

Fees as a source of financing for local development in Cuba

Las tasas como fuente de financiamiento para el desarrollo local en Cuba

Taxas como fonte de financiamento para o desenvolvimento local em Cuba



Liana Simón Otero¹; Raysa Capote Pérez²

¹ Universidad de Pinar del Río "Hermandades Saíz Montes de Oca". Facultad de Ciencias Económicas. Centro de Estudios de Dirección, Desarrollo Local, Turismo y Cooperativismo. Pinar del Río, Cuba.

 <https://orcid.org/0000-0001-6330-339X>

 liana.simono@upr.edu.cu

² Universidad de Pinar del Río "Hermandades Saíz Montes de Oca". Facultad de Ciencias Económicas. Centro de Estudios de Dirección, Desarrollo Local, Turismo y Cooperativismo. Pinar del Río, Cuba.

 <https://orcid.org/0000-0003-0048-8395>

 rcapoteperez@gmail.com

Received: 28/09/2021

Accepted: 24/11/2021

ABSTRACT

In terms of local development, the sources of financing are decisive and own sources are even more so, due to the complexity of accessing external sources. Within this framework of monetary resources, tax fees, due to their peculiar taxable event and the specific purpose of their collection, occupy a special place. In Cuba, even when local development is a priority in the country's policy and there are several sources of financing, these are insufficient, while tax fees do not play a leading role. In this sense, the objective of this work is to argue the theoretical assumptions to introduce in Cuba

tax fees that contribute to finance local development and for this purpose the following methods have been used: analytical-legal, in order to assess the different legal provisions that regulate the sources of financing in Cuba, particularly tax fees and other related revenues, whether they expressly recognize them, as if their configuration responds to that of a fee without declaring it and the legal comparison to contrast the different rules that provide tax fees, although they are diverse regulations. The main result consists of a proposal for a uniform and systemic regulation of a set of fees which taxable event is constituted by the provision of a service or the performance of an activity by the State or the special use of things of public domain, of municipal competence, which collection has a specific purpose, thus favoring the financing of local development projects.

Keywords: local development; sources of financing; tax fees

RESUMEN

En materia de desarrollo local, las fuentes de financiamiento resultan decisivas y las fuentes propias lo son mucho más, debido a la complejidad que encierra acceder a fuentes externas. Dentro de este entramado de recursos monetarios, las tasas tributarias, debido a su peculiar hecho imponible y al fin específico de su recaudación, ocupan un lugar especial. En Cuba, aun cuando el desarrollo local es una prioridad en la política del país y las fuentes de financiamiento son varias, estas resultan insuficientes, mientras las tasas tributarias no gozan de protagonismo. En ese sentido, el objetivo del presente trabajo es argumentar los presupuestos teóricos para introducir en Cuba tasas fiscales que contribuyan a financiar el desarrollo local y para esto se han utilizado los métodos: analítico-jurídico, con el fin de valorar las distintas disposiciones jurídicas que en Cuba regulan las fuentes de financiamiento, particularmente las tasas tributarias y el resto de los ingresos relacionados, tanto si las reconocen expresamente, como si su configuración responde a la de una tasa sin declararlo y el de comparación jurídica para contrastar las diferentes normas que prevén tasas tributarias, aunque se trate de regulaciones diversas. El principal resultado consiste en una propuesta de regulación uniforme y sistémica de un conjunto de tasas cuyo hecho imponible está constituido por la prestación de un servicio o la realización de una actividad por parte del Estado o el

uso especial de las cosas de dominio público, de competencia municipal, cuya recaudación tenga un fin específico, favoreciendo de esta forma el financiamiento de proyectos de desarrollo local.

Palabras clave: desarrollo local; fuentes de financiamiento; tasas tributarias

RESUMO

Em termos de desenvolvimento local, as fontes de financiamento são decisivas, e as fontes de financiamento são ainda mais, devido à complexidade envolvida no acesso a fontes externas. Dentro deste quadro de recursos monetários, as taxas de impostos, devido a seu evento tributável peculiar e ao propósito específico de sua cobrança, ocupam um lugar especial. Em Cuba, embora o desenvolvimento local seja uma prioridade na política do país e do que existem várias fontes de financiamento, estas são insuficientes, enquanto as taxas de impostos não desempenham um papel de liderança. Neste sentido, o objetivo deste documento é argumentar os pressupostos teóricos para a introdução em Cuba de taxas de impostos que contribuem para o financiamento do desenvolvimento local, e para este fim foram utilizados os seguintes métodos: analítico-legal, com o objetivo de avaliar as diferentes disposições legais que regulam as fontes de financiamento em Cuba, particularmente as taxas de impostos e o restante das receitas relacionadas, se as reconhecem expressamente ou se sua configuração corresponde à de uma taxa sem declará-la, e a de comparação legal para contrastar as diferentes normas que preveem as taxas de impostos, embora sejam regulamentações diferentes. O principal resultado consiste em uma proposta de regulamentação uniforme e sistêmica de um conjunto de impostos cujo fato gerador é constituído pela prestação de um serviço ou pela realização de uma atividade pelo Estado ou pelo uso especial de coisas do domínio público, sob jurisdição municipal, cuja cobrança tem uma finalidade específica, favorecendo assim o financiamento de projetos de desenvolvimento local.

