1 - UNIVERSALIZATION OF THE IDEA OF REGIONAL INTEGRATION

Since the end of the Second World War (1939-1945), the world has witnessed, somewhat perplexed, the unprecedented multiplication of experiments, not always successful, at the political and economic integration of neighbouring countries.

This phenomenon, which contrasts with the cosmopolitan designs of UNO, established at the same time, is due, on the one hand, to the virtual impossibility of conciliating the desires of all its members, given the extreme variety in the political, economic and social spectrum existing between them, and on the other, to the organization’s lack of zeal in promoting possible integration, thanks to the traditional disinterest and even hostility of the States possessing the hegemony, occupying the key positions in its decision-making process, towards all initiatives of this nature, seen as restrictive threats to their international trade.

Thus it is that the formation of regional blocks was, for a long period, only terminated in 1992, with the signature of the North American Free Trade Agreement (NAFTA), something of restricted interest to countries with a low or diminished participation in international trade exchanges, with

* Up-dated version of a paper presented to the V Meeting of Mercosul Law Students (Santiago de Chile, 12 to 14 August 1996).
sentiments of external insecurity, and concerned with the consolidation of their sovereignty. In these circumstances both Western Europe and Latin America found themselves, for very different reasons, in the period between 1945 and the end of the 1950s \(^1\).

In Western Europe we had the customs union of BENELUX (1944); the European Parliament, The Council of Europe and the Organization for European Economic Cooperation (1948), the latter (OEEC) set up to administer funds from the Marshall Plan; the European Coal and Steel Community (1951); the European Atomic Energy Community and the European Economic Community (EURATOM and EEC, 1957); and the European Free Trade Association (EFTA, 1959), later partially incorporated into the EEC. In 1993, with the Treaty of Maastricht, the European Union was constituted.

In the Americas, where the confederative dream of SIMÓN BOLÍVAR has been nursed since 1822, there are today, in accordance with a recent survey\(^2\), seventeen distinct international organizations, either of the pan-American variety such as the Organization of American States (OAS, 1948) and the Inter-American Development Bank (1959), or those with a regional basis, such as the above-mentioned NAFTA (1992), the Latin American Economic System (SELA, 1975), the Latin American Association for Integration (ALADI, 1980), the Group of Three, comprising Mexico, Colombia

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\(^{2}\) Cf. ISABELLA SOARES MICALI, *Le Marché Commun du Cône Sud MERCOSUR et les autres mécanismes d'intégration et de coopération sur le continent américain - un panorama comparatif, in MERCOSUL Seus Efeitos Jurídicos, Econômicos e Políticos nos Estados*

The great changes that have occurred recently to the international system - the globalization of the economy, the end of the cold war, the expansion of democracy and the market economy, with a significant reduction in the mechanisms of intervention of nation States - have pulled the Latin American experiments at integration out of the state of lethargy into which they had sunk because of the grave institutional and economic crises that have characterized the last two decades.

In their present effort at consolidation, the American regional integration treaties are trying to model themselves on the successes of the European Union. The disparity in the results obtained is, nevertheless, evident, and can be explained by diverse factors, among which can be noted:

a) as regards the objectives that have been striven for, we have the fact that Latin American integration has always had an exclusively
economic basis\textsuperscript{4}, and consequently been subject to the region’s frequent oscillations in this field; in Europe, a political will for integration serves as a prop for the process when facing the difficulties in economic negotiations between member States;

b) as regards the strategy of integration, Europe, by means of the spill over effect method, consisting in the priority harmonization of sectors with greater disseminator effect, such as energy and basic industry, has known how to make the process simultaneously gradual and irreversible\textsuperscript{5};

c) as regards the legal instruments employed, it can be seen that the harmonization of the national European legislations obeys a supranational juridical order, while in Latin America, except for the Andean Pact, one has never been beyond the traditional harmonization, achieved by means of the typical instruments of Public International Law\textsuperscript{6}. The supranational order, whose structure necessarily presupposes a partial cession of sovereignty on the part of the member States, is governed by three essential principles: direct application in the territory of the member States, independently of any system of conversion, primacy over the internal national systems of law and uniformity of interpretation by the various member States\textsuperscript{7};

d) as regards the degree of reciprocal interdependence of the integrated economies, Europe presents a growing coefficient of integration,

