

DOI: 10.5281/zenodo.12426546

TRANSIGIBILITY OF THE TAX OBLIGATION: APPLICATION OF THE TRANSACTION IN THE FACE OF THE JUDGMENT

Walter Patricio Garnica Bustamante^{1*}, Sandro Vinicio Vallejo Aristizabal²

¹Universidad Tecnológica Indoamérica

Received: 21/12/2025
Accepted: 17/01/2026

Corresponding Author: Walter Patricio Garnica Bustamante
(wgarnica@uti.edu.ec)

ABSTRACT

This article addresses the legal question of whether it is legally feasible to apply the concept of settlement to tax obligations once a final judgment exists, considering the principles of legality, non-availability of tax credit, and the public interest. This problem arises from the growing need of taxpayers and the State itself to find effective mechanisms for resolving tax disputes without violating the legal system. The general objective of this research is to analyze the possibility and legal limits of applying settlement in the tax field, even in the face of a final judgment, identifying conditions and restrictions that allow its use without affecting the State's tax authority or compromising legal certainty. The methodology employed was qualitative, with a dogmatic-legal approach, based on normative, doctrinal, and jurisprudential analysis, both national and comparative. Document review was used to examine legal bodies, relevant rulings, and doctrinal contributions on the nature of tax obligations and the means of dispute resolution. The main finding of the research is that, while the principle of unavailability limits transactions in tax matters, they are not absolutely prohibited.

KEYWORDS: Transaction, Tax Obligation, Final Judgment, Public Law, Tax Dispute Resolution.

1. INTRODUCTION

The transaction is an alternative dispute resolution mechanism, which allows the parties to reach agreements without the need to reach litigation or, given the same, without having to reach a court ruling. Despite its regulatory recognition, its application in tax matters is still limited in large part due to the lack of knowledge of these benefits, and the perception among taxpayers that litigation is inevitable in this area. This research analyzes the transigibility of the tax obligation in Ecuadorian legislation, focusing on the application of the transaction in the face of the judicial judgment, its legal feasibility, and its potential to alleviate the burden of the courts, the analysis of the subjects involved in the transactional process as well as the challenges faced by its implementation in practice; and the use of the transaction as a preventive and resolute mechanism in tax conflicts, within the framework of the Ecuadorian legal system. In the tax field, disputes between the administration and taxpayers have traditionally been resolved through formal court proceedings. However, the transaction emerges as an alternative that allows conciliation between both parties, to resolve or prevent conflicts, promoting faster, cheaper, and more satisfactory solutions for the tax authorities and taxpayers (Pérez, 2021).

The research defines what is the transigibility of the tax obligation, describes the system of determination of taxes in which it is possible to compromise, the transigible aspects at each stage of the tax obligation cycle (determination, challenge, collection), the formalities that must be observed to request a transaction, the competent authority, the legal capacity to request the transaction, the effects resulting from the agreements reached, the advantages of mediation for the Administration and the Taxpayer, and the favorable and adverse circumstances for the Administration and the Taxpayer, which condition the success of a transaction (Ramírez, 2020).

2. METHODOLOGICAL FRAMEWORK

To analyze the transaction as a preventive and tax dispute resolution mechanism in Ecuador, the interpretations of the law and doctrinal opinions of experts in tax matters are examined. This review takes into consideration the current regulatory context including: the General Organic Code of Processes (COGEP, 2015), the Tax Code (COT, 2021), the Organic Code of the Judicial Function (COFJ, 2009), the Civil Code (2019), the Arbitration and Mediation Law (LAyM, 2006) and the Constitution of the Republic of Ecuador (CRE, 2008). By having the

main concepts, the limitations and challenges of the transaction in tax conflicts can be defined, as well as its possibilities to reduce the burden of legal litigation in force in the regulation (Romero, 2023).

Ultimately, it seeks to promote a change of approach in the resolution of tax conflicts, which is oriented towards conciliation and assisted negotiation. This approach seeks to identify barriers and practices that have limited its application and proposes a deep understanding of the current conditions of the use of this mechanism. This study uses the method of analysis and synthesis, which allows the object of study to be broken down into its constituent parts to understand it in depth (analysis) and then integrate these parts to obtain a holistic understanding of the phenomenon (synthesis) (Salcedo, 2022). This method is key to examining the legal and doctrinal foundations of the transaction in the tax field, allowing to identify its advantages and limitations within the Ecuadorian regulatory framework. The research is based on an exhaustive review of documentary sources, including specialized books on tax law and current regulations.

This approach will make it possible to evaluate the applicability of the transaction in practice and determine the challenges faced by its implementation in the Ecuadorian legal system, evaluate the effectiveness of current legislation, and propose strategies for its correct application in the resolution of tax conflicts in Ecuador (SRI, 2021).

3. RESULTS

3.1 Transaction

Doctrinal Characterization:

As a starting point, it is necessary to address what Valencia (2024) pointed out regarding the characteristics of the transaction, the mediation processes, the implications of the transaction and conclusions that can be drawn from this work, which is referential, current and pertinent to this research, whose author was also a member of the highest Court of Justice in Tax matters. According to Valencia (2024), "The tax transaction has been incorporated as a mechanism to extinguish tax obligations in Ecuador, especially after the reform introduced by the Organic Law on Economic Development and Fiscal Sustainability (LODES) in 2021. This mechanism allows taxpayers and the Tax Administration to reach agreements on the tax obligation, including interest, surcharges and fines" (Calva, 2022).

The author also explores the defining characteristics of the transaction, starting with its nature as a mechanism to extinguish tax obligations,

applicable both in the determination and in the tax collection phase. For it to be valid, the transaction requires the fulfilment of several essential requirements, including the existence of a genuine dispute regarding the tax obligation, the presence of an uncertain or negotiable element, and the manifestation of the willingness of both parties to reach an agreement through mutual concessions.

