

Alex C Evans, en el resumen de su artículo [Parameters for applying the two methods of taxation: the modern five idea](#), publicado por Australian Tax Forum en July 1, 2021, dice: *“The first article introduced five ideas that countries, particularly the US, have developed over the past century for this purpose. They are that entity taxation should be applied when the vehicle: takes corporate form; provides owners with limited liability; carries on active business / has predominantly active income; is public, or is economically separate from the owners. This article critically examines the normative value of each as the sole criterion to use for applying entity taxation, and considers their relative advantages and shortcomings, both conceptually and practically. In doing this, this article engages particularly with a report The Reporter’s Study on Private Business Enterprises from 1999 that the American Law Institute commissioned as it comprehensively considered the central question this article asks but it has not yet been critically examined in Australian literature. —This article argues that, of the five ideas, economic separation between the vehicle and the owners is the most valuable. This is because it indicates whether the vehicle and owners are functionally one entity or two or more. The article argues that this idea is grounded in literature about the corporation, particularly around the distinction between controlled and uncontrolled vehicles, and that this distinction has also permeated tax literature. The idea also relates to an inelastic feature of the corporation which is highly desirable from a tax policy perspective. This article argues that this idea could be tested*

for by looking at legal control, but a better technique would be to identify whether the vehicle has an independent (non-owner) manager. The use of an independent manager to indicate economic separation is not new in literature on the corporation, but it is novel in tax literature.”

El derecho tributario colombiano se ha apartado muchas veces de las ideas básicas del derecho colombiano, consagradas ya hace siglos en los códigos civil y de comercio. La confusión existente respecto de los entes sin personalidad, pero con deberes tributarios, es un ejemplo notorio de este problema. Sencillamente, por cobrar impuestos, descuadernamos el país, haciendo más necesarios especialistas que se sepan los galimatías tributarios. Obviamente el derecho básico debe evolucionar para evitar que se creen figuras fuera de sus límites. Poder pactar lo que a uno se le ocurra es algo muy atractivo pero muy peligroso, como ya se advierte en algunos estatutos de SAS. En el caso de los acuerdos de colaboración que dan lugar al desarrollo de una nueva empresa, que para todos los efectos se muestra como otra distinta de las anteriores, conviene pensar en que estamos ante un nuevo tipo de personas jurídicas, que no necesariamente deben ser fundaciones, corporaciones, sociedades o entidades de creación legal. Este tema jurídico tiene mucho que ver con el concepto de entidad que ha planteado IASB. Es claro que se puede llevar contabilidad de empresas y no solo de la actividad de personas.

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