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PRESUMPTIVE DETERMINATION ACTS AND TAX DUE PROCESS: PRACTICAL CASES

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Abstract
Due process as a constitutional right in Ecuador has been the subject of extensive legal debate. In this regard, the present research established the main characteristics and elements that this right must have in order to ensure that its application in presumptive tax determination processes does not rendered fruitless to the detriment as the tax authority as the taxpayer. Furthermore, this research includes the analysis of the guarantee of motivation as an integral component of due process on the presumptive tax determination processes. Additionally, five landmark cases are examined, each consisting of rulings from the District Tax Litigation Tribunals and the Specialized Tax Litigation Chamber of the National Court of Justice. These cases reveal the issue of due process violations caused by a lack of motivation, namely, the impact on the guarantee of motivation in presumptive tax determination acts and the right to due process in tax matters. The research follows a qualitative approach, as it involves interaction with the subject matter and, through careful reflection, it will interpret the elements identified in the cases analyzed. Finally, tools such as bibliographic documentation and case law records were used to reflect the content and the interpretation of the studied cases.

Keywords: Presumptive determination, due process, motivation.

Introduction.

The determination of taxes currently generates interest, debate and criticism in our legislation, due to the difficulties in its imposition and resolution of claims in the tax administrations, in effect establishing when the tax obligation arises and subsequently determining the amount of the tax arouses the interest of this research, considering that the determination is a faculty of the tax administration and it is aimed at establishing the existence of the tax administration. of the generating event, obligated subject, taxable base and the amount of the tax, as stated in Article 15 of the Tax Code, which leads us to the task of investigating what is the treatment and due process that is being given to the procedure for the issuance of the presumptive determination acts, their challenge in administrative and jurisdictional proceedings in tax litigation.

Specifying that the determination of a tax is the exercise of the power of the national, sectional or exceptional tax administration, and includes according to Article 68 of the Tax Code: ***"the verification, complementation or amendment of the declarations of 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 such determination."***

In this sense, the exercise of the determining power, since its entry into force and application in Ecuador, has constituted a control and oversight mechanism for the verification, complementation or amendment of the declarations of taxpayers or responsible parties, and arises into legal life with the main purpose of protecting the collection of taxes that in turn constitute a part of the General State Budget. That is why this power is exercised in the different tax administrations on a permanent basis, since the implementation in the Tax Code.

In Ecuador, there is insufficient dissemination of the doctrine regarding the presumptive determination and the due process that must be carried out for a correct determination of the tax. It is evident then that due to the impact that the audit activity has on the taxpayers' ability to pay and the collection of taxes, it is necessary and fundamental to investigate and identify the factors that are transgressed or protected at the time of exercising this power in the determinative administrative procedure; for this purpose it is essential to examine the due process that occurred to issue the acts of presumptive determination in the tax administrations of the Internal Revenue Service, and that resolved the District Courts of Tax Litigation, when they were challenged, for which reason this work contributes to promote the theoretical debate.

Based on the above, the following research questions have been raised within this research: How can the non-application of due process affect presumptive determination processes? In the same way, the general objective has been to analyze the impact of the guarantee of motivation in the acts of presumptive determination and due process of taxation. Thus, as specific objectives, it has been proposed, in the first place, to identify what are the forms of non-application of due process by the tax administration in the cases studied.

Development

Dogmatic and normative analysis of presumptive determination

Conceptual background

Previous researchers have defined the variables of this research in some ways and under different perspectives, the same ones that contribute to this research. In the thirteenth century, John King of England issued the Magna Carta of the United Kingdom of 1215, in which the tax system of tax collection was introduced. Thus, Armijos (2022) determines that: This Charter indicated that any tax or exemption would have to be sanctioned by the Common Council, following a previously established procedure, thus constituting a precedent of the tax maxim called *non taxation without representation*, also identified as self-taxation (p.15).

