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**STRATEGIC CLIMATE  
LITIGATION UNDER THE  
BRAZILIAN TAX REFORM:  
Environmental protection  
principle and prevention  
of regressive effects as  
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Working Paper nº 09/2026

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# **STRATEGIC CLIMATE LITIGATION UNDER THE BRAZILIAN TAX REFORM: Environmental protection principle and prevention of regressive effects as new entryways for litigations**



Working Paper nº 09/2026

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## Abstract

This chapter examines whether the environmental tax provisions introduced by Constitutional Amendment No.132/2023 create new opportunities for strategic climate litigation in Brazil. It investigates whether the new constitutional rules on environmental taxation and prevention of regressive effects can serve as legal grounds for climate-related claims, including intersectional arguments, within structured process models of constitutional review. Using a bibliographic method to analyze theoretical frameworks and an empirical method to examine Brazilian and foreign case law, the study evaluates the potential for structured constitutional actions to incorporate climate claims based on these new principles by testing the following hypothesis: "Articles 145, §§ 3rd and 4th; and 159-A, § 2nd, of the Brazilian Federal Constitution can be used as legal grounds for strategic climate litigation". Preliminary findings indicate that EC 132/2023 may support litigation targeting insufficient tax differentiation, harmful tax incentives, omissions in environmental tax design, misuse of development funds, and regressive impacts.

## **STRATEGIC CLIMATE LITIGATION UNDER THE BRAZILIAN TAX REFORM: Environmental protection principle and prevention of regressive effects as new entryways for litigations**

**Abstract:** This chapter examines whether the environmental tax provisions introduced by Constitutional Amendment No. 132/2023 create new opportunities for strategic climate litigation in Brazil. It investigates whether the new constitutional rules on environmental taxation and prevention of regressive effects can serve as legal grounds for climate-related claims, including intersectional arguments, within structured process models of constitutional review. Using a bibliographic method to analyze theoretical frameworks and an empirical method to examine Brazilian and foreign case law, the study evaluates the potential for structured constitutional actions to incorporate climate claims based on these new principles by testing the following hypothesis: “Articles 145, §§ 3<sup>rd</sup> and 4<sup>th</sup>; and 159-A, § 2<sup>nd</sup>, of the Brazilian Federal Constitution can be used as legal grounds for strategic climate litigation”. Preliminary findings indicate that EC 132/2023 may support litigation targeting insufficient tax differentiation, harmful tax incentives, omissions in environmental tax design, misuse of development funds, and regressive impacts.

**Keywords:** excise tax; tax incentives; environmental taxation; Brazilian tax reform; strategic climate litigation; stealthy climate litigation.

### **1. INTRODUCTION TO STRATEGIC CLIMATE LITIGATION IN BRAZIL**

Strategic climate litigation is defined by judicial and administrative actions that address issues related to climate change through a "policy-oriented" approach, which aims to achieve wide-ranging social and policy changes through the judicial system. These disputes are made to achieve paradigm cases capable of establishing judicial precedents, provoking legislative reforms, and/or driving the creation of new public policies. Even though the overall objective often involves enforcing the fundamental right to a stable and ecologically balanced climate, climate disputes can also be strategically utilized to undermine existing laws that protect the environment or assert the discretionary authority of the Executive Power over the right to an ecologically balanced environment<sup>1,2</sup>.

Climate litigation, encompassing both judicial and administrative actions, can be categorized according to four main categories. There are actions focused on the reduction of Greenhouse Gas (GEE) emissions, which qualify as mitigation; measures related to reducing vulnerability to the adverse effects of

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<sup>1</sup> Ana Maria de O. Nusdeo, ‘Litigância e governança Climática. Possíveis Impactos e Implicações’ In Joana Setzer, Kamyla Cunha and Amália Botter Fabbri (coord.), *Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil* (Revista dos Tribunais 2019) p. 147–151.

<sup>2</sup> Evorah Lusci Costa Cardoso. *Litígio estratégico e Sistema interamericano de direitos humanos* (Fórum 2012), p. 41–58.

climate change, which qualify as adaptation; claims seeking the reparation for damages suffered in reason of climate change, which qualify as losses and damages; and actions aimed at the assessment and control of environmental and climate risks, which qualify as environmental risk management<sup>3</sup>.

The first climate action is considered to have been filed in the United States in 1990, and, since then, engagement by the judiciary has expanded around the globe, influencing public opinion and exposing governments and businesses to climate scrutiny<sup>4</sup>. Since then, it became a global phenomenon, driven by the climate crisis's urgency and the perceived slowness or insufficiency of governmental action<sup>5</sup>.

