PUBLIC-PRIVATE PARTNERSHIP (PPP) AND THE

ORGANIC LAW OF TAX INCENTIVES

IN ECUADOR

Marlon
MANYA ORELLANA

SYNOPSIS

This article focuses on the analysis of the organic law of incentives for Public-Private Partnerships and Foreign Investment in Ecuador, in force from January 1, 2016, the tax incentives for the implementation of Public-Private Partnership projects, and the specific incentives to promote productive financing, national investment and Foreign Investment in general in Ecuador.

CONTENIDO

AUTHOR

Graduated as Economist from the Escuela Superior Politécnica del Litoral - ESPOL. Master in Applied International Relations, International University of Andalusia. Master's Degree in Public Finance and Financial Management. Instituto de Estudios Fiscales Madrid, Spain. Professor at the Faculty of Natural Sciences and Mathematics FCNM ESPOL. Former Head of Planning and Management Control SRI. Former Director of ECB Economic Research. Former Director of Control Management of the concessionaires APG. Former manager General HTMC IESS. Laureate of the IV Edition of CIAT, AEAT, IEF Research Scholarship. GRIDE Research Group Researcher and Economic Teaching, Director Executive MANYA CONSULTING GROUP MCG. ESPOL Polytechnic University. Escuela Superior Politécnica del Litoral. Faculty of Natural Sciences and Mathematics, and Faculty of Social Sciences and Humanities. Campus Gustavo Galindo Km 30.5 via Perimetral. P.O. BOX. 09-01-5863. Guayaquil, Ecuador.

INTRODUCTION

A Public-Private Partnership (PPP), also known as "APP" in Spanish, is the mode of management by which the State, instructs a private entity with the execution of a public project, for the provision of goods, works or services, including financing, in return for a consideration for the investment and work. This means that experience, knowledge, equipment, technology are incorporated, while risks and resources, preferably private, are distributed in order to create, develop, improve, operate and/or maintain public infrastructure, or providing public services.

The public project promoted by the law of incentives for Foreign Investment and Public-Private Partnerships in Ecuador may consist in the construction, rehabilitation or improvement, equipment when so required, operation and maintenance of a new or existing public work for the provision of a service of general interest; when the investment is substantial, the equipment, operation and maintenance of an existing public work for the provision of a service of general interest; operation and maintenance of an existing public work for the provision of a service of general interest, when substantial improvements are provided through private participation; the construction and marketing of social interest housing and urban development works; as well as in the activities of research and development; and in general, in which the State participates directly and in competition with the private sector, provided that these activities are qualified as of priority by the Inter-Agency Committee.

Among the topics of interest are the mechanisms of incentives for productive investment and the attraction of investment in general; the tax treatment for private participation in projects of public interest, and specific incentives to promote productive financing and foreign investment in general.

1. PUBLIC- PRIVATE PARTNERSHIPS: DEFINITION AND MODALITIES

There are different definitions and views on what constitutes a Public-Private Partnership (PPP). The OECD offers one of the definitions, which considers it as an *"agreement between the government and one or more private partners (that may include operators and financiers) under which private partners provide a service such that the objectives of the provision of government services are aligned with the private sector's objectives of obtaining utility and where the effectiveness is dependent on a proper transfer of risk from the private sector"* (OECD 2008). Moreover, the Multilateral Investment Fund (Bloomgarden and Maruyama, 2008) considers a PPP as *"a long-term collaboration scheme between a public authority and the private sector for the provision of a public service". For other agencies closer to the British model, PPP refers to "a contractual scheme between the public sector and the private sector in a shared project"* (Partnerships UK, 2006).

As described in the document prepared by the Inter-American Development Bank (IDB) *"Public-Private Partnerships for the provision of services. A vision towards the future"*, the main characteristic of a PPP is the scheme of risks allocation and mitigation between each of the parties, and the operation scheme based on the formation of a new economic entity, known as a Special Purpose Company. This new company is in charge of seeking financing, guarantees or other concurrent or necessary services during the lifecycle of the infrastructure project and its services. This way, the parties (Government and creditors) become permanent evaluators of the results obtained by the private operator.

