



# The extinction of the crime of tax fraud regarding the payment of the obligation in Ecuador

La extinción del delito de defraudación tributaria frente al pago de la obligación en Ecuador

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## ABSTRACT

This study focuses on the analysis of Article 298 of the COIP, which penalizes tax fraud and emphasizes the role of the Tax Administration as an active subject in the exercise of criminal action, even when taxpayers have fulfilled their obligations. It explores the relationship between income tax payment and the lack of harm to the protected legal interest in the crime of tax fraud, specifically in the "development regime" according to the regulation. The study addresses the complexity of tax fraud in the Ecuadorian legal context, focusing on the challenge of reconciling harm to economic development with the regulations allowing criminal action, despite compliance with tax obligations. Additionally, it examines the regulatory framework established in Article 298 of the COIP, which classifies illicit behaviors related to tax fraud. The objective is to assess the absence of harm to

the protected legal interest when income tax is paid or tax obligations are fulfilled in this criminal type. The qualitative methodology employed includes an analysis of the structure and modalities of the offense, using analytical-synthetic and deductive methods, along with literature and documentary review.

## RESUMEN

Este estudio se centra en el análisis del artículo 298 del COIP, que penaliza la defraudación tributaria y destaca el papel de la Administración Tributaria como sujeto activo en el ejercicio de la acción penal, incluso cuando los contribuyentes han cumplido con sus obligaciones. Se explora la relación entre el pago del impuesto a la renta y la falta de daño al bien jurídico protegido en el delito de defraudación tributaria, específicamente en el "régimen de desarrollo" según la norma, abordando la complejidad de la defraudación tributaria en el contexto legal ecuatoriano, enfocándose en la dificultad de conciliar la lesión al desarrollo económico y la normativa que permite la acción penal, a pesar del cumplimiento de las obligaciones tributarias. Además, se analiza el marco regulatorio establecido en el artículo 298 del COIP, que tipifica las conductas ilícitas relacionadas con la defraudación tributaria. El objetivo es evaluar la falta de perjuicio al bien jurídico tutelado cuando se realiza el pago del impuesto a la renta o se cumplen los deberes tributarios en dicho tipo penal. La metodología cualitativa empleada incluye un análisis de la estructura y modalidades del delito, utilizando métodos analítico-sintético y deductivo, junto con la revisión bibliográfica y documental.

## Keywords / Palabras clave

Tax Fraud, Tax Obligation, Crime, Omission, Intent, Deception

Defraudación Tributaria, Obligación Tributaria, Delito, Omisión, Dolo, Engaño.

## Introduction

The purpose of this research is to evaluate the lack of damage to the protected legal right when the payment of income tax is made or the tax duties are complied with according to the provisions of numeral 15 of article 298 of the COIP, and its relation with the lack of affectation to the economic development as a protected legal right in the

Ecuadorian context. To this end, research objectives and questions will be formulated to justify the relevance of the topic in the legal and economic sphere of the country. Income tax will be analyzed as one of the most important tax obligations and the configuration of the crime will be examined according to the elements established in the COIP. Likewise, the exceptions of affectation to economic development as a consequence of income tax evasion will be evaluated. The results will support the internal validity of the study.

We describe how informed consent was obtained from the participants and review the current regulations on tax obligations and their extinction. Then, it is examined whether or not there is damage to economic development, which is the legal good protected by the Tax Code (2005). According to article 15 of said code, the tax obligation is the personal legal bond between the State or the tax creditor entities and the taxpayers or responsible parties, who must comply with a benefit in money, species or services appreciable in money, upon the occurrence of the generating event established by law. Therefore, the tax obligation arises between the State and the taxpayer when the generating event occurs. Article 6 of the same code states the purposes of taxation.

Therefore, tax obligation is the legal duty that arises when the State requires a taxpayer to pay an amount of money for the realization of a generating event. Taxes not only have a collection function, but also have an extra-fiscal function, i.e., they serve to guide the general economic policy of the State.

This is established in Article 6 of the Tax Code (2005), which states that taxes must stimulate investment, reinvestment, savings and their channeling towards productive purposes and national development; meet the demands of social stability and progress and seek a better distribution of national income. Thus, the direct relationship between the purposes of taxation and the legal good protected by the Ecuadorian substantive criminal law, which is economic development, is evident.