### **1.1. Stealthy Climate Litigation in the Global South: The Brazilian case**

Despite being a global phenomenon, this sort of litigation is quite different in the Global South, where "stealthy climate litigation" prevails. In this sort of dispute, the explicit political force of climate issues is often diluted into generic environmental or human rights demands, addressing climate change incidentally or tangentially. This means climate change often figures at the periphery, rather than the core, of the legal argument, a phenomenon observed in a large percentage of non-U.S. climate suits. Litigants may favor this indirect approach, believing it yields higher chances of success in jurisdictions characterized by traditions of judicial restraint or where climate issues have lower public policy salience compared to other environmental concerns<sup>6</sup>.

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<sup>3</sup> Joana Setzer, Kamyla Cunha and Amália Botter Fabbri, 'Panorama da litigância climática no Brasil e no mundo' In Joana Setzer, Kamyla Cunha and Amália Botter Fabbri (coord.), *Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil* (Revista dos Tribunais 2019) p. 59–60.

<sup>4</sup> Joana Setzer, Kamyla Cunha and Amália Botter Fabbri, 'Panorama da litigância climática no Brasil e no mundo' In Joana Setzer, Kamyla Cunha and Amália Botter Fabbri (coord.), *Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil* (Revista dos Tribunais 2019) p. 59–60.

<sup>5</sup> Ana Maria de O. Nusdeo, 'Litigância e governança Climática. Possíveis Impactos e Implicações' In Joana Setzer, Kamyla Cunha and Amália Botter Fabbri (coord.), *Litigância Climática: Novas Fronteiras para o Direito Ambiental no Brasil* (Revista dos Tribunais 2019) p. 139.

<sup>6</sup> Jacqueline Peel and Jolene Lin, 'Transnational Climate Litigation: The Contribution of the Global South' (2020) 89 *Nordic Journal of International Law* 679.

Brazil stands out as the jurisdiction in the Global South with the most reported climate actions, being the fourth country globally by the number of cases identified up to March 2024, totaling 80 actions<sup>7</sup>. In Brazil, the stealthy approach is often manifested through the judicialization of public environmental policies<sup>8</sup>.

Examples often include enforcement actions brought by the government against private entities for natural resource violations, such as deforestation or mangrove clearing. In these instances, the climate impacts (like the emission of GHG or the loss of carbon sinks) serve as collateral or peripheral factors supporting the prosecution for broader environmental infractions<sup>9</sup>. Furthermore, strategic cases involving the constitutional control of public policies, such as the judicial review of the 2012 Forest Code under the “Ação Declaratória de Constitucionalidade” n° 42, function as strategic climate litigation by addressing complex, interdisciplinary public policies with broad systemic repercussions<sup>10</sup>.

Many of the Brazilian strategic climate litigation cases have been judged by the Federal Supreme Court, and this gave rise to its role as the guardian of the constitutional ecological order through "climate constitutional control". Faced with government inertia or the dismantling of essential environmental and climate policies (ecological retrocession), STF has been called multiple times to intervene in strategic litigation, evaluating the compatibility of state actions and omissions with constitutional rules<sup>11</sup>.

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<sup>7</sup> Danielle de Andrade Moreira *et al*, *Panorama da Litigância Climática no Brasil* (Juma/PUC-Rio 2024) PDF, disponível em: <<https://www.juma.nima.puc-rio.br/pesquisas-litigancia-climatica>>, p. 2, 36–38. Accessed 17 November 2025

<sup>8</sup> Matheus Chebli de Abreu, ‘Controle de constitucionalidade de políticas ambientais e litigância climática: Análise da ADC 42’ In Alessandra Furlanetti *et. al* (org.), *Políticas Públicas em Perspectiva* (vol 1, Pembroke Collins 2022) 251.

<sup>9</sup> Jacqueline Peel and Jolene Lin, ‘Transnational Climate Litigation: The Contribution of the Global South’ (2020) 89 *Nordic Journal of International Law* 679.

<sup>10</sup> Matheus Chebli de Abreu, ‘Controle de constitucionalidade de políticas ambientais e litigância climática: Análise da ADC 42’ In Alessandra Furlanetti *et. al* (org.), *Políticas Públicas em Perspectiva* (vol 1, Pembroke Collins 2022) 251, p. 259–266.

<sup>11</sup> Marcelo Lima dos Anjos and Nelly Rosa Clemente Paiva dos Santos Almeida, ‘Controle de Constitucionalidade Climática: A Judicialização das Políticas Ambientais no Supremo Tribunal Federal’ (2025) 27(10) *IOSR Journal of Business and Management* 48.

