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**ARTÍCULO ORIGINAL**

## **Special deductions and the hiring of people with disabilities, the effect of ignorance in private companies in Ecuador**

### **Deducciones especiales y contratación de personas con discapacidad, el efecto del desconocimiento en las empresas privadas de Ecuador**

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#### **ABSTRACT**

To date, the tax reform has gone through several modifications allowing the collection of taxes for the provision of public services, among the changes in the law there have always been tax benefits for hiring employees with disabilities, thus achieving a mutual benefit for both the state and the taxpayer. In particular, the Labour Code was analysed with regard to work for persons with disabilities hired only in the private sector. Equal and dignified employment by promoting the integration of people with disabilities into the labour market, together with existing tax incentives such as tax deductions for both employers and employees. The lack of awareness of these incentives is taken into account due to the low number of private companies that enjoy this benefit and also to the low number of people with disabilities hired. The purpose of this research is to inform in a more simplified way the benefits that companies do not enjoy due to lack of knowledge, making a brief comparison and analysis to promote the right to equal work. This article is developed under a descriptive research methodology with a study technique and comparative analysis based on data from Ecuador.

#### **RESUMEN**

Hasta la fecha, la reforma tributaria ha pasado por varias modificaciones permitiendo la recaudación de impuestos para la prestación de servicios públicos, entre los cambios en la ley siempre han existido beneficios tributarios para la contratación de empleados con discapacidad, logrando así un beneficio mutuo tanto para el estado como para el contribuyente. En particular, se analizó el Código de Trabajo en relación al trabajo para personas con discapacidad contratadas únicamente en el sector privado. Empleo igualitario y digno mediante el fomento de la integración de las personas con discapacidad en el mercado laboral, junto con los incentivos fiscales existentes, como las deducciones fiscales tanto para empresarios como para trabajadores. El desconocimiento de estos incentivos se tiene en cuenta por el bajo número de empresas privadas que disfrutan de este beneficio y también por el bajo número

de personas con discapacidad contratadas. El propósito de esta investigación es informar de una manera más simplificada los beneficios que las empresas no gozan por desconocimiento, haciendo una breve comparación y análisis para promover el derecho a la igualdad laboral. Este artículo se desarrolla bajo una metodología de investigación descriptiva con una técnica de estudio y análisis comparativo basado en datos de Ecuador.

**Palabras clave:** Empleo Igualitario y Digno; Incentivos Tributarios; Derecho al Trabajo; Discapacidad.

## INTRODUCTION

In this article, you will find data on the analysis of the implementation of special deductions based on the number of disabled workers working in companies, thus affecting the calculation of income tax in economic entities, deductions are part of a tax benefit that allows us to reduce the taxable base of the net profits of some economic entities.

Ecuador's tax rules allow income tax exemptions and deductions to boost productivity and promote priority industries; However, such companies face several challenges and limitations when making use of these benefits, as with the lack of knowledge of tax matters and the poor implementation of these tax incentives.

It has been shown that deductions based on the number of workers with special disabilities have a great impact on the calculation of income tax and many economic benefits for the different companies existing in the country.

People who suffer from some type of disability have been immersed in facing many difficulties just to cover their basic needs, and they have very little participation in the workplace. As well as the Organic Law on Disability, the Labour Code and the Constitution of the Republic; They establish that persons with disabilities have the right to access employment, training and equal treatment, regardless of the type of disability they suffer from. The Organic Law on Disability establishes that companies that are part of the labor inclusion of disabled people have the power to make use of tax incentives; This benefit consists of employees having the right to deduct or reduce the income tax payable of 150 % of the value of salaries and social benefits paid during a financial period.

The objective of the study is to analyze the tax incentives given for hiring or implementing workers who have or suffer from a disability. This research work will be carried out with an inductively quantitative approach, as it analyzes the deductions in the implementation of tax incentives of companies and their positive effects in order to reduce the tax base and then evaluate the resulting taxes for the implementation of the same.

## Theoretical review

### People, Disabilities and Labor Inclusion People with Disabilities

Disability, he understands, is a multidimensional phenomenon, a "continuum" of human functioning that becomes visible in relation to specific life situations. It is a condition that can be suffered by human beings where various evidences of deficiencies in a bodily function can be noticed. UNICEF (2019)

Having as characteristics the limitations of movements that prevent them from carrying out different actions, they make it difficult at the time of relating or developing in an environment, situations that arise in their day to day, and both physical and emotional alterations.

