

**LA CRISIS DE LOS IMPUESTOS LOCALES**  
El caso del ICA, alumbrado público y estampillas

Esperanza Buitrago Díaz  
*–Editora académica–*



*Colección Textos de Jurisprudencia*

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La crisis de los impuestos locales. El caso del ICA, alumbrado público y estampillas / Esperanza Buitrago Díaz.  
-- Bogotá: Editorial Universidad del Rosario, Facultad de Jurisprudencia, 2016.  
xxiii, 629 páginas. -- (Colección Textos de Jurisprudencia)

Incluye referencias bibliográficas

ISBN: 978-958-738-699-8 (impreso)

ISBN: 978-958-738-700-1 (digital)

Impuestos locales / Política fiscal -- Colombia / Industria y comercio -- Impuestos -- Colombia / Alumbrado público -- Impuestos -- Colombia / Derecho tributario / I. Buitrago Díaz, Esperanza / II. Parra Ortiz, Harold Ferney / III. Universidad del Rosario. Facultad de Jurisprudencia / IV. Título / V. Serie.

343.054

SCDD 20

Catalogación en la fuente --- Universidad del Rosario. Biblioteca

JDA

diciembre 3 de 2015



**Universidad del  
Rosario**

Colección Textos de Jurisprudencia

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Editorial Universidad del Rosario  
Carrera 7 N° 12B-41, oficina 501 • Teléfono 297 02 00  
editorial.urosario.edu.co

Fecha de evaluación: 1 de julio de 2015  
Fecha de aceptación: 21 de agosto de 2015

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Primera edición: Bogotá D. C., abril de 2016

ISBN: 978-958-738-699-8 (impreso)  
ISBN: 978-958-738-700-1 (digital)

Coordinación editorial: Editorial Universidad del Rosario  
Corrección de estilo: Rodrigo Díaz Lozada  
Diseño de cubierta: Kelly Narváez  
Diagramación: Martha Echeverry  
Impresión: Xpress. Estudio Gráfico y Digital S. A.

Impreso y hecho en Colombia  
*Printed and made in Colombia*

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## Autores y colaboradores

### Investigadores principales

#### Esperanza Buitrago Díaz

Profesora de carrera académica de la Universidad del Rosario (Colombia). Profesora asociada de Derecho Tributario de la Universidad de Maastricht (Holanda). Doctora en Derecho Tributario por la Universidad de Salamanca, *cum laude* y mención *doctor europeus*. Su carrera investigadora se ha enriquecido en varias instituciones europeas como el Instituto Max Planck para el Derecho Tributario, la Universidad Ludwig Maximilians, la Universidad de Münster, el International Bureau of Fiscal Documentation, la Universidad de Negocios de Viena (Wirtschaftsuniversität Wien), entre otros. Ha sido profesora visitante de varias universidades, entre ellas la Universidad de Pekín, *Sun Yat Sen* (Cantón) y Cantabria (España). Es autora de varias publicaciones nacionales e internacionales. *Alumni* del Instituto Max Planck en Alemania.

#### Juan Rafael Bravo Gaviria

Economista y abogado de la Universidad del Rosario, asociado en la firma Bravo Abogados (Juan Rafael Bravo y Cía. S.A.S.), dedicado a la asesoría en precios de transferencia y en Derecho comercial y tributario a nivel local, nacional e internacional. Miembro del Instituto Colombiano de Derecho Tributario y panelista de las xxxix Jornadas de Derecho Tributario. Investigador asociado a la línea de investigación en Derecho tributario, con el proyecto *Precios de transferencia en Colombia (2012-2013)* y posteriormente con el proyecto sobre *Impuestos locales (2014-2015)*.

#### Harold Ferney Parra Ortiz

Abogado, con estudios de posgrado en Derecho Tributario de la Universidad de Salamanca. Socio de impuestos de la firma Parra Asociados. Profesor de

Base imponible (gravable)	
Base gravable y forma de liquidar el impuesto	
Desgravaciones fiscales	___, ¿cuáles?
Exenciones	___, ¿cuáles?
Deducciones	___, ¿cuáles?
Crédito tributario	___, ¿cuáles?
Tarifas	Especifique según el caso
Existen disposiciones especiales determinadas por tipo de sector	<input type="checkbox"/> Industrial <input type="checkbox"/> Comercial <input type="checkbox"/> Servicios <input type="checkbox"/> Telecomunicaciones <input type="checkbox"/> Financieros <input type="checkbox"/> Minero <input type="checkbox"/> Otro, ¿cuál? _____
Fechas previstas para declaración y pago	
¿El tributo se encuentra expresa o implícitamente comprendido bajo el ámbito de Convenios para Evitar la Doble Imposición Internacional? No	Justifique su respuesta
¿Cuáles son los problemas más frecuentes asociados con este tributo en su país?	Los indicados, en cuanto a que los municipios, ávidos por procurarse ingresos, recurren a cualquier tipo de gravamen, y a veces asumen la forma de una tasa por un servicio inexistente, o de un costo bajísimo, pero por el que se cobra una suma cuantiosa e injustificada
El beneficiario de las rentas es	<input type="checkbox"/> Autoridad central <input type="checkbox"/> Autoridad regional <input checked="" type="checkbox"/> Autoridad local <input type="checkbox"/> Seguridad social <input type="checkbox"/> Otra, ¿cuál? _____ Comentarios: _____