In most cases, the normative foundation for this action is Article 225 of the Brazilian Federal Constitution<sup>12</sup>, which establishes the fundamental right to an ecologically balanced environment, imposing positive duties of protection and preservation for present and future generations:

“Art. 225. Everyone has the right to an ecologically balanced environment, a common good of the people and essential to a healthy quality of life, and it is the duty of the Government and of society to defend and preserve it for present and future generations.”  
(Translated by the author)

The Court also employs the principle of non-regression (which prohibits the arbitrary suppression of previously established protection levels of rights) and the prohibition of insufficient protection, requiring the State to actively protect, prevent, and repair environmental harm<sup>13</sup>.

To address these complex issues, STF has increasingly adopted a model of judicial review known as the structural process. Through this approach, the Court goes beyond the declaration of unconstitutionality of environmentally harmful practices and rules, and, instead, proposes structural remedies that define goals and deadlines, compels public entities to formulate action plans, and maintains continuous judicial monitoring of execution<sup>14</sup>. This judicial activity, which promotes broad effects (*erga omnes*) and social change, mostly occurs via actions of concentrated constitutional control, such as “Ação Declaratória de Inconstitucionalidade” (“ADI”), “Arguição de Descumprimento de Preceito Fundamental” (“ADPF”) and “Ação Declaratória de Inconstitucionalidade por Omissão” (“ADO”)<sup>15</sup>.

Paradigm examples include ADPF 760<sup>16</sup>, where the Court recognized structural failures and ordered the restoration and effective execution of the Plan for Prevention and Control of Deforestation in

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<sup>12</sup> Brazil, *Constitution of the Federative Republic of Brazil 1988* (as amended) [https://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed 17 November 2025.

<sup>13</sup> *Ibidem*.

<sup>14</sup> Federal Supreme Court, *Processos Estruturais* (Institutional report, 2025) PDF, Available at: <<https://livrariasupremo.stf.jus.br/produto/detalhe?id=5295&detalheProdutoNovo=sim>>, p. 10–12. Accessed 17 November 2025.

<sup>15</sup> Danielle de Andrade Moreira *et al*, *Panorama da Litigância Climática no Brasil* (Juma/PUC-Rio 2024) PDF, Available at: <<https://www.juma.nima.puc-rio.br/pesquisas-litigancia-climatica>>, p. 19–22. Accessed 17 November 2025.

<sup>16</sup> Federal Supreme Court, *Arguição de Descumprimento de Preceito Fundamental 760 Distrito Federal* (Full Bench, 3 April 2024, Reporting Justice André Mendonça) ADPF 760 <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6049993>. Accessed 17 November 2025.

the Legal Amazon<sup>17</sup>. Another example is ADPF 743<sup>18</sup>, in which STF imposed structural measures to combat environmental emergencies and fires in the Amazon and Pantanal<sup>19</sup>.

This prevalence of mechanisms associated with concentrated control of constitutionality could be a byproduct of inefficiencies of the public civil action system.

As identified by Gouvêa & Refosco<sup>20</sup>, the Brazilian class action system has proven insufficient to deter and punish mass rights violations by private companies, despite being the primary tool for collective litigation in the country. Prior to the 1985 Law of Public Civil Action (LACP), Brazil lacked legal tools to prevent harms committed by private agents, relying solely on "popular actions" against government acts. The LACP is theoretically vital for protecting "diffuse rights" yet the system's current ineffectiveness allows companies to generate negative externalities, evidenced by the lack of timely compensation for environmental damage.

The authors compare the Brazilian system with the United States class action rules, and conclude that while the US system utilizes pragmatic categories, active judicial participation in structural litigation, and punitive damages to incentivize private enforcement and settlements, the Brazilian system is hampered by dysfunctional theoretical categorizations (dividing rights into diffuse, collective, and homogenous individual), a passive judiciary regarding evidence production, and a lack of pretrial discovery.

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<sup>17</sup> Federal Supreme Court, *Processos Estruturais* (Institutional report, 2025) PDF, Available at: <<https://livrariasupremo.stf.jus.br/produto/detalhe?id=5295&detalheProdutoNovo=sim>>, p. 376–435. Accessed 17 November 2025.

<sup>18</sup> Federal Supreme Court, *Arguição de Descumprimento de Preceito Fundamental 743 Distrito Federal* (Full Bench, 20 March 2024; Reporting Justice Cármen Lúcia) ADPF 743 <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6007933>. Accessed 17 November 2025.

<sup>19</sup> Federal Supreme Court, *Processos Estruturais* (Institutional report, 2025) PDF, Available at: <<https://livrariasupremo.stf.jus.br/produto/detalhe?id=5295&detalheProdutoNovo=sim>>, p. 462–491. Accessed 17 November 2025.