Nowadays, thanks to new technologies, it has been possible to classify disability, this has been due to the various characteristics and the different pathological affectations that have developed in human beings.

They are classified into the following:

- Visual impairment. - Visual impairment encompasses the accumulation of conditions that a subject suffers from, which are characterized by the partial or total limitation of their visual capacity. These limitations are usually total in the cases of blindness, or partial in scenarios in which a person only suffers from low vision.

- Hearing impairment. - It encompasses the group of people who suffer from the pathology of deafness, which generates as a consequence that these subjects find problems in listening and communicating with the members of the social conglomerate, because, due to their condition, they acquire problems learning oral language and interacting with others by this means.

- Language disability. - as the total or partial loss of the human faculty to communicate by verbal means with the members of the social conglomerate.

- Physical disability. - This disability is no longer within the sensory disabilities, but, as its name indicates, it is subsumed within the classification of physical pathologies that an individual may suffer.

- Intellectual disability. - characterized by significant limitations in both intellectual functioning and adaptive behavior, understood as adaptive skills of a conceptual, social, and practical nature.

- Psychosocial disability. - The limitation of people who have temporary or permanent dysfunctions of the mind to perform one or more daily activities. ( Brito, 2023, pp 17-21)

He CONADIS (2022) states that there are 472,205 people who have some type of disability, whether intellectual, physical, auditory, visual, among others.

Type of Disability	Percentage	Number of People
Physics	45,66 %	215 156
Intellectual	23,12 %	108 957
Auditive	14,12 %	66 538
Visual	11,54 %	54 397
Psychosocial	5,55 %	26 157

People with disabilities have had to face many difficulties in meeting their basic needs and have very little participation in the workplace.

### Labor Inclusion

It states that Brito (2023) disability in the workplace is conceptualized as the space, environment or business in which they work as employers or subject workers who have some type of mental, physical or sensory disability. It should be remembered that being disabled does not limit the individual from being able to acquire full employment, making it necessary to establish a differentiation between incapacity for work and the concept of disability in the workplace. (p. 13)

According to Hernandez (2022) , it is the way in which employees develop in the different conditions that make each worker unique, among these are discrimination and exclusion such as illness or disabilities. In addition, it can be defined as a process that has the purpose of incorporating a person into a productive or administrative activity, complying with the conditions and system that a company is looking for.

In the social and cultural field, there are barriers that do not allow a process of inclusion when it comes to acquiring or being part of a work team. That process is carried out in order to provide a dignified employee for all people who have any type of disability, this inclusion allows society to help develop

people's autonomy, improving social communication and even helping to have better self-esteem and thus generate a harmonious environment.

People who have the possibility of having a decent job are under the same working conditions as other workers, either in; tasks, schedules and salary with their legal remunerations. Workplace inclusion generates the power to maximize the cohesion, learning, and participation of all people equally, overriding all kinds of stigmas, barriers, and limits.

Labor inclusion is the total and unconditional insertion, which requires ruptures in the various systems, which includes changes and benefits anyone, since it is society that comes to adapt to make use of the needs of people with disabilities. (Meléndez, 2016) tags. Among the fundamental aspects of the labour inclusion of people with disabilities are the following:

- Laws, policies, strategic plans, and the services provided to citizens and the community will be adapted to persons with disabilities with adequate planning and organization that allow the free, full and independent development and growth of each one of them based on a framework of respect.
- Social integration is promoted by respecting people's rights, especially the right to work, productive or social development, and participation.
- It is possible to develop in a job that is integrated with standardized companies, that is, one that is exactly the same and under the same conditions with respect to tasks, salaries and schedules that any other worker who does not suffer from a disability has. (Imacaña & Villacrés, 2022)

### **Tax Incentives**

When addressing tax incentives, the topic inherently positions us within the perspective of the employer, as a representative of the company that seeks to obtain these incentives to obtain a benefit of its own, and in turn generate a social benefit by providing preference options for people who have certain disabilities. It is because of this situation that it is considered essential to conceptualize the term tax incentives.