Palavras-chave: desenvolvimento local; fontes de financiamento; taxas de impostos

INTRODUCTION

In Cuba, since the VI Congress of the Communist Party of Cuba (PCC), its model of economic and social development has been updated, in which there is evidence of a political will to promote the processes of self-management of development at the municipal level, expressed in the Conceptualization of the Model, the National Plan for Economic and Social Development until 2030 and the Guidelines approved at the VI, VII and VIII Congresses of the PCC.

As a result, local development has become a public policy of strategic importance, as well as a central and articulating axis of the public agendas of governments at the municipal and provincial levels (Díaz-Canel Bermúdez et al., 2020).

This management process is strengthened through the design of Municipal Development Strategies, and Local Development Projects are defined as key elements for their materialization. For the implementation of the latter, it is essential to carry out an efficient financing management. Regarding this process, Capote, Torres and Del Castillo (2018) point out that among the main limitations to boost it are:

- limited autonomy for the design and implementation of funding mechanisms
- low levels of integration among local actors
- limited funding resources for municipal local development initiatives, which hampers the implementation of municipal strategies with their corresponding programs and projects
- inadequate legal framework and bureaucratic hurdles restricting the efficient use of financial resources
- limited capacities of local actors for the efficient management of financing in terms of resource utilization and financial self-sustainability of the municipality
- limited incorporation of the population as an active subject in the management of local development and its financing process, as well as non-state management forms and their integration with state ones, based on productive and value chains

At present, there is a diversity of sources of financing for local development, among which are: budget, local development project funds, bank credit, territorial contribution

for local development, international cooperation, foreign investment, own funds of the state and non-state business system, natural persons, among others.

However, financial resources to meet the financing demands of local development projects are still limited. However, it is evident that there are fiscal opportunities that can be used for local development. Among them, the proceeds from the collection of tax fees established by law, in order to raise capital to invest it in different activities of their own nature. These represent alternatives generated from the municipality itself, which can contribute to its financial autonomy. The objective of this research is to argue the theoretical assumptions to introduce tax fees that contribute to finance local development in Cuba.

MATERIALS AND METHODS

The methods used for the development of the research were the legal-doctrinal, which was essentially used for the analysis and evaluation of the different doctrinal positions that exist on local development, its sources of financing and essentially the tax fees; the analytical-legal, in order to assess the different legal provisions that regulate the sources of financing in Cuba, particularly tax fees and the rest of the related revenues, whether they expressly recognize them or whether their configuration corresponds to that of a rate without declaring it; and the legal comparison, to contrast the different norms that provide for tax fees, although they are different regulations. Recent materials and some classic studies have been used, although no studies on the subject have been found.

RESULTS AND DISCUSSION

An approach to local development and its sources of finance

There are many existing criteria on how to define local development management, however, common aspects can be identified that make it possible to understand the term as a complex process for social economic development purposes, led by the local community, with the participation of stakeholders, both from the territory and from outside it, in which political and socio-economic aspects interact and where the fundamental axes are represented by the territory, the environment and the actors (whether local or not).

The concept of local development is assumed as the one given by Torres et al. (2018) who defines it as: "process of social construction and structural change that from a territorial innovative environment develops local capacities to manage public policies, strategies, programs and projects oriented to take advantage of endogenous and exogenous resources and to harmoniously articulate national, sectorial and territorial interests, promoting economic, social, natural and political-institutional transformations in the localities on sustainable bases and with an active and protagonist citizen participation, in function of raising the quality of life of the population".

Among the aspects that distinguish the management of local development, the following can be highlighted:

1. It is a process of economic growth and structural change, reactivating the economy and local society on a sustainable basis that affects a territorially defined community and which results in an improvement in the standard of living of its inhabitants
2. It forms a process of strengthening local structures and powers
3. It is composed as a territorial strategy
4. It is the process through which public policies, strategies, programs and projects are managed to take advantage of endogenous and exogenous resources
5. It is a comprehensive project that seeks the competitive insertion of the territories in the international market on innovative bases
6. It is presented as a process of concertation of stakeholders and articulation of local and supra-local interests
7. It is assumed that local development is a complex social and political process that has its own characteristics according to the territories and their characteristics (identity, cultural, political and other resources such as economic and environmental) and where the basis is the construction of capacities for different actors to develop the management process in an articulated way

The above-mentioned elements make it possible to sustain that local development is not the simple application of national policies at the provincial or municipal levels, but requires that the strategies be elaborated based on the mobilization and active participation of local actors.

With respect to the local resources necessary to drive the development process from the localities, they do not represent a sufficient condition by themselves for a process of economic development to originate, but they do represent a necessary condition, in such a way that, although their existence is essential, if these resources are not used in an adequate manner within a coherent whole, a satisfactory solution will not be reached.

The context in which the network of resources available to a specific community should be inserted is that of an integral development strategy, where the joint use of all the productive factors and services that can have an impact on the improvement of the quality of life of the population is delimited.

The scope of local resources is very broad and varied, ranging from physical elements, which include infrastructures of all kinds, to technological, economic-financial, socio-cultural and people's values, among others.

In this way, by strengthening existing resources, in many cases hitherto forgotten, a community can find solutions to its problems through new ideas and projects on its own initiative. However, local development should not be limited to the mere use of resources, but should also be understood as the possibility that the endogenous potential existing in the area can be mobilized in order to satisfy the basic needs of the population.