A crucial component in the transactional process is mediation, an essential procedure that requires interested taxpayers to submit their request to a qualified mediator, who will facilitate the search for an agreement that resolves the tax dispute without resorting to litigation. Finally, the author analyzes the implications of the transaction, pointing out that it does not release the taxpayer from his duty to comply with his tax obligations, so the agreements reached must be honored, without negatively affecting collection. It also underlines the importance of the principle of good faith, which obliges both the Tax Administration and the taxpayer to act honestly during mediation, seeking an agreement that benefits both parties and ensures collection sufficiency (Coronel, 2023).

Legal characterization:

In the tax field, the transaction is a figure of recent legislative creation (November 2021), for this reason there are few scientific studies carried out on its application and its application is also restricted to conflicting tax audits, for these reasons the literary production is scarce, mainly the confidentiality of these processes that is provided for in the Arbitration and Mediation Law hinders a more in-depth investigation. However, its study is based on certain general aspects of the transaction that has been applied in other matters, as well as the analysis of the tradable and non-negotiable aspects of the tax obligation established by the rules (Cabanelas, 2019).

The transaction is a procedure that aims to resolve controversies in tax matters, to realize the Principle of Procedural Speed, a constitutional principle that establishes that judicial processes must be fast and effective, this principle is regulated in the Constitution of the Republic of Ecuador (CRE, 2008) articles 169 and 76, Organic Code of the Judicial Function (COFJ, 2009) Article 18, Civil Code Articles 2348 to 2366, General Organic Code of Proceedings (COGEP, 2015) Article 235, Tax Code (COT, 2021) Articles 56.1 to 56.16 and Article in numbered after Article 71 *idem*, which seek to ensure that judicial processes are resolved in the shortest possible time, without affecting the right of the procedural subjects to reach an agreement with which any tax conflict

ends, whether in administrative or judicial proceedings (Díaz, 2023).

The origin of the conflict in tax matters, however, arises during a non-judicial procedure; it must be said that if such a conflict is referred to the judicial seat, tension is generated between the right to appeal the administrative acts indicated in Article 173 of the Constitution of the Republic and the principle of procedural celerity, since the referral of conflicts to the judicial seat saturates the office of the jurisdictional bodies competent to resolve tax controversies. Thus, in the same order of ideas, Art. 2348 of the Civil Code defines a transaction as a contract in which the parties terminate a dispute, it states that an act that does not consist of the waiver of a right that is not disputed is not a transaction (Civil Code, 2019).

Articles 2349 and 2350 of the Civil Code are in line with Chapter III and 43 of the General Organic Code of Proceedings, which determine who is eligible to compromise and who is capable of making a transaction, stating that the capacity of the person who may compromise is that of the person capable of disposing of the subject matter that can be compromised (COGEP, 2015). In tax matters, the taxpayer, responsible or substitute and the Tax Administration are subjects of the transaction (Tax Code, 2021). The subjects may also act through agents as provided for in common law, that is, through judicial attorneys, special public proxies when they have been constituted in a recognized writing or by delegation granted by the entity or Attorney General of the State; and private proxies constituted by a deed of judicial procuratorship or general or special power of attorney (COGEP, 2015).

Alternative means of dispute resolution are a rare topic today, novel and very different from the traditional way of ending a dispute exclusively by judicial means. In the specific case, the Tax Code has provided: "Art. 37.- Modes of termination. - The tax obligation is extinguished, in whole or in part, by any of the following means: (...) 6. (Added by No. 3 of Art. 72 of Law s/n, R.O. 587-3S, 29-XI-2021). - Per transaction." (Tax Code, 2021) which delimits the transigibility of the tax obligation. Carnelutti (1944) developed a concept of litigation, which he defines as: "the conflict of interests qualified by the claim of one of the interested parties and by the resistance of the other" (Ortega, 2020).

Tax litigation comes from the tax obligation or tribute, conceived since the beginning of history as a burden that falls on the citizens of a state, in exchange for indeterminate benefits such as defense against a foreign enemy, internal security, or collective

burdens that are necessary for the construction of works of general interest. It is the power of the State to provide the services or the execution of the works, as well as to obtain the resources it demands. Although the duty to pay the economic burden of the tax on the part of the citizen is beyond dispute, its amount, time and form of payment; and, moratorium surcharges if they are a cause for controversy (González, 2022).

The legal foundations that support the transaction in Ecuadorian tax law are mainly found in the Civil Code, a regulatory body that establishes the general conditions for the extinction of obligations through this mechanism. Likewise, the Tax Code plays an essential role in specifically regulating the extinction of the tax obligation by transaction, detailing the power of the Tax Administration to carry out these agreements and the procedures established to compromise both inside and outside a judicial litigation. The General Organic Code of Procedures is also relevant when determining the opportune time to compromise within a judicial litigation, specifically before the corresponding judgment is issued (Luzuriaga, 2024). Finally, the Arbitration and Mediation Law complements this legal framework by regulating the exercise of the opportunity to compromise, either once a judicial dispute has been initiated or even before it occurs.

The process of implementation in administrative headquarters is during the tax determination or after said power has been exercised while a claim against the act that determines a tax obligation is pending. In court during tax litigation. Even after the tax obligation has been determined and final, either because it was not challenged in court or because such challenge was definitively resolved, it is still possible to compromise aspects of its enforcement both in exceptions to the coercive (judicial seat) and when processing an appeal for review (administrative seat) (Mayorga, 2024).

Characterization by stages of the tax determination:

The transaction proceeds once there is a conflict between the creditor of the tax and the taxpayer, in our legislation this occurs in those taxes that the Authority submits to audit (determination) a taxpayer, after he has made his tax declaration, as indicated in article 56.1 of the Tax Code: "... by virtue of which (the transaction), an administrative or judicial proceeding is concluded as a result of the agreements embodied in a transactional act..." (Tax Code, 2021) the same is noted in article 56.3 of the Tax Code when it states: "... Taxpayers who have not filed tax returns, until the date on which the determination

order is notified, may not extinguish the obligations determined by the active subject per transaction..." (Tax Code, 2021). Therefore, it can be concluded that the tax transaction requires the exercise of a tax determination on a tax return that precedes.