The scheme of identification, allocation and distribution of risks is inherent to each contract and each sector, and each partner's capacity to assume the risk and mitigate it. This premise is based on the assumption that each of the parties assumes the risks that they have a better capacity to manage and mitigate, and the fact that each of the parties has integrated the actual costs of the project, and the higher risk and difficulty of mitigation, the greater will be the associated cost of the private sector. In addition, the availability of information affects the ability to assume and to quantify the risks inherent in a project.

For a Public-Private Partnership (PPP) project, the ability to identify, quantify and project the risk probability is essential, given its long-term nature.

The main forms of Public-Private Partnership are as follows:

TABLE Nº 1
Forms of PPPs

MODE	DESCRIPTION
Contracts for the provision of services	Contract for the provision of a particular service. The State keeps the ownership and requires a specified level of service. Risks may be assigned in accordance with contractual assignment. Example: Contracts of road maintenance by service levels.
Management contracts	A public good is operated and managed by a private agent under a scheme of shared risk and shared utilities. Example: management contract for a drinking water company.
Concessions	The State grants the right to the usufruct of a good in exchange for an economic agreement between the parties for a specified period. Example: Granting of Container Terminal and Multipurpose.
BOT (build, operate, transfer)	The private entity is responsible for the construction and improvement of a good, and its operation, and the ownership remains with the State or returns to the State at the end of the process. Example: Construction of a power generating plant.
Cooperatives	Community organizations are associated with public institutions to support a common interest.
Joint venture partnerships	Public and private agents are associated through a mixed company and share risks, costs and utilities.

Fuente: *IDB. Public-Private Partnerships*

In this way, we can determine that normally the private sector is responsible for the design, construction or improvement of the infrastructure, assumes the risks associated with the project, usually financial, commercial, technical and operational risks, receives a financial return for the provision of the service, either through charges to users or through financial arrangements with the public agent, and may or may not have a transfer of ownership on the asset. At the same time, the public sector keeps responsibility for the quality of the service provided and its provision under equitable conditions.

In this context, given the scope of the PPP, and this being a long-time agreement, which involves the appropriate allocation of risk between the parties, demanding a paradigm change in the traditional way of providing public services, the following aspects should be taken into account:

- They require high levels of investment in the economic, technical and contractual structuration. High transaction costs are a factor to be analyzed when the feasibility of this type of project is evaluated.

- They usually present asymmetries of information, since the private sector has usually more financial and human resources than the counterpart to manage and define a project.

- The fiscal impacts of unforeseen events and contingencies should be carefully quantified and, according to their probability of occurrence, included in the tax accounts. Equal treatment should be given to non-contingent liabilities. In some countries, there is a limit regarding the long term fiscal commitments for this type of project.

- Since they are long-term contracts, some of the initial conditions may require modifications, which can lead to renegotiations and higher transaction costs.

- The technical complexity is inherent to each sector. The complexity in the structuration and the contractual and financial conditions can lead to economies of scale and are different for each sector.

- This kind of project requires greater effort in the field of regulation and supervision by the State, although on the other hand it releases the state from the execution and operation activities.

Among the PPP experiences and good international practices in Latin America, the implementation of these agreements covers the inclusion of various sectors, from energy infrastructure and transportation (roads, ports, and airports), provision of drinking water and sanitation services, to even irrigation schemes and services of education and health, among others.

However, according to the IDB, not all countries have laws dedicated to PPP, nor have the appropriate institutional framework for the project regulation and oversight of this degree of complexity, and there are even constitutional prohibitions if water and sanitation services were provided by private agents.

2. THE "INFRASCOPE" FOR LATIN AMERICA AND THE CARIBBEAN

The "Infrascope" for Latin America and the Caribbean developed by the Inter-American Development Bank (IDB) measures the ability of a country to mobilize private investment in infrastructure through Public-Private Partnerships PPP. The Infrascope index includes 19 indicators, both qualitative and quantitative.

Data for the quantitative indicators have been extracted from the Risk Briefing Service of The Economist Intelligence Unit (EIU) and the World Bank. Qualitative data come from a number of primary sources (legal texts, Government websites, news reports and interviews), secondary reports and data sources adjusted by the EIU.

