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# Tax exemption of the alcabala on mining concessions in non-urban areas and its impact on the development of rural localities

## *Inafectación tributaria del impuesto de alcabala en concesiones mineras en zonas no urbanas en el desarrollo de localidades rurales*

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**Abstract**

The general objective of this study was to analyze the tax exemption of the alcabala tax on mining concessions in non-urban areas and its impact in the development of rural localities. To achieve this objective, a qualitative methodology with a hermeneutic phenomenological design was used and the data collection was carried out through guided interviews with the participation of eight experts. The result revealed that the tax exemption on rural mining concessions is detrimental to municipal resources destined for community services. It was concluded that this exemption creates inequalities in the tax burden, negatively affecting infrastructure and public services in local communities. This phenomenon impacts tax equity and fiscal justice, as the current regulations do not align with the principle of capacity to contribute or promote balanced development, thereby limiting the availability of resources for the advancement of the affected rural areas.

**Keywords:** tax equity principle, tax equality principle, proportionality principle, urban properties.

**Resumen**

El estudio tuvo como general analizar la Inafectación tributaria del impuesto de alcabala en concesiones mineras en zonas no urbanas en el desarrollo de localidades rurales, para alcanzar dicho objetivo se utilizó una metodología cualitativa con un diseño fenomenológico hermenéutico; la recolección de datos se llevó a cabo a través de entrevistas guiadas, con la participación de ocho expertos; obteniendo como resultado que, la exención tributaria en las concesiones mineras rurales perjudica los recursos municipales destinados a servicios comunitarios; se concluyó que esta exención crea desigualdades en la carga fiscal, afectando negativamente la infraestructura y los servicios públicos en las comunidades locales. Este fenómeno afecta la equidad tributaria y la justicia fiscal, ya que la normativa actual no se ajusta al principio de capacidad contributiva ni fomenta un desarrollo equilibrado, limitando la disponibilidad de recursos para el avance de las zonas rurales afectadas.

**Palabras clave:** principio de equidad tributaria, principio de igualdad tributaria, principio de proporcionalidad, predios urbanos.

# INTRODUCTION

The non-taxation of the alcabala tax on mining concessions in non-urban areas in the development of rural localities has generated significant debate about its implications for fiscal equity and local development. As mining concessions expand into rural areas, the absence of this tax creates a disparity in the tax burden, negatively affecting municipal revenues that are important for investment in infrastructure and services. This phenomenon poses a challenge for tax justice and the sustainability of local development, since the affected communities face a reduction in the resources available to improve their well-being.

At the international level, in Spain, Goicolea (2018) states that the strategic allocation of the alcabala payments in La Rioja was used to cover salaries and military services, which demonstrates an adequate understanding of fiscal principles. In Ecuador, Carpio and Naranjo (2021) argue that the principle of contributive capacity is important for the creation of taxes so that the tax burden is adjusted to the economic capacity of citizens; otherwise, essential principles such as equality and equity are jeopardized, affecting tax justice.

At the national level, Suarez and Ulloque (2023) indicate that the constitutional principle of equality underlines the importance of applying taxes across the board and also allows for distinctions based on differences in wealth levels. The theories underpinning taxation, such as the social need theory, focus on social needs and public services, and seek to achieve a balance in tax equity by taking into account income disparities among citizens.

At the local level, Zúñiga (2021) indicates that the principle of equality proposes precisely tax equality as a constitutional value basis. For this reason, the non-affectation of the alcabala tax on non-urban mining concessions violates this principle. Therefore, it is important to carefully evaluate tax exemptions in order to avoid distortions that may harm the effectiveness of the tax system and equity among taxpayers, highlighting the rigorous application of the proportionality test as an essential element for a fair and equitable tax system.

For this study, it was considered convenient to pose as a general research problem: How does the non-affectation of the alcabala tax in mining concessions in non-urban areas impact the development of rural localities? The general objective of this study is to analyze the impact of the non-affectation of the alcabala tax in mining concessions in non-urban areas on the development of rural localities.