<sup>20</sup> Carlos Portugal Gouvêa and Helena C Refosco, 'Class Action in Brazil: Overview, Current Trends and Case Studies' in Brian T Fitzpatrick and Randall S Thomas (eds), *The Cambridge Handbook of Class Actions: An International Survey* (Cambridge University Press 2021) 129–150. DOI: <https://doi.org/10.1017/9781108770927.008>. Accessed 17 November 2025

This could be, then, one of the reasons why the structural process of constitutionality control plays a key role in Brazilian strategic climate litigation cases.

## **1.2. Tax disputes as a form of Strategic Climate Litigation**

The most common connection between Tax Law and Environmental Law are Pigouvian taxes. Named after Arthur Pigou, these instruments are thought to internalize negative environmental externalities and, ideally, charge taxes equal to the marginal social/environmental costs associated with the production of goods or services, implementing the so-called “Polluter-Pays Principle”<sup>21</sup>.

On the other hand, it is also common to impose taxes that follow the “Protector-Receives Principle”. This principle aims to reward activities that yield environmental benefits, often through fiscal incentives and/or tax expenditures (e.g., deductions, exemptions, tax credits, or reduced rates). The idea is that by decreasing the cost of eco-friendly goods or services, fiscal incentives effectively internalize the positive externalities of these activities<sup>22</sup>.

Aside from those, there are other connection points and issues.

The Climate Litigation Database of Columbia’s Law School<sup>23</sup> identifies several cases involving taxation as forms of climate litigation. To illustrate the other connecting points and issues regarding Strategic Climate Litigation and Tax Law, here are 4 examples of those cases.

In Austria, the Constitutional Court, under Case G106-107/2022<sup>24</sup>, reviewed an individual application challenging the constitutionality of tax exemptions provided by the Value Added Tax Act 1994 and the Mineral Oil Tax Act 2022 that exempted international passenger flights from VAT and aviation fuel

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<sup>21</sup> Alexandre Walmott Borges, Giovanna Cunha Mello and Mário Angelo Oliveira, ‘Mecanismos garantidores do Direito Fundamental ao Ambiente na Política Nacional de Resíduos Sólidos: Análise dos princípios do Poluidor-Pagador e do Protetor-Recebedor’ (2010) 7(13/14) *Veredas do Direito* 191–212.

<sup>22</sup> *Ibidem*.

<sup>23</sup> Climate Litigation Database of Columbia’s Law School, ‘About – The Climate Litigation Database’ <https://www.climatecasechart.com/about>. Accessed 17 November 2025.

<sup>24</sup> Verfassungsgerichtshof, *G 106-107/2022-10, V 140/2022-10* (27 June 2023). [https://www.climatecasechart.com/documents/in-re-tax-benefits-for-aviation-decision\\_dce2?cpl=principal\\_law%2FAustria&cpl=principal\\_law%2FMineral+Oil+Tax+Act+of+2022](https://www.climatecasechart.com/documents/in-re-tax-benefits-for-aviation-decision_dce2?cpl=principal_law%2FAustria&cpl=principal_law%2FMineral+Oil+Tax+Act+of+2022). Accessed 17 November 2025.

from mineral oil tax. The applicant argued that this preferential treatment disadvantaged eco-friendly rail transport, exacerbating the climate crisis, and that this violated their constitutional rights to life and equality, as they suffered from Multiple Sclerosis and are severely impacted by heatwaves associated with climate change. The Court, however, rejected the application as inadmissible, for two main reasons: the applicant lacked standing because they were not the direct addressee of the tax norms; and, regarding the VAT exemption, the Court noted that the law had been amended effective January 1, 2023, which meant that the specific legal situation challenged by the applicant was no longer in force.

In Australia, the Federal Court judged the case of *Academy Cleaning & Security Pty Ltd v. Deputy Commissioner of Taxation*<sup>25</sup>, which concerned the disallowance of a \$420,000 income tax deduction claimed by the taxpayer for the purchase of carbon credits. Just prior to the end of the 2009 financial year, the taxpayer entered an agreement to purchase emissions units, paying a non-refundable deposit of \$63,000 (15%) while the remaining \$357,000 (85%) was payable only upon future delivery. The Court dismissed the appeal, ruling in favor of the Deputy Commissioner. It was held that the unpaid balance of \$357,000 was not an outgoing "incurred" under s 8-1(1)(a) of the Income Tax Assessment Act 1997 because the liability was contingent on the uncertain future creation of carbon credits, meaning the taxpayer was not definitively committed to the debt. Additionally, the Court found the expenditure was not "necessarily incurred" in carrying on the taxpayer's business under s 8-1(1)(b), characterizing it as a speculative investment rather than a legitimate marketing expense for its cleaning and security operations. Finally, the Court concluded that the transaction constituted a "scheme" under Part IV-A of the Income Tax Assessment Act 1936, as the dominant purpose was to obtain a tax benefit correspondent to a deduction grossly disproportionate to the actual outlay.

