

Mexico Alert: Mexican Supreme Court Confirms Constitutionality of the Controlling Beneficiary Tax Code Provisions

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Recently, two rulings of the Second Chamber of the Supreme Court of Justice (“Supreme Court”), with jurisprudential effect, were published that confirm the constitutionality of the controlling beneficiary (“CB”) provisions effective since 2022.¹ These provisions relate to the obligations to identify, obtain, keep as part of the accounting records, and provide to the Tax Administration Service (“SAT”), when required, reliable, complete, and updated information of the CBs. The rulings are effective as of Sept. 25, 2023.

The first ruling establishes that the obligation to identify the controlling beneficiary does not violate the principle of legality, since it is aimed at complying with international commitments regarding the exchange of information and the implementation of strategies to combat various illicit activities of a financial nature. The second ruling establishes that the principle of legal certainty is not violated, since any person that falls within the category of controlling beneficiary fits the description of “any legal figure”, which validates that the definition of controlling beneficiary will be applied in its broadest sense.

The resolution that gave rise to both rulings² resolved – through the application of a *tax proportionality test* – that such rules do not affect rights from a constitutional point of view, after considering that (i) their purpose, being to combat tax evasion, the financing of terrorism, and money laundering, is constitutionally objective and valid, (ii) the obligation to obtain and keep as part of the accounting records the information of the controlling beneficiaries is a rational and adequate measure to suppress evasive or illicit practices, and (iii) the obligation to deliver such information to the tax authority is proportional to the objectives sought.

Although, arguably, such rules affect privacy rights of individuals when requesting sensitive personal information, the Court held that the legislator is authorized to regulate conducts aimed at combating tax evasion, fraud, and illegal acts.

This precedent is important because it validates the powers of the SAT to request certain information on the controlling beneficiary of a legal entity, trust, or any other legal figure, and limits the defense of taxpayers against these difficult compliance obligations.

Compliance requires detailed knowledge of the structure of an entity and the collection of highly detailed and sensitive information, which must be updated with any change in the ownership or structure of the entity.

Finally, failure to comply with the obligation to identify and obtain documentation proving who is the controlling beneficiary may result in considerable fines and, possibly more importantly, the suspension or cancellation of the stamps to issue CFDI’s, which will generate an interruption in the operation and business of the affected taxpayer.

To read en español, [click here](#).

For more information, please contact any of the attorneys listed below.

¹Articles 32-B Ter, 32-B Quáter and 32-B Quinquies of the Federal Tax Code, and rules 2.1.47 section XXI, 2.8.1.20, 2.8.1.21 and 2.8.1.22 of the Miscellaneous Tax Resolution for 2022.

²Ruling in Amparo in Revision 109/2023, May 19, 2022, Second Chamber of the Mexican Supreme Court, Minister Yasmín Esquivel Mossa, June 14, 2023.