

Banking secrecy exception in tax matters in Mexico

I. INTRODUCTION

On May 10, 2022, the Supreme Court of Justice of the Nation (SCJN) declared the constitutionality of the rule that establishes that the country's tax authorities can access, through of the National Banking and Securities Commission (CNBV), to the person's banking information, without the need of a court order.

II. BANKING SECRECY

Article 142 of the Credit Institutions Law (LIC) states that information related to banking operations is confidential. Therefore, in order to protect the right to privacy of their customers and users, credit institutions shall never provide information on deposits, operations or services except to the depositor, debtor, owner, beneficiary, trustor, trustee, their legal representatives or those who have been granted power to dispose of the account or to intervene in the operation or service.

However, the same article provides exceptions to the banking secrecy, including:

- The information requested by the Attorney General to ascertain the facts set forth as crimes in the law and the probable liability of the accused.
- The one requested by the attorney general or deputy attorney general of each of the States of the Federation and of Mexico City, to ascertain the facts that the law qualifies as crimes and the probable liability of the accused.
- The one requested by the federal tax authorities, for tax purposes.

III. JURISPRUDENTIAL RESOLUTION OF THE FIRST CHAMBER

The SCJN issued the following jurisprudence:

"The aforementioned provision -article 142 of the LIC- is not contrary to the constitutional text, since although article 16 of the Constitution protects the right to privacy, the power of the tax authorities to obtain banking information without judicial authorization pursues a legitimate purpose and satisfies the requirements of suitability, necessity and proportionality".



IV. COMMENTS

Through such jurisprudence, the SCJN endorsed the constitutionality of the exception to banking secrecy already established in the LIC, regarding the information requested by the tax authority, stating that it seeks legitimate purposes. However, we consider that to fully safeguard the purposes of the law: security, justice and the common good, the intervention of the judiciary, as an irreplaceable guarantor of impartiality, would be particularly relevant.

ECIJA México, S.C.¹

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