Financial resources are of vital importance for the promotion of local initiatives and are considered to be one of the difficulties that have most limited the expansion of local development processes.

Generally, the resources are not sufficient to maintain an enterprise activity, nor there is a capacity for continuous self-financing, which aggravates the problem due to the difficulties that enterprises encounter when it comes to using the external resources existing in the financial system.

Based on the above, the criteria of Rivera and Del Pozo (2016) are highlighted, which recognize the importance of financing management at the local level, a process that should be conceived as part of the development strategies, contributing to the optimization of these resources from an efficient and timely administration, which allows the prioritization of local objectives, without neglecting the national ones. It is therefore

necessary to stimulate savings, to think about internal sources and the search for external financing that supports territorial processes and allows the use of material, human and technological resources, both endogenous and exogenous.

A key issue is therefore to implement financial measures appropriate to local needs. The public sector could promote this with legislation that would encourage the creation of appropriate instruments for local enterprises, articulate actors according to local priorities, create the necessary legal instruments to establish the framework for action between the public and private sectors, bearing in mind that the latter have potential that should be used for local development. For its part, the financial system should create mechanisms and instruments to solve the problems of local enterprises.

Financial instruments should be adapted to the conditions of growth and viability of local enterprises, developing private, public and mixed initiatives, aimed at structuring local savings, using them in local projects and meeting the specific needs of these enterprises and those of the population.

It is vitally important to move towards an inclusive, integrated financial system geared towards supporting local initiatives, which implies complementing the facilitation of financing alternatives with improvements for investment and incentives for innovation and the incorporation of technologies to reduce production and enterprise gaps.

For this reason, it is necessary to stimulate the creation of funds for investment, accompanied by the use of internal sources and access to favorable conditions of external financing that, through a process of analysis and effective control, facilitate local government decision-making in terms of investment for development.

The financial management of local development includes the management of financial monetary resources to carry out an economic activity in a specific locality, with the characteristic that it generally involves sums borrowed that are complemented with own resources. This includes own and credit financing sources with the objective of ordering and prioritizing inputs and contributions, according to the criteria of: comprehensiveness, relevance and flexibility (Rivera García & Del Pozo Álvarez, 2016).

The management of local development financing is defined as a participatory, interactive and multilevel process through which the public administration, based on its competencies and capacities, plans, organizes, implements, monitors and evaluates the financing of local development projects, based on the use of endogenous and exogenous resources.

As a result of the above, it can be stated that the capacity of local economic actors to undertake any development strategy will depend, to a large extent, on the availability of financial resources and the possibility of accessing them in a timely manner.

In order to carry out the financial planning process, it is essential to identify and study the different sources that can be found in the municipality to finance its projects before making any investment decision.

Governments must take greater responsibility for generating their own revenues to stimulate local development and to pay for the required local infrastructure and services arising from continuing urbanization.

Municipal taxation is one of the sources that has the greatest incidence in the international arena, so for some time now, fiscal decentralization has become a topic of great interest to experts, because, as is well known, everything depends on the degree of financial autonomy that each local entity has.

International experiences such as those described by Argañaraz, Celdrán and D'Angelo (2012) demonstrate the heterogeneity that exists in the collection of taxes at the municipal level that fall on the most varied economic agents. The wide variety of levies detected at the municipal level illustrates the excessive complexity of the municipalities' financing scheme. In them, one source of income corresponds to their own resources: collection of fees, contributions, patents, fines, among others.

In the same sense, Jiménez and Ruelas (2018, p. 3):

"In recent decades, Latin America has witnessed the consolidation of a gradual and clear trend towards fiscal decentralization from the central government to lower levels of government. This process, in its different

periods, occurred mainly through public spending (rather than revenues); however, the situation is quite heterogeneous among countries. In addition, how subnational governments finance their (assigned) spending responsibilities is a key concern. This financing is achieved through three modalities: a) generation of own resources, whether taxes or other non-tax revenues (royalties, municipal fees, rights, etc.); b) intergovernmental transfers; and c) through borrowing, or a combination of the three alternatives".

However, regardless of who and how it is established, within the scope of own resources there are taxes that by their essence, nature and even by their purpose, are ideal for increasing local financial resources. These taxes are the so-called fees.

Tax fees as a local financial resource

The classification of tributes, into taxes, fees and contributions entails a foundation that justifies the existence of the referred tax species and, of course, a theoretical support that individualizes them and, accordingly, differentiates them from each other and from the rest of the public revenues.

Within the genre, fees are a tax that has been questioned from all points of view, either because of their economic impact or because of their legal instrumentation. Although the subject of fees has been profusely dealt with, it can be affirmed that it is the tax species that has generated the most discord and on which there is less consensus, with several discrepancies persisting to this day that have not yet been resolved.

Undoubtedly, the criterion upheld by Giannini (1957) is transcendental as a starting point to try to arrive at concrete characteristics that identify fees and differentiate them particularly from taxes and public prices, especially if it is taken into account that this position has enjoyed great doctrinal support.

This author considers that "the fee is the pecuniary benefit due to a public entity, by virtue of a legal rule and to the extent that it is established, for the performance of an activity of the entity itself that affects the obligor in a particular way" (Giannini, 1957, p. 51).

