

The principle of tax capacity in Peru. A systematic review

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Abstract

This study presents a review of scientific articles from the last five years on the importance of the principle of tax capacity. The articles were sourced from a variety of academic search engines and include those from Peru and other countries where there is also interest in this topic. The following question was posed: How is the importance of the principle of tax capacity demonstrated? The objective of this research is to conduct a systematic review of the literature on the principle of tax capacity. Accordingly, the data from the scientific network has been utilized, encompassing all the documents reviewed from indexed academic journals, both nationally and internationally. This approach enables the recovery of diverse perspectives on this issue, encompassing varying points of view, methodologies, challenges, solutions, and recommendations. The reviewed studies demonstrate that this principle not only ensures a more equitable distribution of tax burden but also enhances the legitimacy of the tax system and fosters sustainable economic development. In this regard, the research indicates a need for further investigation into more precise methodologies for determining tax capacity and for the design of public policies that encourage voluntary compliance with tax obligations.

Key Words: Principle of contributory capacity, Peru, Systematic review.

Resumen

Este estudio muestra la revisión de diversos artículos científicos de los últimos 5 años sobre la importancia del principio de capacidad contributiva, haciendo consulta en distintos buscadores académicos, entre artículos de Perú y otros países donde también existe el interés acerca de este tema. Se formuló la pregunta siguiente: ¿Cómo se muestra la importancia del principio de capacidad contributiva? El objetivo de la presente investigación es realizar una revisión sistemática de los artículos relacionados con el principio de capacidad contributiva. Entonces, se ha utilizado la información en la red científica, es decir, todos los documentos revisados son de revistas indexadas de carácter académico, desde estudios nacionales a internacionales para poder rescatar los distintos enfoques de esta problemática con los diferentes puntos de vistas, su planteamiento, la problemática, las soluciones y sus recomendaciones. Se concluye que, los estudios revisados evidencian que este principio no solo garantiza una distribución más justa de la carga tributaria, sino que también fomenta la legitimidad del sistema tributario y promueve el desarrollo económico sostenible. En este sentido, la investigación revela la necesidad de continuar explorando metodologías más precisas para determinar la capacidad contributiva y de diseñar políticas públicas que incentiven el cumplimiento voluntario de las obligaciones tributarias.

Palabras Clave: Principio de capacidad contributiva, Perú, Revisión sistemática.

Introduction

The principle of tax capacity represents a fundamental tenet of any fair and equitable tax system. This principle establishes tax burden should fall on those individuals or entities that have greatest economic capacity to contribute to the financing of public expenditures. In

other words, the principle of taxation is that those who have greater economic capacity should contribute a greater proportion of tax revenue. This principle is founded upon the tenets of social justice and equity, with the objective of preventing the most vulnerable from bearing an undue tax burden. Furthermore, ensuring that the wealthiest taxpayers assume a greater share of the tax burden encourages a more equitable distribution of wealth. This is where Ramón and Oliver (2019) provide further insight. The authors highlight the adverse implications of vulnerability of the tax capacity principle in income tax calculations for businesses. These include the imposition of excessive tax liabilities, which in turn give rise to a range of adverse consequences for companies, including: This results in a reduction in distribution of profits, a decline in liquidity, and non-compliance with obligations. Consequently, the principle of tax capacity not only affects companies directly but also has ramifications throughout the economy, resulting in a reduced distribution of wealth, a decline in investment, and an uptick in informality.