\textsuperscript{4} Cf. MARCOS SUPERVIELLE, Ciencias Sociales e Integración, in O Mercosul e a Comunidade Européia, cit., pp. 58-61.
\textsuperscript{5} Cf. LEONELLO GABRICI, A Integração Européia, in O Mercosul e a Comunidade Européia, cit., pp. 14-23, esp. p. 15.
\textsuperscript{6} Cf. MICHAEL R. WILL, Mercado Comum e Harmonização do Direito Privado, in O Mercosul e a Comunidade Européia, cit., pp. 64-79, esp. pp. 67-68; and JORGE LAPOVA, Organización Institucional y Derecho Comunitario en el Mercosur, idem, pp. 80-88, esp. p. 86.
\textsuperscript{7} Cf. JORGE PÉREZ OTERMIN, Principios Eseenciales de un Ordenamiento Jurídico Comunitario, in Boletim de Integração Latino-Americana, Ministério das Relações Exteriores, Secretaria-Geral de Política Exterior, Departamento de Integração Latino-Americana, Núcleo
from 35.3% in 1958 to 57.2% in 1992. In the American experiments at integration, this coefficient, which measures the participation of intraregional operations in the global trade exchanges of the party States, reached its peak in the 1960s in the Central American Common Market, but did not pass the 25% mark\(^8\). For this reason, the Latin American countries have opted for what CEPAL has called *open regionalism*, which consists in the deepening of regional interdependence, together with an opening of the doors to other countries, to improve the integration of the whole block in the world economy\(^9\).

### 2 - THE IMPORTANCE OF FISCAL HARMONIZATION

It is intuitive to say that the processes of regional integration are not all equal, or, in other words, that there are different stages in the march towards economic and political integration. A certain economic space, therefore, can be structured in the form of a *free trade area* for intra-regional produce, and maintain customs duties of the member States relative to that from other States intact; a *customs union* can be constituted, within which an external common tariff may also prevail, or a *common market*, in which free right of transit is guaranteed, not only for merchandise, but also for the factors of production (capital and labour); and finally, the whole can be capped with a finishing of *monetary* or even *political union*.

To achieve any of these objectives it becomes necessary to harmonize the internal legislation of the States involved, so as to avoid the normative conflict occasioning unintended inequalities, harmful for the ends of

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integration. Because of the descent of all the legal systems of the countries in Mercosul from the Romano-Germanic family, the task of harmonizing them is considerably facilitated. It should be remembered that, at the time of codification, Argentina and Paraguay even had the same Civil Code, drawn up by VELEZ SARSFIELD from a draft prepared by TEIXEIRA DE FREITAS (a Brazilian)\textsuperscript{10}.

The unanimous opinion of the experts, and invariable practice in current attempts at integration, elect Tax Law as a priority and indispensable field for harmonization in any mechanism of regional integration, because of the undisputed influence that taxes exercise on the dynamics of economic systems.

In fact, as regards customs tariffs, along with the fiscal aspect itself, less relevant with every day that passes in the present context of liberalization of the economy (of the Mercosul countries, only Paraguay has an expressive collection of customs duties: 18.4% of the amount collected in 1991\textsuperscript{11}), the extra-fiscal function is prominent, consisting of the manipulation of tariffs as a tool for State intervention in the economy, which becomes more or less receptive to foreign products and services depending on the rates established.

The harmonization of indirect taxes on consumption, whose economic onus is transferred to the final consumer by means of the price mechanism, is to avoid distortions in free competition between products and


\textsuperscript{10} Cf. LUÍS OLAVO BAPTISTA, \textit{O Impacto do Mercosul sobre o Sistema Legislativo Brasileiro}, in Boletim de Integração Latino-Americana, \textit{cit.}, vol. 5, pp. 05-08, esp. p. 05.
services coming from all the integrated countries. It consists fundamentally in
the decision as to which country, the country of origin or of destination of the
intra-regional operations of merchandise or services rendering, shall retain the
exclusive power to tax its consumption, as well as in the reciprocal undertaking
of non-discrimination, which guarantees to the goods and services imported
from another member country identical treatment to that given to similar local
ones.