Giannini (1957) only recognizes the difference between the fee and the rest of the taxes, based on the taxable event, based on the fact that in this case the activity or service that is part of the structure of the taxable event particularly affects the taxpayer and this only occurs in divisible services. From this point of view, neither the effect on income nor the demand for the service by the private individual are features of the fees. "It is not possible, therefore, to reach a unitary concept of the fee that includes all its manifestations in the vast field of the administrative and jurisdictional activity of the State, but by adopting the above-mentioned criterion, that is, considering it as a tax imposed by law, on account of an activity carried out by the public entity with respect to the obligor, even if the latter has not requested it or even if it is disadvantageous for him" (Giannini, 1957, pp. 51-52).

Regarding the difference between fees and public prices Giannini (1957, p. 59) maintains that "(...) there is (...) no material element of differentiation to which a decisive and constant influence on the juridical character of the relations in question can be attributed. This character must essentially be deduced from the way in which the relationship appears legally disciplined, taking into account above all its historical development"; therefore, it is not decisive the higher or lower level of remuneration or the existence or not of monopoly in the service, which could simply be indications.

The taxable event as the only differentiating element of taxes has been defended, albeit with some peculiarities, by part of the doctrine. According to Martín Queralt et al. (2019, p. 39):

"The differentiating element between taxes and fees is to be found in the different nature of the factual assumption or taxable event; the *tax* is connected with a factual situation that constitutes a manifestation of economic capacity, referring exclusively to the person of the obligor and to his sphere of activity, without any relation, not even in fact, with the activity of the taxing public body. The factual assumption of the *tax*, on the contrary, consists of a factual situation that determines or is necessarily related to the development of an activity of the public entity that refers to the person of the taxpayer".

If the taxable event is accepted as the only differentiating element of the tax species, what transcendence would the tripartite division of taxes have in those countries where the taxing power of the State is not decentralized, since only from this perspective, this approach could fulfill some purpose and, even so, for concrete purposes, the tax burden can be increased both by fees and taxes.

With regard to public prices, the aforementioned authors, taking as a reference the 1995 ruling that has been accepted by the sentence 223/1999, of 16 December 1999 of the Spanish Constitutional Court, maintain that "the scope for an economic benefit to (...) be considered a public price is limited (...) to the simultaneous concurrence of the following three conditions: (...) when it can be understood that the request for the administrative activity or service is effectively free, in which case it must be understood not only that it is not legally imposed, but also that the service or activity requested is not essential, (...) that the service or activity must not be performed in a monopoly position, (...) [and] that the two requirements, voluntariness and non-monopoly of the public sector, occur cumulatively and not alternatively" (Martín Queralt et al., 2019, p. 41).

Without the requirement of clear differentiation requirements, the organs of power could freely create public prices, since the non-recognition of a material element of differentiation between fees and prices grants full freedom to the State to mask, under the guise of public prices, real tax obligations, thus evading the application of the principles of tax justice or breaking its taxation powers, leaving the taxpayer in a real state of defenselessness by suppressing all the legal guarantees that the tax system provides.

From this point of view, Simón (1991, pp. 109-110) states that:

"If there is any sense in establishing differences between the two (he refers to taxes and fees) it is because each of these taxes collaborates in a different way in the common task of making effective the generic ideal of the fair distribution of tax burdens. Intuitively it can be seen that the function of the fee and the function of the tax, in order to achieve tax justice, are different. If it were not for this substantive difference, what

would be the point of the distinction? (...) If it is not recognized any other individualizing feature than the structure of the taxable event, it would have to conclude that the fees are nothing more than particular species of the tax genre".

Even though it is not accepted the solution that this author gives to the historical problem, since he makes the difference in the legal basis of the fees, by affirming that its factual assumption does not show the taxpayer's contributive capacity, we do share the need to delimit the fee beyond the generating fact and its legal regime as an essential means to delimit the powers of the State and, consequently, to protect the taxpayer.

The Latin American doctrine, not far from the above, has based the division of the tax species, based on two basic aspects of the tax: the constituent elements of the taxable event and the destination of its proceeds.

In this sense, it is shared the criterion held by Valdés (1996, p. 92) when he states: "As for the destination, it is unquestionable that it integrates the notion of fees and contributions since it would not be justified, in any way, that the law assigns the proceeds of these taxes to destinations outside the needs of the service or the work that constitute its essential basis by integrating its factual budget. Ignorance of this requirement would make the service lose the character of a fee or contribution".

Fees, from their very conception, are born linked to an activity or service, so that even though it is recognized that its purpose is to collect, like all taxes, it is had the opinion that in this case the destination is much more specific.

In relation to the prices, taking into account that the fee is due to the taxing power of the State and that it is derived from the constitutional duty to contribute to the support of public expenditures, it can be considered as an element of differentiation that the service or activity is provided directly by the State, holding its political public power or another entity on behalf of it, whenever the State directly or indirectly performs an activity or provides a service that affects the taxpayer, it can only regulate as a means of income a fee; in other cases, it can establish public prices. "In this sense, we cannot ignore that while the fee is a tax and, therefore, a public revenue of public law of the Administration, the tariff constitutes a private income of whoever provides a public

service under private law, with all the consequences that derive from it" (Siota Álvarez, 2017, p. 335).