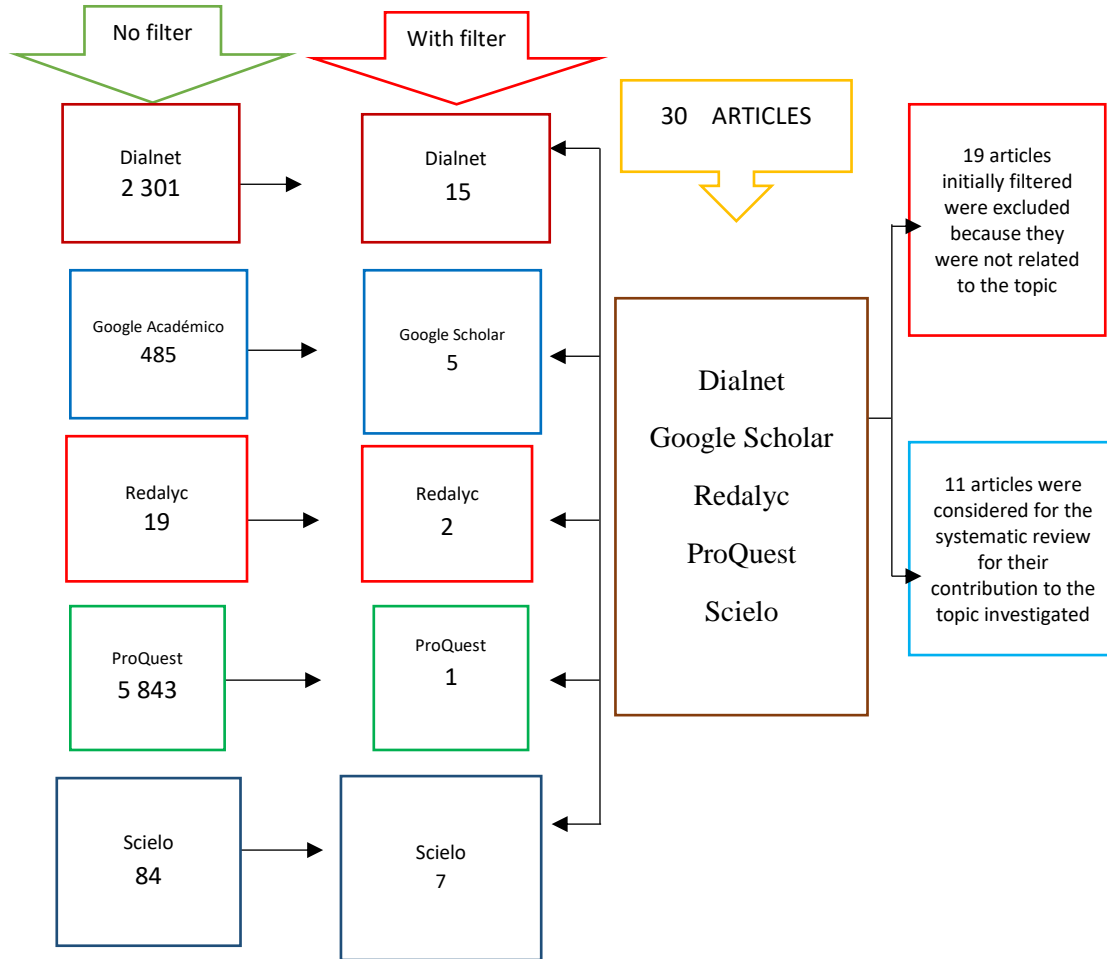
In Peru, the principle of tax capacity is enshrined in the Political Constitution and in various legal norms. Nevertheless, the practical application of this principle has been the subject of debate and analysis, particularly in the context of a constantly evolving economy and an increasing complexity in productive structures. In the context of Peruvian jurisprudence, a series of criteria have been developed with the objective of determining tax capacity. These criteria take into account a range of factors, including income, assets, consumption, and other indicators of economic capacity. Nevertheless, the exact determination of tax capacity in specific instances can be intricate, particularly in context of intricate economic structures or taxpayers aiming to minimize their tax liability. At the Latin American level, the principle of tax capacity has been the subject of considerable academic and political debate. A number of countries in region have implemented tax reforms with the objective of reinforcing this principle and reducing instances of tax evasion and avoidance. Nevertheless, common challenges persist, including informality, the complexity of economic structures, and lack of resources for tax administration.