Direct taxes (taxes on income and assets) only need to be
harmonized if it is intended to characterize the economic space considered as
a common market or a more evolved form of integration. Influencing principally
the profitability of capital investments of individuals and corporations, in the
absence of homogenization, they may cause distortions in the localization of
economic undertakings, that obey the so-called Delaware effect, that is, the
tendency to establish preferentially in those States that offer greater tax
advantages and make less demands.

Frequently appearing as exemptions of income tax, as
reductions or deductions on its calculated base or as exclusions of customs
duties on raw materials, national incentives to the export of manufactured
products also require harmonization within the area of the regional integration
agreements, for reasons appropriate for each type of tax they concern. It is
noteworthy that this question was indirectly harmonized between three of the
four members of Mercosul (Argentina, Brazil and Uruguay), as all of them
have celebrated bi-lateral accords on the question with the USA.\(^\text{12}\)

\(^\text{11}\) Cf. HUGO N. GONZÁLEZ CANO, *Analisis de los Sistemas Tributarios en el Mercosur*, paper
presented in the Seminar organized by Associazione Italiana per il Diritto Tributario Latino-
\(^\text{12}\) Cf. HUGO N. GONZÁLEZ CANO, *op. cit.*, p. 15.
Harmonization of national fiscal legislations is not, however, an easy task. The same circumstances that make it imperative, also make it a field for hotly-contested disputes, that result in the refusal of States involved to compromise on a subject that touches the notion of sovereignty so closely as taxation and, principally, to forego a part of its income. Thus it is that, even in the successful European experience, coordination of indirect taxes is still in a transitory stage, while that of direct taxation has hardly started to be implemented. It should be observed, furthermore, that with the signing of the Single European Act in 1986, the Directives of the Council of European Union will be agreed by qualified majority. For the harmonization of fiscal questions, however, the previous principle of unanimity has been retained\textsuperscript{13}.

In Mercosul, concerning specifically Brazil, the natural difficulty is aggravated by the polemic about the constitutionality of international treaties signed by the Union and ratified by Congress, in that which concerns taxes with competence reserved exclusively for the States and Municipalities (such as the ICMS - Tax on the Circulation of Merchandise and Interstate and Intermunicipal Transport and Communication Services, belonging to the States, and the municipal ISS - Tax on Services, both indirect taxes of the value-added variety, on whose harmonization the success of integration depends). The question has still not been examined by the Supreme Federal Tribunal, and doctrine is split into two antagonistic factions: the one favours legitimacy, and insists on the concentrationary and centripetal character of

\textsuperscript{13} Cf. GERHARD LAULE, Basic Problems of Harmonizing Tax Law in the European Communities, Vorträge, Reden und Berichte aus dem Europa-Institut der Universität des Saarlandes, nº 276 (1992), p. 02; JUAN MARTÍNEZ ARRIETA DE PISÓN, La Imposición Directa en el Marco de la Comunidad Europea: el Impuesto sobre la Renta de las Personas Físicas, paper presented in the Seminar on Tax Law held in 1993 in the Faculty of Law of the
Brazilian federalism\textsuperscript{14}; the other, strongly wed to the inflexibility of Brazilian federalism and its importance as a guarantor of democracy, qualified by the spacial decentralization of power, comes down in favour of unconstitutionality, considering non-obligatory the ratifying instruments where they exceed the federal competence\textsuperscript{15}.

The dilemma has awoken the attention of the Presidency, which has included in its proposal for constitutional amendment on tax reform, under consideration at present by Congress\textsuperscript{16}, a provision conferring on the Union special powers to concede exemption of state and municipal taxes by means of a duly ratified international treaty. The argument has not ended, however. In the first place, because the provision was eliminated in the substitute project presented by the relator of the Special Commission of the House of Representatives on tax reform\textsuperscript{17}. Also because, even after being approved, it would have to pass through the sieve of the Judiciary, as the Brazilian Constitution elevates as one of its head-stones the federative form of the State (article 60, § 4, I). The question here would involve balancing principles, because the same constitutional text, in another place (article 4, sole paragraph), lays down that \textit{‘the Federative Republic of Brazil will seek the economic, political, social and cultural integration of the peoples of Latin}
America, with a view to the formation of a Latin-American community of nations’.