However, the fees have certain advantages that make them an ideal economic resource to contribute to the financing of local development. In this sense, it could be pointed out the specific purpose (the fact that what is collected by concept of this tax is necessarily destined to the maintenance of municipal services or goods, does not make the investment amounts depend on future political decisions); its quota does not represent high amounts (its dependence on the principle of economic capacity, let's call it average, guarantees that its amount is not excessive, which in principle does not coerce the taxpayer who intends to carry out the taxable event); proliferation of taxpayers (the taxable event is so varied that it allows to regulate innumerable fees, without, as we have already seen, this constitutes an excessive increase of the tax burden, here may lie the success in the collection). It frees up the other financial resources that make up the municipal economy for possible investment projects. It is considered that this type of tax fulfills a specific function within a financing system and it is to guarantee the support of certain sectors, which makes it possible that other resources do not have to be destined to those ends) and its peculiar taxable fact favors the achievement of extra-fiscal ends (the establishment of the rate allows to order the use of goods and services of public domain).

Depending on this structure, on its peculiar taxable event, it can be demarcated particular species of this type of tax and, therefore, areas in which revenue will be received. In this sense, it can be spoken of judicial fees (contentious-administrative, criminal, etc.) and administrative fees (authentications, legalizations, identity documents, passports, building permits, driving licenses, hunting and fishing permits, space for stalls or advertising on public roads, etc.).

Tax fees as an opportunity to expand economic resources for local development in Cuba

In Cuba, according to the Ministry of Economy and Planning predictions, in the Methodological Indications for the Elaboration of the 2021 Plan for the National Economy, Resolution No. 113/2020, "at present, there is a diversity of sources of financing for local

development, among which are: Territorial contribution for local development, funds for local development projects, Provincial Government funds from the contribution of the Territorial Contribution of the municipalities, credit with the bank's own funds, international cooperation, foreign direct investment, channeling of remittances, own sources of the different forms of property, National Fund for the Environment, National Fund for Forestry Development, National Fund for the Development of Science, Innovation and Technology, the State Budget and any other lawful source in accordance with the legislation in force". In addition, these sources are regulated by Decree No. 33/2021 and its complementary regulations.

Of these sources, the territorial contribution for local development, the income from municipal initiatives for local development and the own funds of enterprises and non-state forms of management, which in a certain way contributes to the financial autonomy for decision making regarding the financing of development on a local scale, can be considered the territory's own, at least in terms of expenditure.

The amounts from these sources are insufficient to cover the financial demands reflected in development strategies at the local level. This is why it has become necessary to resort to external sources, which, in the current context, are very difficult to access. Accordingly, the diversification of own sources should be a priority, and it is here where fees become a relevant issue.

The current tax system is based on the constitutional regulation of the duty of all citizens to contribute to public expenditures -article 90 of the Constitution of the Republic of Cuba (2019)-, from there, it is Law No. 113/2012, Law of the Tax System, which establishes all the principles and elements that make it up.

Article 5 of the Law defines the fee in its paragraph g) as the "tax for which the person obliged to pay it receives a consideration in the form of a service or activity from the State".

The reference to consideration is undoubtedly inappropriate. As we have already analyzed, we are not in the presence of synallagmatic obligations. In this sense, it was sufficient to have regulated that the subject is obliged to pay the fee for receiving a service or activity from the State or for the private use or special exploitation of the

public domain. Nor does the Law refer to the allocation of the income obtained by the tax, thus aligning itself with the theory held by Giannini (1957).

From the literal interpretation of the article, we can affirm that the private use or special use of the public domain is not part of the structure of the taxable event of the rate, however, if we analyze the particular figures we realize that the Law did assume it as an integral element of the generating event of the Rate for the Placement of Advertisements and Commercial Propaganda, which responds to the authorizations granted by the physical planning directions for posters and commercial advertisements.

Article 336 of the aforementioned Law No. 113/2012 regulates that "a Tax for the Placement of Advertisements and Commercial Propaganda is established, whose taxable event is constituted by the use of property owned by the municipality and other property located within the municipal demarcation for commercial advertisements in public or private spaces with public projection.

For the purposes of this Act, the following terms are construed as set out below:

- a. municipal patrimony, is constituted by the set of goods under the jurisdiction of the municipal government and those of common use or expressly destined to satisfy a demand of public character
- b. public or private space with public projection, those occupied by public buildings and destined by their nature, by their use or affectation to the satisfaction of common and collective needs, among others"

Consequently, the placement of awnings, canopies, windows, counters, umbrellas and platforms and the temporary use of the ground are outside the scope of taxation established by the Tax Law, which has been transferred taxable matter, causing other entities who are those who take advantage of this space.

In Cuba, the current legal system allows the private use or special use of the public domain. The Ministry of Finance and Prices, through Resolution No. 300/2011, established the fees for authorizations to natural persons provided by the Directorates of Physical Planning for two different concepts: posters, commercial advertisements or not, placement of awnings, canopies, windows, counters, umbrellas and platforms and

for the temporary use of land for *guarapo* cafeteria and points of sale. However, the tax legislation does not show harmony in this regard, since the regulation of fees for this concept is insufficient and not very precise.

The Ministry of Economy and Planning, through Resolution No. 293/2006, on the organization of Popular Parties¹, regulated the monetary obligation of self-employed workers for the use of public space for the exercise of their activity. The ninth paragraph numeral 5 of this norm establishes that one of the main sources of income for the Popular Festivities will be the payment to self-employed workers for the use of the space and the eleventh paragraph establishes that the administration of the special account of the Popular Festivities will be taken care of by the Provincial and Municipal Directorates of Culture.