This is how the figure of tax self-imposition was born, which is the one that empowers the State to determine the contributions that citizens must make. In the same way, the aforementioned author points out that the "principle of equal taxation: understood no longer in the sense that everyone must contribute equally, which would be absurd, but in the sense that uniformity of treatment must be ensured under equal conditions" (Armijos, 2022, p.21).

In the same vein, Vega (2023) points out that it is essential that taxpayers' taxes, contributions and rights are clearly determined in the legal norm, this is what the aforementioned author defines as tax legal certainty. Thus, it determines that: However, not all taxpayers' rights are explicitly reflected in the Constitution and in the laws, based on which, Eddy de la Guerra points out that they are grouped into conventional (those regulated in the Constitution or in the legal system) and non-conventional (those that are not). and that the latter "do not lack force and legitimacy in the sense that, once they are violated, they can be claimed by submitting their knowledge to a high-ranking judge (p. 26).

Thus, the State has the power to collect funds, but all this must be limited to a process contemplated in the law. In this sense, Pontón (2011) points out that:

> The main function of the Administration is the realization of the public interest, but according to the modern postulates of positive link to the principle of legality, it must use the same legal logical syllogism of adequacy of the particular case to the norm. An example of this would be that, if the Administration is going to recalculate a tax or fine an offender, it does not do so to apply the law and impart justice, in a conflict of interest, but to satisfy a public interest of adequately nourishing its tax coffers (p. 30).

The text highlights the primary function of the Public Administration, which is to guarantee the public interest. However, it stresses that, within the framework of the principle of legality, this power must be exercised with respect for the right to a trial that complies with the legal rules.

Presumptive tax determination

Dogmatic and normative analysis of presumptive determination

After analyzing the role of the State, specifically of the Public Administration in law and its evolutionary connection with the principles of legality and legality, which act as limits to guarantee the rights of citizens and promote the general interest and the common good, it is important to emphasize that the ability to interpret rules within a formal framework gives rise to administrative discretion.

This power allows the Administration to make decisions and issue resolutions through its acts. In this context, we will focus on the administrative function of the State in fulfilling its sovereign mandate to collect contributions from citizens, with the aim of strengthening the public treasury. This task is known as tax management and is carried out by the Tax Administration, an entity that exercises this power within the legal framework established by the legislator.

The presumptive tax determination is a mechanism used by tax administrations, in the case of Ecuador, by the Internal Revenue Service (SRI), which is intended to estimate and calculate the tax obligations of taxpayers when sufficient or reliable information is not available to make a direct determination. Toscano (2019), on the other hand, argues that this type of determination is applied in situations where accounting records are non-existent, insufficient, incorrect, or when the taxpayer has engaged in conduct that prevents access to truthful information, such as concealment of income or failure to file tax returns.

The purpose of the presumptive determination is to ensure that taxpayers comply with their tax obligations in a fair and equitable manner, thus ensuring the adequate collection of the taxes necessary for the functioning of the State. In the presumptive determination, the tax administration uses various methods and criteria to estimate the taxable base and, consequently, the tax debt. Among the most common methods, according to Patiño (2021), are the use of indirect indicators, such as the taxpayer's standard of living, their assets, their consumption, the volume of purchases and sales, among others.

The transversality of tax legal certainty is especially relevant in the Administration-Taxpayer dynamic. When tax principles are complemented by legal certainty, a balanced relationship is fostered that avoids arbitrariness and guarantees respect for taxpayers' rights. As De la Guerra

(2020) points out, this transversality not only limits the Executive's action in tax matters, but also establishes clear parameters for the design and execution of fiscal policies, avoiding regulatory inconsistencies that may affect citizens' confidence.

The analysis of the text emphasizes that, in Ecuador, the lack of clear and specific regulation on tax legal certainty has generated a climate of regulatory uncertainty. This is reflected in practices such as excessive regulatory production and the creation of taxes with ambiguous legal bases, which directly affects the predictability and ability of taxpayers to plan their economic activities. Sánchez García (2018) warns that this situation is a symptom of tax systems in crisis, where legal certainty is constantly undermined by improvised political and economic decisions.