Reyes (2008) defines this concept as the process in which the real per capita income of a country increases over a prolonged period of time. National economic development depends, among other factors, on state revenues, including tax revenues, which represent one of the country's main sources of public financing.

The tax obligation refers to the legal duty of individuals, companies and other entities to comply with the payment of taxes established by law. It arises as a consequence of the need to finance the expenses of the State and the maintenance of its structures and institutions (Ponce Álvarez et al., 2018). This obligation is established based on the economic activities declared by the taxpayer and may vary according to the type of tax and the economic activity carried out. Failure to comply with tax obligations entails tax penalties and may be considered a crime, as in the case of tax fraud.

Income tax is a tax levied on income earned by individuals or legal entities, whether derived from labor or capital. According to Article 1 of the Internal Tax Regime Law (2004), the purpose of this tax is to finance public spending and redistribute wealth. Therefore, it is a tax obligation that must be complied with within the term established by law. In order to determine whether this obligation is legally established, the following elements must be considered: active subject, passive subject, generating event, taxable base, rate and exemptions.

Income tax is applied to the liquid income obtained in the fiscal year by individuals or legal entities, national or foreign, as well as undivided successions. Income may come from various sources, such as dependent work, business activities, capital investments, among others. Most countries use a progressive tax system, where individuals or entities with higher incomes pay a higher proportion of their income in taxes.

The Tax Code (2005) defines the tax obligation as the legal bond that arises between the State (or collecting entities) and the taxpayers (taxpayers or responsible parties) when a generating event foreseen by law occurs, and which obliges them to make payments in money, in kind or services valued in money. In other words, it is the legal relationship established between the State and the taxpayers when a situation occurs that generates the duty to pay taxes. These tributes serve to finance the functioning of the State and its services, and to ensure the economic and social progress of the country (Ponce Alvarez et al., 2018; Tubón Guerrón, 2013).

Taxpayers are required to declare their income and calculate the corresponding income tax, following the regulations and procedures established by the tax authority. In some cases, deductions and exemptions may be applied that reduce the taxable base and, therefore, the amount of tax payable.

It is a mechanism that allows the State to finance its functions and improve social welfare, based on the contributive capacity of economic agents. Thus, the government can provide indispensable public services such as education, health, security and infrastructure. Income tax also has an economic role, by encouraging investment, reinvestment and savings, and a social role, by redistributing wealth through progressive taxation, reducing income gaps (Tubón Guerrón, 2013). Tax resources are invested in national development, supporting projects that promote sustainable growth and improve the quality of life. In conclusion, income tax not only seeks to raise funds, but also to generate equity, boost the economy and support initiatives that favor society.

32

Compliance with tax obligations, including income tax, is crucial for the economic and social stability of a country. Ignorance or non-compliance with these obligations can lead to penalties and negatively affect the country's growth and citizens' quality of life. Therefore, tax policies should encourage citizens to file and pay their taxes correctly and in a timely manner.

Failure to comply with the obligation to pay income tax results in the application of penalties by the tax administration. In addition, it may be considered a tax fraud offense if it is proven that there was an intention to evade payment by concealing or falsifying information.

According to Bramont-Arias (1992), in the field of economic crimes, it is found that the determination of the legal good cannot be established precisely, since it does not directly attack a socially respected value, but rather elements that ensure a space where other social values can fully develop. In clearer terms, the legal good in economic crimes contributes to the proper functioning of the social system, which presupposes the existence of other legal goods within it. Consequently, the legal good is presented as a concept of a macro-social nature, of interest and at the service of the collectivity as a whole, given that everyone participates in the relationship that defines the economic order.

By virtue of the foregoing and for the purpose of defining the legal good in economic crimes, it can be stated that it is composed of the "set of economic rules that structure a specific economic order of the State, essential for the satisfaction of the needs of all the members of the system". The legal good "economic order" is not conceived as any injury caused to the economy in the process of production,

distribution, consumption of goods and services, and subsequent investment (economic process). In these cases, the injury is caused by the perpetrator without considering or taking into account the economic order (without a devalued action against the economic order), but only taking into account the immediate damage caused to a legal good of a macro-social nature. It is important to highlight that the aforementioned injury may cause damage to the economic process as a devalued result, but it is not configured as an action consciously directed against the economic order itself.(COIP, 2014).