This is only an advance of the confusing and insufficient regulation of tax fees in our system, which is determined by three fundamental aspects: confusion of tax figures, parafiscality and little use of the taxable matter; all aggravated by the fact that our fees do not have a specific purpose, which as it has already seen is a catalytic element in local development.

There are expressly three fees regulated by our Tax Law: the aforementioned fee for the placement of advertisements and commercial propaganda, the toll fee and a fee for airport passenger services. However, the analysis of the taxable event of some taxes allows us to affirm that we are really in the presence of fees, since their peculiar structure so indicates. This is the case of the document tax, which is levied on public documents relating to certifications, procedures and licenses, which in the end is nothing more than a service provided by the State. It was also found this situation in four of the taxes that make up the title dedicated to the environment, since a simple reading of their names and particularly of their taxable events calls into question their classification as taxes, at least in four cases, the Tax on the use and exploitation of beaches, the Tax on the use or exploitation of bays, the Tax on the use and exploitation of forest resources and wild fauna and the Tax on the right to use land waters. We are talking about the use and/or exploitation of natural resources, which as we have already seen constitute the taxable

¹ In practice, the concept of popular festivals has been interpreted in an extensive way, including commemorative parades, cultural fairs or any other activity that implies conglomeration of people on public roads.

event of a fee²; only in the case of the Tax for the approved dumping of waste in hydrographic basins do it is agreed with its configuration, since it cannot be considered that the approved dumping of waste constitutes the use or exploitation of hydrographic basins, which naturally do not have that function.

Now, the analysis of the presence of fees in the Cuban legal system should end in the Tax Law itself, which itself declares that its purpose is to establish the taxes, principles, rules and general procedures on which the Tax System of the Republic of Cuba is based. However, in other legal regulations it can be found a set of monetary obligations, also imposed by the State, which even if they are not identified as such and receive a different legal treatment, their characteristics allow to affirm that we are in the presence of true tax fees. This phenomenon is known as parafiscality and in a technical sense, it does not contribute anything new, it only causes dispersion and lack of protection to the taxpayer.

"In this same sense, the doctrine states that the so-called parafiscal levies are integrated in the category of economic benefits of a public nature and in the specific ones of tax, fee or special contribution, ending with the idea of considering such levies as an independent category" (Muro Arroyo, 2006, p. 114).

An example is the fees charged for the granting of licenses such as construction licenses (Resolution No. 54/2014 of the Institute of Physical Planning) or the procedural costs imposed by the court when, for example, there are ex officio proceedings which payment corresponds to all parties, (Article 198 and following of Law No. 7/1977, Law on Civil, Administrative and Labor Procedure).

Another case is the fee for carrying out a mining activity (Act No. 76/1994, Mining Act, articles 3 and 75), which is paid for the enjoyment of State property, i.e. for the private use of public property.

Although the denomination of this monetary obligation has been given the name of fee, which is usual in international practice, the analysis of its taxable event, together with

² Another criterion is sustained by Díaz Legón et al. (2021, p. 484) when they argue that "the tax legislator for the configuration of environmental taxes only opted for the establishment of taxes; he did not foresee environmental fees or contributions...".

the assumption of the tripartite classification of taxes by our Tax Law (article 5), leads us to affirm that we are in the presence of a fee.

The same happens, for example, in the Spanish system, where the Royal Legislative Decree 1/2001 of the Water Law of Spain regulates that the occupation, use and exploitation of certain assets of public water domain, which require concession or administrative authorization, accrue to the competent basin organization a fee called fee for the use of public water domain assets, for the protection and improvement of the domain.

In the same line of interpretation, Muro (2006, p. 141) states that "If this section is interpreted taking into account article 2 of the same legal text in which it is determined that "taxes, whatever their name, are classified into fees, special contributions and taxes", it can be concluded that the canon is not a fourth tax category, and all taxes bearing this name must be redirected to one of the three categories admitted by the General Tax Law".

However, there are many fees that exist in the world and the relevance of their inclusion in the Cuban tax system could be assessed, as shown by the studies carried out by Domínguez (2009), cited in Díaz Pando et al. (2020, p. 186), regarding the proposal of a fee for payment for environmental ecosystem services and the research of Díaz Pando et al. (2020) regarding the characterization of the management of public policies for the payment of forest ecosystem services. We are not defending the untimely and abundant regulation of all these monetary obligations, but the possibility of studying how many and which of them could be beneficial, especially at the municipal scale, since the need to collect economic resources with a view to contributing to local development is undeniable.

It is worth noting the fees charged for general services such as street lighting, sewerage maintenance or waste collection, for the use of public spaces (which can include both the unloading of materials on a sidewalk and the placement of chairs and tables in food activities), for services related to the cemetery, for street selling, among many others.

It should be noted that we must beware of several dangers such as the overlapping of fees (double taxation) or the principle that is assumed to calculate their collection.

A *sui generis* case that constitutes an important experience for our country is the experience of the Historical Center of Old Havana, which has been able to achieve a financial, socioeconomic, cultural and environmental balance in the locality, making viable the development of a set of projects of social impact that contribute in a very efficient way to the improvement of the quality of life of the population. Infrastructure is repaired in a sustainable manner, new sources of employment are generated and solid economic and productive relationships are established between different state and non-state actors.