The presumptive determination is based on the principle of legal reserve and the duty to contribute, established in many modern constitutions. For example, in Ecuador, Article 300 of the Constitution of the Republic establishes that the tax system must be governed by principles of equity, progressivity and collection sufficiency, among others, guaranteeing the State the necessary resources for its operation. Similarly, Article 5 of the Tax Code (CT, 2025) establishes that the tax regime will be governed by the same principles regulated in the Ecuadorian Constitution, and also states that direct and progressive taxes will be prioritized.

Similarly, local tax regulations specifically regulate the cases and methods of presumptive estimation. For example, the Tax Code of Ecuador (2025) within Article 92 authorizes the tax administration to use indirect means to calculate the taxable base in situations where the taxpayer does not comply with the obligations of registration or provision of truthful information. In such cases, the determination shall be based on the facts, indications, circumstances and other certain elements that make it possible to establish the configuration of the generating event and the amount of the tax caused, or through the application of coefficients determined by the respective law. This approach is supported by the doctrine of the presumption of legality of administrative acts, which empowers tax authorities to act in the public interest, provided that their acts are reasonable and duly motivated.

In addition, Article 23 of the Internal Tax Regime Law (LRTI, 2025) in accordance with Article 268 of the Regulations of the Organic Law of the Internal Tax Regime (RLRTI, 2025) details the cases in which the Tax Administration may initiate a presumptive determination. These include situations when the taxpayer has not filed his tax return, or it is verified by cross-referencing records different from those declared, such as unsupported goods, unjustified differences in inventories, unregistered bank accounts and unjustified increases in assets, as well as when the taxpayer does not provide the required information on three occasions. In this context, the tax administration has the opportunity to make a presumptive determination.

To proceed with the presumptive determination, Article 24 of the Internal Tax Regime Law (LRTI, 2025) establishes the general criteria for the presumptive determination, which will be based on facts, indications or other aspects related to the legal relationship that allow them to be presumed, more or less directly, in addition to using the accounting that was possible to obtain, In this form of determination, the Tax Administration must make the necessary efforts to consider the elements contained in the rule, that is, to deal as far as possible with the use of these assumptions to determine the amount of the tax in a reasoned manner.

It should be emphasized that when a taxpayer carries out more than one economic activity, the Tax Administration can simultaneously apply the direct determination (based on accounting records) and the presumptive determination (based on indications). Once the taxable bases for each activity have been determined, they are consolidated to calculate the overall income of the taxpayer and apply the corresponding tax. This ensures that all income is considered and that the tax is calculated fairly and completely, regardless of the complexity of the taxpayer's economic activities.

Second, Article 25 of the Internal Tax Regime Law (LRTI, 2025) establishes that when it is not possible to make a presumptive determination based on the elements indicated in Article 24 of the Internal Tax Regime Law (LRTI, 2025), general presumptive estimation coefficients will be applied, by branches of economic activity, which shall be set annually by the Director General of the Internal Revenue Service, by means of a Resolution to be issued in the first days of January of each year. These coefficients will be set on the basis of the own and third-party capital used by the taxable persons, the information obtained from taxable persons operating under similar conditions and other indicators that are deemed appropriate.

In both cases in which a presumptive determination is applied, it should be noted that as determined by Article 92 of the Tax Code (CT, 2025), the actions of the tax administration must be based on the principle of the taxpayers' ability to pay and their economic reality, emphasizing that the right to due process must be guaranteed in all its dimensions, especially the motivation of tax administrative acts, will also be based on the general principles of law, such as the principle of proportionality and the principle of reasonableness, which guide tax administrations to use proportional methods in the absence of scarce or doubtful information to support the declarations of the taxpayer or responsible party.