The proceeding of the transaction implies that the taxpayers' returns suffer from errors, while at the same time, as a result of the tax determination, these errors are exposed, that is, it is assumed that the tax returns have defects at risk of being detected, to give rise to the transaction. Although the transaction deals with the tax obligation, Article 56.2 of the Tax Code also indicates other matters derived from it that become transigible: "... the determination and collection of the tax obligation, its interest, surcharges and fines, as well as the terms and facilities for payment of the obligation. The transaction may involve the lifting of all or part of the precautionary measures issued against the taxpayer..." (Tax Code, 2021).

The so-called "... concessions on factual aspects of uncertain valuation disputed during the phase of determination of the taxable base or within contentious proceedings..." (Tax Code, 2021). According to Resolution NAC-DGERCGC22-00000036, the factual aspects of uncertain valuation are "... facts for which there are circumstantial or mediate means of evidence, which correspond to a subjective assessment with respect to their existence or the circumstances in which they occurred..." (Director General of the Internal Revenue Service, 2022).

From the foregoing, it can be concluded that concessions made on facts for which there are circumstantial or mediate means of evidence, of subjective assessment, are also negotiable; with respect to their existence or the circumstances in which they occurred. In my opinion, this refers to the fact that, due to the passage of time or the nature of things, it is not possible to determine the existence of certain relevant facts to determine the tax liability, which are related to deductible expenses or inventory losses, for example, the disappearance of fuels, or the perishing of biological assets, when they are due to deficiencies or difficulties in their storage or conservation (Paredes, 2023).

There are legal concepts that the legislator has foreseen to be moldable over time or given the different localities where this concept will govern, this in order to be adaptable to different populations at different times; therefore, the interpretation of these concepts, instead of being uniform, is conditioned by the place and time in which they apply. The Tax Code has established that "... It will

not be possible to compromise on the understanding or general scope of indeterminate legal concepts in dispute, but with respect to their application to the specific case in which such concept must be applied..." (Tax Code, 2021). Given a tax audit procedure, the understanding of an indeterminate legal concept can be submitted to compromise, concluding that it can be compromised to interpret said concept only in the specific case. As a contrast, it should be mentioned that they are not negotiable: "... claims seeking the total or partial annulment of regulations, ordinances, resolutions and circulars of a general nature issued by the Tax Administration..." (Pazmiño, 2023).

The nature of the tax transaction always has as its center or object the tax obligation, the transaction operates broadly within a determination as indicated in article 56.7 of the Tax Code, it also operates on administrative acts resulting from the powers of the Tax Administration whose challenge in court is not pending, that is, the acts of determination provided for in article 87 of the Tax Code provided that it is not enforceable; on claims against acts of determination as indicated in Article 133 of the same Code; and even on the acts derived from complementary determinations provided for in Article 131 of the aforementioned Code. In these cases, it will be possible to compromise on all the aspects provided for in article "56.6" that this rule says, which actually refers to article 56.2, that is, the determination and collection of the tax, its interest, surcharges and fines, the lifting of precautionary measures, payment deadlines and facilities, application of indeterminate legal concepts and factual aspects of uncertain valuation (Puertas, 2023).

The tradable aspects are reduced by changing the scenario in which the transaction occurs. When the act of determination becomes final, without any litigation pending on it, the transaction is reduced to the facilities and deadlines for payment and the application, modification, suspension or lifting of precautionary measures (Tax Code, 2021). On this point, the appeal for review, if its judicial challenge is not pending, deserves to be subject to settlement during the procedure, but with the restrictions established for final acts. An obligation that becomes final is subject to the exercise of the collection power provided for in Article 71 of the Tax Code, in this phase the tax obligation is susceptible to transaction but is extremely restricted by the aspects indicated in Article 56.7 of the Tax Code, which are rather burdensome to the taxpayer: a total and immediate payment of the obligation allows him to obtain a remission of interest, or it is favored by a reduction

in the interest rate if it signs a commitment not to alienate or divert taxpayer assets that may be subject to coercive enforcement (Tax Code, 2021).

Finally, it is worth noting a type of person responsible for the tax obligation who are not included in the transigibility of the obligation, these are collection agents who, upon receiving a payment for the acquisition of goods or services, receive at the same time the amount of the tax obligation that the Law indicates to transfer it to the authority creditor of the tax; similarly, the withholding agent withholds from the payments made to the issuer of an invoice (supplier of goods or services), the percentage that the Law indicates to transfer it to the Active Subject; therefore, these agents do not have the character of taxable persons but expedite the collection of the tax obligation in favour of the active subject; and consequently, a failure to comply with the transfer to which they are obliged generates a type of liability that may incur in the sanctioning field, matters that constitute a matter other than a declaration subject to determination, which therefore would not be transigible aspects (Rodríguez, 2023).

Procedural characterization:

The transaction proceeds upon request before a mediation center, with particular requirements that Article 56.6 refers to Article 119 of the Tax Code, i.e. there are special considerations regarding the tax determination that must precede the request for a settlement; the determination exercised by the Tax Administration, is aimed at "... establish, in each particular case, the existence of the generating event, the obligated subject, the taxable base and the amount of the tax (...) the verification, complementation or amendment of the declarations of the taxpayers or responsible parties; the composition of the corresponding tax, when the existence of taxable events is noticed, and the adoption of the legal measures deemed appropriate for that determination..." (Ramírez, 2023).

At this point, it should be noted that, in the design of the steps to be followed to achieve a tax transaction, the intervention of a mediator is required, therefore, it follows that a direct agreement with the Administration is not appropriate, which puts an end to the conflict derived from the tax return made by the taxpayer. Management acts in tax matters are a regulated activity, which can be challenged through administrative and jurisdictional channels (Tax Code, 2021). The power to compromise is part of the management acts and therefore requires the intervention of public servants of the Tax Administration with competence to compromise, a

competence that lies in the highest authority, which is also delegable. In a procedure aimed at compromise, the authority must be subject to the provisions established for extra-procedural mediation indicated in Article 56.7 of the Tax Code with the characteristics already reviewed. The transaction becomes valid if it results from a "... mediation act signed by a qualified mediator, in accordance with the provisions of the Arbitration and Mediation Law...". (Tax Code, 2021).