According to the above, the crime of tax fraud, typified in the COIP, attacks "economic development" as a protected legal good. This concept is examined in this part of our research, relating it to the payment of income tax. To this end, a journey is made from tax law to criminal law, seeking to understand the conditions that determine whether or not economic development is harmed by this offense.

Economic development is a fundamental objective of public policies, which seeks to improve the living conditions of the population through sustainable economic growth and equitable distribution of wealth. It is related to tax matters as it is a branch of law that regulates the relationship between the State and taxpayers, establishing the rules and principles that govern the imposition, collection and control of taxes.

Tax law has an essential role in the protection of economic development, since it allows financing the activities and public services that promote it, as well as guiding the behavior of economic agents towards social and environmental purposes. However, it must also respect the rights and guarantees of taxpayers, avoiding arbitrariness, abuse and confiscation in the exercise of taxation power. Thus, it must seek a balance between efficiency and equity, between collection and incentive, between control and trust, between general and particular interests. In this way, it contributes to economic development from an integral perspective, which considers not only the quantitative but also the qualitative aspect of economic activity.

In turn, its fundamental objective is to guarantee the economic development of a country by collecting taxes and preventing tax evasion (Forero Hernández, 2020). This principle implies protecting the economic and financial order of the nation, ensuring that the resources destined for development and public services are obtained in an equitable and efficient manner.

Criminal tax law, for its part, is responsible for punishing crimes against this legal right. These crimes not only harm the State's revenues, but also violate tax equity and justice, generating inequalities among taxpayers. Taxes are indispensable to finance the economic and social development of a country, since they allow investment in public infrastructure, education, health and other basic services that improve the quality of life of the population (Forero Hernández, 2020). Therefore, tax law and criminal tax law play an essential role in ensuring that all taxpayers comply with their fiscal duties.

The criminal system punishes actions that violate tax regulations, including the crime of tax fraud. This crime consists of concealing, omitting, falsifying or deceiving the Tax Administration in order to evade the payment of the corresponding taxes. Specifically, Article 298 establishes the following penalties, the purpose of which is to discourage tax evasion and guarantee the integrity of the tax system.

For such purposes, for paragraphs 1 to 11, the penalty is one to three years imprisonment. For paragraphs 12 to 14, the penalty is from three to five years, with a maximum penalty if the amount of sales receipts exceeds a certain limit. Items 15 to 17 have a penalty of five to seven years, with the possibility of the maximum penalty if the amount of taxes defrauded exceeds a certain threshold. Items 18, 19 and 20 carry a penalty of five to seven years, with the possibility of seven to ten years if the undeclared taxes exceed a certain threshold. Aggravated fraud, with the participation of tax administration officials, results in the maximum penalty and dismissal. For legal entities, the penalty is extinction and a fine of fifty to one hundred basic unified salaries. Legal representatives and accountants are liable; in cases of State withholding agents, in addition to the penalty, dismissal and disqualification for six months are applied.

The tax system must be fair, based on the principle of economic capacity of taxpayers. The prevention and prosecution of tax evasion is essential to ensure that the tax burden is shared equitably among all citizens, preventing some from taking undue advantage of the collective effort.

It is important to remember that the State is the active subject of this tax, while the passive subjects are natural persons, undivided estates and national or foreign companies, whether or not residing in the country, that receive income subject to taxation according to the law

(Forero Hernández, 2020). Thus, the protected legal right corresponds to the patrimony of the State.

Economic development as a protected legal good in tax law reflects the interconnection between tax collection, tax equity and the general welfare of society. Through an effective criminal tax system that punishes tax evasion and other forms of tax avoidance, it seeks to ensure that all taxpayers contribute equitably to the financing of public services and the economic development of the country. This approach not only promotes tax justice, but also contributes to building a more equitable and prosperous society.

In the formal tax sphere, all persons with an income above the annual exempt taxable base are subject to the filing and payment of the tax on their income. Exceeding such base, progressively implies the payment of income tax, through the application of the rate provided according to each range of income acquired by the different taxpayers (Vilcacundo, 2021).

As mentioned in the elements of income tax, the taxable base consists of adding all the taxable income and subtracting from them the deductible expenses that allow us to obtain the taxable profit. This item is subject to the application of the respective income tax rate.