It is important to note that the elements established in Articles 24 and 25 of the Internal Tax Regime Law (LRTI, 2025) for the determination of presumptive income are efficient in neutralizing evasive and evasive conduct by taxpayers, which undermine the principle of tax equity. This point has been consistently affirmed by the Colombian Constitutional Court in judgment C-238/97, which has also ruled that the purpose of a presumptive income is the estimated determination of a taxpayer's income and profits. These resources are intended to contribute to the General State Budget, making it possible to meet its objectives, under the premise that such determination is made in accordance with the principles of justice and equity.

It is essential to ensure that the presumptive determination does not infringe the taxpayer's rights. The taxpayer has the right to challenge the presumption, offer evidence and request reconsideration of the calculated tax base. International organizations, such as the Inter-American Court of Human Rights, have reiterated that the presumption cannot be absolute, but must be controversial, thus ensuring the balance between the fiscal interest and the protection of taxpayer rights. In conclusion, the presumptive tax determination is a legitimate and necessary mechanism in the fight against tax evasion. Its use must be based on clear legal norms and conform to the principles of proportionality, equity and due process, to guarantee a fair and efficient tax system.

Thus, the presumptive tax determination is a valuable mechanism for the tax administration in the fight against tax evasion and fraud, allowing tax obligations to be estimated in the absence of reliable information. However, its application must be rigorous and respectful of taxpayers' rights, guaranteeing transparency, fairness and the possibility of defence. Guarantees that are part of the right to due process that the Constitution of the Republic of Ecuador (2008) enshrined in Article 76.

Due Process in the Presumptive Determination

Historically, the origin of the concept of due process dates back to the Magna Carta of 1215, a normative instrument that sought to limit the absolute power of the English monarchy and guarantee subjects protection against arbitrary arrests. Since then, this notion has progressively expanded, consolidating itself in contemporary legal systems through national constitutions, international treaties and other instruments that make up the so-called constitutionality block.

Due process stands as a cardinal principle of law, aimed at ensuring a fair, impartial, and equitable trial for every person. By virtue of this, it constitutes an indispensable guarantee for the effectiveness of fundamental rights, both in the administrative and jurisdictional spheres. As Chinchilla (1999) points out, due process represents an essential element in preserving the transparency, impartiality, and legitimacy of any judicial system.

Its normative transcendence comes, moreover, from the level of conventionality. In fact, since the Declaration of the Rights of Man and of the Citizen of 1789, the Universal Declaration of Human Rights of 1948 and, particularly, the American Convention on Human Rights of 1969, States have been compelled to guarantee unrestricted respect for this guarantee within their respective legal systems. These instruments establish that due process is non-derogable, even in contexts of emergency or state of emergency, which reaffirms its status as an inviolable right and of universal application.

Consequently, it is the responsibility of the courts of each State to ensure that judicial proceedings are conducted in accordance with the parameters of due process. Similarly, public servants, including those belonging to the tax administration, are obliged to observe criteria of impartiality, ensure equality of arms between the parties and issue duly reasoned decisions on the basis of relevant evidence and solid legal arguments. In this way, due process not only protects individual rights, but also constitutes a pillar for the strengthening of the rule of law and the consolidation of democratic regimes, favoring the construction of more just and equitable societies.

In the Ecuadorian context, due process is expressly recognized in Article 76 of the Constitution of the Republic (2008), which develops a set of minimum guarantees aimed at safeguarding procedural justice. These include the right to defence at all stages and instances of the procedure, as well as the obligation to state reasons for decisions, understood as the requirement that any decision be based on a clear, objective and rational legal basis. Thus, due process should not be conceived only as a procedural formality, but as an indispensable structural guarantee for the observance of human rights, legal certainty and institutional legitimacy in a constitutional State of rights and justice.