This systematic research will enable us to ascertain the answer to the problem raised, namely the correlation between principle of tax capacity and its importance in the state. The findings of this study will prove invaluable to public policy designers, legislators, and taxpayers alike, offering a comprehensive understanding of how this principle has been operationalized in practice and challenges and opportunities emerge in the current context. To this end, a comprehensive examination will be conducted on the tax reforms enacted over the past five years (2019-2024), with particular attention paid to investigations exceed the specified time threshold. The analysis will focus on the reforms' impact on equity and efficiency of the tax system.

Methodology

Systematic reviews (SR) are secondary studies that seek to answer a research question. To this end, they carry out exhaustive searches of the available evidence, that is to say, studies that have already answered research question in question. The results of these investigations are then synthesized (Fernández, et al. 2019). Comprehensive bibliographical research was conducted, encompassing a diverse array of scientific articles oriented towards the study variables. The most recent literature, spanning the period from 2017 to 2021, has been consulted in order to obtain the most current data on the subject matter under investigation. The systematic review was conducted using the primary academic search engines, including: The following databases were consulted: Google Scholar, SciELO, ProQuest, Dialnet, and Redalyc. In this manner, articles from scientific journals pertaining to the significance of social skills in basic education have been obtained. The search terms employed were "**Principle of Contributive Capacity**" and "**Principle of Contributive Capacity in Peru.**"

Figure 1. Flowchart of the inclusion and exclusion criteria taken for the systematic review.



Note: Dialnet, Google Scholar, Redalyc, Proquest and Scielo databases

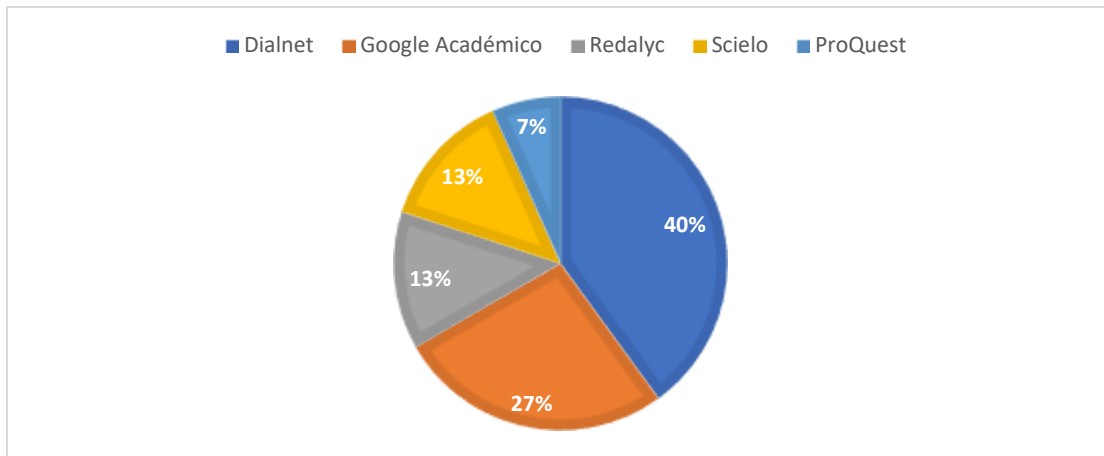
Results

The findings of research are presented in the following section. The bibliographic analysis was conducted via the academic network, utilizing reliable virtual resources for scientific searches. The following search engines were utilized: The following databases were consulted in the order listed: Dialnet, Google Scholar, Redalyc, Proquest, and Scielo. The articles are from most recent five-year period and include significant contributions in Spanish and Portuguese. The search terms employed were "**Principle of Contributive Capacity**" and "**Principle of Contributive Capacity in Peru**", which yielded results that were highly pertinent to the research problem.

