

Mexico: controller beneficiary. Federal tax reform

In continuity with the reform published on November 12, 2021, in the Federal Official Gazette ("FOG") to the Federal Fiscal Code ("FFC") in which tax obligations were added that became effective on January 1, 2022. After a comprehensive analysis to this reform, the amendments to articles 32-B Ter, Quáter and Quinquies, as well as to the Miscellaneous Tax Resolution for 2022, are worth highlighting.

In order strengthen the collection powers of tax authorities, an obligation applicable to legal entities, trustees or settlors, parties integrating or contracting through any other legal construct, notaries, brokers, and any other person intervening in the incorporation of legal entities or in trusts or in any other legal construct (the "**Obligated Parties**"), was added, for these subjects to obtain and preserve, as well as provide, at the request of the Tax Administration Service ("**TAS**"), the reliable, complete and updated information of their **Controller Beneficiaries**.

Under the FFC, the Controller Beneficiary is understood as the individual or group of individuals that:

- A. Directly or through others or through any legal act, obtain the benefit derived from their participation in a legal entity, a trust or any other legal construct, as well as from any other legal act, or those who ultimately exercise the rights of use, benefit, enjoyment, use or disposal of a good or service or those on whose behalf a transaction is made, even if made contingently.
- B. Directly, indirectly or contingently, exercise control¹ of the legal entity, trust, or other legal construct.

In matters of trusts, the settlors, trustees, and any other person involved that exercises effective control in the contract, even on a contingent basis, shall be considered Controller Beneficiaries.

The Obligated Parties shall implement internal control procedures, duly documented, to obtain and maintain the information of Controller Beneficiaries, which shall be considered as part of the accounting that the TAS may require.

¹ Control is exercised, through the ownership of securities, by contract or by any other legal act, if someone can: (i) Impose, directly or indirectly, decisions in the general meetings of shareholders, partners or equivalent bodies, or appoint or remove the majority of the directors, administrators or their equivalents; (ii) Maintain ownership of the rights that allow, directly or indirectly, to exercise the vote with respect to more than 15% of the capital stock; and (iii) Direct, whether directly or indirectly, the administration, strategy or main policies of the legal entity, trust or any other legal construct..



All legal entities shall identify, verify, validate and update the information on their Controller Beneficiaries, indicating their participation percentages in the capital stock, taking into account the "Ownership² and Control Chains"³.

In case no individual is identified using the aforementioned criteria, the Administrative Organ shall be considered as Controller Beneficiary, whether the Sole Administrator or each of the members of the Board of Directors.

The information of the Controller Beneficiary that legal entities, trustees, settlors and integral or contracting parties of any other legal construct, must collect is the following:

- a) Full names and surnames, according to their official identification; aliases and gender;
- b) Date of birth or death, if applicable;
- c) Country of origin and nationality(ies);
- d) CURP (Single Population Registration Code) or its equivalent in other countries or jurisdictions.
- e) Country or jurisdiction of residence for tax purposes.
- f) Type and number or code of the official identification.
- g) Federal registration as taxpayer (RFC) or, in case of foreigners, proof of the tax identification number.
- h) Marital status and property regime, as applicable, and identification of the spouse or concubine, as applicable.
- i) Email and telephone numbers, home address and domicile for tax purposes.
- j) Relationship with the legal entity or capacity in the trust or legal construct, as appropriate.
- k) Degree of participation in the legal entity or in the trust or legal construct, that allows the exercise of the rights of use, enjoyment, exploitation, or disposal of a good or service or carry out a transaction.
- l) Description of the form of participation or control (direct or indirect).

² If the indirect property is held, through other legal entities.

³ If control is held indirectly, through other legal entities, trusts or any other legal construct and by means other than ownership.



- m) Number of shares, partnership interests, participations or rights or their equivalents; series, class, and nominal value, in the capital of the legal entity.
- n) Place where the shares, partnership interests, participations, or other equivalent rights are deposited or in custody.
- o) Determined date in which the individual acquired the status of Controller Beneficiary of the legal entity, trust, or any other legal construct.
- p) If applicable, provide the data mentioned in the preceding paragraphs regarding the Sole Administrator or each of the members of the Board of Directors of the legal entity or equivalent.
- q) Date on which a change occurred in the participation or control in the legal entity, trust, or any other legal construct.
- r) Type of modification of the participation or control in the legal entity, trust, or another legal construct.
- s) Termination date of the participation or control in the legal entity, trust, or any other legal construct.

In the cases of Ownership or Control Chains, the following information shall also be available:

- a) Name, designation, or corporate name of the legal entity or entities, trusts, or legal constructs participating or controlling the legal entity, trusts, or legal constructs.
- b) Country or jurisdiction of creation, incorporation, or registration.
- c) Country or jurisdiction of residence for tax purposes.
- d) Federal taxpayer registration number (RFC) or tax identification number, or its equivalent, if resident abroad, for tax purposes.
- e) Fiscal domicile.

In case of not obtaining, not maintaining, or not submitting reliable, complete, and updated information of each Controller Beneficiary that is part of the legal entity, trust, or legal construct in question, as required by the TAS; not keeping updated information or submitting information that is incomplete, inaccurate or with errors, fines from \$500,000.00 to \$2,000,000.00 shall be imposed, as appropriate (approximately USD 25,000.00 to \$98,000.00).



To comply with the obligation of maintaining the aforementioned records, ECIJA México can assist in its integration and update, as well as provide comprehensive advice on this reform.