The categories and their associated indicators refers to the analysis of the following factors: the legal and regulatory framework, institutional framework, operational maturity, investment climate, and financial facilities.

TABLE Nº 2

Infrascope indicators

CATEGORIES	WEIGHTING (%)	DESCRIPTION
Legal and regulatory framework	25%	Consistency and quality of regulation
		Selection and effective decision-making
		Equity/opening of tenders
		Dispute resolution mechanisms
Institutional framework	20%	Quality of institutional design
		Private Public Partnership contract. Risks
Operational maturity	15%	Public capacity to plan and monitor
		Methods and criteria for the attribution of projects
		Risks allocation history
		Experiences in concessions
		Quality of concessions
Investment climate	15%	Political distortion
		Business environment
		Political will
Financial facilities	15%	Risk in government payments
		Private financing in the capital market
		Marketable debt
		Government support
Adjustment factor	10%	

Source: *The Economist. Inter-American Bank of development 2014.*

The 2014 Ranking of the countries of Latin America and the Caribbean, is as follows

TABLE Nº 3
Infrascope ranking (2014) of Latin America and Caribbean countries

Nº.	COUNTRIES	SCORE (ON 100 POINTS)	SCALE
1	Chile	76.6	Developed (60 – 80)
2	Brazil	75.4	Developed (60 – 80)
3	Peru	70.5	Developed (60 – 80)
4	Mexico	67.8	Developed (60 – 80)
5	Colombia	61.0	Developed (60 – 80)
6	Uruguay	52.9	Emerging (30 – 60)
7	Guatemala	46.3	Emerging (30 – 60)
8	Jamaica	44.4	Emerging (30 – 60)
9	El Salvador	41.6	Emerging (30 – 60)
10	Costa Rica	39.0	Emerging (30 – 60)
11	Honduras	37.7	Emerging (30 – 60)
12	Paraguay	37.0	Emerging (30 – 60)
13	Trinidad and Tobago	37.0	Emerging (30 – 60)
14	Panama	34.0	Emerging (30 – 60)
15	Dominican Republic	24.2	Startup (0 – 30)
16	Ecuador	22.1	Startup (0 – 30)
17	Nicaragua	20.6	Startup (0 – 30)
18	Argentina	16.0	Startup (0 – 30)
19	Venezuela	3.2	Startup (0 – 30)

Source: *The Economist. Inter-American Bank of development 2014.*

Ecuador, according to this ranking, is No. 16 in 19 countries, with a score of 22.1, considered within the "Startup" scale. In this context, by implementing this new law, it is estimated that under the modality of partnerships public-private, according to the portfolio of the Transport and Public Works Ministry presented in September 2015, port infrastructure projects could be implemented in the next three years for 576 million dollars; with $ 1.737 million for railroad infrastructure; and $ 831 million for social housing.

3. CONSTITUTIONAL AND LEGAL ANTECEDENTS JUSTIFYING PRIVATE INITIATIVES

The Constitution of the Republic of the Ecuador, as highest depository of the rights of persons, in paragraph 25 of article 66, recognizes and guarantees the right to access to public and private goods and services of quality, with efficiency, effectiveness and good treatment, to individuals and legal entities as well as other fundamental rights.

In regards to public services and public participation, article 85 of the Magna Charter stipulates that public policies and the provision of public goods and services strive to enforce the quality of life and all rights, and will be developed starting from the principle of solidarity by also guaranteeing the participation of the people, communities, populations and nationalities in the formulation, implementation, evaluation and control of public policies and public services.

On the same subject, and with regard to public services, article 314 of the Constitution establishes the responsibility of the State in the provision of public services of drinking water and irrigation, sanitation, electric power, telecommunications, roads, port and airport infrastructures, and others to be determined by the law, ensuring that both public services as well as their provision respond to principles such as compulsory character, generality, uniformity, efficiency, responsibility, universality, accessibility, consistency, continuity and quality.

As an effective constitutional and legal guardianship, the same constitutional chart disposes that the State will determine that prices and tariffs of public services will be equitable, and establishes their control and regulation.