### 3. Brasil

Author:	Luís Eduardo Schoueri Mateus Calicchio Barbosa	
Date:	September 2nd, 2014	
Part I		
Government	Federal <input checked="" type="checkbox"/> Unitary _____ Unitary, with administrative decentralization _____ Other, which one? _____	
Does your country impose local taxes and or levies?	Yes <input checked="" type="checkbox"/> No _____	How many approximately? <u>3</u> Make a cross if the number is unknown. Note: There are also 3 taxes levied by Member States. This paper, however, consider local taxes as the one levied by Municipalities, not by Member States
Local taxes are created by	Federal Law _____ (for federal States) State Law _____ National Law _____ (for Unitary States) Local Authorities Act <input checked="" type="checkbox"/> Who? Local taxes are created by local law, passed by the Municipal Legislative Assembly and observing the parameters set by national complementary law (see below) Regional Authorities Act _____ Who? _____ Other _____ Who? _____	
Does the Federal or National Law establish all elements of every local tax?	Yes _____ No <input checked="" type="checkbox"/>	
Does the local authority define any element of the local tax?	No _____ Yes <input checked="" type="checkbox"/> Which one? _____	
<p>Local law is the one which enacts local taxes. In other words, even though local taxes are foreseen by Constitution and framed by national law, taxes are only valid if legislated locally. Some elements, however, must be fixed within national frames. This is the case of the local Tax on Services, which tax rates are fixed by local legislation but limited to a maximum 5% rate set by national complementary law. Local legislation may also provide for collection mechanisms (e.g. compliance obligations, withholding at source and term of payment), always observing any general guidance established by national complementary law (see below)</p>		

<p>If taxes are not created by National or Federal Law, please indicate the competent authority</p>	<p>Brazilian federalism comprises three subdivisions (Union, Member States, and Municipalities), each with its own attributes and powers granted by the Constitution itself. Therefore, local legislative body shall enact local taxes. The Constitution also provides for an exclusive allocation of tax jurisdiction among the federal subdivisions.</p> <p>Where no primacy principle is adopted, the allocation of a tax base is accompanied by an allocation of exclusive rights to legislate in relation to that base. Thus, the allocation of a tax base to a Municipality ensures there will be no interference by State or Federal Governments, meaning that only the Municipality itself will be entitled to enact a tax on a specific source or transaction it has been granted by the Constitution (namely services, urban real estates and transfer of immovable property).</p> <p>Nonetheless, Brazilian legal system adopts a special category of law – the “complementary law” (article 69 of the Constitution) – enacted by the Federal Congress under a qualified quorum and setting parameters within which all taxing entities (Union, States and Municipalities) are expected to act.</p> <p>Brazilian tax system should thus be understood as a two-level structure. A higher (national) level, comprising the Constitution and the complementary law, provides for a framework for the legislative actions in the area of taxation of the federal, state and local governments. The lower level of legislation comprises the actual tax laws and rules enacted by the Union, Member States, and Municipalities within their constitutional jurisdiction.</p> <p>In brief, local taxes are created by local legislation, but always observing the general national rules set by complementary law</p>										
<p>What powers do local authorities have to impose taxes and or levies?</p>	<p>The creation of local taxes by Municipal legislation must follow the allocation of jurisdiction set forth by the Constitution and the general guidance provided for by complementary law</p>										
<p>Does the Constitution or the Law include any limit to local tax/levies?</p>	<table border="1"> <tr> <td>On the number of taxes,</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>the burden created to the taxpayer,</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>on the tax's fee,</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>On the procedures for collection</td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>Other</td> <td><input type="checkbox"/></td> </tr> </table>	On the number of taxes,	<input checked="" type="checkbox"/>	the burden created to the taxpayer,	<input checked="" type="checkbox"/>	on the tax's fee,	<input checked="" type="checkbox"/>	On the procedures for collection	<input checked="" type="checkbox"/>	Other	<input type="checkbox"/>
On the number of taxes,	<input checked="" type="checkbox"/>										
the burden created to the taxpayer,	<input checked="" type="checkbox"/>										
on the tax's fee,	<input checked="" type="checkbox"/>										
On the procedures for collection	<input checked="" type="checkbox"/>										
Other	<input type="checkbox"/>										
	<p>If yes, Include the text of the provisions</p> <p>At constitutional level, taxing rights are allocated to all federal subdivisions and taxpayer's basic rights are ensured. The following provisions demonstrate the taxes assigned to Municipal jurisdiction and illustrate the main guarantees ensured to taxpayers upon the creation of these taxes.</p> <p>Article 145. The Union, the states, the Federal District and the municipalities may institute the following tributes:</p> <p>I – taxes;</p> <p>II – fees, by virtue of the exercise of police power or for the effective or potential use of specific and divisible public services, rendered to the taxpayer or made available to him;</p>										