Nature and historical evolution

The concept of due process finds its origins in common law, particularly in the Magna Carta of 1215 and in the Statute of Edward III of 1354. In these instruments, the expressions *law of the land* and later *due process of law* were coined, through which it was established that no person could be deprived of his rights without the guarantee of a fair trial in accordance with the law. Over time, this notion expanded beyond the national level, being integrated into international human rights law through norms such as the Universal Declaration of Human Rights (1948) and the American Convention on Human Rights of 1969, also known as the Pact of San José. Both instruments highlight substantial principles such as equality before the law, the presumption of innocence and the right to defence (Linares, 1989; Ramírez, 2016).

Due process constitutes, in essence, the guarantee of procedural justice, operationalized through principles such as adversarial and motivational. The first empowers the parties to present and dispute evidence, ensuring a procedural balance that prevents defenselessness. The second, on the other hand, imposes on judges and authorities the obligation to justify their decisions in a clear, objective and reasoned manner, granting legitimacy to the resolutions. According to Agudelo (2015), the right of contradiction materializes the equality of arms between the parties, while the motivation gives validity and rationality to judicial and administrative rulings by expressing in an understandable way the legal and factual grounds of the decision.

In the Ecuadorian legal system, due process is supported by different normative bodies, with the Constitution of the Republic of 2008 being the supreme norm that expressly and categorically enshrines it in its Article 76. At the level of administrative-tax law, this guarantee acquires special relevance. Thus, Article 139 of the Tax Code (2025) provides for the nullity of administrative acts that violate the right to defense of the taxpayer or responsible party, while Article 23 of the Internal Tax Regime Law (2025) orders that due process and the right to defense be respected in the administrative determination procedure in an unrestricted manner. Along the same lines, it is recognised that the Tax Administration must duly justify its determining acts, observing the taxpayers' ability to pay and the economic reality.

In this way, due process not only operates as an individual right that protects justice in each procedure, but also as a structural guarantee that preserves institutional legitimacy, balances the sanctioning power of the State vis-à-vis citizens and reinforces legal certainty within the framework of the constitutional State of rights and justice.

Due process as a right

Due process, seen as a legal principle, is understood as a normative guideline that guides the elaboration, interpretation and application of procedural laws. This is structural in nature, establishing general standards that legal procedures must meet to ensure impartiality, reasonableness, and equity in the administration of justice. According to Alexy's doctrine, principles have a guiding character and do not have a rigid structure like the rules, allowing them to be adapted according to the specific context. For example, the principle of due process guides judges to ensure that procedural rules are not arbitrary and respect the fundamental rights of the parties involved (Alexy, 2024).

On the other hand, due process as a fundamental right constitutes a specific guarantee of citizens vis-à-vis the State. Enshrined in various international norms and constitutions, this right ensures that any person can be heard and judged in accordance with a previously established procedure that respects their essential guarantees, such as the presumption of innocence and access to an impartial judge. In this sense, due process protects individuals from arbitrary decisions and ensures that state actions respect standards of legality and material justice. For example, Article 8 of the American Convention on Human Rights defines the right to due process as the basis for effective access to justice and respect for substantive rights (Inter-American Court H.R., OC-9/87, 1987).

The essential difference between the two conceptualizations lies in their application. As a principle, due process operates as a guiding norm that informs the entire legal system, while, as a right, it has an enforceable character and materializes in specific cases as a defense mechanism against arbitrary acts. Recent jurisprudence has indicated that both concepts are interdependent: due process as a right could not be guaranteed without its conceptualization as a guiding principle of the legal system, and vice versa (Passanante, 2021).

Finally, both the principle and the right to due process are essential to protect human dignity and maintain the balance between the powers of the State and citizens. This requires not only strict observance of procedural rules, but also the implementation of substantive criteria that ensure fair results in each proceeding.

In this sense, for López (2022), he mentions that, among the main guarantees of due process are the right to be informed of the charges or accusations against him, the right to an adequate defense, the right to be heard by an impartial tribunal and the right to appeal the decision to a higher instance. These guarantees are essential to prevent judicial errors and ensure that decisions are made fairly and based on clear and objective evidence that has been incorporated into the process in compliance with constitutional and legal provisions.