In addition, the Constitution of the Republic of Ecuador prescribes that the State has the right to manage, regulate, and control the strategic sectors that have decisive economic, social, political or environmental influence by their significance and magnitude, and must strive for the full development of the rights and the social interest.

However the Constitution also states in its article 316 that the State may, exceptionally, delegate to private initiative and the popular and supportive economy the exercise of these activities, in cases established by the law.

In accordance with those constitutional principles, the organic code of Production, Trade and Investments, in its article 100, determines that the mode of delegation may be of concession, association, strategic partnership, or other contractual forms according to the law, following, for the selection of the delegatee, the procedures of public bidding determined by the regulation.

4. ORGANIC LAW OF INCENTIVES FOR PUBLIC-PRIVATE PARTNERSHIPS AND FOREIGN INVESTMENT IN ECUADOR

For the implementation of the constitutional provisions referred to in the preceding subparagraphs, the law of incentives for partnerships and Foreign Investment was published the official registry supplement 652 of 18 December 2015, which objective is to establish incentives for the implementation of projects in the form of Public-Private Partnership and guidelines and institutional framework for its implementation also establishing specific incentives to promote overall production funding, national investment and Foreign Investment in Ecuador.

Complying with the provisions of the Constitution of Ecuador, the General Regulation of application of the organic law of incentives for partnerships and Foreign Investment was issued and published in Official Register no. 786 of June 29, 2016.

Within the legal framework to be considered in the implementation of Public Private Partnerships, the legal provisions laid down in the regulation of the regime included in Executive Decree No.. 582, published in official register no. 453, of 6 March 2015, should be considered.

This law applies to partnerships that are aimed at the provision of goods, works or services by the Central Government and the Autonomous Decentralized Governments. The public projects approved will benefit from the incentives proposed under this law, in accordance with the agreements made by the parties.
Structuring, implementation and evaluation of public projects, in the Public-Private Partnership modality must comply with the following principles and guidelines:

- **Fiscal sustainability.** The State's ability to pay should be considered for acquiring financial commitments, formal or contingent, arising from the execution of Public-Private Partnership contracts, without compromising the sustainability of public finances or the regular provision of services.

- **Adequate distribution of risks.** In all Public-Private Partnership, an identification and appraisal of risks and benefits should be performed for the duration of the project, which will be assumed, transferred or shared by the delegating public entity and the private party, in accordance with the provisions of the contract.

- **Financial Value.** Public projects executed in the form of Public-Private Partnership must provide the best results of value for money and obtain the economically most advantageous conditions for end users of the work, good or service as possible.

- **Respect for the interests and rights of users.** The State and the private Manager will be required to protect end users and provide them with clear and sufficient information upon their rights, as well as meet and resolve their claims in a timely manner.

- **On property rights.** The public project and the delegated contract of management shall ensure the ownership rights for the parties, during the established period of validity.

- **Social coverage and Inclusion.** Geographical areas, social groups and peoples and nationalities that require the good, work or service generated by the project may not be excluded in the design and implementation of public projects. These projects should provide the use of the national component, technology transfer and the recruitment of national human talent. The profitability of the public project shall be calculated in an aggregated way, considering the possibility that exceptionally the State could provide subsidies, guaranteeing coverage and social inclusion for the population at risk.

4.1 Reforms to the Organic Code of Production, Trade and Investment (COPCI)

• New Investment

Article 13 of COPCI defines the term New Investment for the application of incentives provided for in said document. It is defined as the flow of resources aimed at increasing the economy's capital stock, through effective investment in productive assets that broaden the future production capacity, generating a higher level of production of goods and services, or generating new sources of employment. The simple change of ownership of productive assets that are already in operation as well as credits to acquire these assets do not imply new investment for purposes of COPCI.

This definition also includes as New Investment, *all investments made for the execution of public projects under the public-private partnership modality.*

• Classification of incentives

Article 24 of COPCI includes the following classification of incentives for the Productive Development:

General: Applicable for investment anywhere in the national territory. Examples: Additional deductions for the calculation of the income tax, such as mechanisms to encourage the improvement of productivity, innovation and eco-efficient production; the benefits for the opening of share capital by companies for their workers; payment facilities in taxes to foreign trade; the exemption from tax on the foreign currency outflows for financing external operations; the release of the advance income tax for five years for all new investment.