Continúa

	<p>III – benefit charges, resulting from public works.</p> <p>Paragraph 1. Whenever possible, taxes shall have an individual character and shall be graded according to the economic capacity of the taxpayer, and the tax administration may, especially to confer effectiveness upon such objectives, with due respect to individual rights and under the terms of the law, identify the property, the incomes and the economic activities of the taxpayer.</p> <p>Paragraph 2. Fees may not have the assessment basis reserved for taxes.</p> <p>Article 150. Without prejudice to any other guarantees ensured to the taxpayers, the Union, the states, the Federal District and the municipalities are forbidden to:</p> <p>I – impose or increase a tribute without a law to establish it;</p> <p>II – institute unequal treatment for taxpayers who are in an equivalent situation, it being forbidden to establish any distinction by reason of professional occupation or function performed by them, independently of the juridical designation of their incomes, titles or rights;</p> <p>III – collect tributes:</p> <p>a) for taxable events that occurred before the law which instituted or increased such tributes came into force;</p> <p>b) in the same fiscal year in which the law which instituted or increased such tributes was published;</p> <p>c) within the period of ninety days as from the date of publication of the law which instituted or raised such tributes, with due regard for the provision of letter b);</p> <p>IV – use a tribute for the purpose of confiscation;</p> <p>V – establish limitations on the circulation of persons or goods, by means of interstate or intermunicipal tributes, except for the collection of toll fees for the use of highways maintained by the Government;</p> <p>VI – institute taxes on:</p> <p>a) the property, income or services of one another;</p> <p>b) temples of any denomination;</p> <p>c) the property, income or services of political parties, including their foundations, of worker unions, of non-profit education and social assistance institutions, observing the requirements of the law;</p> <p>Article 156. The municipalities shall have the jurisdiction to institute taxes on:</p> <p>I – urban buildings and urban land property;</p> <p>II – inter vivos transfer, on any account, by onerous acts, of real property, by nature or physical accession, and of real rights to property, except for real security, as well as the assignment of rights to the purchase thereof;</p> <p>III – services of any nature not included in article 155, II, as defined in a supplementary law;</p> <p>IV – (Revoked).</p> <p>Paragraph 1. Without prejudice to the progressiveness in time mentioned in article 182, paragraph 4, item II, the tax referred to in item I may:</p> <p>I – be progressive according to the value of the property; and</p> <p>II – have different rates according to the location and utilization of the property.</p>
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	<p>Paragraph 2. The tax set forth in item II:          I - shall not be levied on the transfer of goods or rights incorporated into the assets of a corporate body to pay up its capital, nor on the transfer of goods or rights resulting from the merger, incorporation, division or dissolution of corporate bodies, unless, in such cases, the predominant activity of the purchaser is the purchase and sale of such goods or rights, the lease of real property or leasing;          II - is within the competence of the municipality where the property is located.          Paragraph 3. As regards the tax established in item III of the head paragraph of this article, a supplementary law shall:          I - establish its maximum and minimum rates;          II - exclude exportations of services to other countries from levy of the said tax;          III - regulate the manner and conditions for the granting and revocation of fiscal exemptions, incentives, and benefits.          Paragraph 4. (Revoked)</p>	
<p>Is there any known national policy regarding local taxation</p>	<p>No _____          Yes <u>  X  </u>          Please specify</p>	<p>A preferential treatment (the "Simples Nacional") is established by complementary law for small businesses whose gross revenues stay within a determined threshold (currently set at BRL 3.6 Mio). Companies that comply with the requirements are given the option to pay different taxes (including the Municipal Tax on Services, together with major State and Federal taxes) through a unified procedure and at a single rate. Since it reduces the collection of several taxes and compliance obligations allocated to different federal subdivisions to a single monthly payment form, the "Simples Nacional" is regarded as a relevant feature of the system towards simplification</p>
<p>Are local taxes the main source of revenue for the municipalities?</p>	<p>No <u>  X  </u>          Yes _____</p>	<p>What are the most important local taxes?          Main local taxes are established by article 156 of the Constitution as follows: (i) Tax on the Rendering of Services of Any Nature (Imposto sobre Serviços de Qualquer Natureza - ISS), (ii) Tax on the Transfer of Immovable Property (Imposto sobre a Transmissão de Bens Imóveis - ITBI) and (iii) the Tax on Urban Real Estates (Imposto sobre a Propriedade Predial e Territorial Urbana - IPTU).          Where in a few larger cities with a dynamic local business environment local taxes may play a relevant role in revenue sourcing, this is certainly not the case in general. Indeed, the number of Municipalities in Brazilian federation is as significant as 5,600, most of them relying on federal resources derived from the collection of the Income Tax and the Tax on Manufactured Products (22.5% of which must be delivered to local governments by virtue of constitutional provision) for local funding</p>

Continúa

<p>Who collects the local taxes?</p>	<p>_____ <input type="checkbox"/>  <u>  X  </u> <input checked="" type="checkbox"/>          _____ <input type="checkbox"/>          _____ <input type="checkbox"/></p>	<p>The national tax administration          The local tax administration          An entity different to the Tax Administration          Other, who? _____</p>
<p>The procedures for the collection of local taxes/levies are</p>	<p>National _____          Local <u>  X  </u> <input checked="" type="checkbox"/>          Other _____, Which one?          It depends _____, justify your answer</p>	
<p>Legal base for the collection of local taxes/levies</p>	<p>Article 156 of the Constitution (transcribed above).</p>	
<p>The tax return for local taxes</p>	<p><u>  X  </u> <input checked="" type="checkbox"/> Is specific for each local tax at each local entity          _____ <input type="checkbox"/> Is specific for each local tax but can be paid at one entity at the national level          _____ <input type="checkbox"/> Includes all local taxes due to a Municipality          _____ <input type="checkbox"/> Includes all local taxes due to all municipalities  <u>  X  </u> <input checked="" type="checkbox"/> Other, specify          Should the taxpayer apply for the "Simples Nacional" preferential system (see above), the Municipal Tax on Services shall be collected together with other Federal and State taxes through a single monthly tax return</p>	
<p>Payment for local taxes</p>	<p>_____ <input type="checkbox"/> The assessment Includes payments related to all local taxes and can be done at once  <u>  X  </u> <input checked="" type="checkbox"/> The assessment Is specific for each local tax and is paid at different public offices          Other, specify _____</p>	