The non-compliance of the referred tax entails the affectation of the treasury or national patrimony, since omitting taxable income or increasing deductible expenses implies the reduction of the income tax payable (Iglesias Capellas, 2011). This means that by reducing the taxable base, the Treasury is being harmed with an erroneous amount, which can be audited and claimed by the Internal Revenue Service, which is the competent body and the creditor of the tax, and, in addition, can lead to criminal consequences for possible tax fraud.

At this point, it is important to determine with precision the scenarios that entail the real materialization of a tax fraud crime, which produce the non-compliance of the tax obligation correctly calculated, in relation to the income tax and consequent affectation to the general budget of the State, understood as the protected legal good of the State: economic development.

The social and democratic State under the rule of law has the function of protecting the legal assets that guarantee the participation of individuals in society. Among these legal goods are the economic, social and political conditions that favor human development. For this

reason, compliance with tax obligations is a civic duty that contributes to the common good. By paying taxes, such as income tax, citizens contribute to the economic growth of the country and to the financing of public services provided by the State to improve the quality of life of the population (Linares, 2016). Thus, the payment of taxes is a form of social participation that reflects the commitment to the rule of law (Orrala, 2017).

In the Ecuadorian tax context, the analysis of the protected legal good in the criminal normative body, reveals a complexity inherent to the compliance with tax obligations, to be precise, on the payment of taxes; and, the search for a balance between the interests of the State, the taxpayers and national development (Linares, 2016). The fundamental notion underlying the legal protection of these interests is closely linked to the State's ability to collect revenues in a fair and efficient manner, thus promoting social welfare and progress.

The crime of tax fraud directly affects the legal property of the public treasury, which is supported by the economic resources that the State obtains through the collection of taxes. These resources are indispensable for the national government to be able to fulfill its essential functions, such as the provision of quality public services and the execution of infrastructure works that improve the living conditions of the population. Therefore, it is necessary to have a solid and efficient tax system that ensures the collection of the necessary revenues to meet the demands of the State and promote sustainable economic development. This is recognized by Morales (2021), who highlights the relevance of criminal tax protection as a mechanism to prevent and punish conducts that violate the fiscal assets of the State.

Another crucial aspect of the protected legal right is its link with the equity provided for in Ecuador's tax regulatory system. The distribution of the tax burden must be carried out in an equitable manner, ensuring that those with greater contributive capacity contribute more significantly (Morales & León, 2018). The application of equity seeks to avoid tax inequality and ensure that taxes are perceived as fair by the society in which it is applied, thus strengthening the legitimacy of the tax system.

Tax collection is an indispensable means to achieve national development, which is a legal value that must be protected and promoted. Taxes make it possible to finance projects and programs that drive growth and improve living conditions in various areas, such

as education, health and infrastructure. Therefore, it is necessary not only to preserve tax revenues, but also to use them efficiently to promote sustainable and equitable development. To ensure compliance with tax obligations, the State has administrative and criminal control mechanisms.

Criminal tax law punishes conducts that seek to evade or avoid the payment of taxes due, through the omission of income, the inclusion of expenses, costs, deductions, exemptions, rebates or withholdings that are false or nonexistent or higher than those established by law. These conducts are typified as crimes against the development regime in numeral 15 of article 298 of the COIP.

## **Materials and Methods**

The development regime is a special system that grants tax benefits to companies that carry out productive, innovative or social interest activities in certain areas of the country. In order to avoid tax fraud in the development regime, the following measures can be taken:

- Strengthen the control and inspection mechanisms by the Tax Administration, by verifying compliance with the requirements and obligations of the companies benefiting from the regime.
- Establish harsher penalties for violators, both administrative and criminal, to deter fraudulent behavior and generate an exemplary effect.
- Promote a tax culture based on ethics, responsibility and solidarity, through awareness, education and dissemination campaigns on the benefits of the development regime and the negative consequences of tax evasion.
- Encourage collaboration among the different actors involved in the development regime, such as local authorities, trade associations, social organizations and the media, to create a climate of trust and transparency in the management of public resources.
- Implement tax simplification and modernization measures, which facilitate voluntary compliance with tax obligations by companies, reduce administrative costs and improve the efficiency and effectiveness of the tax system (Mendoza Llamacponcca, 2018).

Tax legislation is a key element for the economic development of a country, since it allows the State to establish the appropriate mechanisms to finance public expenditures that benefit the population and growth; being one of the main revenues of the State the tax one. However, there are individuals or companies that fail to comply with their tax obligations through acts of fraud, which consist of hiding, omitting, falsifying or deceiving the tax authority to avoid paying taxes.