Sectoral and for the equitable regional development: for the sectors that contribute to the change to the energy matrix, strategic replacement of imports, to the promotion of exports, as well as for rural development in the country, the total exemption from income tax for five years is granted for new investments that are developed in these sectors.

For depressed areas: in the ZEDES special zones of economic development, the new investment will receive priority, in the form of tax benefit via the additional deduction of 100% of the cost of hiring new workers, during five years.

This classification of incentives includes also:

For Public-Private Partnership public projects: the investments carried out in the context of the implementation of public projects in the form of Public-Private Partnership may obtain exemptions to the income tax, to the currency outflows tax, foreign trade taxes and more benefits provided in the law of internal tax regime for this type of public projects.

• Validity of investment contracts

Article 26 of COPCI expresses that investment contracts will have a period of up to fifteen (15) years from the date of their signature, and their validity shall not limit the power of the State to exercise control and regulation through its competent bodies.

At the request of the investor, and as long as the Sectoral Council of Production considers it relevant, depending on the type of investment being developed, investment contracts may be extended only once, not exceeding the term originally granted.

The following provision is added, with respect to investment contracts within a Public-Private Partnership:

Investment contracts concluded on the occasion of a Public-Private Partnership public project will have the same term as the respective contract of delegated management. The termination of the delegated management contract entails likewise the termination investment contract without requiring any additional procedure or statement.

• Customs and foreign trade

Article 46 of COPCI determines that the ZEDES shall benefit from the customs destination treatment provided by the legal customs regime, with the exemption of tariffs on foreign goods entering such areas, to comply with the authorized processes, both for administrators and operators.

This treatment of the ZEDES includes:

Duties to foreign trade at the stage of design and construction in ZEDES: individuals or legal entities that sign contracts for engineering, procurement and construction ("IPC") with operators or administrators of the special economic development zones, shall enjoy the same benefits as the Contracting Parties in the field of import, provided that they are intended for the execution of these contracts and remain located in the ZEDE.

• Investment in strategic sectors

Article 96 of COPCI specifies that the State may delegate exceptionally, to the private initiative and the popular solidarity economy, investments in strategic sectors in the cases established in the laws of each sector.

It also includes the following:

Legal stability of the investment- In addition to the fiscal stability that is guaranteed in this Code, the legal stability of the specific sectoral legislation may be granted, when it has been declared as essential in the respective concession contracts or other qualifying titles for the management of strategic sectors or the provision of public services. The term of such legal stability will be the same as the investment contract.

• Foreign trade taxes exemptions

Article 125 of COPCI indicates that imports for consumption of the following goods are exempt from the payment of all taxes on foreign trade, except fees for customs services; this article include:

Imports directly intended for the execution of public projects in the Public-Private Partnership modality carried out by responsible private participants, in accordance with the delegated management contracts concluded with the State and its institutions, will be entitled to the same benefits, whether of a tax nature or of any other nature, as the delegating public entity in its imports, provided that the total amount of imports comply with criteria determined by the Interinstitutional Committee on Public-Private Partnerships for each prioritized sector.

For this purpose, the delegating public entity shall issue in favor of the private partner responsible for the corresponding import private a certificate attesting to the destination of the goods to be imported and the results of their evaluation studies carried out in the pre-contractual stage with regard to the quantity and quality of the goods to be imported.

• Need for officially enabling titles

Article 97 of COPCI, refers that the investment contract cannot be understood as authorization for the development of activities in strategic sectors if they require other specific qualifying titles defined by sectoral laws, such as contracts, permits, authorizations, concessions, etc. The existence of an investment contract will not involve a constraint of application for acts of regulation and control by the State, through competent authorities.