Part II		
Is there any constitutional or legal obligation to avoid domestic double taxation?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Other, which one?	
<p>If the answer is yes, please indicate the legal provision together with its text (preferably in English). If case law sets the limits please include the relevant references.</p> <p>As explained above, the allocation of a tax base in Brazilian federal system is followed by the exclusive right to legislate in relation to that base. That is to say, once article 156 of the Constitution grants Municipalities the right to tax services, urban real estates and the transfer of immovable property, no federal or state taxes are allowed as to domestically double tax these bases.</p> <p>Although such an exclusivity is not a requirement of a federal arrangement (the U.S. is enough evidence in this respect), it is to be praised as a guarantee of the taxpayer against the excess of burden (Tipke's "Überbesteuerung") when preventing several federal subdivisions from seeking funding from the same source. Where the prohibition of domestic double taxation derives from the constitutional (exclusive) allocation of tax jurisdiction itself, its legal basis, when it comes to local taxes, lies in article 156 of the Constitution (transcribed above).</p> <p>Despite such an exclusive allocation of tax jurisdiction, the Constitution does not establish rigid limits for each federal subdivision's jurisdiction. Under article 146 of the Constitution, it is up to national complementary law to arbitrate possible tax jurisdiction conflicts by setting general criteria applicable to all federal levels. The complementary law (an example of which is the Tax Code itself) thus has a fundamental role in drawing the definitive shape of each of the subdivision's jurisdiction, avoiding overlapping legislation and possible double taxation derived thereof. An example is the definition by the Tax Code of urban real estate - subject to the municipal tax on real estate - and rural real estate - granted to the Union's tax jurisdiction. In the absence of national complementary law, circumstances where a given real estate cannot be easily identified as urban or rural could give rise to double taxation. Aware of the potential conflict, Article 32 of the Tax Code provides for the requirements for a location to be identified as "urban area" (the presence, at least, of two of the public improvements mentioned therein), thus being under exclusive tax jurisdiction of the Municipality.</p> <p>Another interesting example is found in Complementary Law No. 116/03. Where tax jurisdiction on the supply of services is generally allocated to the Municipalities, and tax jurisdiction in relation to the sales of goods (and some specific services, like communications, transports, and energy) is allocated to the States, this constitutional allocation rule cannot be immediately applied in case of mixed transactions. For example, a bed and breakfast hotel supplies both services and goods. Complementary Law No. 116 determines that in case the breakfast is included in the hotel lodging fees, it is considered part of the lodging services and taxed accordingly</p>		
Is it possible to deduct local taxes from national taxable income or can any other tax relief be obtained?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Other. Justify your answer	
Explain briefly		
Has your country been challenged by formal investigations for state aid rules for granting exemptions on the trade tax or other local taxes by giving more advantageous treatment to companies in a selective manner?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes If the answer is yes, please include a list of the case's reference	

### 3.1. Impuesto sobre las operaciones relativas a la circulación de mercancías y sobre la prestación del servicio de transporte interestatal e intermunicipal y de comunicaciones "ICMS"

Part III			
Does any of the following taxes/levies exist in your country?		Trade tax	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
		Advertising tax	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
		Stamps Duty	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
		Lighting tax	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Trade Tax			
Tax/ Levy name in the national language		Imposto sobre operações relativas à circulação de mercadorias e sobre prestações de serviços de transporte interestadual e intermunicipal e de comunicação - "ICMS"	Name in English Tax on operations concerning the circulation of goods and on rendering of communication and interstate and intermunicipal transport services
Type of tax/levy	Direct Tax <input type="checkbox"/> Indirect tax <input checked="" type="checkbox"/> Excise <input type="checkbox"/> Fees and charges <input type="checkbox"/> Social Security <input type="checkbox"/> Contribution <input type="checkbox"/> Other <input type="checkbox"/>	Federal tax <input type="checkbox"/> State tax <input checked="" type="checkbox"/> Local tax <input type="checkbox"/> Regional tax <input type="checkbox"/>	
	Direct <input type="checkbox"/> Individuals Income Tax <input type="checkbox"/> Corporate income tax <input type="checkbox"/> Other	Indirect <input checked="" type="checkbox"/> VAT Excise duties: <input type="checkbox"/> Alcoholic beverages <input type="checkbox"/> Energy products and electricity <input type="checkbox"/> Manufactured tobacco <input type="checkbox"/> Other	
Legal base		In force Complementary Law No. 87/1996 Law No. 6.374/1989 (São Paulo State)	Abolished



Non tax purposes related to the tax, if any	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes, explain briefly (e.g. environmental taxation) By virtue of article 155, § 2, III of the Constitution, the Trade Tax may be selective, meaning that its rates can vary according to the essentiality of the goods concerned to the taxpayers and to the public needs. The Trade Tax as such is not an environmental tax, but the criteria for the partial sharing of its revenues among Municipalities (see below) may take into account environmental criteria. Some States (the pioneer of which is Paraná), when establishing the redistribution of the collection among Municipalities, provide for criteria as the forest stock maintained and the decrease in deforestation experienced by the Municipality.				
The competence to establish the following elements of the tax/levy lies on:					
	Taxpayer	Tax Object	Tax Rate	Reliefs	Other
Federal or National authorities	X	X	X	X	
State authorities			X	X	
Regional authorities					
Local authorities (municipalities)					
Other (indicate who)					
Comment briefly	In a national market, the existence of a Trade Tax belonging to State's jurisdiction required special attention. Firstly, it was necessary to create a national measure for this tax to work on a non cumulative fashion, implying that the tax paid to one State should be recognized (credit) by the other State for purpose of offsetting the tax due to the latter. Secondly, the Constitution assigned to the national complementary law the task of regulating the way States, through deliberation, are allowed to grant and revoke tax benefits. After all, the national market could be at stake if, in an interstate transaction, a good is subject to a lower tax burden than the ones produced in the destination market itself. This is currently regulated by Complementary Law No. 24/1975, the article 1 of which establishes that tax benefits regarding the Trade Tax shall only be granted after unanimous deliberation of all States, represented by their Finance Ministries at the National Council of Fiscal Policy ("Confaz"). For the main problems related to this tax, see below				
Identify the taxpayer	Any individual or entity that ordinarily or with commercial intent carries out operations concerning the circulation of goods or renders communication services or interstate and intermunicipal transport services.				
Specify the tax Object	The object of the Trade Tax are operations concerning the circulation of goods and the rendering of communication services or interstate and intermunicipal transport services				
Specify the tax Base	In general, the tax base is the value of the operation				
Specify the basis for assessment	Monthly, as a rule.				