Tax CRS (2020) incentives are legal measures that involve the exoneration or reduction of the tax to be paid and whose purpose is to promote certain objectives related to productive policies such as investments, generation of stable and quality employment, prioritizing national production and certain consumptions, containment of final prices, etc. They are mainly applied to generate a framework for the behavior of companies, to meet and promote various objectives in productive policies. (p. 52)

In addition, it is important to emphasize that according to what he mentions: Brito (2023)

The Ecuadorian Constitution promotes the labor protection of people with disabilities, in addition to presenting binding principles that must be materialized by society.

In this way, an infra-legal normative development has arisen that is prone to try to materialize these international and constitutional normative postulates, in order to configure norms that promote inclusion, protection, and incentives for the hiring of this priority attention group. (p. 41)

From this, the argument is defended that, before intuiting that companies only seek their own benefit, and promote inclusion only with the intention of being able to profit from it, but that it is actually the Ecuadorian state seeks to present these benefits to capture the attention of companies, and thus encourage them to comply with international and constitutional regulatory development.

After noting that there is a real concern on the part of the state and companies to generate genuine inclusion, it is also important to emphasize that there are several relevant aspects to be considered by employers, in order to find these measures attractive within the management of talents that consider people with some degree of disability.

The most relevant attractions related to these measures are the following:

- Tax incentive established in the LORTI.
- Applicable in all economic sectors.

- It is part of the tax reconciliation.
- It seeks to boost the hiring of workers with disabilities.
- It promotes compliance with the taxpayer's tax obligation.
- Its application is free to choose.
- There is no maximum period of application as this will depend on the duration of the employment relationship. (Bastidas & Guanoluisa, 2015)

In this context, and mainly pointed out the LORTI tax incentive, as explained by Orozco (2022)

The application of the tax benefit for the hiring of people with disabilities is a relevant factor that acts positively when establishing the taxable base to obtain the amount to be paid of income tax. (...) The lack of recurrence in training focused on tax areas or new legislation framed in the company's activities has contributed to this type of benefit going unnoticed, reducing initiatives and competitiveness among accounting personnel. From this we can connect the benefit of hiring people with disabilities with the probable reason that many of the companies have no idea about these incentives. (pp. 75-76)

The author states that it is due to the limited updating or training of the area in charge of taxes within the company, which denotes an imminent reduction of activities, which promote inclusion and as an addition generates the benefit.

This benefit, as far as possible, represents a tax deduction for employers since under certain conditions companies can receive the incentive that the law grants. According to what he mentions: Brito (2023)

The law aims to grant tax benefits to employers who, exceeding the legal minimum for hiring people with disabilities, decide to hire more members of this human group. To this end, the law grants an additional 150 % deduction for the calculation of the taxable income tax base with respect to the remuneration and social benefits on which contributions are made to the Ecuadorian Social Security Institute, of each employee hired with a disability, substitutes or spouse, common-law partner or child with disabilities who are under their care. (p. 48)

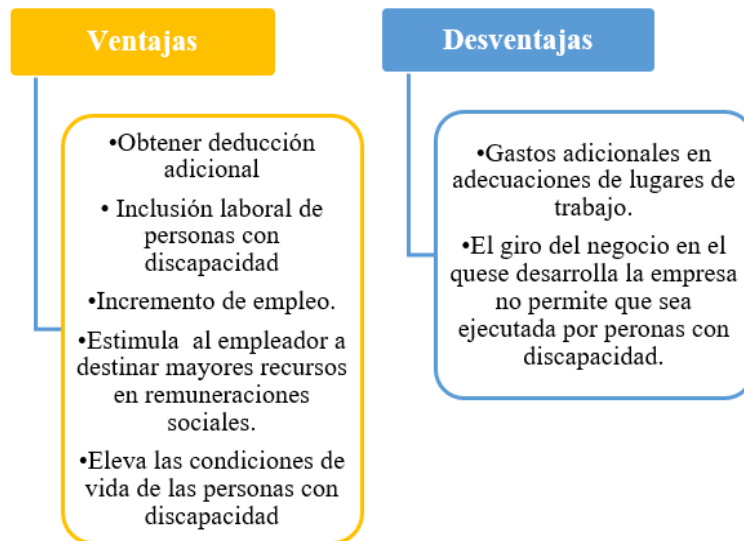
This results in the following formula for the calculation of the tax benefit.

$$\left( \frac{\sum (\text{amounts paid to workers with disabilities, substitutes and workers with disabled dependents})}{\text{No. of workers with disabilities, substitutes and workers with disabled dependents who received payments.}} \right) \times \left( \text{Number of workers with disabilities, substitutes and workers with disabled dependents, exceeding the minimum \%} \right) \times 150\%$$

**Figure 1.** Formula for calculating the tax benefit

In this way, it is established the way to simplify the concepts that were previously mentioned for the calculation of this benefit, it is important to mention that the complete formula and with the first source information is found in resolution NAC-DGERCGC17-0000045 of the SRI, which addresses the establishment of the rules that regulate the procedure and requirements for the refund of taxes.