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<sup>25</sup> Federal Court of Australia, *Academy Cleaning & Security Pty Ltd v Deputy Commissioner of Taxation* [2023] FCA 480. [https://www.climatecasechart.com/documents/academy-cleaning-security-pty-ltd-v-deputy-commissioner-of-taxation-decision\\_ca5c?cpl=principal\\_law%2FAustralia&cpl=principal\\_law%2FIncome+Tax+Assessment+Act+1997](https://www.climatecasechart.com/documents/academy-cleaning-security-pty-ltd-v-deputy-commissioner-of-taxation-decision_ca5c?cpl=principal_law%2FAustralia&cpl=principal_law%2FIncome+Tax+Assessment+Act+1997). Accessed 17 November 2025.

In the United States, the U.S. Court of Appeals for the Fourth Circuit judged the case of *GenOn Mid-Atlantic LLC v. Montgomery County, Maryland* (Case No. 10-1882), which concerned a challenge to a local levy of \$5 per ton on carbon dioxide emissions imposed on major stationary emitters, with GenOn being the only expected subject. The County had partially earmarked the revenue for greenhouse gas reduction programs. The main question was whether this exaction was a "tax" (barred from federal jurisdiction by the Tax Injunction Act) or a "fee". The District Court had previously dismissed the case, ruling the levy was a tax and thus outside federal purview. However, the Circuit Court reversed this decision, holding that the charge was a punitive and regulatory fee, not a tax; after all, the burden fell exclusively on GenOn, creating a "class of one," which is characteristic of a punitive fee rather than a generally applicable tax. Furthermore, the Court found the charge was explicitly designed to incentivize emission reductions within a broader regulatory scheme rather than merely raise revenue. Consequently, the TIA did not apply, and the case was remanded for federal adjudication regarding the Plaintiff's constitutional claims<sup>26</sup>.

In Brazil, the Civil Appeal nº 5054992-22.2020.4.04.7000/PR, judged by the 4th Region's Federal Regional Court, involved a dispute between a Fuel Distributor and the Federal Treasury (União Federal) regarding the nature of the mandatory acquisition of Decarbonization Credits (CBIOS) under the National Biofuels Policy (RenovaBio, Law nº 13.576/2017). The distributing company challenged the obligation, arguing that the compulsory pecuniary payment backed by potential fines for non-compliance constituted a new, residual tax. They asserted this putative tax was unconstitutional as it failed to meet formal requirements, such as institution via complementary law and the principle of non-cumulativeness. The defendant contended that the CBIOS mechanism was an administrative environmental measure, consistent with international agreements like the Paris Agreement and constitutional mandates for environmental protection (Art. 225 of the Brazilian Constitution), not a tax. The court ultimately ruled against the

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<sup>26</sup> United states Court of Appeal (4<sup>th</sup> Circuit), *GenOn Mid-Atlantic LLC v Montgomery County, Maryland* (20 June 2011) Case No 10-1882. [https://www.climatecasechart.com/document/genon-mid-atlantic-llc-v-montgomery-county-maryland\\_300b?cpl=principal\\_law%2FUnited+States&cpl=principal\\_law%2FTax+Injunction+Act](https://www.climatecasechart.com/document/genon-mid-atlantic-llc-v-montgomery-county-maryland_300b?cpl=principal_law%2FUnited+States&cpl=principal_law%2FTax+Injunction+Act). Accessed 17 November 2025.

distributor, concluding that the CBIOS instrument did not possess the nature of a tax, as it primarily constituted an administrative obligation to compensate for emissions via a private market, rather than a direct pecuniary obligation owed to the Public Treasury<sup>27</sup>.

Thus, tax-related climate disputes are present in different jurisdictions. In many cases, courts have been asked to scrutinize tax exemptions, environmentally harmful subsidies, green incentives and carbon-market instruments as indirect or direct means of protecting the climate.

Many of these precedents are resolved on procedural or jurisdictional grounds, without reaching the core climate arguments. Typical obstacles include lack of standing, inadequacy of the chosen procedure, or supervening changes in the challenged legal framework. Other disputes are decided based on strict tax law reasoning, applying traditional concepts such as the definition of taxable events, the characterization of levies as taxes or regulatory fees, the rules on deductibility of expenses, and constitutional limits on the taxation power.

## **2. CLIMATE LITIGATION UNDER THE BRAZILIAN TAX REFORM**

As previously mentioned, Article 225 of the Brazilian Federal Constitution, states that everyone has the right to an ecologically balanced environment and is, thus, one of the main entryways for strategic climate litigation in Brazil. By applying and interpreting this rule, taxation can be used as an instrument for climate policy, because taxes can be designed to make polluters pay for the emissions and environmental damage they cause, and to support activities that reduce or absorb emissions.