Continúa

Indicate the Reliefs Deductions Allowances Credits Exemptions Other	<input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> Yes, explain briefly each case As explained above, the Trade Tax is a VAT-profile levy, thus providing for that the tax due in each transaction shall be offset against the amount charged in the previous transactions by the same or by another State through an ordinary credit system. <input checked="" type="checkbox"/> Where particular goods may be subject to exemption or lower tax rates due to the essentiality criterion (see above), benefits of all sorts (e.g. exemptions, deemed credits, lower rates, deductions from the tax base and payment deferral) are granted by States' legislation to specific sectors as part of their development agenda, whether or not approved by the Confaz (see below). <input type="checkbox"/> The export of goods and services is also exempted from the Trade Tax due to the destination principle adopted by the Constitution in article 155, § 2, X, "a"
Is the tax included under the scope of Double Taxation Conventions?	No.
Tax Rate Structure	Specific rules are provided for intra and interstate transactions. As per article 155, § 2, V, "a" of the Constitution, the Federal Senate may establish, by Resolution of one-third of Senators approved by absolute majority of the House, minimum rates for intrastate transactions. As such Resolution was never issued, each State freely provides for Trade Tax rates on internal transactions, only observing the limit set by item "VI", whereby those may never be lower than the interstate rate in the absence of an agreement between the States. In practice, rates usually range from 17% to 19%. For interstate transactions and following on item "IV" of the constitutional provision, rates are currently set by the Senate at 12% in transactions from developing (North, Northeast and Midwest) to developed States (leaving to the latter the difference to their internal rate) and at 7% in transactions on the opposite way (thus leaving to the former a bigger share)
Are there any provisions targeting specific sectors	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Services <input type="checkbox"/> Telecommunications <input type="checkbox"/> Banking <input type="checkbox"/> Mining <input checked="" type="checkbox"/> Other, which one? Explain briefly As explained above, tax benefits of every kind are granted by States' legislation to innumerable sectors, depending on each State's development policy. The identification of benefited sectors depends on thorough examination of State legislation. Benefits must be approved by Confaz (see above) or may be voided by the Judiciary
Assessment is made by	<input checked="" type="checkbox"/> The taxpayer <input type="checkbox"/> The Tax Administration

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Tax due date	15th of the subsequent month, as a rule (São Paulo)
The beneficiaries of the revenue are	<input type="checkbox"/> Federal or Central authorities <input checked="" type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input checked="" type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one? _____ Comments: See below.
Collection is made by	<input type="checkbox"/> Federal or Central authorities <input checked="" type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one? _____
If the local authorities do not collect the taxes, how is the revenue transferred /allocated to every municipality?	Under article 158, IV of the Constitution, 25% of the revenue from the Trade Tax shall be shared by the States among Municipalities. At least three-quarters of that amount shall be shared in the proportion of the value added in transactions carried out in each Municipality's territory. The remaining quarter may be shared according to any criteria set by State legislation
Most common problems related to this tax	Despite the relevant constitutional provisions, a comprehensive harmful tax competition (locally referred to as "tax war") took place among the States as soon as many of them decided to attract investment through (non approved unilateral) benefits in the Trade Tax rather than adopting longtime and substantial development policies. A very common "tax war" weapon was to grant taxpayers very long term interest free loans equivalent to the amount of the Trade Tax due on interstate transactions, thus allowing products to enter the consumer market with no actual taxation at origin. Problems related to external imports and exports are also raised. Given that in interstate transactions part of the Trade Tax is due to the producing State, the States of destination prefers their taxpayers to import products from abroad instead of buying from another States, since in this case the latter do not have to share taxes with any other State. As to exports, the Constitution provides for the reimbursement of taxes paid in previous stages of production (e.g. acquisition of raw material) to the exporter of the final good. Since in case raw material is acquired from another State, part of the tax will have been paid to the latter, it is understandable that States of destination refuse to reimburse credits accumulated by exporters, since they do not concern taxes collected to them. A final criticism to the Trade Tax concerns the profile of the consumption taxation as a whole in Brazil, where the allocation of consumption taxes to all three federal subdivisions has been particularly problematic. While the Trade Tax is in States' jurisdiction, services are taxed by Municipalities and industrialized goods by the Union. These consumption taxes are cumulative among each other and thus do not generate reciprocal credits; therefore they can be levied in a same production chain, and, moreover, with one tax being levied over the other

### 3.2. Impuesto sobre comunicaciones (Referencia a avisos)

Part III			
Advertising Tax (communications)			
Tax/ Levy name in the national language		Imposto sobre operações relativas à circulação de mercadorias e sobre prestações de serviços de transporte interestadual e intermunicipal e de comunicação - "ICMS"	
Name in English		Tax on operations concerning the circulation of goods and on rendering of communication, interstate and intermunicipal transport services	
Type of tax/levy	Direct Tax _____ Indirect tax <input checked="" type="checkbox"/> Excise _____ Fees and charges _____ Social Security Contribution _____ Other _____	Federal tax _____ State tax <input checked="" type="checkbox"/> Local tax _____ Regional tax _____	
	Direct <input type="checkbox"/> Individuals Income Tax <input type="checkbox"/> Corporate income tax <input type="checkbox"/> Other	Indirect <input checked="" type="checkbox"/> VAT Excise duties: <input type="checkbox"/> Alcoholic beverages <input type="checkbox"/> Energy products and electricity <input type="checkbox"/> Manufactured tobacco <input type="checkbox"/> Other	
Legal base	In force Complementary Law No. 87/1996 Law No. 6.374/1989 (São Paulo State)	Abolished	
Non tax purposes related to the tax, if any	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, explain briefly (e.g. environmental taxation)		