It should be noted that the new Constitution of Paraguay, promulgated on 20/06/92, resolved the problem conveniently for a unitary State, laying down in its articles 137 and 141 that international treaties and agreements are hierarchically infraconstitutional and supralegal\textsuperscript{18}.

3 - HARMONIZATION OF INDIRECT TAXES

The scene in Europe as regards indirect taxation in the ‘50s was so varied that no integration project was feasible\textsuperscript{19}. The Fiscal and Financial Commission of the EEC, in the Neumark Report, called attention to the need for harmonizing indirect taxes by the adoption, by all member States, of a tax on the aggregate value conceived on the lines of the taxe sur la valeur ajoutée, in force in France since 1954. In this type of taxation only the wealth aggregated in each stage of the circulation of the merchandise is taxed, deducting from the amount due on sale, the amount paid by the previous trader. In this way the economic distortions caused by cumulative taxation, \emph{in cascade}, are eliminated. They are summarized by J. DUE\textsuperscript{20} as follows:

a) distortion in the allocation of economic resources, as the tax is not neutral, causing alteration in prices between producer and final consumer;

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\textsuperscript{19} Cf. JUAN MARTÍNEZ ARRIETA DE PISÓN, \textit{Los Impuestos sobre la Circulación y el Consumo en la Comunidad Europea. Armonización Legislativa y Competencia de los Estados Miembros}, paper presented in the Seminar on Tax Law held in 1993 in the Faculty of Law of the Federal University of Minas Gerais, p. 02, note 02.
b) distortion of the price of the goods in accordance with the possibilities of vertical integration that each sector possesses (the fewer the stages of circulation the goods suffer, the less the added tax burden);

c) lack of stimulation for exports, as, even if the invoicing of the exporting companies is exempted, no way exists of returning the tax incorporated in the price of raw materials and capital goods that they acquired;

d) stimulation of importation of goods, above all finished goods, as these are taxed only on their entry, whereas locally produced goods are taxed repeatedly at each stage of the production and circulation cycle;

e) increase in the price of goods superior to the extra tax collected (pyramid effect);

f) more difficult and expensive supervision, as no type of juridical relation is established between the successive links in the chain of circulation (in contrast to Value Added Tax, where the debit of the seller becomes the credit of the buyer).

The French experience spread rapidly throughout the world, finding free passage in the Latin American countries from the mid-sixties. Of the countries of Mercosul, Paraguay was the last to adopt a tax of the value added type, in 1992.

In addition to the general taxes of the value added type, Argentina, Uruguay and Paraguay collect selective taxes on consumption (excises or accisas), monophasic and with a restricted basis, which should also be harmonized. Brazil maintains, in parallel with the ICMS and the ISS, the IPI - Tax on Industrialized Products, multiphasic, non-cumulative and broadly based.
As has already been stated, the central theme of harmonization of indirect taxes is the choice of the country competent to tax the goods and services which are the object of operations of international circulation. Two solutions are possible: the adoption of the principle of origin or the option for exclusive taxing at the destination.

As regards value added taxation and the selective taxes on consumption, all the countries of Mercosul adopt, for the purposes of international trade, the principle of exclusive taxing at the destination. They do not, therefore, tax exports, and they return to the exporter the credits for all the previous operations relative to the goods exported, so that these leave the country completely free of tax. On entry, on the contrary, as the product also arrives completely unburdened, they impose their internal tax, submitting the product to the same treatment undergone by local produce of a similar nature (principle of non-discrimination). In this way, the country where effective consumption of the good occurs is benefited by the collection.

The option for the principle of destination dispenses with more efforts at legislative harmonization, guaranteeing at the same time a certain level of integration and the maintenance of the tax structure (base and rates) of each party State. The most traditional criticism levelled against it was the impossibility of eliminating the customs between the countries involved, as it is in them that the necessary operational adjustments are made (return of credits on departure; collection of local VAT on entry).