For this reason, the application is presented "... before any mediation center or before any qualified mediator, in accordance with the provisions of the Arbitration and Mediation Law and its Regulations..." (Tax Code, 2021). The Tax Administration intervenes in this procedure under three characteristic conditions: a) Negotiate in good faith, b) do so with the support of its technical and legal dependencies c) carry out an analysis of the cost-benefit ratio of continuing with the dispute, considering: i) the cost in time and resources of a litigation, ii) the expectation of success of pursuing such litigation, and iii) the convenience of resolving the dispute in the earliest possible instance (Tax Code, 2021).

The request for extra-procedural mediation affects the time available to the Tax Authority to exercise its determining power, established in Article 94 of the Tax Code; The effect of the request for mediation is: "... the suspension of all limitation periods (...) until a mediation agreement is reached or an act of impossibility of agreement is signed. If a deed of impossibility of agreement is signed, the limitation periods will be resumed..." (Tax Code, 2021). With respect to the taxpayer, the effect is that "... Once the request for mediation has been submitted, the deadlines for challenging the administrative act shall be suspended, whether in judicial or administrative proceedings, until the authority pronounces on the acceptance to enter a mediation process or, failing that, the act of mediation or impossibility is issued, as the case may be..." (Tax Code, 2021).

The rule is consistent with the provisions of Article 76, last paragraph of the General Organic Code of Proceedings: "... In tax matters, the suspension of terms is appropriate in the case of filing a request for mediation, in accordance with the rules provided for in the Tax Code..." (COGEP, 2021). In this sense, in the absence of a transactional agreement or if the mediation process is not accepted, the judicial challenge of the acts of tax determination, claims or appeal for review is safeguarded. In the same sense, the legal time granted to the Tax Authority for the exercise of the determining power, resolute or collection continues (Rodríguez, 2023).

The last paragraph of article 56.9 of the Tax Code contradicts the third paragraph of article 56.7 *ibid.*, since it establishes for the Tax Administration the obligation to negotiate in good faith, however the text of the last paragraph of article 56.9 implies that a mediation process is not accepted by the Administration, it is a doubt to know if negotiation in good faith implies refraining from compromise, which can only be clarified with the practice of this figure. Finally, it remains to be noted that the Transactional Act is mandatory and its non-compliance specifically gives rise to coercive jurisdiction (Tax Code, 2021).

Given a judicial conflict between the Administration and the taxpayer, it is feasible to solve it through the transaction, in this case after going to the judicial bodies, the transaction can take place when the so-called Hearings take place, given the procedural orality that governs the Ecuadorian judicial system (SRI, 2023). The General Organic Code of Procedures (COGEP) has provided for a phase of reorganization, establishment of the points under debate and conciliation; for proceedings that establish two hearings, this phase takes place during the Preliminary Hearing (COGEP, 2021). For single-hearing processes, the remediation, setting of the points of debate and conciliation has been foreseen as the first phase within the same hearing (COGEP, 2021).

By way of example, it is indicated in which types of action the transaction proceeds, under the following terms: "... the case of challenges to tax administrative acts; either in special actions, such as those of exceptions to coercion or the action aimed at the declaration of prescription of tax credits, interest and fines; or in any other judicial actions of Jurisdiction of the District Court of Tax Litigation..." (Tax Code, 2021). As can be seen, it is categorically possible to compromise in any other actions within the competence of the Tax Justice, for example, the prescription of tax credits or challenge against denials of requests for tax refunds due to overpayment or improper payment (Torres, 2023).

If the transaction is included in any dispute between the Tax Administration and the taxpayers, which arises from a declaration subject to determination, this article opens the possibility of settling on any matter arising from the obligation, which has been judicialized through the channels admitted by the jurisdictional activity; but which is subsumed in the subject matter that can be transigted: the collection of the tax, its interest, surcharges and fines, the lifting of precautionary measures, deadlines and payment facilities, since the results of the determination of the tax, the application of indeterminate legal concepts in a specific case, and

factual aspects of uncertain valuation, are negotiable only at the time of exercising the determining power on tax returns filed by the taxpayer.

It should be noted at this point that the procedural moment foreseen for mediation aimed at a settlement agreement to take place is advantageous compared to the foreseeable time to resolve a dispute by means of the judgment, all the more so since the settlement agreement is final while the judgment is still subject to challenge, being a considerable time advantage for the resolution of tax disputes. It would seem that the figure of the mediator was replaced by the figure of the Judge to apply the so-called conciliation, which is an agreement guided by the Jurisdictional Authority, by establishing that "... The intra-procedural settlement shall proceed during the Preliminary or Single Hearing, as the case may be, following the rules of conciliation and settlement prescribed in this Code and in the General Organic Code of Proceedings..." (Tax Code, 2021).

The request for mediation not only serves to suspend the processing of tax trials, but also replaces the figure of the Judge as conciliator with that of a qualified mediator, that is, the figure of the transaction prescribed in both the Tax Code and the COGEP is enhanced, which is nothing more than the agreement reached before an impartial third party in the figure of the mediator, as previously reviewed, but nevertheless Article 317 of the COGEP, which refers to exceptions to coercion, contains a rule applicable to all proceedings within the jurisdiction of the Tax Litigation Courts: "... The substantiation of the proceedings within the jurisdiction of the District Court of Litigation may be suspended with the presentation of the request for mediation by the plaintiff in accordance with the rules contained in Section 6 of the Tax Code..." (COGEP, 2015).

The judicial route called exceptions to coercive duty serves the taxpayer to resist the forced collection of a firm tax obligation, this defense, although it is governed by exhaustive causes, which if proven would leave the collection unsupported in its entirety or at least with respect to the person who executes it; During the processing of this judicial procedure, aspects susceptible to compromise have also been established: the forms of compliance with the obligation and possible facilities that may be agreed for this purpose, including the imposition or lifting of precautionary measures. (Tax Code, 2015).