The research on the non-affectation of the alcabala tax in rural mining concessions is theoretically justified by promoting an academic debate on the violation of the principle of equality, by economically benefiting rural populations and practically by highlighting the need to reform tax legislation to correct inequalities, promoting a more just and equitable society.

# METHODOLOGY

This research adopted a qualitative approach to analyze the perceptions of experts, using a hermeneutic phenomenological design to obtain an in-depth understanding of their experiences and opinions on the impact of the tax exemption on mining concessions on the development of rural localities. In addition, semi-structured interviews were used as a technique and main data collection tool. Likewise, a detailed analysis of the tax court rulings related to this issue was carried out. A purposive sampling was applied to select 8 participants, who were chosen with the criterion of being professionals of the law with experience in the subject in question.

**Theoretical Framework**

Among the previous studies of this problem at the international level, we find Franco (2022) who points out that there is a regulatory problem regarding the alcabala tax in Ecuador, where it is charged even when there is no generating event in certain cases. Ecuadorian tax regulations pose difficulties, especially in situations of nullity, rescission, termination or reform of legal acts, arguing that, in such cases, the refusal to refund the tax contradicts the principle of contributive capacity, since the tax lacks substance in the generating fact once the effects of the act or contract are reversed.

At the national level, González (2022) states that the relevance of this tax in the financing of local public services highlights the need for an efficient administration in the collection of the alcabala tax.

For Escalante (2021) it is essential to understand the constitutional principles in the field of taxation, as well as the regulation and importance of taxes to cover the expenses generated by the State. In this sense, the equitable application of the tax law must be supervised by constitutional courts, to ensure consistency and avoid injustices, and therefore, it is necessary to adopt temporary measures to achieve equality in tax matters. Likewise, the rulings of the Constitutional Court must be consistent with the principle of equality, applying objective, reasonable and proportional criteria, regardless of the composition of their judges.

Regarding the importance of the alcabala tax collection, López (2021) indicates that the alcabala tax has a detrimental effect on municipal revenues, causing economic losses and affecting the financial independence of municipalities.

At the local level, we have Zúñiga (2021) who points out that the implementation of tax exemption affects equality in the tax system by compromising the principles of tax equality, indicating that the legitimacy of the rule is called into question, so it is necessary to adjust it to adequate procedures to justify its application.

Principle of tax equality. Parra and Vallejo (2022) mention that this marks a break with the social privileges of the past by equalizing conditions for all individuals. This principle encompasses both formal and material equality in the legal sphere. Legal equality implies that all individuals have the same rights and obligations, eliminating any form of discrimination and privileges. This ensures equal application of the law, reflecting the material equality that must be applied uniformly to all persons.

As Novoa (2006) rightly states, in relation to tax burdens, everyone must make sacrifices in the same way. This principle does not seek equality in quantitative or material terms, but focuses on personal and qualitative aspects, taking into account the economic situation of each individual.

Principle of tax equity. According to Mancilla and Lozano (2021), the principle of tax equity is based on the fair and uniform treatment of all taxpayers under the same tax legislation. This implies that all should be treated the same in terms of the tax base, allowable deductions, payment deadlines and other aspects of the tax. The only acceptable difference is in tax rates, which must be adjusted to the economic capacity of each taxpayer to ensure proportionality. Thus, tax equity ensures that those facing similar taxes are on an equal footing before the tax laws.

Regarding the principle of tax legality, Sarmiento (2023) states that only the legislator has the authority to define tax obligations and their conditions. This means that only a law can determine who must pay taxes. The principle is based on a hierarchy where the legislature, as the superior authority, legitimizes the State to impose taxes. In essence, the principle of legality, also known as the principle of reservation of the law, restricts and legitimizes the actions of the State in tax matters.

Regarding the alcabala tax, Durán and Mejía (2014) point out that the alcabala tax applies to the transfer of real estate, whether urban or rural, regardless of whether it is done for payment or free of charge. Since 1984, it has been a key source of revenue for local governments and is one of the top five taxes at the municipal level. However, there are exceptions in which the transfer is exempt from this tax, such as properties with a value of less than 10 Unidades Impositivas Tributarias (UIT) and in certain cases of inheritances or cancellations of purchase and sale contracts, as long as the cancellation is decided after the agreed price has been paid.