According to Oyarte (2017), the constitutionalization of due process eliminates and postpones the notion of individual demand or public subjective right. This means that due process is not limited or defined by the particularities of each State, but constitutes a universal notion that requires specific adaptations and its own standards to guarantee procedural fairness. This approach involves establishing the necessary conditions to understand what is considered to be what is due.

Motivation as an integral guarantee of due process

The tax administration, when issuing its determining acts, has the obligation to give reasons for them. This, in accordance with what was held by the Constitutional Court of Ecuador in judgment No. 191-16-SEP-CC; Case No. 2139-11-EP, implies that the statement of reasons constitutes a mechanism for ensuring rationality in the decisions of the agencies that exercise public powers. Motivation as a guarantee of due process seeks to ensure that judicial decisions and, in general, any resolution of the public authorities, in addition to stating the facts, the norms and comparing them with each other, are the result of the application of logic and legal argumentation by the authorities that exercise public powers.

For this reason, the motivation will constitute a guarantee for the taxpayer or responsible party subject to a presumptive determination process, allowing him to know the grounds used by the active subject of the tax to establish the amount of the obligation. This knowledge, according to Milkes, S. (2019) empowers the administered to contradict the arguments and challenge them, if necessary in administrative or jurisdictional proceedings before the district contentious-tax courts. (P.156). Consequently, the statement of reasons is of paramount importance, since, according to the Constitutional Court of Ecuador, it is not limited to the mere enunciation of facts and norms, but requires a solid legal logic and argumentation.

However, Milkes (2019) argues that the duty to state reasons constitutes the concrete manifestation and justification of the legal-administrative action. However, its importance is not limited to being a formal requirement for the validity of the decision, but, by requiring a qualified content, that is, a sufficient and reasoned reasoning, it is configured as a true mechanism of legal and procedural guarantee for the administrated. In this sense, the motivation gives citizens the possibility of understanding the foundations and reasons that support the decisions of the Administration, which strengthens the principle of transparency and legitimate expectations. In turn, this requirement provides the judge, in a possible judicial review, with broader and more objective criteria to verify the validity, proportionality and effectiveness of the administrative act (p. 174).

Case Analysis, Discussion Points

The specific objective was to identify the forms of non-application of due process by the tax administration in the cases studied. According to Chinchilla (1999), due process is essential to maintain the essence of a transparent and impartial judicial system. In the analysis of case one, it was found that the tax administration used presumptive estimation coefficients, without previously complying with the provisions of Art. 92 of the Tax Code, that is, the active subject of the tax should have established the taxable base, on facts, indications, circumstances and other certain elements that allow establishing the generating event and the amount of the tax; and, only if there was no such possibility, it was appropriate to apply the general presumptive estimation coefficients, by branches of economic activity, set by resolution by the Internal Revenue Service.

One of the guarantees of due process is reasoning, as the Constitutional Court of Ecuador has held in judgment No. 191-16-SEP-CC; Case No. 2139-11-EP, stating that: "the statement of reasons as a guarantee of due process seeks to ensure that judicial decisions and, in general, any resolution of the public authorities, in addition to stating the facts, the rules and comparing them with each other, are the result of the application of logic and legal argumentation by the authorities exercising public powers." In the case under analysis, it is observed that the tax administration does not observe the pertinent legal norm that should be applied to the determination, specifically Article 92 of the Tax Code, incurring in a lack of motivation, for not justifying in the determining act, what were the reasons to consider that it was not possible to establish the amount of the tax based on facts, indications, circumstances and other proven elements.