These behaviors not only harm the collection of resources, but also generate a situation of inequity and fiscal injustice, by obtaining an undue advantage over other taxpayers and affecting the common good and the national interest. For this reason, the State has a criminal tax system, which is the set of rules and procedures that establish the penalties applicable to violators of the tax law, including the crime of tax fraud.

The purpose of this system is to deter and punish these illegal conducts, thus guaranteeing the integrity of the tax system and supporting the country's economic development regime. Penalties may be of a criminal nature, such as imprisonment, or of an administrative nature, such as fines and other corrective measures that seek to restore the legal order and protect the legal good of economic development.

The enactment of regulations to prevent fraudulent or evasive conduct seeks to preserve the integrity of the system. The effectiveness in collection is subject to the prevention and prosecution of practices that may undermine the tax base (Mendoza Llamacponcca, 2018). Thus, the protection of this legal good implies the implementation of measures that guarantee transparency and legality in the payment of tax obligations.

Consequently, a tax system emerges that aspires to become an instrument of economic development, equity and social justice. However, this balance is delicate and subject to constant challenges. The tension between the need for revenue collection and the preservation of equity can generate conflicts, especially in taxpayers' perception of the fairness of tax burdens.

It is essential to highlight that, when analyzing the protected legal good referred to in this article, certain questions related to the application of tax regulations arise. Equity, for example, becomes a key principle to prevent the burden from falling disproportionately on specific segments of society. The struggle for equity is manifested in the

constant revision of tax structures to ensure that those with greater capabilities contribute adequately.

The relationship of the development regime and the criminal tax system to the crime of tax fraud is fundamental to the protection of the legal good of economic development. The development regime refers to the policies and strategies implemented by a country to promote economic growth and the welfare of its citizens. Tax collection is essential to finance a country's economic and social development. Taxes provide the necessary resources for public infrastructure, education, health and other essential services that promote the general welfare of the population.

The criminal tax system, by sanctioning tax fraud, seeks to deter and punish these illegal conducts, thus ensuring the integrity of the tax system and contributing to the country's economic development regime. Penalties may include custodial sentences, fines and other measures that seek to reestablish the legal order and protect the legal good of economic development. In short, economic development as a protected legal good in tax law reflects the interconnection between tax collection, tax fairness and the general welfare of society.

Through an effective criminal tax system that punishes tax evasion and other forms of tax avoidance, it seeks to ensure that all taxpayers contribute equitably to the financing of public services and the economic development of the country. This approach not only promotes tax justice, but also contributes to building a more equitable and prosperous society.

#### Analysis of the Configuration of the Tax Fraud Offense

The crime of tax fraud, provided for in Article 298 of the Organic Comprehensive Criminal Code (2014), which punishes anyone who deceives or evades the tax authorities through various fraudulent conducts, is analyzed. It focuses especially on numeral 15 of said article, which punishes whoever declares lower income than the real ones or includes false or excessive expenses or deductions, in order to reduce the amount of taxes to be paid. For this purpose, the legal regulations in force are studied and the constituent elements of this type of tax infraction in Ecuador are identified.

Tax fraud covers the formal tax and criminal tax spheres, as it evidences an alleged damage to the State in terms of the reduction in tax collection and the fraudulent intention to evade taxes.

The Comprehensive Organic Criminal Code (2014), in its third chapter establishes the extinction of the penalty. As such, there is no definition of extinction of the crime, rather than a typical, guilty antijudicial conduct punishable by the norm, in accordance with this, the extinction of the crime implies extinction of the penalty (Prado, 2000). Even so, the doctrine establishes that the modes of extinction of the crime, in other legislations, occur by death of the offender or by prescription (Forero Hernández, 2020).

This research seeks to demonstrate that the crime of tax fraud, established in article 298, numeral 15 of the COIP, does not affect the protected legal right (economic development), when it comes to the payment of income tax. Likewise, the final paragraph of the same article is questioned, which provides that the investigation, prosecution and punishment of this crime will be carried out regardless of the payment or compliance with tax obligations.

For this purpose, it is necessary to analyze the constituent elements of the crime of tax fraud, in order to determine whether or not the criminal offense in question is configured, through a detailed study of the applicable legal norm.