It was in Europe that a way of conciliating the principle of destination and the suppression of fiscal frontiers was found, and carried into effect in 1993.
By 1997, the date established for the institution of the system of taxing in the country of origin, a transitional regime will be applied, denominated deferred payment system. By this system, the trader of a member State, when demonstrating to his local tax authorities that he is selling merchandise to a taxpayer of another member State (which he does by means of the commercial documents where the numbers of both in the sole registry of the community VAT appear), will benefit from exemption and recuperate the previous credits. The exported good will suffer the taxing of the country of destination as soon as it circulates in its territory.

In the system of origin, to be introduced in Europe in the near future, the good leaves the exporting country burdened by its respective VAT, but it is the tax authorities of the importing State that recognize for the buyer, if a taxpayer, his right to compensation of credits equivalent to the tax supported, in the name of the principle of non-cumulativity. On the other hand, a credit for the State where consumption occurred accrues against the State in which tax was effectively collected, as it is the nature of the VAT that its benefits belong to the country where effective consumption happens.

In accordance with the proposal of the European Commission, reciprocal compensation between member States will be effected in the following way: monthly, each one will inform the value of VAT collected on goods sold to taxpayers situated in the other States (sum of internal operations and final intracommunity operation), and the amount whose

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23 Cf. JEAN-JACQUES PHI LIPE, op. cit., p. 50.
compensation its own taxpayers claim, because of purchases effected from traders located in the other States. Confronting the two accounts, if a negative result is found (net importer country), the country will indicate the amount which it intends should be reimbursed; if the balance is positive (net exporter country), the country will render it to the central clearing house, which will redistribute it so as to satisfy the credits of the other member States.\footnote{Cf. JUAN C. GÓMEZ SABAINI, \textit{op. cit.}, pp. 41-42; and JEAN-JACQUES PHILIPE, \textit{op. cit.}, p. 55.}

In this system successive breaks in the debit-credit chain do not exist, which under the destination principle occur each time a good transcends the territorial limits of a member State of an integrated economic space. The high level of harmonization that it demands, involving even the convergence of rates, in addition to the large quantity of information that has to be exchanged between the fiscal authorities involved represent, however, considerable obstacles to its adoption. The system has already been experimented, for a short period, between some member countries of the Central American Common Market. The large scale evasion which followed the elimination of frontiers was, however, responsible for the abandonment of the trial.\footnote{Cf HUGO N. GONZÁLEZ CANO, \textit{Experiencias Americanas de Armonización Tributaria en Procesos de Integración Economica}, Buenos Aires, 21 February 199, p. 9.}

The proposal for constitutional fiscal reform presented by the Brazilian Federal Government, now in the process of parliamentary discussion, brings important advances in the present situation of indirect taxation in the country, to wit:

\begin{enumerate}
\item a) it substitutes the present IPI by a federal ICMS, possessing the same base of the state ICMS, which is maintained and becomes regulated exhaustively by a complementary law of the Union;
\end{enumerate}
b) it augments the present constitutional prohibition of the incidence of the state ICMS on the export of industrialized products, extending it also to primary and semi-elaborated products, the taxation of which is today allowed by the Federal Constitution (immunity is valid also for the federal ICMS that may come to be created). The practical effects of the proposal were anticipated by the Federal Legislature, which, using express constitutional permission, exempted from the state tax, without distinction, all exported merchandise, by means of the issue of Complementary Law number 87 of 13.09.96;

c) as regards the state ICMS, it maintains taxation at the origin and extinguishes the present distinction, for determining the applicable rate, between internal and interstate operations, allowing the creation of a repass mechanism to the destination State and envisaging a progressive federalization of interstate operations (part of the tax collection, that corresponding to the raising of the rate of the federal ICMS to be created, in proportion to the reduction in that of the state, will be repassed by the Union to the destination State);

d) it concedes credits on the state ICMS (and the federal ICMS to be created) in the purchase of goods for the fixed assets of the taxpayer. The rule was also anticipated, and even extended, by Complementary Law number 87, of 13.09.96, which permits integral and immediate deduction of the credits referring to goods destined for the use of, consumption of, and permanent assets of companies (in which is included fixed assets), requiring, as regards the latter, a minimum permanence of five years, or the proportional reversal of the compensated credits. The previous system, which prohibited
the use of these credits, attributed a certain cumulative effect to the state ICMS, that had an inevitable effect on prices. The problem remains, however, until the approval of the constitutional amendment under examination, relative to the federal IPI. Reasons of internal equilibrium in the collection of state ICMS, raised by some of the experts\textsuperscript{26}, led to insatisfaction with the rule, which, in the terms of the proposal of the relator of the Special Parliamentary Commission, is to be substituted by the exemption on the final sale of capital goods, to be defined in law, with maintenance of the previous credits\textsuperscript{27}. The argument is that the buying States would concede credits, losing income, by tax collected and appropriated by the sellers, principally São Paulo. The solution is partial, and the problem could be resolved by the determination of a term for the establishment of the reap mechanism of the tax collected to the destination State, envisaged vaguely in the reform project.

