

Identification of controlling beneficiaries and publication of FAQ by the Tax Administration Service (SAT)

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As of January 1st, 2022, the obligations to (i) identify the controlling beneficiaries of legal entities, trusts and other legal concepts and (ii) establish duly documented internal control procedures in order to obtain and keep the complete and updated information of such beneficiaries came into force in order to combat tax evasion and prevent money laundering.

In general terms, a controlling beneficiary is defined as the individual(s) who (i) directly or through other(s) or through any legal concepts obtains the benefit derived from its participation in a legal entity, trust or other legal concept or (ii) directly, indirectly or contingently, exercises control over said legal entity, trust or legal concept.

As it can be observed, this definition contemplates assumptions that would not be commonly interpreted as controlling beneficiary, since the tax provisions establish that any individual who benefits from his or her participation will be considered a controlling beneficiary, regardless of his/her percentage of participation.

The Mexican tax provisions establish the way in which the controlling beneficiaries must be identified, recognizing that there are cases in which the foregoing will not be possible. In these cases, the controlling beneficiary will be the entity's sole administrator or the members of its board of directors, as the case may be.

The information of the controlling beneficiaries (i) must be kept as part of the taxpayer's accounting, (ii) provided to the Tax Administration Service ("SAT", as per its acronym in Spanish) when said authority requests it, and (iii) may be provided to certain foreign tax authorities.

The infractions and fines related to the identification of controlling beneficiaries established in the Federal Fiscal Code may amount to up to MXN \$2,000,000 for each controlling beneficiary.

Additionally, in recent days the SAT published a FAQ document regarding the identification of controlling beneficiaries, in which certain issues related to the obligation in question were detailed, mainly in the case of taxpayers that (i) are publicly listed companies; and/or (ii) have direct or indirect foreign shareholders that are publicly listed companies, indicating certain information and documentation that the tax authorities consider that must be kept by the taxpayers in these cases.

We stress the importance of complying with the tax obligations related to the identification and collection of information of controlling beneficiaries. We are at your service to assist you in carrying out all the necessary actions in order to achieve the foregoing.

Contact us:

Nora Morales

Partner | nmorales@macf.com.mx
Tax

Enrique Ramírez

Partner | eramirez@macf.com.mx
Tax

Manuel Tamez

Partner | mtamez@macf.com.mx
Tax

Luis Monroy

Partner | lmonroy@macf.com.mx
Tax

Santiago Moctezuma

Associate | smoctezuma@macf.com.mx
Tax

+52 (55) 5201 7400

For further information, visit:

www.macf.com.mx