Once the main benefit obtained from fully complying with the requirements has been established, a clear vision of the advantages it represents to the company can be obtained, the inclusion of this type of initiatives and regulations to achieve a better social and financial environment.



**Figure 2.** Advantages and disadvantages in hiring workers with disabilities

As can be seen in the graph above, it can be recognized that the deduction is the main benefit and incentive obtained by implementing inclusion regulations. However, this does not mean that this benefit is the essence of why these principles are complied with, but we also denote that there are improvements in the social sphere, since it increases sources of employment for people of priority attention, providing conformity and coherence with the principle of "inclusion", in addition to the fact that, at the organizational level, these regulations generate a culture of improvement in the management of resources for social remunerations.

Workers with disabilities who are eligible for the benefit described must not have been hired to meet the minimum staffing requirement established in article 47 of the . For example, if in one case, the employer must necessarily hire 15 workers to comply with the legal minimum, it will only be able to obtain tax benefits from worker number 16, and not from the other 15 who are essential to comply with labor regulations. (Organic Law on Disability, 2019)

Emphasizing the tax benefits obtained in the hiring of employers with disabilities, a brief explanation is presented below, in a company that has a total of 50 workers and under the law should hire at least 2 workers to comply with the 4 % percentage established by the law; However, the company hired a total of 3 workers with disabilities, which gives it 1 worker as surplus, which counts for its tax benefit.

Table 2. Application for special deductions	
This company Juanita S.A has 50 workers and hires 3 workers with a degree of disability between (30 % and 49 %)	
Remuneration for the 3 workers with disabilities	\$3 600,00
Average per worker	\$1 200,00
Taxable base for the 1 extra worker who was hired	\$1 200,00
150 % tax credit	\$1 800,00

This calculation will then be determined in the following table to observe a broader approach to the benefit that exists in the application of tax incentives.

	No inclusion of workers with disabilities	With inclusion of workers with disabilities
Usefulness	\$ 28 750,00	\$ 28.750,00
Tax summary		
Exemption and tax credit for special laws		\$ 1 800,00
Taxable profit	\$ 28 750,00	\$ 26 950,00
Income tax payable 22 %	\$6 325,00	\$ 5 929,00

### Legal Base

Despite being an Organic Law on Disabilities that has been in place since 2020, in which these exemptions are not received, also contradicting the regulations, it should be noted that previously in the year 2020 - 2021 if there are tax benefits they are for the benefit of the employer in order to encourage the hiring of people with disabilities, The reason why this law is subrogated in 2022 is not yet fully understood, which is corrected for the new . As it mentions Internal Tax Regime Law (2023) Internal Tax Regime Law (2023) (Díaz et al., 2020.), "tax management in Ecuador consists of records, filing and payment of taxes, which are arranged by the tax regulatory body in the country, the Internal Revenue Service (SRI), providing formal, material and extensive control" (para. 12)

On the other hand, the tax administration, as the tax regulatory body, establishes that: Tax incentives are legal measures that involve the exoneration or reduction of the tax to be paid and whose purpose is to promote certain objectives related to productive policies such as investments, generation of stable and quality employment, prioritizing national production and certain consumptions, containment of final prices, etc. (Delgado Kuffó et al., 2020, p. 3)

### Benefits of the Act

#### Incentives for The Employer

Employers may deduct up to an additional 150 % for the calculation of the taxable base on those who contribute to the IESS, of each employee hired with a disability, substitutes to meet the requirement of the minimum staff with disabilities, set at 4 %, in accordance with this Law.

*Source: Article 49 of the Organic Law on Disability (2019) The Authors.*

**Figure 3.** Employer incentives

### Hiring of persons with disabilities in private companies in Ecuador.

According to CONADIS in its latest study in 2022, 9 % of these people who worked in a private company were 4,664.

