



TAX FLASH

Controlling Beneficiary

- **What does the new obligation related to the identification of the beneficial owner consist of?**

Beginning January 1st 2022, a new obligation is set forth in Article 32-B of the Federal Tax Code, in which all legal entities, including trusts, are bound to obtain and keep the complete, updated information of their beneficiary owners as part of their accounting and provide to the Mexican Tax Authority (SAT in Spanish) with such information when required a such by that authority, in the form and terms determined by the Mexican Tax Authority (SAT in Spanish) through general rules that were published in the Official Daily Gazette last December 27, 2021.

- **What is the period for providing the information in the event that it should be required by the SAT?**

In the event that the Mexican Tax Authority (SAT in Spanish) should request this information, it will have to be provided in a period of 15 business days, subsequent to the date on which notice served of that request becomes effective. This period may be extended for 10 additional days, provided that there is a duly justified request for extension, and that such a request is filed prior to complying with the period discussed above.

- **How is the beneficial owner identified and under what criteria?**

In conformity with Article 32-B Quater of the Federal Tax Code, the beneficial owner shall be understood as the individual or group of individuals who:

1. Directly or through any other legal act(s), the benefit is obtained from their equity in a legal entity, a trust or any other legal concept, as well as any other legal act or, it is who, in the final analysis, exercises the rights of use, satisfaction, enjoyment, use or disposal of a good or service or in whose name a transaction is carried out, even when it is done on a contingent basis.
2. Control of the legal entity, trust or any other legal concept is exercised directly, indirectly or on a contingent basis.

It is understood that an Individual or group of persons exercises control when by holding securities, by contract or through any other legal act, They can:

- a) Directly or indirectly impose decisions on general stockholders' or partners' meetings or equivalent bodies or name or remove the majority of the regular board members, administrators or their equivalents.
- b) Maintain the ownership of the rights that directly or indirectly allow the vote to be exercised with regard to more than 15% of the capital stock or capital assets.
- c) Directly or indirectly steer the management, strategy or main policies of the legal entity, trust or any other legal concept.

In this respect, rule 2.8.1.20 sets for the criteria that should be applied in identifying beneficial owners.

Legal entities should identify the information about the beneficial owners, indicating the percentages of equity in the capital of the legal entity, including the information relative to the chain of ownership, in the cases when the beneficial owner is indirectly and of the chain of control, in the cases in which the beneficial owner is through means other than ownership.

When an individual is not identified under the criteria set out in rule 2.8.1.20, that individual shall be considered as a beneficial owner who holds the position of chairman and chief executive officer (sole administrator) of the legal entity or its equivalent. In the event that the legal entity should have a board of administration or an equivalent body, each member of that board shall be considered as a beneficial owner of the legal entity.

- **What mechanisms must be implemented to identify and keep the updated information of the beneficial owners?**

Rule 2.8.1.21 sets forth that internal control procedures should be implemented that are reasonable and necessary for obtaining and keeping the information about the identification of the beneficial owners, and they will be considered part of the accounting that may be required by the SAT.

In order to obtain and keep the information, taxpayers should at least:

1. Identify the beneficial owner appropriately and require that they furnish information that comprises their file, which is set out in rule 2.8.1.22.
 2. Obtain and keep complete, updated information available through procedures that allow beneficial owners to report any change in their status and furnish such updated information.
 3. Keep the information of the beneficial owner, chain of ownership, and chain of control, the documentation that provides support therefor, as well as the supporting documentation of the internal control procedures implemented for those purposes.
 4. Allow the tax authorities to have access and provide them with the facilities for them to access the information, records, data and documents relative to beneficial owners.
- **What is the period for updating the files of beneficial owners in case of a modification?**

In conformity with the provisions of Article 32-B Quinquies of the Federal Tax Code, legal entities must keep the information concerning beneficial owners up to date. When there are modifications in the identity or equity of beneficial owners, there will be a period of 15 calendar days subsequent to the date on which the modification has occurred of what is involved to update that information.

- **What information comprises the file of the beneficial owners as part of the accounting?**

In accordance with the provisions of rule 2.8.1.22., legal entities should compile the following information as part of their accounting of each beneficial owner:

- I. Full names and surnames that must correspond to the official document with which identity has been evidenced.
- II. Alias.
- III. Date of birth. When applicable, date of death.
- IV. Sex.
- V. Country of origin and nationality. In case of having more than one, identify all of them.
- VI. Unique Population Registration Code (CURP in Spanish) or its equivalent, in the case of other countries or jurisdictions.
- VII. Country or jurisdiction of residence for tax purposes.
- VIII. Type and number or code of official identification.
- IX. Code in the RFC or tax identification number or its equivalent, in case of being a foreign resident, for tax purposes.
- X. Civil status with the identification of the spouse and marital property system, or identification of the common-law wife or common-law husband, if applicable.
- XI. Contact data: e-mail and phone numbers.
- XII. Home address and tax domicile.
- XIII. Relationship with the legal entity or capacity that he/she holds in the trust or legal concept, as applicable.
- XIV. Degree of equity in the legal entity or in the trust or legal concept that allows it to exercise the rights of use, satisfaction, enjoyment, use or disposal of a good or service or carry out a transaction.
- XV. Description of the form of equity or control (direct or indirect).
- XVI. Number of shares, limited liability company shares, interests or rights or equivalent rights; series, class, and par value thereof in the capital of the legal entity.
- XVII. Place where the shares, limited liability company shares, interests or other equivalent rights are deposited or in custody.
- XVIII. Date determined from which the individual acquired the status of beneficial owner of the legal entity, trust or any other legal concept.
- XIX. If applicable, provide the data referred to in the preceding subsections concerning who holds the position of chairman and chief executive officer (sole administrator) of the legal entity or its equivalent. In the event that the legal entity should have a board of administration or an equivalent body of each member of that board.

- XX. Date on which a modification has taken place in the equity or control of the legal entity, trust or any other legal concept.
- XXI. Type of modification of the equity or control in the legal entity, trust or any other legal concept.
- XXII. Date of termination of the equity or control in the legal entity, trust or any other legal concept.

In the cases of the chain of ownership or chain of control referred to in rule 2.8.1.20., there must also be the following information:

- I. Name, corporate name or partnership name of the legal entities, trusts, or legal concepts that have equity or control over the legal entity, trusts or legal concepts.
- II. Country or jurisdiction of creation, incorporation or registry.
- III. Country or jurisdiction of residence for tax purposes.
- IV. Code in the RFC or tax identification number or its equivalent, in case of being a foreign resident, for tax purposes.
- V. Tax domicile.

- **What sanctions could be applied in the event of not meeting these obligations?**

In conformity with Articles 84 M and 84 N of the Federal Tax Code, persons who are taxpayers and do not comply with the foregoing may be subject to the following sanctions:

Not obtain, not keep or not file the information of beneficial owners or failing to file it through the means or forms indicated by the SAT within the periods established.	From \$1,500,000.00 to \$2,000,000.00 for each beneficial owner who forms part of the legal entity, trust or legal concept involved.
Not keep the information relative to beneficial owners up to date.	From \$800,000.00 to \$1,000,000.00 for each beneficial owner who forms part of the legal entity, trust or legal concept involved.
File the information of the beneficial owners incompletely, inaccurately, with errors or in a manner other than as set out in the applicable provisions.	From \$500,000.00 to \$800,000.00 for each beneficial owner who forms part of the legal entity, trust or legal concept involved.

Nuestros especialistas de BDO México, estarán a sus órdenes para atender cualquier duda o comentario relacionados con estos temas.

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