Continúa

The competence to establish the following elements of the tax/levy lies on:											
	Taxpayer	Tax Object	Tax Rate	Reliefs	Other						
Federal or National authorities	X	X	X	X							
State authorities			X	X							
Regional authorities											
Local authorities (municipalities)											
Other (indicate who)											
Comment briefly	<p>Despite being essentially a service, communication (including advertising) is taxed by the States' Trade Tax, and not by the Municipal Tax on Services.</p> <p>The jurisdiction of the States to tax communication services through their Trade Tax was an innovation of the 1988 Constitution. Indeed, under previous 1967 Constitution (article 21, VII) these services should be taxed by the Union, or by the Municipalities when the communication had a strictly municipal character.</p> <p>In current Complementary Law No. 87/96, the Trade Tax is due on the "costly render of the communication services, done by any means, including the generation, emission, reception, transmission, retransmission, repetition and amplification of communication of any nature"</p>										
Identify the taxpayer	Any individual or entity that undertakes communication services										
Specify the tax Object	The rendering of communication services										
Specify the tax Base	In general, the tax base is the value of the operation										
Specify the basis for assessment	Monthly, as a rule										
Indicate the Reliefs	<table border="0"> <tr> <td>_____</td> <td rowspan="5">           Explain briefly each case            As previously explained for the Trade Tax, an ordinary credit system ensures that the tax due in a transaction be offset against the tax collected in the previous transaction. Particular exemptions and benefits may also be found in each State's legislation         </td> </tr> <tr> <td>_____</td> </tr> <tr> <td>___X___</td> </tr> <tr> <td>___X___</td> </tr> <tr> <td>_____</td> </tr> </table>					_____	Explain briefly each case As previously explained for the Trade Tax, an ordinary credit system ensures that the tax due in a transaction be offset against the tax collected in the previous transaction. Particular exemptions and benefits may also be found in each State's legislation	_____	___X___	___X___	_____
_____	Explain briefly each case As previously explained for the Trade Tax, an ordinary credit system ensures that the tax due in a transaction be offset against the tax collected in the previous transaction. Particular exemptions and benefits may also be found in each State's legislation										
_____											
___X___											
___X___											
_____											
Deductions											
Allowances											
Credits											
Exemptions											
Other											
Is the tax included under the scope of Double Taxation Conventions?	No										
Tax Rate Structure	Being usually higher than the tax rates set for transactions of goods (see above), the rate applicable to communication services are set by each State around 25%										

Continúa

Are there any provisions targeting specific sectors	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Services <input type="checkbox"/> Telecommunications <input type="checkbox"/> Banking <input type="checkbox"/> Mining <input checked="" type="checkbox"/> Other, which one? Explain briefly As explained, particular provisions targeting specific circumstances and sectors depends on each State's development policy.
Assessment is made by	<input checked="" type="checkbox"/> The taxpayer <input type="checkbox"/> The Tax Administration
Tax due date	15th of the subsequent month, as a rule (Sao Paulo)
The beneficiaries of the revenue are	<input type="checkbox"/> Federal or Central authorities <input checked="" type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input checked="" type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one? _____ Comments: See below.
Collection is made by	<input type="checkbox"/> Federal or Central authorities <input checked="" type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one? _____
If the local authorities do not collect the taxes, how is the revenue transferred /allocated to every municipality?	25% of the Trade Tax on communication services collected is allocated to the Municipalities under the same criteria specified above for the Trade Tax on goods' transactions

Continúa

Most common problems related to this tax	<p>Common problem with respect to advertising taxation is the conflict of jurisdiction that took place between States and Municipalities as to the competence to tax such an activity.</p> <p>Although communication services in general were expressly assigned by the Constitution to States' jurisdiction and their Trade Tax, some Municipalities took the position that advertising would be a service taxable by the Tax on Services. The argument is that item 17.06 of the list of services taxable by the Municipal tax, as provided for by Complementary Law No. 116/2003, would not only comprise the making of the advertisement, but also the advertising itself.</p> <p>The matter is yet to reach Superior Courts and State lower Courts have already upheld the Municipalities' position. While the scenario is unclear, taxpayers are subject to a double – State and Municipal – tax assessment on the advertising</p>
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### 3.3. Contribuição para la financiación del servicio de iluminación pública

Part III					
Tax/ Levy name in the national language		Contribuição para o custeio do serviço de iluminação pública ("cosip")		Name in English Contribution for the financing of street lighting service	
Type of tax/levy	Direct Tax _____ Indirect tax _____ Excise _____ Fees and charges _____ Social Security Contribution _____ Other <u>X</u>			Federal tax _____	State tax _____
				Local tax <u>X</u>	Regional tax _____
		Direct _____ Individuals Income Tax _____ Corporate income tax _____ Other		Indirect _____ VAT  Excise duties: _____ Alcoholic beverages _____ Energy products and electricity _____ Manufactured tobacco <u>X</u> Other	
Legal base		In force Federal Constitution, article 149-A Law No. 13.479/2002 (São Paulo)		Abolished	