Additional aspects:

It remains to be pointed out with respect to the punitive power of the State, which is manifested through sanctions for breach of duties, this matter is

not negotiable, however, by giving a similar treatment to the obligations contained in final acts, its enforceability admits transaction with respect to the time and facilities of payment, late payment fee or precautionary measures; all the more so since its challenge is included in the actions of competence of the Tax Justice. As a general rule, the Transaction Act takes effect with respect to those who sign it, whether they have the status of taxpayers, responsible parties or substitutes. But the transaction does not bind third parties who have not participated in it "... In the face of them, the tax obligation will be extinguished..." (Tax Code, 2021).

That is to say that once the obligation is extinguished and paid by the person or persons who intervened in it if it is the responsible or substitute, they can repeat the payment derived from an act, against the taxpayer, but they are released from payment before the Tax Authority. In this order of ideas, it is also possible for the taxpayer to attend the transaction together with a person responsible for or substitute for the tax obligation, both acquiring the status of subjects obliged by the Act, being jointly and severally liable for the obligation (Tax Code, 2021).

Mediation processes are confidential as indicated in Article 34 of the Arbitration and Mediation Law, therefore the records of negotiation carried out by the Tax Administration with different taxpayers also have this character, being especially important as they are parameters of the study of the cost-benefit relationship that has to occur during the mediation process as reviewed above. since it is not possible to expose these parameters by treating them as publicly accessible information, therefore: "... The tax administration will not be bound to third parties by the concessions of a legal or factual nature that it makes with a view to reaching a transactional agreement (Vega, 2023).

Consequently, taxable persons shall not have the right to demand that the respective tax administration make concessions on points of law or points of fact that it has made in other cases, even in the case of transactional agreements reached with the same taxable person, unless the circumstances are fully identical or equivalent. Such concessions of a legal nature may not be taken as evidence against the tax administration, either in administrative or judicial proceedings..." (Tax Code, 2021).

In principle, the Transactional Act is final and unchallengeable, that is, it does not admit the re-discussion of the matters resolved in it, however, it cannot deal with issues other than those established in articles 56.1 to 56.16 of the Tax Code, for this reason "... if a settlement has been made with respect to

matters other than those provided for in this section, the settlement act may be annulled in accordance with the Law..." (Tax Code, 2021).

The agreement contained in a Record may be partial, that is to say that certain points can be resolved in the Minutes and other remaining points derived from a determination, can continue its normative channel (determination, claim, review, judicial challenge). Regarding the latter, the Authority's treatment must contemplate that the collection of obligations contained in transactional minutes must be expedited, without prejudice to dealing with other controversial points of a determination in accordance with the general rules, therefore: "... The Transactional Acts may be executed from the day following their signing, without prejudice to the continuation of the substantiation of administrative or judicial proceedings contained in the same administrative act or tax obligation with respect to positions that were not reconciled or that were not the subject of a transaction..." (Tax Code, 2021).

In the same sense, if the same act of determination may be susceptible to partial agreement, it is executed in one part with the support of the Act, and another part will be executed whenever it is supported by the finality of the act because there is no claim against it, or after its administrative or judicial challenge has been processed, and even after a subsequent settlement is reached on the disputed part. the resulting Act will be subject to its particular conditions (Zambrano, 2023). In any case, the payments will be imputed as the various obligations resulting from a single determination become final, either by transaction, or conditioned to the result of the challenge, therefore: "... the Transactional Agreements will incorporate the collection order and will be a sufficient requirement to exercise collection and even constitute a valid title to initiate the corresponding coercive process. In this case, the imputation of the payments will be made separately, with respect to the part of the obligation that is contained in the transactional act..." (Tax Code, 2021).

Finally, it should be noted that the number of mediation requests that the taxpayer can make has not been limited, but only the first request has the effect of suspending the deadlines for challenging the act of determination in administrative or judicial proceedings, or the resolution of the claim in court, or the judicial challenge to the appeal for review. Likewise, the suspension of the time provided for exercising the various powers of the Authority occurs only from the filing of the first request for mediation until the Act of Impossibility is signed, which

resumes the expiration periods or deadlines for resolution; even though there are subsequent requests for mediation, since if there were a Transactional Act, the obligation would be firm with it (article 56.9 of the Tax Code, 2021).

3.2 Analysis of the Results

Data Resulting From The Documentary Research

The documentary research carried out exposes the existence of a legal institution, which facilitates compliance with the tax obligation, under the perception of legitimacy provided by the agreement reached between the parties. Numerous studies converge that the solution to conflicts, when it comes from a direct settlement, generates a greater commitment to comply with what has been decided by compromising the good faith of the participants.

The tax conflict, when submitted to a transaction, puts the parties on an equal footing due to the intervention of a qualified mediator, all the more so that only the Minutes signed by said mediator are binding on the Tax Administration and the taxpayer. The scope of the transaction in administrative headquarters has been restricted to self-declarative taxes, and to those who have declared and made any payment. Compromiseability in taxes whose determination system is mixed or by action of the administration, operates in terms of their collection and payment.

It is not possible to negotiate at administrative headquarters during the tax determination phase, when the determination corresponds to the active subject; nor in those taxes whose determination corresponds to both the active subject and the taxpayer of the tax obligation (mixed determination). To compromise in the determination phase, an administrative procedure is required in which there is a request from the taxpayer. In the collection phase, the initiative falls on the taxpayer, but if the compulsory phase of collection (coercive trial) is entered, the request for mediation must be accompanied by a commitment not to alienate or divert assets of the taxpayer, which could be subject to coercive enforcement

Given that, in public law, entities can only do what the legal system authorizes them to do and although the legal norms analyzed do not establish the possibility for the Tax Administration to request a transaction, such action is viable under the terms of Article 56.11 of the Tax Code, a rule that implicitly carries such power since it does not restrict the costs of mediation to be borne by the taxpayer. The stages that cover the tax legal relationship have been established for transaction purposes in: a)

determination and, b) collection of the tax obligation, its interest, surcharges and fines, as well as on the terms and facilities for payment of the obligation, and each phase corresponds to a specific area of the subject matter that can be transigted.