In addition, the criterion of the National Court of Justice expressed in Ruling No. 17282-2017-03592 (2020) should be considered, in which it is held that the failure to pay taxes is not an essential element of the criminal type. Let us recall that omitting means not doing, saying or consigning something voluntarily or involuntarily. However, the last paragraph of Article 289 of the COIP (2014) states, "Each case will be investigated, judged and sanctioned without prejudice to the fulfillment of tax obligations, as well as the payment of taxes due."

The COIP defines antijudicity in its article 29 and states that the criminally relevant conduct will be antijudicial when it threatens or injures, without just cause, a legal good protected by this Code (Mogrovejo, 2011).

According to Mogrovejo, the COIP is intended to punish atypical and unlawful actions, but it cannot punish mere intentions. Thus, having a bad intention to generate damage cannot be considered as the commission of a crime, since for the configuration of a fraudulent crime there must be an imminent damage.

Crimes against the public treasury and social security are those that affect the economic interests of the State, which is in charge of

collecting and administering taxes and social security contributions. The active subject of these crimes is the person obliged to pay who, by means of deceit or simulation, totally or partially evades his tax or social security obligations. The passive subject is the State, represented by the Tax Administration or the Social Security.

These crimes have an objective dimension, which refers to the typical, antijudicial and punishable conduct described in the criminal law, and a subjective dimension, which is related to the elements that make up the culpability of the perpetrator, such as intent, recklessness, spirit or tendency. Criminal law protects, through these crimes, the social conditions that allow the participation of individuals in society, guaranteeing solidarity and redistribution of wealth. Thus, if the conduct is not correctly assessed, the two sides lose their function, there is no causal nexus, therefore, neither a responsible party nor the materialization of the crime.

## Results

Tax fraud, according to article 298 of the Organic Integral Penal Code, contains several grounds for prohibition that detail the criminal conduct that indicates the infraction. The first paragraph of this article establishes that there is tax fraud when a person hides, omits, falsifies or deceives the administration in the determination of the tax obligation, avoiding the total or partial payment of the taxes due, either for his own benefit or for the benefit of a third party.

The COIP establishes that the mere intention to cause damage to the State, without materializing, is not sufficient to constitute a criminal offense. It is necessary that there is a concrete harmful action that generates a damage to the protected legal good, in this case, the economic development. Therefore, tax evasion requires acts that evidence fraudulent intent, i.e., the purpose of causing damage through tax evasion.

It is often difficult to prove that the omission in the payment of taxes is done with the intention of harming the economic development of the country. In addition, the complexity of tax legislation can lead to taxpayers not fully understanding their obligations or facing economic difficulties that prevent them from complying with them. In these cases, non-payment may not be considered as an act of tax fraud if there is no intention to benefit oneself or third parties. Therefore, we can say that there may be situations where compliance is omitted due

to the impossibility of making the payments, but not due to the intention of impeding economic development.

The Tax Administration has the power to impose default interest to taxpayers who omit or delay their payments, as well as to determine the value of the tax that corresponds to each one. This power seeks to guarantee compliance with tax obligations and the economic development of the country. However, what happens when the taxpayer pays the value determined by the Tax Administration, but it differs from the one he declared? Can it be considered that there is a damage to the economic development, even if it is not permanent?

The answer is even more complicated than just proving the existence of fraud, since the payment of the obligations allows to put an end to the interruption of the economic development, but it cannot be said that an irreversible or permanent damage was done.

The central debate is whether the total and unconditional payment of the outstanding tax obligations can extinguish the criminal action for tax fraud. The criminal tax law contemplates cases in which the payment of the debt can lead to the extinguishment of the criminal action. This raises the question of whether, once the obligation determined by the Tax Administration has been fulfilled, it is still possible to demonstrate damage to the protected legal asset and, therefore, to maintain the charge of an alleged crime of tax fraud.

The general order to close the criminal investigation reveals that it is not always possible to establish a clear link between the crime of tax fraud and the responsible parties when there is no evidence of damage to the protected legal interest or fraudulent intent in the action. This case suggests that the payment of tax obligations, even after the initiation of an investigation, could mitigate or eliminate the alleged damage caused, questioning the appropriateness of the criminal sanction.

