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# The impact of Mexican judicial reforms on tax dispute resolution

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By *Oscar López Velarde Perez, Juan José Paullada Eguirao, Gabriel Márquez García* June 27, 2024



## **A change of president is not expected to alter the aggressive stance of the tax authorities, say Oscar López Velarde Perez, Juan José Paullada Eguirao, and Gabriel Márquez García of Ritch Mueller**

In recent years, Mexican tax authorities have become more aggressive in their tax audits, often issuing high-value assessments to improve their negotiation position down the road. Although Claudia Sheinbaum, the Mexican president-elect, has made clear that no tax reform will be proposed once she takes office on October 1 2024, the lack of tax reforms implicitly means continuity in this aggressive revenue strategy, where tax controversy procedures are key.

Sheinbaum secured a landslide victory in Mexico's presidential elections, and her victory marks a continuation of President Andrés Manuel López Obrador's agenda, as she vowed to uphold the direction set by her predecessor.

In addition to the presidential race, the elections also saw her party and its coalition partners seemingly secure a majority in the Chamber of Deputies and the Senate, granting them the power to pursue constitutional reforms.

On February 5 2024, López Obrador submitted several proposals to Congress aimed at amending the Constitution, a reform package commonly referred to as “Plan C”. Among these is the initiative to reform the judicial branch (the Initiative).

The Initiative proposes, among others, that the appointment of justices of the Supreme Court of Justice, Circuit Court magistrates, Federal District judges, and members of a new Judicial Discipline Tribunal is made through election by direct and secret vote of the citizenry.

Additionally, the Initiative intends to prohibit injunctions and decisions that have the effect of protecting companies or individuals in *amparo* procedures even when they are not an active party in such procedures; that is, injunctions and decisions may only benefit the company or individual that submitted the *amparo* petition, not an entire sector or group, as is currently the case if certain requirements are met.

## Reaction to the Initiative

The Initiative has been publicly criticised for potentially affecting the independence of the judicial branch, and has raised concerns that legal certainty for defending rights against authorities could be irreparably compromised.

Amid these concerns, there are alternative mechanisms under Mexican law that taxpayers may use to settle disputes with the tax authorities, without necessarily resorting to court. Specifically, taxpayers often turn to conclusive agreement procedures before the Taxpayers' Defence Office (PRODECON), an effective mediation procedure that has allowed for the settlement of potential assessments before going to trial.

While conclusive agreement procedures have represented a significant opportunity for taxpayers to settle disputes over recent years, after the enactment of a reform to the Federal Fiscal Code in 2022, these procedures can no longer last more than 12 months. As tax controversies become more complex, taxpayers and tax authorities require more time to fully clarify their differences. This time constraint has resulted in conclusive agreement procedures being closed without a settlement, forcing the tax authorities to issue a tax assessment and the taxpayer to challenge it.

PRODECON has also been mentioned as a strong candidate to disappear as part of the administrative reorganisation that López Obrador intends to implement in the short term.

## New law on alternative dispute resolution

In seeking to introduce additional methods for settling disputes with authorities, the federal government introduced the General Law on Alternative Dispute Resolution Mechanisms (the Alternative Disputes Law), enacted on January 26 2024. Its purpose is to define the principles, foundational elements, and competencies for alternative dispute resolution as outlined in the Mexican Constitution since 2017.

One of the key aspects of the Alternative Disputes Law is that it promotes methods such as negotiation, mediation, conciliation, and arbitration to resolve disputes outside traditional judicial frameworks, ensuring access to voluntary, confidential, neutral, and accessible conflict resolution methods for all parties involved. Additionally, the Alternative Disputes Law incorporates the use of information technology to facilitate these mechanisms, outlines a framework for the certification and operation of facilitators and mediators, and suggests the creation of specialised centres, both public and private, for managing these mechanisms.

Under the Alternative Disputes Law, taxpayers will have the ability to initiate an alternative dispute resolution method during the administrative procedure before the competent authority or even at the court stage, before a final decision is reached. For such purposes, it is important to note that before entering into a dispute, the

corresponding authority must issue a technical opinion to determine the feasibility of resolving the dispute using one of these methods, which makes these processes a discretionary alternative.

Federal and local tax courts will be tasked with promoting the use of alternative dispute resolution methods. Consequently, federal and local courts will certify, supervise, and sanction the individuals who will serve as facilitators and heads of Public Centres for Alternative Dispute Resolution Mechanisms in Administrative Justice matters.

Some clear advantages are that alternative dispute processes must be completed within a three-month period, which can be extended if all the parties agree. Also, the processes may be conducted online, with the consent of all the parties involved. Agreements reached through these methods are considered legally binding. If no agreement is reached, or if an agreement is not executed, the parties involved retain the right to pursue their claims through other means as they deem appropriate.

Although the Alternative Disputes Law came into force the day after it was published, the federal and local congresses have a one-year period to make the necessary legal amendments to implement and clarify details as to how the alternative dispute resolution methods will work.

While the Alternative Dispute Law represents a step forward in seeking efficient and faster ways to resolve disputes, including tax disputes, without having to navigate lengthy controversy procedures, and may provide viable alternatives to avoid confronting a potentially biased and inexperienced judiciary, adhering to these procedures is still discretionary for authorities, so their willingness to negotiate with taxpayers will certainly play a crucial role.

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