Figure 1 illustrates the process of information retrieval. Upon entering the search terms without any filters, a multitude of articles was returned. Dialnet 2301, Google Scholar 485, Redalyc 19, Proquest 5843, Scielo 84. Applying language filters (Spanish), with a minimum publication date of five years ago, and specifying that only articles from scientific journals were to be included, a smaller number of articles were obtained. It is also noteworthy that the initial search yielded a considerable number of articles that were not directly relevant to the application of the topic in the context of regular basic education. Consequently, a further selection was made, whereby articles were not pertinent to the subject matter were excluded. The following search strategy was employed: The results yielded 15 articles from Dialnet, 5 from Google Scholar, 2 from Redalyc, 1 from Proquest, and 7 from Scielo.

In conducting this study, our objective was to gather articles from a range of academic search engines to obtain a diverse set of results. However, as illustrated in Figure 2, the prevalence of articles on topic is more pronounced in the academic search engine "Dialnet," which is noteworthy given that the majority of articles, as depicted in Figure 1, originate from search engine "ProQuest." It is important to note that searches conducted through the latter search engine often result in the discarding of numerous results, in addition to application of a personal selection process. This observation highlights the fact that, despite the precision of search terms employed, results were still found that were not directly related to the research topic. Conversely, the search engine "Dialnet" yielded articles that were pertinent to research topic, thus providing the opportunity to select several noteworthy articles.

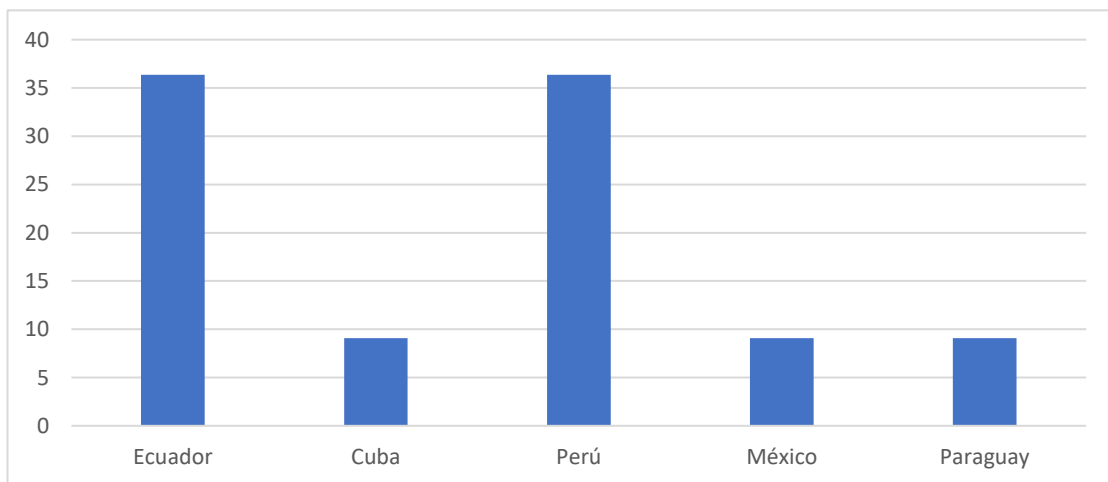
Figure 2. Percentage distribution of articles according to the academic search engine.



Note: Dialnet, Google Scholar, Redalyc, Proquest and Scielo databases

Conversely, the genesis of the research has been reclaimed to facilitate a comparison between countries have investigated the issue in question. In this research, articles from Peru and Ecuador represent a significant proportion of the total, with 36.36% of the total number of articles being from Peru and another 36.36% from Ecuador.

Figure 3: Percentage distribution of articles by country.



Note: Dialnet, Google Scholar, Redalyc, Proquest and Scielo databases

Some of the articles consulted in review yielded more general results. For instance, in the corpus of Peruvian articles, Cruz, S. L. A. (2020) posits taxes are directly correlated with the principle of tax capacity. Consequently, for the purposes of their creation or collection, it must be ascertained passive agent generates income, accumulates it, or demonstrates it

through his level of consumption. This is to ensure that compliance does not jeopardize his survival or of his dependents.