In case two, the tax administration made a presumptive determination to establish income; however, it is established that such a procedure is not justified, because it is clear from the determination record that there were the necessary inputs to establish the taxable base of the tax, a situation that is correct, since as Toscano (2019) rightly argues, this type of determination is applied in situations where accounting records are non-existent, insufficient, incorrect or when the taxpayer has engaged in conduct that prevents access to truthful information, such as the concealment of income or the failure to file tax returns.

In consideration of the information that the tax administration had, it is reflected that if it had sufficient documentation to proceed with the direct determination, and should not apply the presumptive determination to the detriment of the economic capacity of the taxpayer, consequently affecting due process, in the guarantee of motivation, since the act of determination, by not knowing that the presumptive determination is based on facts, indications, circumstances and other certain elements that allow establishing the configuration of the generating event and the amount of the tax caused, as provided for in Article 92 of the Tax Code, causes arbitrariness on the part of the tax administration, violating due process.

In relation to due process, it is a guarantee for those administered in the different administrative or judicial processes. According to Chinchilla (1999), due process is essential to maintain the essence of a transparent and impartial judicial system. This principle was violated in the act of determination submitted to the control of legality by the jurisdictional authority, so the taxpayer's claim was accepted, ordering that the tax administration proceed to a new determination, which could again violate due process, because the active subject of the tax must analyze whether it is appropriate to apply the expiration of the determining power, considering Art. 94 of the Tax Code.

In case three, it is observed that the tax administration, at the time of notifying the taxpayer with the communication of presumptive differences, did not protect the taxpayer's rights, since it was evident that the determining power had expired, in addition there was no response to the taxpayer when he alleged the expiration of the determining power, evidencing a lack of motivation that caused the nullity, since, as Milkes, S. (2019) maintains, the right to motivation empowers the administered to contradict the arguments and challenge them, if necessary in administrative or jurisdictional headquarters before the contentious-tax district courts. (P.156). Consequently, the statement of reasons is of paramount importance, since, according to the Constitutional Court of Ecuador, it is not limited to the mere enunciation of facts and norms, but requires a solid legal logic and argumentation.

If a reasoned response had been given to the taxpayer, when he was notified of the communication of differences, the tax administration would have reviewed Article 94 of the Tax Code, and through an analysis consistent with the facts, it was appropriate to declare the expiration of the determining power, avoiding an unsuccessful determination process to the detriment of the taxpayer and the tax administration itself. since it causes expenses in financial, human, material resources, etc., which could be channeled into other determinative processes whose power is not expired, in addition to applying the motivation in administrative actions, avoids the violation of due process.

In the fourth case, it is evident that the tax administration erred in the presumptive determination, considering that the taxpayer's economic activities, consisting of urbanization, subdivision and other similar activities, fall within Article 29 of the Internal Tax Regime Law. However, in court it was determined that the taxpayer also built homes, so it was appropriate to apply Article 28 of the LRTI. This action, although the ruling does not expressly declare the violation of the right to due process, in the guarantee of motivation, as maintained, Milkes, S. (2019) who establishes that the duty to motivate constitutes the manifestation and justification of the legal-administrative behavior, it is established that since there is no justification to apply a legal rule, if there was a lack of motivation in the presumptive determination act, that is why a new settlement was resolved.

In the fifth case, it was determined that the application of a presumptive determination under Article 25 of the Internal Tax Regime Law was not appropriate. This is due to the need to previously comply with the assumptions established in Article 92 of the Tax Code, which require the identification of the generating event and the quantification of the tax based on facts, indications or circumstances inherent to the taxpayer's economic activity. It is noted that the tax administration omitted the motivation of the circumstances that justified the application of coefficients, considering the existence of working papers, requests for information and the taxpayer's income tax return during the determination process. In this sense, the District Tax Court ruled that the active subject of the tax failed to demonstrate the justification for establishing the presumptive determination of income tax through coefficients of 14.79%, applying the margin of profitability compared to that of other taxpayers belonging to the same segment of economic activity.