This need includes also:

The entry into force of the investment contracts concluded on the occasion of the development activities in strategic sectors, will be extended for *the same period that provided for the corresponding qualifying titles. In addition, investment contracts, shall be extended under the same terms that enabling certificates are renewed or extended.*

• Limits (Hectares) for rural land tax

The twenty second disposition of COPCI is modified, which deals with the limits prior to the calculation of the tax on farmland located in the Amazon Region and in similar areas defined in the respective Executive Decree issued by the President of the Republic (hectares). *The limit of non-taxed hectares until 2017 will be 70 Ha, 2018 will be 60 has, and from 2019, will be 50 has.*

• Inter-sectorial participation

Within article 7 of COPCI, with the proposal of giving power to the Advisory Council to propose or suggest technical guidelines for the development of policies to be adopted by entities responsible for policies for productive development, investments, partnerships, public-private associations and foreign trade.

The integration and operation of this Advisory Council will be determined in the regulation of this code, which will consider the creation of sub-councils in areas previously designated, in which the stakeholders will participate; or by a resolution of the sectoral Council of production, in matters not provided for in that regulation.

4.2 Reforms to the Organic Law of Internal Tax Regime (LORTI in Spanish)

- **Income tax exemptions for fixed-term deposits revenues and benefits**

Within article 9 of LORTI, paragraph 15.1 the following changes are established:

"15.1 Profits and benefits made by individuals and societies, resident or not in the country, from fixed term deposits in domestic financial institutions, as well as investments in fixed income securities which are negotiated through the stock exchanges of the country or the special stock registration, including yields and benefits distributed by commercial investment trusts, investment funds and supplementary funds originated in this type of investment.

This exemption for fixed-income investments and fixed-term deposits must take place from 01 January 2016, issued for a term of 360 calendar days or more, and remain in possession of the holder, which benefits from the exemption at least for 360 days continuously.

This exemption shall not apply where the beneficiary of the income is directly or indirectly debtor of the institutions that hold the deposit or investment, or any of its related parties; as well as when this recipient is an institution of the national financial system or in transactions between related parties for capital, management, direction or control"

- **Income tax exemptions for the financing of public projects in public-private partnership**

Within article 9 of LORTI, a paragraph 23 is added, which says:

"(23) Income generated from titles representing bonds of 360 calendar days or more, issued for the financing of public projects developed in public-private partnership and in transactions operated with regard to such titles. This benefit does not apply in transactions among related parties."

• Income tax exemptions for capital revenue

Within article 9 of LORTI, a numeral 24 is added, which states:

"(24) Utilities received by companies domiciled or not in Ecuador and Ecuadorian individual persons or foreign, resident or not in the country, from the direct or indirect disposition of shares, participations, other rights representative of capital or other rights that allow the exploration, exploitation, concession or similar, performed in Ecuadorian stock exchanges, up to an annual amount of a basic fraction taxed at zero tax rate for the payment of the income tax."

• Income tax exemptions for the development of public projects in Public-Private Partnership

Subsequent to article 9(2) of LORTI, the following is added:

"Art. 9.3. Income tax exemption in the development of Public-Private Partnership projects. Societies that are created or structured in Ecuador for the development of Public-Private Partnership ("PPP") projects, shall enjoy an income tax exemption during a period of ten years counted from the first fiscal year in which operating revenues established within the APP object are generated, in accordance with the economic and financial plan added to the delegated management contract, provided that the project is carried out in one of the sectors prioritized by the Interinstitutional Committee on Public-Private Partnerships and comply with the requirements laid down in the law governing the application of incentives for PPPs.

Dividends or utilities that societies that are constituted in Ecuador for the development of public projects in PPP, paid to partners or beneficiaries whatever their domiciliation are exempt from the income tax during the term of ten years counted from the first fiscal year in which operational revenues established within the PPP object are generated."

• Payments abroad

Article 13 of LORTI indicates that expenditures abroad that are necessary and intended to obtain income are deductible, provided the withholding at source has been performed, if the payment for the beneficiary constitutes a taxable income in Ecuador.