Currently in Ecuador, according to figures from the Ministry of Public Health (MSP) updated until January 5, 2023, there is 3,01 % of the population with some degree of disability, giving a total of 540 650. Of this total, only people with Disabilities who are Active in Private Companies are considered.

The table details how it is based on the percentage of disabled people who were hired in a private company in Ecuador. In addition, the study divides this percentage by type of disability, in which 52,13 %

of physical disability, 17,80 % hearing impairment, 13,40 % visual impairment, 12,70 % intellectual disability, and 3,97 % psychosocial disability. CONADIS (2022)

**Table 4. Types of disability in Ecuador in 2022**

Type of disability	
Physics	52,13 %
Auditive	17,80 %
Viual	13,40 %
Intellectual	12,70 %
Psychosocial	3,97 %

It is necessary to distinguish them by the degrees of disability that exist, which CONADIS represents with percentages that are divided in the following table.

**Table 5. Degree of disability**

30 % to 49 %	27 790	59,57 %
50 % to 74 %	14 346	30,75 %
75 % to 84 %	3 361	7,21 %
85 % to 100 %	1 152	2,47 %
Total	46 649	100 %

It should be noted ORGANIC LAW ON DISABILITIES (2019) that Article 48 establishes that employers may not hire more than fifty percent (50 %) of substitutes of the established legal percentage. In other words, of the number of disabled people, only 50 % can be substitutes. So of the total number of people who have some type of disability regardless of the degree of it, only 5 % of people with disabilities have substitutes.

**Table 3. Percentage of substitutes in Ecuador**

People with disabilities	44 532	95 %
Substitutes for people with disabilities	2 117	5 %
<b>Total</b>	<b>46,649</b>	<b>100 %</b>

Additionally, it is shown that there is an inequality due to the hiring of the male gender compared to the percentage of the female gender with disabilities.

**Table 7. Percentage division by gender in Ecuador**

Gender	No.	%
Female	15,641	33,53 %
Male	31,008	66,47 %
<b>Total</b>	<b>46,649</b>	<b>100 %</b>

**METHODS**

It is mainly based on the bibliographic and descriptive review in order to identify and distinguish the tax benefits contemplated in the Disability Law, this to publicize the benefits that exist when



implementing the law, we also use the comparative method with the tax law and the internal regulations; This allowed us to collect and analyze the articles and regulations in which tax incentives are immersed.

An analysis was also carried out between the relevant characteristics of the study presented, based on the contextualization of its percentages and their due comparison, thus giving the data of people with disabilities hired in private companies.

Likewise, the problem tree was used as a research technique. Based on the authors, it is determined that "it consists of developing creative ideas to identify the possible causes of the conflict, generating in an organized way a model that explains the reasons and consequences of the problem" This is determined in order to develop a broader and documentary study, thus analyzing the exposed sources and comparing them with updated laws. Martinez and Fernandez (2008) (p.3).

The review of 10 scientific documents on the subject, master's theses, databases and qualified pages was considered to determine percentages. The documents mentioned above are current rounding the last 5 years, in addition pertinent information was obtained from the following; ECLAC (2019), CONADIS (2022), the Constitution of the Republic of Ecuador (2021), the Organic Law on Disabilities (2019), the Internal Tax Regime Law (2023) and the SRI (2022).

## RESULTS

According to the data presented; One of the main results is the percentage of hiring, as it is minimal compared to the birth rate that grows per year, despite the benefits that exist as an incentive and help for the inclusion of workers with disabilities.

According to the Communist Party, tax benefits are a legal incentive that consists of the reduction of income tax by encouraging compliance with it to favor the taxpayer or the consumption of certain products, also favoring the state, regulating compliance in an equitable manner both for reasons of public interest and social justice. Another benefit offered by these regulations is to increase sources of employment, investments, prioritization of national marketing support, protected under the law allows the reduction or exoneration of tax taxes. CRS (2022)

The valuation of special deductions is a fundamental and relevant element for labor development in the country, since it currently does not have an applicable development in its regularization and has been affected by taking advantage of the new tax reforms on incentives, currently only 4 % of people with disabilities are part of the labor inclusion in institutions, whether public or private.