*Continúa*

Non tax purposes related to the tax, if any	<u>X</u> No ____ Yes, explain briefly (e.g. environmental taxation)																																				
The competence to establish the following elements of the tax/levy lies on:																																					
	<table border="1"> <thead> <tr> <th></th> <th>Taxpayer</th> <th>Tax Object</th> <th>Tax Rate</th> <th>Reliefs</th> <th>Other</th> </tr> </thead> <tbody> <tr> <td>Federal or National authorities</td> <td>X</td> <td>X</td> <td></td> <td></td> <td></td> </tr> <tr> <td>State authorities</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Regional authorities</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Local authorities (municipalities)</td> <td></td> <td></td> <td>X</td> <td>X</td> <td></td> </tr> <tr> <td>Other (indicate who)</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>		Taxpayer	Tax Object	Tax Rate	Reliefs	Other	Federal or National authorities	X	X				State authorities						Regional authorities						Local authorities (municipalities)			X	X		Other (indicate who)					
	Taxpayer	Tax Object	Tax Rate	Reliefs	Other																																
Federal or National authorities	X	X																																			
State authorities																																					
Regional authorities																																					
Local authorities (municipalities)			X	X																																	
Other (indicate who)																																					
Identify the taxpayer	The individual or legal person to whom regular electric lighting service is available																																				
Specify the tax Object	The lighting of streets and other public goods																																				
Specify the tax Base	Where the Constitution is not clear on the tax base, local legislation usually adopt the consumers' electric bill																																				
Specify the basis for assessment	Monthly																																				
Indicate the Reliefs Deductions _____ Allowances <u>X</u> _____ Credits _____ Exemptions <u>X</u> _____ Other _____	Explain briefly each case Particular benefits may be granted depending on local development policy. Their identification requires thorough analysis of local legislation In general, it is not unusual to find taxpayers with low energy consumption, churches or residents in areas of resource shortage exempted from the COSIP																																				
Is the tax included under the scope of Double Taxation Conventions?	No																																				
Tax Rate Structure	The rate is generally set around 10%. The experience of local legislation demonstrates that it may distinguish between individuals and legal persons, be progressive according to the electric consumption or even be a fixed specific value																																				

*Continúa*

Are there any provisions targeting specific sectors	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Services <input type="checkbox"/> Telecommunications <input type="checkbox"/> Banking <input type="checkbox"/> Mining <input checked="" type="checkbox"/> Other, which one? Explain briefly: Specific sectors may be granted benefits depending on each local legislation's policy. As mentioned above, particular allowances and exemptions are usually assigned to taxpayers with low energy consumption, churches or residents in areas of resource shortage
Assessment is made by	<input type="checkbox"/> The taxpayer <input checked="" type="checkbox"/> The Tax Administration
Tax due date	Upon payment of the electric bill
The beneficiaries of the revenue are	<input type="checkbox"/> Federal or Central authorities <input type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input checked="" type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one?
Collection is made by	<input type="checkbox"/> Federal or Central authorities <input type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input type="checkbox"/> Local authorities (municipalities) <input checked="" type="checkbox"/> Other, which one? The electric lightning licensee
If the local authorities do not collect the taxes, how is the revenue transferred /allocated to every municipality?	cost is charged upon the payment of the electric bill. The electric lightning licensee is obliged to transfer such amount to the Municipalities, depositing it in a specific account of the Municipality

Continúa

Most common problems related to this tax	<p>The tax was originally charged by the Municipalities without the necessary constitutional ground.</p> <p>The Municipalities would argue that the tax was a fee for a public service provided. However, under Brazilian Constitution fees may only be charged with respect to public services that are "specific" and "divisible". The specificity criterion is related to the possibility of the service to be measured in unities, i.e. the fee levied cannot be related to constant activities of the State. As to the divisibility, it is opposed to general services, which are rendered to the society in general.</p> <p>The issue on the "specificity" and "divisibility" of the tax on street lightning eventually reached Brazilian Courts, which ultimately deemed it as invalid once not meeting the two constitutional criteria for legitimate fees.</p> <p>In 2002, Constitutional Amendment No. 39 included article 149-A expressly allowing Municipalities to charge the <i>cosif</i>. The amendment was a reaction from Municipalities against the clear unconstitutionality of the original tax. Unwilling to fund street lightning with resources from other Municipal taxes, Municipalities managed to obtain a new source of revenue</p>
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### 3.3. Impuesto sobre los servicios de cualquier naturaleza

Tax/ Levy name in the national language		Imposto sobre Serviços de Qualquer Natureza ("iss")	Name in English Tax on the Rendering of Services of Any Nature	
Type of tax/levy	Direct Tax <input type="checkbox"/> Indirect tax <input checked="" type="checkbox"/> Excise <input type="checkbox"/> Fees and charges <input type="checkbox"/> Social Security Contribution <input type="checkbox"/> Other <input type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Federal tax <input type="checkbox"/> State tax <input type="checkbox"/> Local tax <input checked="" type="checkbox"/> Regional tax <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>
		Direct <input type="checkbox"/> Individuals Income Tax <input type="checkbox"/> Corporate income tax <input type="checkbox"/> Other	Indirect <input type="checkbox"/> VAT Excise duties: <input type="checkbox"/> Alcoholic beverages <input type="checkbox"/> Energy products and electricity <input type="checkbox"/> Manufactured tobacco <input checked="" type="checkbox"/> Other	

Continúa

Legal base	<input checked="" type="checkbox"/> In force Federal Constitution, article 156, III Complementary Law No. 116/03 Law No. 13.701/03 (São Paulo)		Abolished		
Non tax purposes related to the tax, if any	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, explain briefly (e.g. environmental taxation)				
The competence to establish the following elements of the tax/levy lies on:					
	Taxpayer	Tax Object	Tax Rate	Reliefs	Other
Federal or National authorities	X	X	X	X	
State authorities					
Regional authorities					
Local authorities (municipalities)			X	X	
Other (indicate who)					
Comment briefly	As per article 156, III of Constitution, Municipalities are granted the jurisdiction to tax services of any nature, "as they are defined in a complementary law". If not for this provision, countless conflicts would rise between the ISS and state Trade Tax in mixed transactions (see above) Besides specifying the taxpayer, tax object and maximum rate (5%) eligible by local legislation when passing the tax, Complementary Law No. 116/03 provides for a list of taxable services, understood as exhaustible by the Supreme Court. As put by § 1 of article 1 of Complementary Law No. 116/03, except where expressly provided for by the list, services mentioned therein are not subject to the state Trade Tax, irrespective of comprising furnishing of goods				
Identify the taxpayer	Any individual or entity that supplies services listed by Complementary Law No. 116/03				
Specify the tax Object	The object of the tax is the rendering of services listed by Complementary Law No. 116/03, including when provided abroad but the result of which is in Brazil				
Specify the tax Base	In general, the price charged for the service rendered				
Specify the basis for assessment	Monthly, as a rule				