The following payments abroad will be deductible, and will not be subject to the income tax or to withholdings at source in Ecuador:

"3. The payments originating from external financing to external financial institutions, legally established as such, or specialized non-financial entities described by the corresponding control bodies in Ecuador; as well as the interests of foreign loans granted from Government to Government or multilateral agencies. In these cases, the interest may not exceed the maximum interest rates of reference set by the Board's policy and monetary and financial regulation to the date of registration of the credit or its renewal. If they in fact exceed them, a withholding at source equivalent to the general tax rate of companies must be performed for the allowed portion to be deductible.

In the case of interest paid abroad not referred to in the preceding paragraph, withholding should be done at source equivalent to the general rate of corporate income tax, regardless of the residence of the financier.

The lack of registration of external financing operations, in accordance with the provisions issued by the Policy and Financial and Monetary Regulation Board, determine that the financial costs of the credit may not be deducted."

• Gold as taxed good with 0% VAT rate

In article 55 of LORTI, paragraph 16 is reformed as follows:

"16. The gold acquired by the Central Bank of Ecuador directly or through public or private economic agents duly authorized by the Bank itself. From January 1, 2018, the same rate will be applied to the gold acquired by holders of mining concessions or individuals or legal entities that have a trade license granted by the sectoral ministry."

• VAT withholding in Public-Private Partnerships projects

Article 63 of LORTI, regarding VAT withholding in Public-Private Partnerships projects, adds the following:

"Art. (…). "- VAT withholding in Public-Private Partnerships projects -the societies created for the development of public projects in the Public-Private Partnership modality will act as VAT withholding agents under the same terms and under the same percentages as public companies."

• Refund of VAT paid in export activities

Article 72 of LORTI is reformed as follows:

"The reinstatement of the tax value added tax, does not apply to the oil activity in relation to the extraction, transportation and marketing of crude oil, or other non-renewable resources-related activity, except in mining exports, which apply the refund of VAT paid for periods corresponding to January 1, 2018, hereinafter" in the terms referred to in this article."

4.3. Reforms to the Tax Equity Law

- **Tax exemption on remittances of currencies in the execution of public projects in Public -Private Partnership**

Article 159.1 is added, stating the following:

"Art. 159.1 exemptions in the execution of public projects in Public-Private Partnership. Payments abroad are exempt from the tax on foreign currency payments by companies that are created or structured for the development and execution of public projects in Public-Private Partnership, which comply with the requirements laid down in the law governing the application of PPPs incentives, regardless of the address of the recipient of the payment:

1. When importing goods for the execution of the public project, whatever the import regime used.

2. in services procurement for executing the public project.

3. Payments made by the company to the public project funders, including capital, interest and fees, provided that the agreed rate of interest does not to exceed the referential rate to the date of registration of the credit. The benefit extends to the subordinated credits, provided that the lending society is not in situation of sub-capitalization in accordance with the general scheme.

4. Payments made by the company for distribution of dividends or profits to its beneficiaries, notwithstanding the location of their tax domicile.

5. Payments made by any person or society because of the acquisition of shares, rights or interests of society structured for the execution of a public project in the form of Public-Private Partnership or by transactions on stocks or bonds representing securities issued for the financing of the public project.

For the application of the exemptions provided for in this article, only the corresponding return must be submitted, under the general regime, about the operation that is exempt."

- **Generating event and rural land tax rate**

Articles 174 and 178 of the reform law for the tax equity of Ecuador, detail:

"Article 174. Causing event. In the case of real estate located in the Amazon Region and in similar areas defined in the respective Executive Decree issued by the President of the Republic, the causing event occurs with the ownership or possession of land surfaces exceeding 50 hectares, value that may be extended to 70 hectares through Executive Decree by the President of the Republic for one or several fiscal periods, upon motivated request of the Ministry of Industry.

Properties located in other areas of the country in geographical conditions and productivity similar to located in the Amazon Region will receive a similar treatment, detailed in the respective Executive Decree issued by the President of the Republic, prior technical report of the Ministry of Agriculture, Livestock, Aquaculture and Fisheries, and the Environment Ministry, and fiscal impact report from the Internal Revenue Service. In these cases, the exemption basis shall be applicable from the fiscal year during which the mentioned Executive Decree is issued.