When the transigibility proceeds on self-declarative taxes, it is clear that the transaction requires a tax return from which some payment has resulted and that is subject to determination in the time authorized by law, which is four years from the declaration as provided for in Article 94 of the Tax Code. Article 56.3 of the aforementioned Code prohibits compromise with the taxpayer who has not made his declaration on the date of receipt of the determination order by the active subject. Compromiseability in the determination covers possible concessions on factual aspects of uncertain valuation, which were at issue during the phase of determining the tax base, and the application of indeterminate legal concepts to the specific case. The collection phase is responsible for the transigibility of interest, surcharges and fines, or payment facilities. Both interest, surcharges, fines, and payment terms and facilities are conditioning circumstances of the transaction when it comes to the lifting of precautionary measures (Zapata, 2023).

The transaction does not generate effects for third parties, i.e. the concessions reached in a tax transaction do not apply in a general way to all taxpayers, each agreement reached is a specific and independent case and therefore no taxpayer can invoke treatment similar or identical to that received by another in a transaction process, which, due to its confidentiality, could not be freely disclosed, but only with the authorization of the parties involved and in the parties to the agreement that they wished to make known. In the general theory of law, acts and declarations of will are subject to grounds for nullity, that is, specific circumstances that deprive them of validity. In terms of settlement, a cause for the nullity of transactional acts is created, which is to enter into agreements on matters other than those established in section six of the Tax Code, restricting the validity of transactional acts to the matters indicated: i) factual aspects of uncertain valuation disputed during the phase of determination of the taxable base, (ii) the application of indeterminate legal concepts to the specific case, (iii) interest, surcharges and fines, or payment facilities, and (iv) the lifting of precautionary measures.

The acts determining tax obligations, the acts of verification of a return, ex officio estimates or settlements, are subject to claim in the administrative channel. During the processing of these claims, the

rules of transigibility of the tax obligation are applicable in the aspects of its determination and collection. In the face of an administrative act of determination that is final, but which has not been challenged in court, the settlement may be made with respect to facilities and deadlines for payment, as well as the application, modification, suspension or lifting of precautionary measures. However, given that the appeal for review proceeds against a final administrative act or enforceable resolution of a tax nature, in the processing of this type of appeal there is only compromise on the aspects of the collection of the tax indicated above.

There are two obligations of the Tax Authority that must be observed during a settlement procedure: a) negotiate in good faith and b) carry out a cost/benefit analysis of continuing with the dispute, considering the cost in time and resources of a litigation, the expectation of success of pursuing such litigation, and the convenience of resolving the controversy in the earliest possible instance. The negotiation on the part of the Authority must always be aimed at achieving the tax principles of collection sufficiency, equity, equality and proportionality. As a contrast, it should be noted that the Tax Administration is not obliged to reach a transactional agreement in all cases. The request for mediation, when it occurs in a determination procedure, takes effect in terms of the time provided for its processing, suspending its course. As for the time to exercise the determining power, which always has legal rank, once a tax mediation is requested, the passage of said period is suspended.

When a request for mediation is made while an appeal is being processed, the time provided for its resolution is also suspended, finally it can be said that the time provided for challenging an administrative act in court, which is short in the Ecuadorian regulatory system, is also suspended as a result of the request for mediation. Only the first request for mediation produces the suspensive effect in the course of terms and deadlines, the second or subsequent requests, although they may result in a transactional agreement, do not suspend the passage of terms and deadlines and the consequent actions that must take place such as the taking of evidence, the resolution of the claim and the challenge or contentious tax lawsuit (Alvarez, 2020).

Intra-procedural mediation, as it has been regulated, encompasses two incompatible scenarios: i) conciliation before the jurisdictional authority and ii) the request for mediation during the course of the litigation, which opens up two uncertainties regarding the validity and scope of transigibility: 1.-

If the Tax Code is clear in saying that during the trial of exceptions to coercion, the facts or rules that originated the formation of the taxable base, which are aspects related to the determination of the tax obligation, are these aspects negligible when there is an intra-procedural mediation even if the trial proceeds on acts of determination or resolution of claims, which are final? 2.- Is the conciliation reached with the help of a Judge with respect to a transactional agreement valid despite the fact that the Minutes are not signed by a qualified mediator? It must be said that jurisdictional practice is incipient and does not yet allow a response to be obtained in these cases.

Three results can be derived from a compromise process: i) the impossibility of an agreement, in which case the terms and deadlines are resumed within the respective procedures (determination, claim, appeal, judicial challenge); ii) the partial agreement, in which case the agreed portion becomes mandatory and immediately complied with, even through coercive means, but with respect to the portion in controversy, the pertinent procedures continue. and iii) the total agreement that is definitive in which case the determined obligation becomes equally obligatory and of immediate compliance, with the same possibility of exercising coercion, the agreement may be conditional with respect to immediate payment or with facilities; only in the case of immediate payment will the remission of interest and surcharges, or the lifting of precautionary measures, proceed.

Collection in the coercive trial stage is subject to mediation, but with the following characteristics: 1.- It only proceeds on collection aspects 2.- The first request suspends the statute of limitations of the tax obligation, 3.- The request at this stage requires an additional commitment not to dispose of assets that would serve for collection. 4.- The remission of interest and surcharges is proportional to the amount of the obligation that is covered together with the request for mediation (Zúñiga, 2023).

3.3 Discussion of the Results

The research presents the following findings: The subject matter of the tax obligation is: a) during the determination of the tax, the application of indeterminate legal concepts and the factual aspects of uncertain valuation; b) During the collection of the tax, it is the interest, surcharges and fines, the lifting of precautionary measures, the terms and facilities of payment. The indeterminate legal concepts and the factual aspects of uncertain valuation in the framework of the tax obligation are issues that

require an in-depth study.

The highest authority of the Tax Administration is vested with the power to compromise within a determination procedure, however, it is not called upon directly, but with the help of a qualified mediator. The taxpayer, whether taxpayer, responsible or substitute, is the one who must request tax mediation aimed at compromise. It is possible that two taxpayers obliged by the same tax concur to request mediation, for this it is essential to have filed a return and made a payment, the declarations without value to be paid do not allow the taxpayer to request mediation aimed at settling the tax obligation, likewise those who do not declare their taxes cannot avail themselves of the transaction.