Under the Brazilian Tax Reform, however, other entryways for climate litigation have been added in Brazilian Federal Constitution, providing new grounds for constitutional structured process.

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<sup>27</sup> Federal Regional Court (4<sup>th</sup> Region). Biostratum Distribuidora de Combustíveis SA v União (15 February 2024) Civil Appeal n° 5054992-22.2020.4.04.7000/PR. [https://www.climatecasechart.com/documents/biostratum-distribuidora-de-combustiveis-sa-v-federal-union-acquisition-of-cbios-petition\\_760c?l=brazil&cpl=principal\\_law%2FNational+Tax+Code+%28Federal+Law+5.172%2F1966%29&cpl=principal\\_law%2FBrazil](https://www.climatecasechart.com/documents/biostratum-distribuidora-de-combustiveis-sa-v-federal-union-acquisition-of-cbios-petition_760c?l=brazil&cpl=principal_law%2FNational+Tax+Code+%28Federal+Law+5.172%2F1966%29&cpl=principal_law%2FBrazil). Accessed 17 November 2025.

The Brazilian Tax Reform was introduced by Constitutional Amendment No. 132/2023, which, among other measures, reshaped the Brazilian system of consumption taxation in an effort to address distortions to neutrality, residual cascading effects, tax competition among subnational entities, and the regulatory complexity that had long characterized indirect taxation in Brazil<sup>28</sup>. To achieve this objective, the ICMS, ISSQN, PIS, and Cofins will be replaced by two non-cumulative taxes with broad tax bases and wide creditability (the Goods and Services Tax — “IBS”; and the Contribution on Goods and Services — “CBS”), and the IPI will be replaced by the Selective Tax (“IS”).

This new tax framework proposed by the reform is inspired by the international model of value-added taxation, adopted by more than 170 countries in the form of a Value-Added Tax (VAT) or Goods and Services Tax (GST)<sup>29</sup>.

In addition to introducing non-cumulative taxation, Constitutional Amendment No. 132/2023 also incorporated new guiding principles for the National Tax System into Article 145, § 3<sup>rd</sup>, of the 1988 Federal Constitution: simplicity, transparency, tax justice, cooperation, and environmental protection. Furthermore, § 4<sup>th</sup> of the same article establishes a directive requiring that legislative changes aim to mitigate the regressive effects of taxation, thereby reinforcing the commitment to greater fiscal equity. Finally, Article 159-A, § 2<sup>nd</sup>, was also included in the Brazilian Federal Constitution to provide that States shall prioritize projects that contain environmental sustainability and carbon emissions reduction actions:

“Art. 145. The Union, the States, the Federal District and the Municipalities may establish the following taxes: (...) § 3. The National Tax System shall observe the principles of simplicity, transparency, tax justice, cooperation, and environmental protection. § 4. Amendments to tax legislation shall seek to mitigate regressive effects.” (Translation by the author)

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<sup>28</sup> Fabiana Carsoni Fernandes, ‘A não cumulatividade do IBS e da CBS e o impedimento à dedução de créditos sobre aquisições de bens e serviços de uso ou consumo pessoal: o que esperar? Uma análise à luz da experiência do IVA de Portugal e do IVA da Espanha’ (2024) 58(42) *Revista Direito Tributário Atual* 362–388, p. 362.

<sup>29</sup> Antônio Machado Guedes Alcoforado, ‘A não cumulatividade do IVA-Dual (CBS e IBS) prevista na proposta de reforma tributária’ (2023/2024) 49 *Revista de Direito Tributário da APET* 239–263, p. 241.

“Art. 159-A. The National Fund for Regional Development is hereby established, with the purpose of reducing regional and social inequalities, pursuant to art. 3, III, through the transfer of federal resources to the States and the Federal District for: (...) § 2. In applying the resources referred to in the caput, the States and the Federal District shall prioritize projects that include actions for environmental sustainability and the reduction of carbon emissions.” (Translation by the author)

These devices have created 5 new entryways for climate litigation in Brazil.

### **2.1. New entryways for Strategic Climate Litigation under Brazilian Tax Reform**

There are at least five new entryways for climate litigation under the Brazilian Tax Reform:

1. Non-taxation of environmental harm;
2. Fiscal incentives for harmful products;
3. Lack of environmental differentiation;
4. Regressive tax policy effects;
5. Misuse of development funds;

The first entryway is mainly based on the excise tax provided in the Brazilian Federal Constitution. As mentioned, the new system is based mainly on broad consumption taxes (such as the IBS and CBS) and on a Selective Tax with an explicit regulatory function. If these taxes are created or regulated without considering climate impacts, this may be challenged through strategic litigation.

