Supreme Court Decisions Could Impact Decisions on 2004 Budget

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Mexico's highest court (Suprema Corte de Justicia de la Nacion, SCJN) issued two rulings in November that could have repercussions in deliberations on the 2004 budget and related tax-reform proposals, which the Congress and President Vicente Fox's administration must settle in the coming weeks. By law, the Fox government must send its proposed expenditures and revenues to Congress, which must approve a final budget by the end of December.

In one ruling, the high court decided that the Fox administration was not obligated to comply with a mandate from the independent federal auditor (Auditoria Superior de la Federacion, ASF) to reduce the amount of money paid to commercial banks through the bailout programs, the Fondo Bancario de Proteccion al Ahorro (FOBAPROA) and its successor the Instituto de Proteccion al Ahorro Bancario (IPAB).

In a second decision, the SCJN ruled that the Secretaria de Hacienda y Credito Publico (SHCP) was violating the Mexican Constitution by imposing a payroll tax (Impuesto Sustitutivo al Credito al Salario, ISCAS). The court sided with several companies that claimed that the ISCAS violated Article 31, which provides for fair and proportional taxation.

The two court decisions came at a time when the administration and Congress were considering an austere 2004 budget because of uncertainty about prospective revenues during the coming year (see SourceMex, 2003-10-15). Both the IPAB and the ISCAS rulings could have some implications for the budget because they could ultimately affect the revenues at the disposal of the government.

The three major political parties are discussing several tax-reform options to boost the government's coffers but strong disagreements exist on which taxes to increase. The administration and the governing center-right Partido Accion Nacional (PAN) have proposed imposing a value-added tax (impuesto al valor agregado, IVA) on all goods and services, including food and medicine.

This plan is countered by proposals from the opposition Partido Revolucionario Institucional and Partido de la Revolucion Democratica (PRD) to exempt food and medicines from the IVA, crack down on tax evasion, and perhaps raise the income tax (impuesto sobre la renta, ISR) for wealthier taxpayers.

Opposition parties want to return liabilities to banks

In the IPAB case, the Congress was forcing four commercial banks to assume liabilities that the government had assumed during bank-rescue operations in 1995. The Congress requested an independent federal auditor (Auditoria Superior de la Federacion, ASF) to review whether the loans assumed by the government were proper (see SourceMex, 2003-09-04). Following a study of the
loans, the ASF earlier this year ordered administration officials to return the liabilities to the banks: Banamex, Bancomer, Bital, and Banorte.

The ASF move prompted the Fox government to file its appeal with the high court, challenging the authority of the ASF to issue such an order. The court, in an 8-1 decision, sided with the administration in the Banamex case."

Audited offices have the obligation to collaborate with the ASF, to hand over all solicited information, but they do not have the obligation to execute acts, since the ASF does not have constitutional powers to give orders," the court said. The high court is looking at the matter on a case-by-case basis, however, and has yet to issue a ruling for the three other banks.

Still, economist Edgar Amador of the Mexico City office of Stone & McCarthy Research Associates said the court decision sets a precedent that signals that it will rule against the auditor in cases involving the three other banks.

Other analysts say the ruling represents a small defeat for the Congress. The PRD, in particular, has long opposed the bank-rescue program, claiming that it benefitted the fat-catz bankers and was a drain on the government's finances (see SourceMex, 1997-11-19 and 1998-07-22). The court decision, however, prompted opposition legislators to propose constitutional amendments to give the ASF the power to enforce actions in audited bodies.

"The SCJN ruling exposed the need to strengthen the ASF," said PRI Sen. Dulce Maria Sauri Riancho. PRD Deputy Dolores Padierna said the ruling was only a decision on a constitutional matter and did not preclude the Congress from seeking other remedies to force banks to take back the bad loans. "What [the decision] does not signify is that all the irregular credits the auditor found will be paid for by the government," said Padierna. "There's an established process in the law, and the irregular credits will be discounted."

**Ruling on payroll tax builds on similar decision in May**

The ISCAS ruling could also have some implications in the fiscal deliberations during the next few weeks because the Congress and the administration will be prevented from folding expected ISCAS collections into the 2004 budget. This is the second time the court has ruled the tax unconstitutional (see SourceMex, 2003-05-08). The tax remained in place, even after the earlier court ruling. "With the court decision to declare the tax unconstitutional a second time, the Chamber of Deputies has no alternative but to exclude the ISCAS from the budget for next year," said the daily newspaper El Universal.

Under the court decision, the Fox administration is obligated to issue refunds only to a handful of companies that filed an appeal with the high court and not all companies that were charged the ISCAS. The SCJN ruling came as the administration was contemplating a plan to help rescue the maquiladora sector by phasing out the payroll tax (see SourceMex, 2003-10-22).

Daniel Romero Mejia, president of Consejo Nacional de la Industria Maquiladora de Exportacion (CNIME), said the ruling would allow the maquiladora industry to recover 50,000 direct jobs and
150,000 indirect positions, which were lost when the tax was implemented in 2002. "Through the simple imposition of this tax, our industry experienced a dramatic decline in employment," said Romero. "Many companies were prevented from proceeding with expansion plans or even maintaining their current operations." Administration sources contend that other factors, such as unfair competition with China, have had major significance in the recent poor performance of the maquiladora sector (see SourceMex, 2002-07-17 and 2003-09-17). [Sources: Notimex, 10/22/03, 10/28/03; Milenio Diario, 10/14/03, 10/29/03, 10/30/03; El Sol de Mexico, 10/29/03, 10/30/03; Unomasuno, 10/30/03; El Financiero, 10/15/03, 10/22/03, 11/03/03; The Financial Times, 11/04/03; La Cronica de Hoy, 10/22/03, 10/30/03, 11/05/03; The Herald, 11/05/03; El Universal, 10/07/03, 10/21-23/03, 10/29/03, 11/05/03, 11/06/03; La Jornada, 10/07/03, 10/10/03, 10/29-31/03, 11/04/03, 11/05/03, 11/07/03]

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