e) it prohibits the concession, under any guise, of incentives that annul the economic burden of the tax; this prohibition, with little chance of being approved, contemplates preferentially the States, to put an end to the fiscal war at present being waged in the bosom of the Brazilian federation.

The project has also its drawbacks, such as the permission to collect cumulative taxes by the Union, in the exercise of its residual competency, and the maintenance of the present separation between ICMS and ISS, which prevents the use of credits relative to the tax paid on services

\textsuperscript{26} Cf. SACHA CALMON NAVARRO COÊLHO, Reforma Tributária - o Dedo Paulista, in the Estado de Minas newspaper.

\textsuperscript{27} Cf. Vote of the Relator of the Special Commission of the House of Representatives on the Proposal for Constitutional Amendment nº 175/95, p. 09.
rendered in the process of production and circulation of merchandise, or on previous services necessary for the present service\textsuperscript{28}.

It should be noted that Argentina and Brazil, together with the general and selective taxes on consumption, structured as non-cumulative (which does not prevent possible cumulative effects, as has been demonstrated), apply taxes on the gross invoicing of companies, completely cumulative (PIS and COFINS in Brazil, destined for the financing of the General Social Security programme; \textit{Impuesto sobre Ingresos Brutos} in Argentina, the competence of the provinces), causing grave distortions to the prices of local products and attracting all the negative effects of taxation in cascade, previously mentioned.

In addition to this, Brazil, in a burst of fiscal schizophrenia, has recently approved the creation of one more tax with cumulative effects: the CPMF - Provisional Contribution on Financial Movement, which is destined to fund public health. Introduced by Constitutional Amendment number 12 of 16/08/96, the contribution, with a maximum period in force of two years, will be calculated \textit{“on the movement or transmission of values and credits and rights of a financial nature”}, and will represent a burden of 0.25\% at all stages of the production and circulation of goods and services, as it is certain that at each stage there will be a banking transaction between the parties involved.

\textbf{4 - HARMONIZATION OF DIRECT TAXES}

The treaty constituting the European Economic Community dealt exhaustively with indirect taxes, but only vaguely and implicitly with the need to

\textsuperscript{28} Cf. MISABEL DE ABREU MACHADO DERZI, \textit{op. cit.}
harmonize tax on income and on assets (cf. article 52, which instituted the liberty of the establishment of companies; article 58, which lays down the principle of non-discriminatory treatment in relation to the participation in the capital stock of companies; article 67, that envisages removal of restrictions to the free movement of capital; article 100, that determines the harmonization of legislations that affect directly or indirectly the working of the common market; article 101, that envisages the same in relation to those who distort conditions of free competition; and article 220 which deals with double international taxation\textsuperscript{29}).

The coordination of direct taxation is, as has been said, a measure that is only of interest in a common market or more sophisticated form of integration. At this stage the degree of integration intended by the treaty constituting Mercosul (the treaty of Assunção of 26.03.91) should be queried. The only reply which is possible to this query is: a customs union. Nothing more than this is contemplated in the treaty, which does not refer to any instrument for the guarantee of the free circulation of the factors of production\textsuperscript{30}.

As a matter of fact, what can be perceived is that the customs union achieved up to now (the external common tariff was adopted in 01.01.95) is somewhat imperfect, as:

a) the intra-regional zero tariff is subject to a series of exceptions that contemplate the so-called sensitive products;

b) the customs institutions of the member countries still exist;

c) non-customs barriers to internal trade still exist;

\textsuperscript{29} Cf. GERHARD LAULE, \textit{op. cit.}, p. 08.
d) the external common tariff only covers 85% of the imports of
the block, and by the year 2001 each country may except 300 registered
products from it; relative to data processing products, this right extends to the
year 2006\(^{31}\).