## RESULTS

Regarding the impacts of the alcabala tax, it has important economic and social repercussions, both positive and negative. However, only one interviewee highlights the fiscal challenges, such as the decrease in resources for infrastructure and public services, which contrasts with the general evaluation of the measure.

Measures for Fiscal Equity. There is a perceived need to implement several measures to ensure fiscal equity and guarantee resources for rural municipalities affected by the tax exemption. Proposed solutions include participation in mining royalties, improved collection management, transparency in the use of funds, and tax reforms tailored to each community.

Proposals for Fiscal Equity: As in the previous paragraph, all interviewees agree on the need to adopt measures to balance fiscal equity and ensure resources for the affected municipalities. In addition to the above-mentioned proposals, the introduction of conditional transfers tailored to the specific needs of each community is suggested.

Impact on Revenues and Local Development: Six interviewees agree that the alcabala tax exemption has a significant effect on municipal revenues, local development and economic equity. Meanwhile, two interviewees point to the negative impact of illegal mining in communities.

Management of the tax exemption: Seven interviewees agree that the management of the tax exemption should promote mining development without compromising equity. They propose various measures and strategies to achieve a fair and sustainable balance, although one focuses on the benefits that mining investment can bring with this exemption.

Citizen Participation and Popular Consultations: Seven interviewees emphasize the importance of citizen participation and popular consultations in the formulation of fair tax policies related to mining. However, one interviewee focuses on the oversight of municipal works and services and the creation of transparency regulations.

Challenges and Proportionality: Seven interviewees agree that the alcabala tax exemption may cause fiscal imbalances and affect the principle of proportionality. On the other hand, one considers that the exemption could offer local economic benefits, suggesting that it should be evaluated in an exhaustive manner.

Mitigation of Negative Effects: to mitigate the negative effects of this tax exemption, measures such as equitable compensation, promotion of transparency, community participation and corporate social responsibility should be implemented.

## DISCUSSION

The aforementioned coincides with what has been pointed out by researchers in previous international studies such as those of Carpio and Naranjo (2021), who emphasize the need to adjust the regulations to the principles of taxation based on the economic capacity of taxpayers. Likewise, Franco (2022) proposes the implementation of a new tax system that, in accordance with the recommendations of economists, focuses on promoting social equity and equal opportunities.

What was mentioned by the interviewees is in agreement with Escalante (2021); when examining the constitutional principle of equality in tax matters, the importance of equality before the law and the need to implement temporary measures to achieve material equality is highlighted. Similarly, Zúñiga (2021), who examines the non-affectation of the alcabala tax on rural land and its effect on tax equality, argues that it goes against the principles of justice and equity.

Likewise, on theoretical grounds, Goicolea (2018) points out that, in Spain, the strategic use of alcabala payments, to cover salaries and military services demonstrates a deep understanding of basic tax principles. Thus, the inclusion of exemptions and differentiated treatments, provided they are well justified, reflects a pragmatic approach in the application of tax principles such as equity, equality and proportionality.

Regarding integrity, Mancilla and Lozano (2021) address the principle of tax equity and proportionality, emphasizing the need to treat all taxpayers fairly and to maintain a consistent relationship among different income levels.

The above is consistent with Escalante (2021), who highlights the importance of rigorous monitoring of the principle of equality in the application of the law by the Constitutional Court, using objective, reasonable, and proportional criteria. This is also confirmed by Díaz and Ariza (2022), who indicate that the lack of adequate territorial planning and the granting of environmental licenses without prior analysis affect equity, given that some mining companies do not comply with constitutional standards, causing harm to the environment and health.

Vásquez (2019) confirms the abovementioned, adding that the alcabala tax, in relation to the legal criteria applied to value land in the first sale of real estate by construction companies, influences tax collection.

