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# Global Tax Alert

News from EY Americas Tax

## Ecuadorian Constitutional Court declares unconstitutional executive decree requiring estimated income tax payments for fiscal year 2020

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The Ecuadorian Constitutional Court has declared unconstitutional Decree 1109, which had established a requirement for certain taxpayers to make estimated tax payments in advance for fiscal year 2020 to assist with COVID-19 relief efforts.

### Background

In July 2020, the Ecuadorian President ordered certain taxpayers to pay estimated income taxes for fiscal year 2020, rather than paying the entire tax by the April 2021 deadline. The Government considered the early income tax payments as necessary to address the social and economic effects of COVID-19. See EY Global Tax Alert, [Ecuador requires certain taxpayers to pay estimated income taxes for fiscal-year 2020](#), dated 30 July 2020.

### Reasons declared unconstitutional

The Constitutional Court had to analyze whether this measure requiring the advanced payment of income tax was suitable, strictly necessary and proportional to address the circumstances motivating the declaration of the state of emergency in Ecuador.

The Court determined that there was no link or relation between the emergency that the country was facing and the advance collection of estimated income tax that was sufficient to consider the measure the only solution for facing the

COVID-19 pandemic and resolving the state of emergency. Furthermore, it was not possible to prove that the income that the Government would receive through this measure would be applied exclusively to cover the expenses related to facing the pandemic or assisting in overcoming this emergency.

## Effects and remedies

After the declaration that the estimated income tax obligation is unconstitutional, the obligation is considered nonexistent.

Taxpayers that paid this estimated income before the declaration of the Constitutional Court can choose one of the following remedies:

- ▶ Request a refund of the paid amount
- ▶ Use the paid amount as a tax credit
- ▶ Consider the paid amount as a voluntary income tax payment, which, under the Humanitarian Support Law provisions, will be entitled to interest, with interest running from the date that the voluntary payment was made until the due date of the income tax payment

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