According to him, he tells us that the payroll incentive is used as a benefit, but not all benefits generate an incentive, even if these incentives have the purpose of reducing income tax. It can be noted that the purpose of the tax incentive is to make a change in the behavior of the economic factors of each country, while the benefit will only contribute to the growth and economic support of taxpayers. ECLAC (2019)

The private sector is the one that generates the most jobs for the disabled, unlike the public sector where job opportunities are scarce, thus noting that private companies have always been the ones that best generate the development, not only of economic growth but also the labor inclusion of the disabled, according to the private sector. Since in private companies tax and labor incentives are presented, having the respective legal support in the Organic Law on Disabilities. INEC (2018)

Concluding that for people who have some type of disability they must take advantage of the law in order to promote and be included within society, thus being the equal implementation of the labor and social inclusion of disabled people, thus putting an end to injustices through the new processes, in which it has been possible to change the perception and labor inclusion for people who do not enjoy the same rights as other citizens of Ecuador. It is also stated that, according to, the strengthening of control measures and actions within labor inclusion was carried out. Implementing all the laws and regulations issued on which both public and private companies are based, complying with social responsibility, so that they fully assume a commitment to people who have a disability, considering the internal policies

within an organization, which must guarantee diversity and inclusion as a business value. and thus generate the respective tax incentives current to the law. CONSTITUTION OF THE REPUBLIC OF ECUADOR (2021)

## DISCUSSION

The application of tax incentives causes many doubts to the employer, this is due to the lack of knowledge of the regulations, accountants as well as employers miss out on these benefits due to the outdated and omission of the regulations. Despite the fact that decent and equal employment for all is part of the SDGs, in Ecuador there is no follow-up as such and it is not developed to provide the necessary inclusion, which should be provided by the support centers

However, the Organic Law on Disabilities in Ecuador fully helps people with disabilities from 30 % of disability, not only benefiting the worker, currently this benefit is extended to family members up to the third degree of consanguinity, becoming substitutes, ignorance that still exists in Ecuador.

When addressing the issue of job stability for people with disabilities, deficiencies or conditions, the Organic Law on Disabilities of Ecuador establishes that, in the case of unjustified dismissal, they must be compensated in a value equivalent to 18 months of the best remuneration, when workers acquire a disability within the company they have the right to their rehabilitation and their fair relocation to the workplace.

Despite the fact that the SRI facilitates the application of the tax incentives that are given from employers with disabilities and that there is no complete supervision for the application in the fiscal year, the accountant or person in charge of making this deduction is obliged to carry out a control such as verification of relative or degree of disability with the corresponding certificate granted by the Ministry of Public Health thus helping to prevent tax evasion.

But as already mentioned, these incentives seek to promote the hiring of employees with disabilities, thus promoting business activities, despite this, the improper use of these incentives that can become a gift to the taxpayer become an expense for the national government. In this way, if the income is reduced due to the bad practice of these benefits, it leads to the establishment of more taxes or an increase in the existing rates, in order to sustain Ecuador's public spending.

## CONCLUSIONS

- Tax incentives or different special deductions are of great importance for companies that wish to make use of it, since as it could be mentioned during the type of research carried out the application either the deduction for disabled people, it is true that the purpose of these deductions is to reduce income tax, And not only does it contribute as a benefit to the employer but also to economic and social development, with labor inclusion being a fundamental part of this.

- The benefits, tax incentives are various treatments and processes that comprise the different special deductions or also known as rebates for the payment of certain established taxes that are established in order to favor a certain sector and economic group, promoting employment and attracting investment, thus giving us incentives that promote economic development and social growth

- Disabled or substitute people have no knowledge of the benefit that companies can access just by hiring or including them in the work, being so that companies are entitled to this benefit and thus the stigmas about the labor inclusion of disabled people end and the companies that make use of this benefit remain as an example of application to the new reforms through which they are given over the years.

- In Ecuador there are few companies that make use of this tax incentive, since they may be unaware of it or as companies have not decided to implement the new reforms and regulations that are being implemented based on the respective decisions that are made in the country. As a

result, few disabled people can access labor inclusion and enforce their rights, and have the same possibilities as other citizens.

- Finally, based on the study carried out, it can be determined and recognized that there is a great importance of the application of benefits on special deductions and tax incentives in Ecuador, based on the different needs to guarantee the rights of persons with disabilities, making use of the country's laws for the benefit not only of the disabled but also of economic entities. And it can be concluded by stating that special employment centers, as in private companies, do not encourage the isolation of people with disabilities, since the objective is to be sustainable and sustainable both economically and socially.

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