At the local level, Zúñiga (2021) emphasizes the importance of carefully reviewing exemptions or inafectations to prevent distortions that may affect the effectiveness of the tax system and equity among taxpayers, highlighting the consideration of constitutional principles as key elements to ensure a fair and equitable tax system.

In the same vein, Toledo (2018) adds that, in the tax field, this equality does not prevent the application of technical differences in the distribution of tax burdens, as long as the principle of equity is maintained. Also, Aquino (2020) indicates that the lack of prior analysis in public policies for the granting of licenses contributes to the violation of the principle of tax proportionality, since mining companies do not comply with constitutional standards, resulting in serious and irreparable damage to the environment as well as to human health.

We also find Díaz and Ariza (2022) who point out that, although there is citizen participation in decisions on land use, there are still conflicts among companies, the government and the communities. Furthermore, in the opinion of López (2021), revenues obtained by the municipality are negatively affected by tax exemptions, which generates economic losses and affects its financial autonomy. Likewise, Huanca (2021) adds that the lack of personnel complicated the achievement of its management objectives. Aquino (2020) insists on the importance of ensuring that municipalities receive adequate resources from the tax in order to provide better service to the community.

For Zúñiga (2021) the ambiguity in the mining regulations highlights how the exemption affects tax equality, putting at risk the principle of proportionality and the taxpayers' contributive capacity.

Likewise, Mancilla and Lozano (2021) emphasize that this principle ensures that the payment of taxes is distributed fairly according to the economic capacity of each individual, promoting equity in the tax system. Progressive rates are used to ensure that those with greater resources contribute more, reflecting the idea that the tax burden should correspond to the ability to pay.

## CONCLUSIONS

Tax regulations with fundamental principles such as contributive capacity, social equity and equality of opportunities. The non-application of the alcabala tax in rural areas has shown negative effects on tax justice and equity, compromising constitutional principles. It is essential to implement measures that guarantee material equality and avoid distortions in the tax system, with a focus on ensuring that differentiated treatments are duly justified and that all taxpayers are treated fairly according to their economic capacity.

The importance of strictly applying the principle of equality in tax law so as not to compromise constitutional principles such as equality and equity, it is essential to carefully evaluate tax policies and exemptions to avoid distortions in the tax system, ensure that businesses comply with constitutional standards, and protect the environment and public health.

Tax exemptions negatively affect the collection and financial autonomy of municipalities, impacting their development by affecting their ability to meet their goals and offer adequate services to the community. In addition, the lack of regulatory clarity in the mining area compromises key principles of tax equity, such as proportionality and contributive capacity. Citizen participation and adequate resource allocation are crucial to improve management and ensure that the tax system works fairly, reflecting individual economic capacity in the tax burden and promoting equity in the system.

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## REFERENCES


Aquino, P. (2020). *Inafecctación del impuesto predial por predios de cofopri qu eno han sido adjudicados a posesionarios.* [Tesis de pregrado, Universidad Tenológica del Perú] Repositorio UTP. https://repositorio.utp.edu.pe/bitstream/handle/20.500.12867/3978/Pamela%20Aquino_Karen%20Salas_Trabajo%20de%20Suficiencia%20Profesional_Bachiller_2020.pdf?sequence=1

Carpio, M., y Naranjo, M. (2021). El efecto de la ineficacia de los actos traslaticios de dominio en el hecho generador del impuesto de alcabala. *Foro: Revista de Derecho,* (35), 169-189. https://doi.org/10.32719/26312484.2021.35.9

Díaz, J., y Ariza, G. (2022). La concesión minera en Colombia, un análisis ecológico desde el marco normativo. *Advocatus,* (39), 1-19. https://dialnet.unirioja.es/servlet/articulo?codigo=8910704

Durán, L., y Mejía, M. (2014). El Impuesto de Alcabala en el Perú. *Derecho & Sociedad,* (43), 345-365. https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/12582