In the event that the taxpayer is owner or own land in the Amazon Region and/or in similar areas and other regions of the country, all the areas will be added for the purpose of calculating this tax and the number of hectares of land in the Amazon Region and similar areas will be subtracted to the limit of tax reduction applicable. The surplus resulting from this operation will constitute the taxable base."

“Article.”178. The taxable persons must pay the equivalent to one per thousand of the untaxed basic fraction of the individual income tax and undivided succession under tax law, per hectare or fraction of a hectare of land which exceeds the nontaxed threshold.”

CONCLUSIONS

- The Organic Law of Incentives for Public-Private Partnerships and Foreign Investment, valid from January 1, 2016, has as its main objective to establish incentives for the implementation of projects in the Public-Private Partnership modality, and guidelines as well as institutional framework for its implementation, establishing specific incentives to promote overall productive financing, national investment and Foreign Investment in Ecuador.

- Investments carried out in the context of the implementation of public projects in the Public-Private Partnership modality may obtain exemptions on the income tax for 10 years, on the currency outflow tax, on foreign trade taxes and more benefits are provided for in the law of internal tax regime for this type of public projects.

- Investment contracts concluded under Public-Private Partnership project will have the same duration as their respective contract of delegated management.

- In addition to the tax stability that is guaranteed in COPCI, legal stability of the specific sectoral legislation which would have been declared as essential in the respective concession contracts or other qualifying titles for the management of strategic sectors or the provision of public services may be granted. The term of such legal stability will be the same as the investment contract.

- To implement this new law, it is estimated that under the Public-Private Partnership modality, according to the portfolio of the Ministry of Transport and Public Works of the Ecuador presented in September 2015, that in the next three years port infrastructure projects could be implemented for 576 million dollars; $ 1,737 million in railway infrastructure; and 831 million in social housing.

BIBLIOGRAPHY

Asamblea Nacional (Ecuador) (2015). Ley Orgánica de Incentivos para Asociaciones Público-Privadas y la Inversión Extranjera. Registro Oficial Suplemento 652 del 18 de Diciembre del 2015.

Asamblea Nacional (Ecuador) (2015). Reglamento General de Aplicación de la Ley Orgánica de Incentivos para Asociaciones Público-Privadas y la Inversión Extranjera. Registro Oficial No. 786 del 29 de Junio del 2016.

Akitoby, B., R. Hemming y R. Schwartz. (2007). Inversión pública y asociaciones público-privadas. Washington, D.C.: FMI.

BID (Banco Interamericano de Desarrollo) The Economist (2014). Evaluando el entorno para las asociaciones público-privadas en América Latina y el Caribe. Infrascopio,

BID (Banco Interamericano de Desarrollo) (2011). Asociaciones público-privadas para la prestación de servicios. Una visión hacia el futuro. División de Mercados de Capital e Instituciones Financieras (ICF/CMF). Documento de debate # IDB-DP-195. Noviembre.

Bloomgarden, D.R. y A. Maruyama. (2008). Retrospectives Infrastructure and Public-Private. Partnerships in Latin America and the Caribbean. Washington, D.C.: Fomin.

CFI (Corporación Financiera Internacional). (2010). IFC Advisory Services in Public-Private Partnerships: Lessons from Our Work in Infrastructure, Health and Education. Washington, D.C.: Grupo Banco Mundial.

Departamento Nacional de Planeación (Colombia). (2014). Nota Técnica 2. El Concepto del valor por dinero (VPD) y el comprador público privado (CPP). Abril 2014.

Ministerio de Economía y Finanzas (Uruguay) (2012). Guía Metodológica del Comparador Público-Privado para esquemas de Participación Público-Privada en Uruguay. Abril.

Pro Inversión (Perú) (2015). Las asociaciones público-privadas en el Perú. Noviembre 2015.

Robalino, J. (2010). Las asociaciones público-privadas (PPP): Una opción para contratación administrativa en Latinoamérica. Revista de Derecho, No. 13, UASB-Ecuador / CEN. Quito.

Schwartz, G., A. Corbacho y K. Funke. (2008). Public Investment and Public-Private. Partnerships: Addressing Infrastructure Challenges and Managing Fiscal Risks. Washington, D.C.: FMI