Continúa

Indicate the Reliefs	<input checked="" type="checkbox"/> Explain briefly each case <input type="checkbox"/> As per article 7, § 2, I of Complementary Law No. 116/03, contractors are allowed to deduct from the tax base the value of materials furnished in construction services. <input checked="" type="checkbox"/> Particular exemptions may be granted by each Municipality according to local development policy. Where their identification depends on thorough analysis of local law, it is not unusual to find services rendered by not-for-profit sports or cultural entities, as well as local public transport service, exempted from the ISS <input type="checkbox"/>
Deductions	
Allowances	
Credits	
Exemptions	
Other	
Is the tax included under the scope of Double Taxation Conventions?	No
Tax Rate Structure	Tax rates may be fixed by local legislation up to a maximum 5% rate currently established by Complementary Law No. 116/03.
Are there any provisions targeting specific sectors	<input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Services <input type="checkbox"/> Telecommunications <input type="checkbox"/> Banking <input type="checkbox"/> Mining <input checked="" type="checkbox"/> Other, which one? Explain briefly As mentioned above, benefits and targeted sectors depend on each local policy. In general, exemptions are granted to services rendered in the interest of local community, e.g. transport, sports- or cultural-oriented ventures
Assessment is made by	<input checked="" type="checkbox"/> The taxpayer <input type="checkbox"/> The Tax Administration
Tax due date	Depends on each local legislation. In São Paulo, 10th of the subsequent month
The beneficiaries of the revenue are	<input type="checkbox"/> Federal or Central authorities <input type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input checked="" type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one?
Collection is made by	<input type="checkbox"/> Federal or Central authorities <input type="checkbox"/> State authorities <input type="checkbox"/> Regional authorities <input checked="" type="checkbox"/> Local authorities (municipalities) <input type="checkbox"/> Other, which one?

Continúa

If the local authorities do not collect the taxes, how is the revenue transferred /allocated to every municipality?	N/A
Most common problems related to this tax	<p>Similar to the state Trade Tax, difficulties related to the iss derive from the allocation to local subdivisions of a consumption tax in a national market. Besides a harmful tax competition for investments, it did not take long before Municipalities entered into jurisdiction conflicts in case a service is rendered in a Municipality by a provider whose premises are located elsewhere. Under Complementary Law No. 116/03, the iss is due at the place of the provider's establishment, defined as where he "performs the activity of rendering services, and configure an economic or professional unity". The definition is unclear, and there is a discussion whether the establishment is the place where the service is effectively delivered or the premises located.</p> <p>Moreover, much uncertainty derives from the constitutional notion of "service". Traditional Supreme Court case law, based on concepts of private law, used to limit the notion of services to "doing" obligations, thus excluding from the iss "giving" obligations (e.g. rental of movable assets). Recent judgments, however, seem to accept the understanding whereby taxable services would include all sorts of intangible supplies and utilities (e.g. financial leasing)</p>

#### 4. Ecuador

Autor:	César Montaña Galarza Juan Carlos Mogrovejo Jaramillo	
Fecha de diligenciamiento:	3 de julio de 2014	
<b>Parte I</b>		
Forma de gobierno	Federalista <input type="checkbox"/> Centralista <input type="checkbox"/> Centralista con descentralización administrativa <input type="checkbox"/> Otro, ¿cuál? <input type="checkbox"/> Unitario con descentralización	
¿En su país existen tributos locales?	Sí <input checked="" type="checkbox"/> <input type="checkbox"/> No <input type="checkbox"/>	Sí <input checked="" type="checkbox"/> ¿Cuántos aproximadamente? Una decena de impuestos; un sinnúmero de tasas según los servicios públicos que presten los gobiernos municipales, así como por autorizaciones por uso o aprovechamiento del dominio público; y un sinnúmero de contribuciones especiales de mejoras según las obras públicas que estos ejecuten No <input type="checkbox"/> Marque con X si el número es desconocido.
Los tributos se crean	Por ley nacional <input type="checkbox"/> Por acto de autoridades locales o regionales <input type="checkbox"/> Otro <input type="checkbox"/>	Sí <input type="checkbox"/> impuestos Sí, tasas y contribuciones especiales de mejoras por los gobiernos municipales, mediante ordenanza. <input checked="" type="checkbox"/>
Si la creación es por ley nacional, todos los elementos del tributo se definen por esa ley	Sí <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Algún elemento del tributo se define por la autoridad/norma local	No <input type="checkbox"/> Sí <input checked="" type="checkbox"/>	Sí <input checked="" type="checkbox"/> Mediante ordenanza. Con relación a los impuestos, principalmente la tarifa (alícuotas), en unos casos dentro de límites en mínimos y máximos establecidos en la misma ley, ejemplo: impuesto predial urbano, impuesto predial rural, impuesto de patente; en otros, con opción abierta para la modificación de la tarifa, como en el impuesto a la utilidad en la transferencia de predios urbanos y plusvalía de los mismos, y en el impuesto a los vehículos. Respecto de tasas y contribuciones especiales de mejoras derivadas de las competencias de los gobiernos municipales, estas se crean y regulan por ordenanza