Considering that the success of this phase of integration will lead
inexorably to the realization of a true common market, it would be opportune to
touch immediately on some rapid reflections on direct taxation in the region.

As regards taxation of income and assets, the regional scene is
mutifaceted. It is sufficient to consider that only Argentina and Uruguay
maintain general taxes on the net assets of individuals and corporations, and
that only Argentina and Brazil tax the income of individuals\(^ {32}\) and maintain
bilateral treaties to prevent double international taxation\(^ {33}\).

Double international taxation is due to the application, by
different countries, of distinct criteria for the payment of their respective
income taxes. According to the *principle of the source*, competence to tax
income belongs to the country in whose territory the source responsible for the
income is located. According to the *world income principle*, the power to tax all
the income received by any person, independently of the geographical location
of its sources, belongs to the State in which he resides.

Income tax for legal entities, in all the countries of Mercosul,
obeys the principle of the territoriality of the source. As regards individuals,
income tax in Argentina, and also in Brazil relative to non-residents, is subject

\(^{30}\) Cf. SABELLA SOARES MICALI, *op. cit.*, p. 430.
\(^{32}\) Cf. HUGO N. GONZÁLEZ CANO, *Analisis de los Sistemas Tributários en el Mercosur*, *cit.*, pp. 06-12.
to the same principle. As regards residents, Brazilian income tax on individuals is subject to the world income principle, which is founded on the following arguments:

a) equality and progressivity - the country that differentiates between its residents that obtain their income exclusively in its territory, by taxing them, while it exempts those that obtain income abroad, definitely jeopardizes fiscal progressivity and equality;

b) dual protection - the country of residence, as well as that of source, which protects the individual, incurs public expenditure in favour of the receiver, guaranteeing his well-being and security;

c) annulment of incentives to attract investments - non-taxation of income earned abroad would represent an incentive to capital flight in the direction of those countries that concede incentives for foreign investment, with consequent economic and fiscal loss to the exporting country

In spite of the warning of the need to dedramatize the analyses of the urgency of the harmonization of direct taxes, calling attention to various other factors determining the location and movement of capital investments (interest and exchange rates, investments in infrastructure), which remain under the control of the nation States even in the presence of the coordination of fiscal policies, the necessity of such harmonization in a later and more advanced stage of integration within Mercosul should not be underestimated, above all as a means of eliminating the competition between member States for intra and extra-regional investments.

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33 Cf. MISABEL DE ABREU MACHADO DERZI, op. cit.
5 - FINAL CONSIDERATIONS

The objective of this work is to highlight, within the narrow limits of Tax Law, certainly only one of the various aspects to be considered, the little that has been done and the long road that still needs to be traversed in the arduous but invigorating task of Latin American integration.

In this sense, the positive influence that the success of the incipient integration in Mercosul has exercised over international relations in the region is stressed. Various countries of ALADI are today interested in negotiating with the block the recuperation of the ancient and forgotten customs preferences that they enjoyed with each of its members. Demonstrations of this tendency are the recent agreements 4+1, for the constitution of free trade zones, celebrated with Chile and Bolivia.

On a world scale, the celebration in Madrid of the Standard Agreement of Inter-Regional Cooperation between the European Union and its member States and Mercosul and its member States, on 15.12.95, is noteworthy as a foretaste of fruitful political, scientific-technological and cultural cooperation, in addition to a full commercial opening between the two blocks, to be effected after the year 2001.

All that can be hoped for is that the integration, forged by means of taxation and in so many other ways, may be a means of promoting the development of economic activities, and the political and economic stability of our sub-continent, that has witnessed so much suffering, and above all of

35 Cf. JUAN MARTÍNEZ ARRIETA DE PISÓN, La Imposición Directa en el Marco de la Comunidad Europea: el Impuesto sobre la Renta de las Personas Físicas, cit., pp. 04-06.
36 Cf. MARCELO MONTENEGRO, op. cit., p. 9.
37 Cf. MARCELO MONTENEGRO, op. cit., p. 9.
discharging the enormous social debt that the Latin American peoples are owed since the days of colonization.

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