Among the main contributions of this experience, even though the conditions it has by Decree Law No. 143/1993 "On the Office of the Historian of the city of Havana" modified in 2019, are atypical to those of the rest of the territories of the country, are: the importance of localities to manage their development in a self-financed way, promoting their sources of financing. It was demonstrated the need to have levels of local autonomy to associate and establish relationships with foreign entities, as well as to charge taxes to productive entities located in the territory; it was evident the need for integration of economic interests with social, natural and political institutional interests that ensure the sustainability of the development process and it was evident the insufficient economic autonomy for the management of income and expenditure of the locality.

One of the taxes established in this context was the so-called fee for the use of public space and the lease of a stand or premises, which, regardless of its name, is a clear example of a fee for the use of public property, an example that could well be generalized.

Consequently, our proposal entails assuming certain pillars that would turn tax fees into an essential source for local development. From this point of view, at least the following premises should be taken as a reference:

- With regard to the structure of the fee, it should be clear how the taxable event (for a service or activity provided by the State and for the private use of public property) and the specific purpose of its collection are to be determined
- The regulation of fees should be the competence of the highest municipal power body, based on a general catalogue established by law, as a way of contributing

to the financial autonomy of the municipality, without which local development is unthinkable

- Organize the dispersed regulation that exists today in terms of fees, including parafiscal obligations, taking into account the areas of competence
- To establish a procedure for the calculation of the general economic capacity of a territory, which is the principle that determines the amount of the fees

Sources of financing are a decisive element in local development, where own sources are of special significance due to the difficult access to external sources. One of the most widely used own sources in the international context are tax fees, which, because of their special structure and purpose, are ideal for increasing local financial resources.

Although there is no consensus on the characteristics of tax fees and the elements that differentiate them from the rest of the monetary obligations, the authors are of the opinion that their peculiar taxable event, their subjection to the principle of economic capacity and their specific purpose determine their essence and function within the tax framework.

In Cuba, there are several sources of financing for local development, but these are insufficient to cover the financial demands reflected in the development strategies at the local level, which is why the collection of the territory's own monetary resources takes on special significance, especially when only the territorial contribution for local development is counted among the tax revenues.

Fees do not currently constitute a specific source of financing for local development, basically because they are not recognized as a service or taxed good. Their regulation is determined by the confusion of tax figures, the presence of parafiscal levies and the limited use of the taxable matter.

It is assumed in this study that the uniform and systemic regulation of a set of taxes, which taxable event is constituted by the provision of a service or the performance of an activity by the State or the special use of things in the public domain and which collection has a specific purpose, of municipal competence, would favor the financing of local development projects.

REFERENCES

- Argañaraz, N., Celdrán, S., & D'Angelo, M. (2012). *Una «constelación» de tasas municipales en Argentina: Existen más de 130 tipos de tasas diferentes*. Instituto Argentino de Análisis Fiscal (IARAF). <https://www.ele-ve.com.ar/Una-constelacion-de-tasas-municipales-en-Argentina-Existen-mas-de-130-tipos-de-tasas-diferentes.html>
- Asamblea Nacional del Poder Popular. (2019). *Constitución de la República de Cuba*. Gaceta Oficial de la República de Cuba, Edición Extraordinaria No. 5. <https://www.gacetaoficial.gob.cu/es/constitucion-de-la-republica-de-cuba-proclamada-el-10-de-abril-de-2019>
- Asamblea Nacional del Poder Popular de la República de Cuba. (1977). *Ley 7 Ley de procedimiento civil, administrativo y laboral*. Gaceta Oficial de la República de Cuba. <http://legislacion.sld.cu/index.php?P=FullRecord&ID=253>
- Asamblea Nacional del Poder Popular de la República de Cuba. (1994). *Ley 76 Ley de Minas*. Gaceta Oficial de la República de Cuba. <http://repositorio.geotech.cu/jspui/bitstream/1234/3684/1/Ley%20No%2076%201995%20Ley%20de%20Minas%20de%20la%20Rep%C3%BAblica%20de%20Cuba.pdf>
- Asamblea Nacional del Poder Popular de la República de Cuba. (2012). *Ley 113 Sistema Tributario de Cuba*. Gaceta Oficial de la República de Cuba, Edición Ordinaria No. 53. <https://www.gacetaoficial.gob.cu/es/ley-113-de-2012-de-asamblea-nacional-del-poder-popular>
- Capote Pérez, R., Torres Paez, C. C., & del Castillo Sánchez, L. (2018). Retos de la Administración Pública para la gestión del proceso de financiamiento del desarrollo local. *Cooperativismo y Desarrollo*, 6(2), 179-197. <http://coodes.upr.edu.cu/index.php/coodes/article/view/206>
- Consejo de Estado de la República de Cuba. (2019). *Decreto Ley 143 de 1993 Sobre la Oficina del Historiador de La Ciudad de La Habana*. Gaceta Oficial de la

República de Cuba, Edición Ordinaria No. 40.

<https://www.gacetaoficial.gob.cu/es/gaceta-oficial-no-40-ordinaria-de-2019>

Consejo de Ministros de la República de Cuba. (2021). *Decreto 33 Para la gestión estratégica del desarrollo territorial*. Gaceta Oficial de la República de Cuba, Edición Ordinaria No. 40. <https://www.gacetaoficial.gob.cu/es/decreto-33-de-2021-de-consejo-de-ministros>

Díaz Legón, O. J., Pérez Inclán, C. A., & Toledo Barrios, Y. (2021). Los tributos ambientales en Cuba. *Revista Cubana de Derecho*, 1(2), 470-494.

