbidden.

Our opinion is that governments as a whole, regardless of the taxation system used profit from the cascading effect and collect through a disguised scheme much higher rates than the nominal one, avoiding public criticism that would arise otherwise, if they had to raise the rate to accomplish the same level of revenues.

On the discussion of exemption, as well as the establishment of lower tax rates for equity reasons, in order to diminish the regressive nature of the consumption tax in general, there is wide consensus from our research that targeted low-income tax credits, achievable through the income tax, is a more effective solution, rather than exemptions.

Such regressive nature of consumption taxes is imperceptible to the majority of the population as it is disguised in generally small values levied in several, countless consumption operations spread through time, amounting in the end to a considerable amount of the family income.

Ainsworth, using an intelligent analogy to the impossible trinity in international economic (which states that it is impossible for a country to adopt a fixed-exchange rate, free movement of capital and independent monetary policy simultaneously), stated that “No consumption tax has ever had all three of the critical attributes of a progressive consumption tax: a broad base, a single rate and measured relief for those in greatest need.”

Considering that a broad base combined with a single rate are determinant to the success of a tax framework, we consider that the drawback of the regressive aspect has to be addressed putting in place other mechanism, such as tax credits or deductions to be claimed in the income tax returns.

The importance of a single rate taxation over a broader base is such that empirical literature on the taxation of consumer purchases supports the policy advice offered by analysts defending the idea that a broad consumption tax bases with low tax rates are

more efficient and encourage economic growth even if the states continue to tax many business-to-business transactions, incurring in tax cascading.

Just a final data on how exemptions are poorly targeted. In the American states typically the poorest 40% of taxpayers receive only about 25% percent of the benefit from exempting groceries. The rest goes to wealthier taxpayers who could more easily afford to pay the sales tax on groceries, had the exemption not been created.

Moving to discuss the critical issues regarding the credit-invoice mechanism, we will address three problems that the São Paulo state faces on a daily basis in present times.

First of all, there is high incidence of fraud exploiting the credit aspect of the ICMS VAT liability calculation process. Fraudsters are always developing new schemes derived from the famous missing-trader, or from the carrousel frauds, basically in order to generate illegitimate credits to offset the payment of ICMS VAT due. The São Paulo state tax inspectors have identified for example the creation of false export operations of products bought in other states, allowing the false exporter to use the credits on the false purchase of inputs (usually a 12% rate) to lower their VAT liability. In another case reported by the state's tax authority, false firms (in the sense that they never existed other than in books and invoices) created to play the role of intermediate companies in the supply chain of soy products, passed on to other traders credits, but never actually paid the VAT amount informed in the invoices.

Another relevant outcome from the credit system is that of legitimate exporters that accumulate huge amount of lawful ICMS VAT credits in their books, which result from the fact that their exporting operations are VAT free (a Constitutional right in Brazil) whereas their inputs carry credits from previous stages of the supply chain. Because these credits must come under scrutiny prior to become usable, both companies and tax administration face a colossal amount of work to comply with the rules pertaining to the reimbursement of accrued credits. There is work on the way to simplify the procedures in place, but progress has been insufficient so far.

But the most pernicious aspect of the credit system in the ICMS VAT is the establishment of tax benefits in other Brazilian states creating unlawful credits that are

claimed against the São Paulo state. This federation problem is often referred as “Tax War”, has transformed the credit system into a shortcut to artificially attract industries from other states. It starts with a state creating a tax law that waives to an industry a certain amount of credit, usually as a percentage of the sales value. The immediate effect is to reduce the own state’s tax revenue, that will surely be imposed on the other taxpayers, because of the credit’s offset on the ICMS VAT liability of the favoured business. However, there is a second effect: that ICMS VAT value unpaid is carried to the São Paulo state’s buyer, through the already described credit-invoice method, as the inputs are registered in the buyer’s books. This illegitimate credit will damage the São Paulo state’s revenues, as the business claims the credits in its tax return. The aggregate tax revenue of both states decrease, the neutrality of the tax is compromised, and investment decisions are made without taking into consideration operating costs, economies of scale, infrastructural conditions, and existence of skilled labour. Other states counterattack, creating a vicious circle, and in spite of many efforts the problem remains.