Armijos González, P. O. (2023) notes right to private property is constitutionally guaranteed, to the extent its confiscation is prohibited. However, this is not fully reflected in reality, as the national legal system, particularly at the sectional level, has tax regulations that converge with the objective of obtaining excessive taxes from taxpayers, which are clearly detrimental to their right to private ownership. In this regard, the principles of tax capacity and non-confiscation serve to circumscribe actions of the legislator, as they indicate that cooperation with the state should be provided in a fair and reasonable manner, in accordance with capabilities of each obligated party. This is done in order to prevent any actions that may result in undue harm to the right to private property.

In light of the aforementioned considerations, the following table (Table 1) presents a synthesis of the most significant contributions of each investigation to address the question of the importance of the principle of tax capacity.

Table 1: Articles by author and contribution.

N°	Authors	Contribution to the study
1	Cruz, S. L. A. (2020).	Taxes are directly related to the principle of tax capacity; therefore, for the purposes of their creation or collection, it must be verified that the passive agent generates income, accumulates it, or manifests it through his level of consumption, in such a way that compliance does not put his survival or that of his dependents at risk.
2	Apaza, H. M. V. (2021).	It highlights a recurring problem in the application of the principle of legality in tax matters in Peru. The Tax Administration, in its eagerness to collect taxes, has exceeded its powers and violated the rights of taxpayers. To correct this situation, it is proposed that specific sanctions be established for public servants who commit these abuses and that control and monitoring mechanisms be strengthened over the actions of the Tax Administration.
3	Armijos González, P. O. (2023).	It emphasizes that the right to private property is constitutionally guaranteed, to the point that its confiscation is prohibited. In reality, this is not fully verified, because in the national legal system, mainly at the sectional level, tax regulations converge that seek to obtain excessive taxes from the taxpayer that are clearly detrimental to his right to private ownership. Unfortunately, confiscation in tax matters is not expressly prohibited by the Constitution. The principles of tax capacity and non-

		<p>confiscation represent limits to the actions of the legislator, since they indicate that cooperation with the State should only be provided to the fair extent, within the possibilities of each obliged party, thus avoiding excesses that harm the right to private property. Consequently, the symbiotic relationship between tax maxims is fundamental, since they act as guidelines to avoid the violation of guarantees. Likewise, the rules of the tax system must be applied in their entirety, since their partial or isolated application undermines rights.</p>
<p>4</p>	<p>Armijos González, P. O. (2021).</p>	<p>Since ancient times, there has been an urgent need to formally take into account the tax capacity of individuals, as an indicator of the extent to which they must have the obligation to contribute to the financing of public expenditure. Although it is true that the principle of tax capacity is not prescribed in the constitutional text, its relevance and significance are undeniable in the Ecuadorian tax system, since due to its scope, the Constitutional Court of Ecuador has come to qualify it as a transversal axis, which acts as the origin of the tax obligation, considering the base measured in the framework of contributions, and even as a limit of the tax pressure.</p>
<p>5</p>	<p>Orellana Ulloa, M. N., Gutiérrez Jaramillo, N. D., & Ramón Ruffner de Vega, J. G. (2021).</p>	<p>In conclusion, this study shows that the health crisis caused by COVID-19 greatly affected several economic and social aspects of the population, due to the measures adopted by the authorities, such as confinement and restriction of movement, which took their toll on productive activities, causing a serious economic crisis that affects employment, family income and the health of citizens. Focusing this study on the tax aspect, the decrease and, in certain cases, paralysis of productive activities decreased family income, mainly affecting their tax capacity and, therefore, there was a decrease in tax collection of 34%, which makes it even more difficult for the State to fulfill its purposes of helping the population.</p>