Conclusions

The foregoing violates due process in the guarantee of motivation, this point of view is supported by what the Constitutional Court of Ecuador has held, judgment No. 191-16-SEP-CC; Case No. 2139-11-EP, which has indicated that the right to reasoning, in addition to stating the facts, the rules and comparing them with each other, must apply logic and legal argumentation, a situation that did not occur in this case, since, as observed by the tax administration, there being facts, indications that allow it to determine the tax in accordance with Article 92 of the Tax Code, it was disenchanted without any justification to apply presumptive estimation coefficients, according to Article 25 of the Internal Tax Regime Law.

In the tax determination process, there was evidence of a deficient review and assessment of the facts and indications in the file, which made it impossible to establish precisely both the generating event and the actual amount of the tax obligation. In addition, the active subject of the tax failed to give duly reasoned responses to the requests and allegations submitted by taxpayers, thus constituting a direct violation of the constitutional rights of motivation and legitimate defense. Finally, it is noted that the Tax Administration incorrectly applied the applicable regulations, by confusing the assumptions that enable the presumptive determination, provided for in Article 92 of the Tax Code, in accordance with Articles 23, 24 and 25 of the Internal Tax Regime Law and Article 268 of its Implementing Regulations. These shortcomings not only affect the validity of the procedure, but also compromise the legal certainty and legitimate expectations of the administered in the face of the determining power of the State.

Bibliographic References

Alexy, R. (2024). Theory of fundamental rights. Editorial Trotta.
Armijos, J. (2022). History and evolution of taxation in Ecuador. Quito: Ediciones Jurídicas.
Agudelo, J. (2015). The right of contradiction in the process. Revista Jurídica Universidad de Medellín, 42(1), 45–67.
Chinchilla, M. (1999). Due process as a judicial guarantee. Revista de Derecho Procesal, 10(2), 33–56.
Constitutional Court of Ecuador. (2016). Judgment No. 191-16-SEP-CC; Case No. 2139-11-EP. Quito: Official Registry.
Constitutional Court of Colombia. (1997). Judgment C-238/97. Retrieved from https://www.corteconstitucional.gov.co/relatoria/1997/c-238-97.htm
Inter-American Court of Human Rights (1987). Advisory Opinion OC-9/87. Judicial guarantees in states of emergency. San José: Inter-American Court.
De la Guerra, E. (2020). Tax legal certainty and constitutional principles. Journal of Financial and Tax Law, 15(2), 55–74.
Linares, J. (1989). Constitutional procedural law. Buenos Aires: Abeledo-Perrot.
López, C. (2022). Due process and its guarantees in the constitutional State. Ibero-American Journal of Constitutional Law, 8(1), 77–95.

Milkes, S. (2019). Good administration and the reasons for administrative acts issued in the exercise of discretionary powers. Revista Digital de Derecho Administrativo, 21, 153–176. Retrieved from https://heinonline.org/HOL/LandingPage?handle=hein.journals/rdigdad21&div=10

Oyarte, H. (2017). Due process as a universal notion. Ecuadorian Journal of Constitutional Law, 12(1), 101–120.

Passanante, M. (2021). Due process: principle and right. Latin American Journal of Constitutional Procedural Law, 5(2), 33–60.

Patiño, R. (2021). Presumptive determination in tax matters: grounds and limits. Revista de Derecho Tributario, 18(2), 65–89.

Pontón, G. (2011). Legality in the Public Administration and the General Interest. Andean Journal of Public Law, 4(1), 25–38.

Ramírez, P. (2016). Procedural Law and Due Process. Bogotá: Editorial Jurídica Colombiana.

Sánchez García, J. (2018). Tax legal certainty and regulatory production. Revista Española de Derecho Financiero, 177, 13–38.

Toscano, A. (2019). Presumptive determination and taxing power. Ibero-American Journal of Tax Law, 23(3), 99–121.

Vega, M. (2023). Legal certainty and tax equity. Ecuadorian Journal of Tax Law, 7(1), 44–62.