Tax incentives are common in the United States of America as well, as it is the case with BMW in South Carolina, Mercedes-Benz in Alabama, and Boeing in South Carolina, for example. True, but the point that has to be stressed is that the credit-invoice mechanism fuels the predatory competition among states, reaching a much more dangerous level.

The Brazilian Supreme Court is about to finally issue a decision that apparently can end this predatory policy making between states, while states themselves argue on solutions for the problem, based on lowering the tax rate for cross-border operations.

6 CONCLUSIONS

As one could anticipate and expect, the US SUT has characteristics that greatly simplify not only the tax inspection and administration process, but also tax compliance. This is not equivalent to saying that the American retail tax as a whole is perfect, or that is a model or ideal design for a consumption tax. US SUT has considerable problems in its structure, especially considering the increase in electronic commerce and the loss of revenue associated with this form of retail, arising from the use tax being almost unenforceable in practice. Another unwanted feature of the US SUT is the excessive use of exemptions, that combined with a broad range of local taxes, add complexity to the tax structure.

On the other hand, as the American states' revenue do not depend heavily on sales taxes, the same states can afford to have generally lower tax rates than the ICMS VAT, compensating the lack of revenue with income taxation. Moreover, American states use the state's income tax to offset the regressive essence of the sales tax, concentrating the tax burden on higher income groups using the powerful tool of the income tax.

Our impression is that the American tax system will not change towards the adoption of a value added tax mainly because taxpayers are often suspicious that their tax burden will rise with such change, and they are more comfortable with the known devil.

Due to limitations imposed by the Brazilian Constitution, São Paulo state cannot collect income tax and is extremely dependant on the ICMS VAT revenues in general, but most of all, the state is dependent on the ICMS VAT collected over electricity and communications bills, and over oil products like gasoline and diesel. Also, the state has transformed the ICMS VAT from its ideal design to a different tax, and the scholars from important institutions such as the Inter-American Development Bank and the International Monetary Fund have stressed that the ICMS VAT has to move back to a pure value added tax.

Varsano has studied the ICMS VAT in depth and defends the idea that the tax should have a number of different rates as small as possible, as this is the modern trend in the

world. Eighty percent of the countries that have adopted the VAT recently have chosen a single tax rate. Varsano points out that along with the excessive number of tax rates, the overuse of exemptions, the generalized adoption of the tax anticipation mechanism, and finally the cumbersome process pertaining to VAT refunds for exporters play a major role in moving the ICMS VAT apart from an ideal VAT.

Mendonça, a former Minerva student has an intelligent explanation of an alternative for the ICMS VAT that results from the application of the Varsano ideas combined with the work of Bird, another specialist in subnational VAT.

The propositions referred above are very well structured, but we dare to disagree with their implementation, because the result might not be aligned with the certainty and simplicity principle that we think should be embraced.

We believe that ICMS VAT levied in the São Paulo state must be redesigned, with one single tax rate, as low as possible but imposed over all of the consumption of goods and services, including utilities such as electricity, water, and communications in general including mobile and landline telephones, and broadband internet access.

A second step should be the implementation of some of the ideas the model defended by Varsano, Bird and Panzarini, through the unification of all federal taxes levied on production into a national VAT that would be collected by the states on behalf of the Brazilian Federal Tax Authority. This would be done in order to compensate for the revenue losses resulting from treating cross-state operations as if they were exports and exempting them from taxation. This last change would be important to terminate with the “Tax War” previously described.

All of the alternatives proposed here face considerable political objections, as both states and federal government would need to compromise. Otherwise no reasonable agreement will be reached, and a simpler, fairer tax system will remain a taxpayer’s dream.