For example, a case could argue that the Selective Tax must differentiate between products according to their measurable environmental and climate impact, so that goods with higher emissions face a higher tax burden (operationalizing the polluter-pays principle). The claim would be that a neutral design that ignores emissions fails to use an available and suitable instrument to protect the environment, which would still be contrary to Article 225, but could also imply a violation to Article 145, § 3<sup>rd</sup>.

Although it does not involve environmental rights, a similar case is currently being judged by STF under ADO n° 55/DF<sup>30</sup> regarding the absence of a federal law disciplining the taxation of big wealth. Specifically, the claimant contested National Congress's failure to approve the supplementary law required to institute the tax on large fortunes, which never happened in almost three decades. The party argued that this legislative inertia violates the state's "power-duty" and fundamental republican objectives, specifically the reduction of social inequalities. Citing Brazil's regressive tax structure compared to G7 and OECD nations, the claimant sought a declaration of unconstitutional omission to force the prioritization of this redistributive mechanism.

On November 6<sup>th</sup>, 2025, STF declared the National Congress in unconstitutional omission regarding the enactment of the supplementary law required by Article 153, VII of the Federal Constitution to institute the tax on large fortunes.

The second entryway involves fiscal incentives for harmful products.

Through this entryway, litigation can also be used to review tax incentives. If the Government grants tax benefits to sectors that are highly carbon-intensive, without clear environmental justification, this may be attacked as a form of "negative" climate policy, because it encourages emissions instead of reducing them. Here, claimants can invoke constitutional principles of environmental protection (Article 225), efficiency in public administration (Article 37), and the non-regressivity principle, but also Article 145, § 3<sup>rd</sup>.

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<sup>30</sup> Federal Supreme Court, *Ação Direta de Inconstitucionalidade por Omissão 55 Distrito Federal* (Full Bench, 6 November 2025, Reporting Justice Cristiano Zanin) ADO 55. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5786819>. Accessed 17 November 2025.

A similar matter is being discussed in STF under ADIs n° 5.553/DF<sup>31</sup> and 7.755/DF<sup>32</sup> regarding tax incentives to pesticides.

In ADI 5.553/DF, the Socialism and Liberty Party challenges Clauses 1 and 3 of CONFAZ Covenant 100/97 and Decree 7.660/2011. These norms grant a 60% reduction in the ICMS calculation base and total exemption from the Tax on Industrialized Products (IPI) for various pesticides. The plaintiff argues these tax breaks violate fundamental rights to health and an ecologically balanced environment (Articles 196 and 225 of the Constitution) by stimulating the consumption of toxic substances. Furthermore, they contend the measures violate the principle of tax selectivity, arguing the State creates an "essentiality in reverse" by subsidizing harmful activities rather than taxing them heavily, thereby failing to discourage the use of dangerous goods.

In ADI 7.755/DF, the Green Party expands the scope of litigation by challenging not only CONFAZ Covenant 100/97 but also Article 9, §1, XI of Constitutional Amendment 132/2023 (the recent Tax Reform). The party argues these provisions form a "block of constitutionality" that perpetuates a 60% tax rate reduction for agricultural inputs, including pesticides. The claimant asserts these incentives constitute unconstitutional environmental retrogression and violate state duties to control dangerous substances. The Green Party also argues that subsidizing pesticides contradicts the principle of selectivity, as these chemicals are not essential for production but are detrimental to public health and biodiversity.

There was no definitive decision on this case up to November 17<sup>th</sup> 2025.

The third entryway regards the lack of environmental differentiation between taxable events or economic situations when imposing the tax burden, which might also violate art. 145, § 3, of the Federal Constitution. Based on this rule, taxpayers may decide to take the issue to court and argue that they deserve

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<sup>31</sup> Federal Supreme Court, *Ação Direta de Inconstitucionalidade 5.553 Distrito Federal* (s/d, Reporting Justice Edson Fachin) ADI 5553. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5011612>. Accessed 17 November 2025.

<sup>32</sup> Federal Supreme Court, *Ação Direta de Inconstitucionalidade 7.755 Distrito Federal* (s/d, Reporting Justice Edson Fachin) ADI 7755. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=7103152>. Accessed 17 November 2025.

a lighter tax treatment due to their lower environmental impact. Their claim would be that taxing environmentally different behaviors in exactly the same way goes against the constitutional rule that provides that taxes can be used as tools to promote environmental protection

The fourth entryway is related to the avoidance of regressive tax policy effects. Through the rule contained in Art. 145, § 4<sup>th</sup>, taxpayers may argue that certain environmental taxes should be struck down because they end up increasing the tax burden on low-income groups. Their claim would be that these taxes produce regressive effects, making poorer individuals pay proportionally more, which contradicts the constitutional requirement to prevent regressive outcomes in the tax system.