Escalante, A. (2021). *El principio constitucional de igualdad en materia tributariaen la jurisprudencia oscilante y relevante del tribunal constitucional desde 1996 hasta el 30 de junio de 2020.* [Tesis de maestría, Pontificia Universidad Católica del Perú] Repositorio PUCP. https://tesis.pucp.edu.pe/repositorio/bitstream/handle/20.500.12404/19748/ESCALANTE_GONZ%c3%81LES_ANTENOR_JOS%c3%89%20%281%29.pdf?sequence=1&isAllowed=y

Franco, A. (2022). *Justicia social en Colombia: economía política de la política tributaria, la desigualdad y el Estado social de derecho (1991-2022).* [Tesis de maestría, Universidad Nacional de Colombia] Repositorio UNAL. https://repositorio.unal.edu.co/bitstream/handle/unal/84069/1020801615.2023.pdf?sequence=2&isAllowed=y

Goicolea, J. (2018). Fiscalidad Real en la Rioja a fines del medievo: El tributo del alcabala. *Brocar,* (42), 7-30. http://doi.org/10.18172/brocar.3770

Huanca, D. (2021). *Evasión tributaria y los ingresos tributarios en la municipalidad provincial de Quispicanchi periodo 2018-2019.* [Tesis de grado, Universidad Andina del Cusco] Repositorio digital. https://repositorio.uandina.edu.pe/bitstream/handle/20.500.12557/4665/Diane_Tesis_bachiller_2022.pdf?sequence=1&isAllowed=y

López, I. (2021). *La elusión del impuesto de alcabala y la repercusión en la recaudación tributaria municipal del distrito de Carmen Alto – Ayacucho, 2020.* [Tesis de pregrado, Universidad César Vallejo] Repositorio UCV. https://repositorio.ucv.edu.pe/handle/20.500.12692/73863

Mancilla, E., y Lozano, C. (2021). El principio de proporcionalidad aplicado en los impuestos estatales y el impuesto sobre La Renta. *Revista del Posgrado en Derecho de la UNAM, 8*(15), 173-198. https://doi.org/10.22201/ppd.26831783e.2021.15.182

Novoa, G. (2006). El Principio de la Capacidad Contributiva. *Derecho & Sociedad,* (27), 101-106. https://revistas.pucp.edu.pe/index.php/derechoysociedad/article/view/17169

Parra, R., y Vallejo, P. (2022). El principio constitucional de igualdad en la legislación tributaria ecuatoriana respecto al pago de intereses. *Polo del Conocimiento, 7*(8), 2800-2827. https://dialnet.unirioja.es/servlet/articulo?codigo=9042852

Sarmiento, P. (2023). Sistema tributario de excepción en economías primarias, el caso colombiano. *Revista Derecho del Estado,* (56), 363-388. https://doi.org/10.18601/01229893.n56.13

Suarez, J., & Ulloque, M. (2023). *La alcabala y su regulación progresiva de la tasa en la Municipalidad Provincial de Lambayeque 2022.* [Tesis de pregrado, Universidad Señor de Sipán] Repositorio Digital USS. https://repositorio.uss.edu.pe/bitstream/handle/20.500.12802/11909/Suarez%20Ruiz%2C%20Jimmy%20-%20Ulloque%20Nu%C3%B1ez%2C%20Miriam%20Andrea.pdf?sequence=1&isAllowed=y

Toledo, P. (2018). Igualdad tributaria: reconstrucción racional de la jurisprudencia constitucional española. *Revista de Derecho (Valdivia),* 31(1), 251-271. http://dx.doi.org/10.4067/S0718-09502018000100251

Vásquez, Y. (2019). *Criterios legales aplicados en la valorización del terreno al determinar el impuesto de alcabala e impuesto general a las ventas en la primera venta de inmuebles que efectúan las empresas constructoras.* [Tesis de pregrado, Universidad Privada Antenor Orrego] Repositorio UPAO. https://repositorio.upao.edu.pe/handle/20.500.12759/4710

Zúñiga, A. (2021). *Alcabala en el sector rural minero; validez de la norma tributarial. Arequipa.* [Tesis de Grado, Universidad César Vallejo] Repositorio Digital Institucional. https://repositorio.ucv.edu.pe/handle/20.500.12692/64668