Only the first request for mediation has the suspensive effect of the time within the stage in which it is presented: during the determination it suspends the expiration times of the determining power, during the substantiation of a claim it suspends the times for its processing, during coercive execution it suspends the statute of limitations of the obligation. Once the administrative remedies have been exhausted and before the time for filing a lawsuit has elapsed, the application suspends the time for the exercise of the claim, and even during the course of the trial it suspends the time of the trial when a request is filed.

Although second or subsequent applications can be submitted, they no longer suspend the time that elapses for the resolution of a case. Only the Transaction Act signed by a qualified mediator makes the agreement valid, the Judge is not vested with the power to approve a conciliation nor is he called upon to validate the agreements reached by the taxpayer and the Administration within a tax trial. The agreement reached with respect to an obligation may be total or partial, in the latter case the part in which an agreement was not reached is subject to the general rules of administrative procedures. The agreements reached are of immediate compliance and make the obligation enforceable directly under the coercive jurisdiction.

6. CONCLUSIONS

The negotiable aspects during collection are conditioned to the payment offer made by the taxpayer, the higher the amount of immediate payment, the better facilities in collection such as remission of surcharges and fines, remission or reduction of interest, substitution or lifting of precautionary measures, extension of deadlines. In the trial against acts of tax determination and acts that resolve claims of these aspects, it is allowed to review compromiseable aspects

of the determination (application of indeterminate legal concepts and the factual aspects of uncertain valuation). In my opinion, the trial against resolutions issued within appeals for review and trials of exceptions to coercion, allows only aspects of collection (interest, surcharges and fines, the lifting of precautionary measures, payment deadlines and facilities) to be compromised (García, 2021).

There are uncertain areas of the legal regulation of the tax transaction, which must be the object of in-depth study. One of them is how the transaction operates when it comes to taxes that are determined jointly by the administration and the taxpayer, such as foreign trade taxes, in which there is a declaration of the taxpayer together with a settlement by the Customs Authority. Another issue is whether aspects of the determination of the tax obligation can be compromised, when it is the responsibility of the active subject, since the taxpayer does not participate in this phase, as is the case with the urban property tax. The negotiations that precede a transaction are confidential, therefore the level of understanding of taxpayers and the Administration with respect to what is a transigible, confidential and particular matter of each case, even if its content is regulated by law, acquires specific characteristics in each particular situation because they are concessions made by the Administration to reach an agreement. Such concessions are not binding on third parties and they do not have the right to demand treatment equal to that received by another taxpayer, or even in other cases, even if they are the same intervening parties.

The in-depth knowledge of the content of the taxpayer's declarations allows him to be in a better position to face a determination. Ignorance of their declarations exposes the taxpayer to risks in the collection and payment of their taxes. In this context, the transaction is a tool that allows you to reduce the negative impact of the contingencies of the responsible management of your taxes, it is also an optimal tool for the Administration in terms of complying technically, and efficiently and in a timely manner with the principle of collection sufficiency, this legal institution would be ideal to reduce non-compliance and delinquency in the payment of taxes, as well as to provide a free and confidential space to

decide extraordinary aspects in the determination of a tax such as the factual aspects of uncertain valuation and the concrete application of indeterminate legal concepts (Latorre, 2022).

By establishing technical parameters to regulate how the Administration intervenes in order to achieve a transactional agreement, we conclude that the Administration does not negotiate out of sympathy or animosity to the taxpayer, but rather seeks to focus on merely technical and legal aspects of the tax obligation, although the subjective bias is not uprooted, the Authority must conduct the negotiations in good faith. From the foregoing, it can be concluded that the advantages of the transaction over the judgment are perceptible by both parties in conflict, to the extent that the taxpayer has a clear idea of the amount of the tax to be paid. The timely determination and payment of taxes has a direct impact on the amount, and timely compliance also prevents the taxpayer from incurring costs for interest, surcharges and fines.

As far as the taxpayer's conduct is concerned, if he is unaware of the details of the tax returns of his business, or if he is reluctant to comply with his obligations; it could well incur in conduct aimed at avoiding or postponing the payment of its taxes through the use of the transaction, and in the face of such conduct it is no longer a useful tool in the management and compliance of its tax obligations, but even in this scenario it is likely to benefit from the transaction in terms of collection and payment. Tax litigation undermines the principle of collection sufficiency to the extent that it becomes a guarantee of the taxpayer against the fiscal action of the State, since the plaintiff has resources that he allocates to litigation instead of preventing litigation or fulfilling his obligations. Tax mediation favors the principle of collection sufficiency by opening the possibility of discussing the fair amount of a tax in order to obtain its timely payment. The dissemination of the advantages of the transaction over the judgment should focus on the advantages of reducing waiting times in the collection of taxes, as well as reducing the risks derived from the defective compliance with taxpayers' obligations, which entails incurring determinations, surcharges, interest and fines.

BIBLIOGRAPHIC REFERENCES

- Álvarez, A. (2020). *Tax determination: Legal nature and procedure*. Lima: Jurista Editores.
- Cabanellas, G. (2019). *Dictionary of Tax Law*. Buenos Aires: Heliasta.
- Calva, D. (2022). Measurement of the tax transaction cost of medium-sized companies in the city of Riobamba, period 2019-2020. PUCE Repository. <https://repositorio.puce.edu.ec/bitstreams/c60b368a-1142-4b0d-a18b-52a45afde9c4/download>