Indeed, climate policies must integrate social justice concerns, since market-based instruments like carbon taxes can disproportionately burden low-income households<sup>33</sup>. In such cases, strategic litigation focusing on regressive effects can compel the government to design the tax system to mitigate these distributional impacts. Arguments stemming from social justice and equity can be used to challenge a tax that exacerbates social gaps or to mandate revenue recycling programs aimed at compensating vulnerable communities, even if this taxation policy aims to protect the environment.

Lastly, the misuse of development funds can also give margin to Strategic Climate Litigation based on the provision of Art. 159-A, § 2<sup>nd</sup>. Even though this is a new entryway, this type of claim has already been made to STF, for instance, under ADPF 708<sup>34</sup> and ADO 59<sup>35</sup>. In ADPF 708, STF recognized the Union's unconstitutional omission in keeping the Climate Fund inoperative during 2019 and 2020. The Court established that the Executive has a constitutional duty to allocate resources annually for climate mitigation, prohibiting their contingency. Similarly, in ADO 59, the Court ruled that the Union's alteration

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<sup>33</sup> Martini C, 'The Distributive Effects of Carbon Taxation in Italy' in Soares CD and others (eds), *Critical Issues in Environmental Taxation: International and Comparative Perspectives: Volume VIII* (Oxford University Press 2010)

<sup>34</sup> Federal Supreme Court, *Arguição de Descumprimento de Preceito Fundamental 708 Distrito Federal* (Full Bench, 4 July 2022, Reporting Justice Luís Roberto Barroso) ADPF 708. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5951856>. Accessed 17 November 2025.

<sup>35</sup> Federal Supreme Court, *Ação Direta de Inconstitucionalidade por Omissão 59 Distrito Federal* (Full Bench, 03 November 2022, Reporting Justice Rosa Weber) ADO 59. <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5930766>. Accessed 17 November 2025.

of the Amazon Fund's governance structure, which paralyzed the allocation of over R\$ 3 billion in donations, constituted an unconstitutional omission, ordering its reactivation under the original governance model. Both decisions share the fundamental premise that environmental protection is a binding constitutional duty (Art. 225), not a discretionary political choice. In both instances, the STF enforced the prohibition of environmental retrogression, asserting that the State cannot dismantle or freeze existing financial mechanisms essential for combating climate change and meeting international commitments.

### **3. CONCLUSION**

This chapter examined how Constitutional Amendment No. 132/2023 reshapes the landscape of strategic climate litigation in Brazil by introducing five new entry points rooted in tax governance. Although climate-related tax disputes have appeared before, they generally emerged indirectly, embedded in broader environmental or administrative claims. The reform changes this dynamic by offering explicit constitutional anchors that can support climate arguments in tax disputes.

The first entry point concerns the absence of taxation on activities that generate environmental harm. Under the new framework, the Selective Tax and the broad-based VAT-style taxes (IBS and CBS) may be required to incorporate environmental burdens into their design. A neutral tax system that disregards measurable climate impact can now be questioned not only under Article 225 but also under Article 145, §3, which affirms environmental protection as a guiding principle of taxation.

A second entry point relates to fiscal incentives for carbon-intensive products. Claimants may challenge benefits that support sectors incompatible with climate commitments, arguing that these incentives contradict the constitutional duty to protect the environment and violate the principles of transparency and tax justice. Cases involving tax incentives for pesticides already illustrate how such disputes may evolve.

The third entry point involves the lack of environmental differentiation in tax policy. By establishing environmental protection as a principle of the National Tax System, the Constitution now

authorizes litigants to argue that tax burdens must account for the environmental profile of goods and services. If environmentally distinct activities are taxed identically, claimants may assert that the State has failed to use taxation as a constitutionally mandated regulatory instrument.

The fourth entry point addresses the duty to mitigate regressive effects. This introduces a social-equity dimension to climate taxation. Claimants may question environmental taxes that impose disproportionate burdens on low-income groups or argue for compensatory mechanisms that reduce inequality while maintaining environmental effectiveness.

The fifth entry point concerns the allocation of development funds. Article 159-A, §2 requires States to prioritize projects involving environmental sustainability and emissions reduction. Misallocation, stagnation, or diversion of these resources may constitute a constitutional omission, as previous jurisprudence on the Climate Fund and the Amazon Fund has already suggested.

Taken together, these five avenues expand the potential for structured constitutional litigation involving taxation. They also reinforce the trend in which the Federal Supreme Court employs structural remedies to address complex environmental and climate issues. As climate governance increasingly intersects with tax policy, these constitutional provisions will likely influence how courts evaluate the design, implementation, and distributive effects of fiscal measures. In this sense, the Tax Reform does not merely adjust the tax system; it reshapes the institutional pathways through which climate claims can be articulated and adjudicated in Brazil.

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