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The Mexican high court (Suprema Corte de Justicia de la Nacion, SCJN) has ruled the alternative minimum tax (Impuesto Empresarial a la Tasa Unica, IETU), instituted by the government in 2008, does not violate the Mexican Constitution. A group of businesses had brought a legal complaint before the court, charging that the IETU violated the fair-taxation principle because it did not allow the same types of deductions applicable to other taxes such as the Impuesto sobre la Renta, ISR), which is equivalent to an income tax. The IETU, implemented in 2008 as a temporary measure, has increased government revenues by more 33.4 billion pesos (US$2.57 billion), a much smaller amount than had been anticipated. In a ruling handed down on Feb. 2, the SCJN voted 9-2 to uphold the IETU, created in 2007 as part of the tax-reform legislation approved that year.

The tax, which would be charged at a rate of 16.5% in 2008 and 2009 and 17.5% in 2010, was one of the measures approved to boost government revenues (SourceMex, September 19, 2007). But the IETU did not sit well with the private sector, and at least 40,000 legal appeals were filed against the tax. The matter eventually ended before the SJCN, where plaintiffs argued that the inability of take deductions on the tax violated the principle of fair and equitable taxation found in Article 31 of the Mexican Constitution. In arriving at their decision, the justices determined that the IETU was created with a different purpose than the ISR, and therefore the same types of deductions were not applicable. "There is no unconstitutionality of the IETU for not permitting the deduction of net recorded income," said Chief Justice Guillermo Ortiz Mayagoitia.

One of the two dissenters, Justice Margarita Luna Ramos, accepted the argument presented by the businesses. "This is a tax on earnings and as such should be allowed to have deductions," said Luna Ramos. "Since this is a direct or personal tax, it should allow the deduction of costs necessary for businesses to generate the goods that they sell." IETU revenues much smaller than anticipated In testimony before the SCJN, deputy finance secretary Jose Antonio Meade said the IETU, along with other business taxes, had allowed government revenues from tax sources to reach 5.2% of GDP. Mexico's revenues from all tax sources, including the tax on oil charged to the state-run oil company PEMEX, reached 21.1% of GDP in 2008, compared with 18.1% in 2007, said a report from the Organization for Economic Cooperation and Development (OECD). The OECD report, released in early February 2008, did not yet have statistics for 2009.

Meade said the IETU has not acted as a deterrent to investment, especially since two of every three taxpayers do not have to pay this tax. As evidence, he pointed out that investment in machinery and equipment increased by 15.1% in 2008. "This is a very minimal tax," said Meade. "With the introduction of this tax, we proposed that taxpayers meet their constitutional obligations of improving the way in which we finance our public expenditures." Still, the government has managed to collect only 33.4 billion pesos (US$2.57 billion) during the first two years of the IETU's existence compared with the target of 55.4 billion pesos (US$4.27 billion). Even with the shortfall,

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analysts believe that the Secretaria de Hacienda y Credito Publico (SHCP) will probably keep the IETU for at least another two or three years.

Much will depend on whether the US Congress or US Treasury certifies that the IETU does not violate the principle of double taxation, since the tax is applied to Mexican businesses overseas. "If the conclusion is that the tax cannot be credited in the US, then it will eventually disappear," Pedro Carreon, a tax expert at Pricewaterhouse Coopers, told the Mexico City daily newspaper El Universal. [Note: Peso-dollar conversions in this article are based on the Interbank rate in effect on Feb. 3, 2010, reported at 12.95 pesos per US$1.00]

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