<https://revista.unjc.cu/index.php/derecho/article/view/82>

Díaz Pando, J. C., Domínguez Junco, O., & Acosta Oramas, M. (2020). Caracterización de la gestión de políticas públicas para el pago por servicios ecosistémicos forestales. *Cooperativismo y Desarrollo*, 8(2), 183-196.

<https://coodes.upr.edu.cu/index.php/coodes/article/view/298>

Díaz-Canel Bermúdez, M., Núñez Jover, J., & Torres Paez, C. C. (2020). Ciencia e innovación como pilar de la gestión de gobierno: Un camino hacia los sistemas alimentarios locales. *Cooperativismo y Desarrollo*, 8(3), 367-387.

<https://coodes.upr.edu.cu/index.php/coodes/article/view/372>

Giannini, A. D. (1957). *Instituciones de derecho tributario*. Editorial de Derecho Financiero. <https://www.worldcat.org/title/instituciones-de-derecho-tributario/oclc/807109802>

Instituto de Planificación Física. (2014). *Resolución 54 Aprueba el procedimiento para cumplir las funciones que se traspasan a las direcciones municipales y provinciales de planificación física*. Gaceta Oficial de la República de Cuba, Edición Extraordinaria No. 40. <https://www.gacetaoficial.gob.cu/es/gaceta-oficial-no-40-extraordinaria-de-2014>

Jiménez, J. P., & Ruelas Ávila, I. (2018). Autonomía tributaria subnacional en América Latina. *Presupuesto y gasto público*, (92), 177-197.

https://www.ief.es/docs/destacados/publicaciones/revistas/pgp/92_09.pdf

Martín Queralt, J., Lozano Serrano, C., Tejerizo López, J. M., & Casado Ollero, G. (2019). *Curso de Derecho Financiero y Tributario*. Tecnos.

Ministerio de Economía y Planificación. (2006). *Resolución 293 Organización de las Fiestas Populares*. Gaceta Oficial de la República de Cuba.
https://www.baragua.gob.cu/images/PDF/nuestraRegion/Cultura/03.%20Resolucion%20293_2006%20Cuenta%20de%20Festejos.pdf

Ministerio de Economía y Planificación. (2020). *Resolución 113 Indicaciones Metodológicas para la Elaboración del Plan de la Economía Nacional*. Gaceta Oficial de la República de Cuba, Edición Ordinaria No. 62.
<https://www.gacetaoficial.gob.cu/es/resolucion-113-de-2020-de-ministerio-de-economia-y-planificacion>

Ministerio de Finanzas y Precios. (2011). *Resolución 300 Establece las tarifas para los servicios que prestan las direcciones provinciales y municipales de Planificación Física, a personas naturales, en pesos cubanos (CUP)*. Gaceta Oficial de la República de Cuba, Edición Extraordinaria No. 29.
<https://www.gacetaoficial.gob.cu/es/resolucion-300-de-2011-de-ministerio-de-finanzas-y-precios>

Ministerio de Medio Ambiente de España. (2001). *Real Decreto Legislativo 1 Se aprueba el texto refundido de la Ley de Aguas* (BOE No. 310).
<https://www.boe.es/buscar/act.php?id=BOE-A-2001-14276>

Muro Arroyo, C. (2006). Tributos ecológicos, aspectos generales: El nuevo Canon del Agua en la Comunidad Autónoma del País Vasco. *Zergak: gaceta tributaria del País Vasco*, (31), 137-156.
<https://dialnet.unirioja.es/servlet/articulo?codigo=3778009>

Rivera García, A., & Del Pozo Álvarez, P. L. (2016). La gestión del financiamiento para el desarrollo local. *Revista Caribeña de Ciencias Sociales*, junio.
<https://www.eumed.net/rev/caribe/2016/06/financiamiento.html>

Simón Acosta, E. (1991). Las tasas y los precios públicos de las entidades locales. En R. Calvo Ortega, *La Reforma de las haciendas locales* (pp. 103-168). Lex Nova.

Siota Álvarez, M. (2017). Algunas notas sobre el régimen jurídico de tasas y tarifas por el servicio de abastecimiento domiciliario de agua. *Administración y Ciudadanía (A&C)*, 12(1), 333-361. <https://egap.xunta.gal/revistas/AC/article/view/3430>

Torres Paez, C. C., Gómez Ceballos, G., González Pérez, M., Ares Fuego, E., Cardoso Carreño, R., & Flores Lóriga, J. (2018). Modelo para la gestión de políticas territoriales de desarrollo local a escala municipal en Cuba. *Anales de la Academia de Ciencias de Cuba*, 8(1).

<http://www.revistaccuba.cu/index.php/revacc/article/view/405>

Tribunal Constitucional Español. (1999). *Sentencia No. 223* (BOE No. 310).

https://www.boe.es/diario_boe/txt.php?id=BOE-T-1999-24564

Valdés Costa, R. (1996). *Curso de derecho tributario*. Temis.

Conflict of interest:

Authors declare not to have any conflict of interest.

Authors' contribution:

All authors reviewed the writing of the article and approve the version finally submitted.



This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License

Copyright (c) Liana Simón Otero; Raysa Capote Pérez