The extinguishment of the crime of tax fraud versus payment of the obligation in Ecuador is a complex issue that requires a detailed analysis of the taxpayer's intentions and the real impact of his actions on economic development. While the COIP penalizes actions that actually cause harm, the possibility of extinguishing the criminal action through payment of the outstanding tax obligation raises a debate on the nature and purpose of penalties for tax fraud. This approach seeks to balance the need for tax compliance with the recognition of the economic and legal realities faced by taxpayers.

## Conclusions

This paper examined the extinction of the crime of tax fraud and the non-existence of damage to the protected legal interest "economic development" in Ecuador, according to the final paragraph of Article 298 of the Comprehensive Organic Criminal Code (COIP). In conclusion, when analyzing the extinction of the crime of tax fraud in the Ecuadorian context, specifically in relation to the fulfillment of tax obligations, especially the payment of income tax, the importance of understanding the direct connection between these actions and the preservation of the economic development of the country is highlighted.

43

Within the framework of the extinction of the crime, it is evident that compliance with tax obligations, such as the timely payment of income tax, emerges as a crucial element. This compliance not only implies acting in accordance with tax regulations, but it is also a fundamental pillar for safeguarding the protected legal asset, which is the "economic development" of the nation.

In this context, the relationship between tax compliance and the absence of harm to economic development manifests itself as an essential interconnection. The payment of taxes is perceived not only as a legal obligation, but also as a direct mechanism to contribute to the proper functioning of the State's economic system. The lack of harm to economic development is consolidated when taxpayers honor their tax commitments, which, in turn, has a positive impact on the progress and general welfare of society.

The analysis focused on the crime of tax fraud, particularly on numeral 15 of article 298, which deals with the omission of income to evade the payment of taxes. The criminal and tax perspectives were examined, pointing out inconsistencies and possible problems of interpretation. In addition, the challenges arising from the criminalization of this offense in the Ecuadorian legal system were evaluated, exploring constitutive elements such as intent, contributive capacity and criminal consequences.

The relevance of the final paragraph of article 298, which establishes a presumption of fraud in case of repeated noncompliance with tax obligations, was evaluated, discussing its impact on the legal security of taxpayers. The importance of tax compliance as a civic duty for the financing of public policies and the economic development of the

country was emphasized, identifying inconsistencies between the criminal and tax perspectives, especially in cases where non-payment does not denote an intention to harm the Treasury.

## References

- Asamblea Nacional Constituyente. (2004). Ley de Régimen Tributario Interno LRTI. Decreto Legislativo 26. Registro Oficial Suplemento 463. Última modificación 2024-01-11. Estado Vigente. [https://eclexpro.lexis.com.ec/lts-visualizer?id=TRIBUTAR-LEY\\_DE\\_REGIMEN\\_TRIBUTARIO\\_INTERNO\\_LRTI&codRO=02218403F227F5748FAE51C1D9DAEE35B8879CB9&query=%20ley%20r%C3%A9gimen%20tributario%20interno&numParrafo=none](https://eclexpro.lexis.com.ec/lts-visualizer?id=TRIBUTAR-LEY_DE_REGIMEN_TRIBUTARIO_INTERNO_LRTI&codRO=02218403F227F5748FAE51C1D9DAEE35B8879CB9&query=%20ley%20r%C3%A9gimen%20tributario%20interno&numParrafo=none)
- Asamblea Nacional Constituyente. (2014). Código Orgánico Integral penal. Decreto Legislativo 0. Registro Oficial Suplemento 180. Última modificación 17-02-2021. Estado Vigente. [https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/03/COIP\\_act\\_feb-2021.pdf](https://www.defensa.gob.ec/wp-content/uploads/downloads/2021/03/COIP_act_feb-2021.pdf)
- Auto General Archivo de Investigación Fiscal Nro. 16281201900929G, (28 de enero de 2020). <https://procesosjudiciales.funcionjudicial.gob.ec/expel-actuaciones>
- Bramont-Arias, L. (1992). Delitos económicos y bien jurídico. En IUS ET VERITAS, (5), <https://revistas.pucp.edu.pe/index.php/iusetveritas/article/view/15362>
- Congreso Nacional. (2005). Código Tributario. Decreto Legislativo 9. Registro Oficial 417. Última modificación 20-12-2023. Estado Vigente. [https://eclexpro.lexis.com.ec/lts-visualizer?id=TRIBUTAR-CODIGO\\_TRIBUTARIO&codRO=8836CD09B9BEF970792858D27C4BC33D98F5F810&query=%20codigo%20tributario&numParrafo=none](https://eclexpro.lexis.com.ec/lts-visualizer?id=TRIBUTAR-CODIGO_TRIBUTARIO&codRO=8836CD09B9BEF970792858D27C4BC33D98F5F810&query=%20codigo%20tributario&numParrafo=none)
- Sentencia No. 17282-2017-03592, (Tribunal De Casación De La Sala Especializada De Lo Penal, Penal Militar, Penal Policial, Tránsito, Corrupción Y Crimen Organizado De La Corte Nacional De Justicia 9 de julio de 2020).
- Echavarría Ramírez, R. (2014). Consideraciones sobre el bien jurídico penalmente protegido por el delito de defraudación tributaria del art. 305 C.P. español. Revista electrónica de ciencia penal y criminología, 16, 4.