6	Carpio Frixone, M. B., & Naranjo Ponce, M. G. (2021).	<p>In conclusion, in our opinion, there is no justification within the framework of Tax Law for ignoring the refund of the excise tax paid in cases of nullity, rescission, resolution or reform (with the exceptions set out throughout this work). On the contrary, once the effects of the act or contract that gave rise to the collection of the tax are retroactive, this lacks substance in the taxable event and, therefore, denying its refund contravenes the principle of taxable capacity.</p>
7	Gutiérrez, W. V. (2021).	<p>The tension between the economic foundations of the tax (neutrality, consumption, added value) and its legal regulation using civil law concepts (sale, provision, consideration, movable or immovable property), should always lead us to interpret within the limits of the normative text, based on the purpose of the tax, enabling the deduction of the tax credit that is the heart of the tax and, in turn, allowing the final consumer to assume the economic burden of the tax.</p>
8	Prado, Y. M. M. (2024).	<p>It concludes that there is a good predisposition of the analysis unit regarding the possible implementation of an IBP to contribute to ecological protection, in the same way, the proposed tax must have a deterrent character and encourage recycling through a system of refund of the tax paid, also, the application of the tax must be accompanied by environmental education and awareness campaigns.</p>
9	Ramos Farroñán, E. V., Tacilla Ramos, L. J., & Alburqueque Atoche, C. I. (2022).	<p>Deductible and non-deductible expenses are a factor in the compliance of companies' tax obligations, and deductible expenses include depreciation, financial interest, operating expenses, representation expenses and travel expenses, among others. It is also important to highlight that these expenses are subject to limits and must comply with the principle of causality and reliability because, if they are deducted incorrectly, the expenses that the tax administration will not accept must be added, that is, they will become tax objections.</p>
10	Ponce, L. J. T. (2021).	<p>Within the suspicious categories related to the different forms of family in tax matters,</p>

	<p>there is no doubt that much remains to be done, and it is worth asking ourselves: is our tax legislation ready to deal with the situations that arise from scientific advances in family matters? Is it possible to access the benefits established by the Income Tax Law, for people who have been born through assisted reproduction techniques, in which the genetic family relationship is present, but not the relationships of economic, emotional and cohabitation dependency?</p>
11	<p>Villalobos López, J. A. (2023).</p> <p>Currently, legal interpretation in tax matters has been one of the most controversial and debated issues, where tax decisions are constantly and permanently updated. In legal interpretation, the concepts of tax capacity and economic capacity play a decisive role, establishing an indissoluble and interdependent relationship between both terms. Tax capacity is shown through the manifestation of wealth (income, assets or capital), where the principles of legality and legal certainty are decisive for its conception. Economic capacity is externalized by reflecting the available wealth of taxpayers (income, assets and capital), reflecting more a concept of social justice than of legality.</p>

Note: Dialnet, Google Scholar, Redalyc, Proquest and Scielo databases

The preceding 11 articles have served to highlight relevance of the principle of tax capacity to achieving greater progressivity in Peruvian tax system. The studies concur that the effective implementation of this principle would facilitate a reduction in economic and social inequality by necessitating a greater contribution from those with greater resources. However, the findings also indicate the presence of impediments to realization of this objective, including influence of pressure groups and the complexity of the tax system. In light of these considerations, it is imperative to reinforce control and monitoring mechanisms to guarantee Peruvian tax system is founded upon principles of equity and social justice.

Discussion

Upon review of the results, it became evident that there is a necessity for a sustained and precise implementation of training on the significance of the principle of tax capacity within the Peruvian tax system. The effective application of this principle is essential to guarantee a fair, equitable, and efficient tax system and to strengthen the legitimacy of the state. In light of the aforementioned considerations, it becomes evident that failing to accord sufficient attention to the significance of the principle of tax capacity has far-reaching consequences.

For example, in the study by Villalobos López, J. A. (2023), the authors emphasize the significance of comprehending the interconnection between tax capacity and economic capacity in the context of tax legal interpretation in Peru. The constant evolution of this field

necessitates a meticulous and balanced interpretation of these concepts, consistently upholding the principles of legality, legal certainty, and social justice.

What is particularly noteworthy is observation made by Armijos González, P. O. (2021), who emphasized that the interpretation of the principle of tax capacity represents a pivotal aspect of tax law. This interpretation, primarily conducted by the Constitutional Court, has facilitated the establishment of this principle as a pivotal component of the tax system, guaranteeing a fair and equitable distribution of the tax burden.