- Codification of the Civil Code (2005) National Congress, Official Gazette supplement 46 of 24 June 2005.
- Organic Code of the Judicial Function (2009) National Assembly, Official Gazette Supplement 544 of March 9, 2009.
- General Organic Code of Processes (2021) National Assembly, Law s/n, Official Gazette 587-3S, November 29, 2021.
- Tax Code (2021), National Assembly, Law s/n, Official Gazette 587-3S, November 29, 2021.
- Constitution of the Republic of Ecuador (2008), Constituent Assembly, Official Gazette 449 of October 20, 2008.
- Coronel, J., & Núñez, M. (2023). Compromise: an incorrect criterion of arbitrability. *IEA Ecuador Journal*, 10, 45-60. <https://iea.ec/pdfs/revista-10/articulos/Coronel-%26-Nunez.pdf>
- Díaz, A. (2023). The transaction as a means of extinguishing the tax obligation in Ecuador. *Scientific Code*, 6(2), 89-105. <https://revistacodigocientifico.itslosandes.net/index.php/1/article/view/340>
- Francesco Carnelutti, *Sistema de derecho procesal civil*, (1944) trans. Niceto Alcalá-Zamora y Castillo and Santiago Sentís Melendo, UTEHA.
- García Mullín, F. (2021). *Tax procedure: Fundamentals and stages*. Bogotá: Editorial Temis.
- González, M. (2022). The tax transaction and the public interest. University of Cuenca. <https://dspace.ucuenca.edu.ec/handle/123456789/41965>
- Latorre, M. A. (2022). The tax determination procedure in comparative law. *Ibero-American Journal of Tax Law*, 30(2), 45-68. <https://doi.org/10.32719/12345678>
- Arbitration and Mediation Law (2021) National Assembly, Law s/n, Official Gazette 587-3S, November 29, 2021.
- Luzuriaga Castro Abogados. (2024). The tax transaction in Ecuador. <https://luzuriagacastro.com/la-transaccion-tributaria-en-ecuador/luzuriagacastro.com>
- Maritza Tatiana Pérez Valencia (2024) *Tax Legislation: Legal Institutions in Ecuador Volume I*, First Edition, Editorial IAEN.
- Mayorga Ochoa, P. N. (2024). The relationship between the principle of legality and the resolution of tax conflicts based on the application of mediation as an alternative means of conflict resolution within the framework of the tax reform of November 2021 in Ecuador. University of the Hemispheres. <https://dspace.uhemisferios.edu.ec/bitstreams/5d607551-0388-43c3-9f57-2bb4eb9b1dd8/download>
- Morales, J. (2023). The transaction in tax matters: a vision of its application in Comparative Law from the Ecuadorian experience. ResearchGate. https://www.researchgate.net/publication/376646008_La-transaccion-en-materia-tributaria-una-vision-de-su-aplicacion-en-el-Derecho-Comparado-desde-la-experiencia-ecuatoriana
- Ortega, L. (2020). *Substantive and adjective tax law*. Quito: Corporación de Estudios y Publicaciones.
- Ortega, L. (2023). The transaction as a means for the effective resolution of tax conflicts in Ecuador. University of Azuay. <https://dspace.uazuay.edu.ec/bitstream/datos/12589/1/18116.pdf>
- Paredes, M. (2023). Analysis of the application of the transaction in tax processes in Ecuador. University of Otavalo. <https://repositorio.uotavalo.edu.ec/items/75189c70-001c-4d03-af23-e956cc722703/full>
- Pazmiño, M. (2023). Matters that can be negotiated in mediation in Ecuador. *REMCA*, 5(1), 112-130. <https://remca.umet.edu.ec/index.php/REMCA/article/view/628>
- Pérez, R. (2021). The audit function and the process of determining the tax obligation. *Journal of Fiscal Studies*, 18(1), 89-110.
- Pérez, R. (2022). Study on the viability and operation of domestic arbitration in tax matters in Ecuador. *Alpha Publications*, 3(1), 78-95. <https://alfapublicaciones.com/index.php/alfapublicaciones/article/view/439>
- Puertas, R., & Silva, B. (2023). Matters that can be negotiated in mediation in Ecuador. *Redalyc*, 10(2), 45-60. <https://www.redalyc.org/pdf/7217/721778125026.pdf>
- Ramírez, J. (2020). Stages of tax determination: Analysis from the principle of legality. *Law & Taxation Journal*, 22(3), 123-145.
- Ramírez, J. (2023). The transaction as a means of extinguishing the tax obligation: doctrinal and jurisprudential analysis. *Scientific Code*, 6(2), 106-120. <https://revistacodigocientifico.itslosandes.net/index.php/1/article/view/340>
- Resolution NAC-DGERCGC22-00000036 (2022) Director General of the Internal Revenue Service, Official Gazette Second Supplement 178, of October 27, 2022
- Rodríguez, L. (2023). Arbitrability in tax matters in light of the new Fiscal Sustainability Law. *USFQ Law Review*, 4(1), 22-39. <https://revistas.usfq.edu.ec/index.php/lawreview/article/view/2591>
- Romero, S. (2023). *Fiscal control and tax determination: A doctrinal and jurisprudential study*. Mexico City:

Editorial Porrúa.

Salcedo, V. (2022). *Tax Law Manual: Procedural part*. Madrid: Marcial Pons.

Internal Revenue Service (SRI). (2023). Tax transaction. <https://www.sri.gob.ec/en/transaccion-tributaria>

Internal Revenue Service of Ecuador. (2021). Guide to the tax determination procedure. Quito: SRI. Retrieved from <https://www.sri.gob.ec>

Torres, A. (2023). The tax transaction as an alternative means of conflict resolution in Ecuador. University of Cuenca. <https://dspace.ucuenca.edu.ec/bitstreams/86e7e485-3907-4b96-b75c-0d2588c22c20/download>

Vega, C. (2023). The transaction in tax matters: a vision of its application in Comparative Law from the Ecuadorian experience. ResearchGate. https://www.researchgate.net/publication/376646008_La_transaccion_en_materia_tributaria_una_vision_de_su_aplicacion_en_el_Derecho_Comparado_desde_la_experiencia_ecuatoriana

Zambrano, E. (2023). The cost of the tax transaction in Ecuador. *Redalyc*, 11(3), 150-165. <https://www.redalyc.org/journal/4776/477653850011/>

Zapata, F. (2023). The transaction as a means for the effective resolution of tax conflicts in Ecuador. PUCE. <https://repositorio.puce.edu.ec/bitstreams/c60b368a-1142-4b0d-a18b-52a45afde9c4/download>

Zúñiga, M. (2023). Analysis of the tax transaction in Ecuador. University of Cuenca. <https://dspace.ucuenca.edu.ec/bitstreams/86e7e485-3907-4b96-b75c-0d2588c22c20/download>