- Forero Hernández, C. (2020). El bien jurídico protegido en el delito de defraudación o evasión tributaria. Una visión desde las legislaciones colombiana y española. *Nuevo Foro Penal*, 16(95), 191-233. <https://doi.org/10.17230/nfp16.95.7>
- Iglesias Capellas, J. (2011). La regularización de la defraudación tributaria constitutiva de delito contra la Hacienda Pública. *Revista de Contabilidad y Tributación. CEF*, 5-50. <https://doi.org/10.51302/rcyt.2011.6861>
- Linares, M. B. (2016). EL DELITO DE DEFRAUDACIÓN TRIBUTARIA. ANÁLISIS DOGMÁTICO DE LOS ARTS. 305 Y 305 BIS DEL CP [Tesis Doctoral, Universidad de Sevilla]. <https://idus.us.es/bitstream/handle/11441/66862/Mar%C3%A1Da%20Bel%C3%A9n%20Linares.%20Tesis.pdf?isAllowed=y&sequence=1>
- Mendoza Llamacponcca, F. N. (2018). Delitos tributarios como actos criminales previos al delito de lavado de activos. *Revista de la Facultad de Jurisprudencia RFJ*, 279-321. <https://doi.org/10.26807/rfj.voi3.48>
- Mogrovejo, J. C. M. (2011). Las sanciones en materia tributaria en el Ecuador. *Foro: Revista de Derecho*, 15, Article 15.
- Morales Castro, S., & León Sánchez, F. X. (2018). La caducidad tributaria en el impuesto a la renta: Aplicación práctica en la legislación ecuatoriana. *INNOVA Research Journal*, 3(8.1), 99-112. <https://doi.org/10.33890/innova.v3.n8.1.2018.770>
- Morales Navarrete, M. A. (2021). La defraudación tributaria y la proporcionalidad de las penas en el Ecuador. *Sociedad & Tecnología*, 4(S1), 133-143. <https://doi.org/10.51247/st.v4iS1.119>
- Orrala, M. Á. S. (2017). El Delito Tributario en el Ecuador. *Empresarial*, 11(41), Article 41.
- Prado, V. (2000). Causales de extinción de la acción penal y de la ejecución de la pena. En *Derecho PUCP: Revista de la Facultad de Derecho*, (53), 905-947. <https://dialnet.unirioja.es/servlet/articulo?codigo=5085010>
- Ponce Alvarez, C., Pinargote Vásquez, A., Chiquito Tigua, G., Baque Sánchez, E., Quiñonez Cercado, M., Campozano Chiquito, G., & Salazar Pilay, M. (2018). Desconocimiento de obligaciones tributarias y su incidencia en el Impuesto a la Renta. 4(3), 294-312.
- Reyes, G. (2008). Política Económica, crecimiento y desarrollo humano: Principales relaciones. *Tendencias*, 9(1), 101-126.
- Tubón Guerrón, M. S. (2013). La obligación tributaria sustantiva y su extinción. En el caso de los estados miembros de la Comunidad

Andina [Tesis de Maestría, Universidad Andina Simón Bolívar].  
<https://repositorio.uasb.edu.ec/bitstream/10644/3194/1/T1175-MDE-Tubon-La%20obligacion.pdf>

Vilcacundo, X. (2021). EVOLUCIÓN NORMATIVA DEL DELITO DE DEFRAUDACIÓN TRIBUTARIA EN EL ECUADOR. *Revista de Investigación Enlace Universitario*, 20(1), 1-7.  
<https://doi.org/10.33789/enlace.20.1.80>