In conclusion, Apaza, H. M. V. (2021) asserts that the most persistent challenge in Peru pertains to implementation of the principle of legality in taxation. The proposed solution entails the reinforcement of control and surveillance mechanisms over the Tax Administration, as well as imposition of sanctions on public servants who engage in misconduct. Such an approach would ensure a fairer and more equitable application of tax regulations, thereby protecting the rights of taxpayers and strengthening the rule of law.

Conclusions

This research, which focused on a systematic review of the principle of tax capacity in Peru, has revealed the complexity and relevance of this concept in the Peruvian tax system. The analysis of various sources has demonstrated that the effective application of this principle is crucial for ensuring equity and efficiency in tax collection. However, challenges and limitations in its implementation have also been identified, including tax evasion, the complexity of the tax system, and the difficulty in determining the economic capacity of taxpayers. The findings of this study indicate that future tax reforms in Peru should prioritize reinforcement of the principle of tax capacity, the streamlining of the tax system, the enhancement of control and surveillance mechanisms, and advancement of tax culture. Furthermore, it is essential to sustain research and monitoring of implementation of this principle to guarantee that the advantages of equitable taxation are universally accessible to the Peruvian population.

Bibliographic references

Apaza, H. M. V. (2021). Determinación del impuesto a la renta sobre base presunta y vulneración del principio de legalidad. *Revista de derecho*, 6(2), 3-14.

Armijos González, P. O. (2021). La importancia del principio de capacidad contributiva en el régimen tributario ecuatoriano. *Foro: Revista de Derecho*, (36), 149-168.

Armijos González, P. O. (2023). El derecho a la propiedad privada frente a los tributos con efectos confiscatorios. *Foro: Revista de Derecho*, (39), 129-148.

Carpio Frixone, M. B., & Naranjo Ponce, M. G. (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.

Cruz, S. L. A. (2020). ¿Los Organismos Públicos se encuentran obligados a pagar el Impuesto al Patrimonio Vehicular sobre la propiedad de sus vehículos? *Vox Juris*, 38(1), 155-169.

Fernández, J. Zafra, J. Goicochea, S., Peralta, C.I., Taype, A. (2019): Aspectos básicos sobre la lectura de revisiones sistemáticas y la interpretación de meta-análisis. *Acta Med Peru*, 36(2), 157-69 <http://www.scielo.org.pe/pdf/amp/v36n2/a13v36n2.pdf>

Gutiérrez, W. V. (2021). Conceptos fundamentales del Impuesto General a las Ventas. *Derecho & Sociedad*, (56), 1-21.

Orellana Ulloa, M. N., Gutiérrez Jaramillo, N. D., & Ramón Ruffner de Vega, J. G. (2021). El principio de capacidad contributiva con relación a la emergencia sanitaria COVID-19 en Ecuador, 2019-2020. *Quipukamayoc*, 29(60), 19-28.

Ponce, L. J. T. (2021). El concubinato y otras formas de familia, como categorías sospechosas dentro del derecho fiscal. *Emerging Trends in Education*, 9(25), 1.

Prado, Y. M. M. (2024). Impuesto a las botellas plásticas no retornables y la protección ambiental a través del reciclaje. *Latam: revista latinoamericana de Ciencias Sociales y Humanidades*, 5(1), 73.

Ramón, S., & Oliver, E. (2019). Vulnerabilidad del principio de capacidad contributiva en la determinación del impuesto a la renta de las empresas de la región Lambayeque, año 2017. *Revista Ciencia y Tecnología*, 15(4), 47-60.

Ramos Farroñán, E. V., Tacilla Ramos, L. J., & Alburqueque Atoche, C. I. (2022). Los gastos deducibles y no deducibles como factor de cumplimiento de las obligaciones tributarias en empresas del sector agrícola en Perú. *Cofin Habana*, 16(2).

Villalobos López, J. A. (2023). Relaciones en materia fiscal entre el derecho tributario y la economía pública. *Revista Economía y Política*, (38), 27-53.