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## **SUPERINTENDENCE RESOLUTION 185-2019/SUNAT**

### **ESTABLISHMENT OF THE FORM, TERM AND CONDITIONS FOR THE SUBMISSION OF THE BENEFICIAL OWNER AFFIDAVIT AND PROVISIONS FOR NOTARIES PUBLIC TO VERIFY SAID SUBMISSION AND NOTIFY SUNAT ON NON-COMPLIANCE BY REPORTING PARTIES**

Lima, September 23, 2019

#### **WHEREAS:**

Section 3 of Legislative Decree 1372, which regulates the obligation of legal persons and/or legal arrangements to report on the identification of beneficial owners, establishes who the reporting parties obliged to submit a beneficial owner affidavit are, which constitutes an informative affidavit that must be submitted to the National Superintendency of Customs and Tax Administration (SUNAT) in accordance with the regulatory provisions, and in the form, term and conditions established by the authority by means of a superintendence resolution;

Additionally, Section 9 of the Legislative Decree sets forth that SUNAT must enable virtual access to notaries public for verifying that the beneficial owner affidavit has been submitted by legal persons or legal arrangements to SUNAT, and that when notaries public, in the exercise of their duties, become aware of non-compliance with said submission, they must notify SUNAT in the form, term and conditions established by the authority by means of a superintendence resolution;

Paragraph 4.1 of Section 4 of the Regulations of the aforementioned Legislative Decree, as approved by Executive Decree 003-2019-EF, sets forth the data that must be included in the beneficial owner affidavit that the reporting parties must submit in the form, term and conditions established by SUNAT, while Section 9 of the same provision regulates the assumptions and deadlines in which the information of the beneficial owner declared to SUNAT must be updated;

Subparagraph 15 of Section 87 of the Tax Code provides that the persons must submit to SUNAT informative affidavits for the fulfillment of mutual administrative assistance, in the form, term and conditions established by means of a superintendence resolution, adding that such obligation includes information on the identity and ownership of the beneficial owner, as established by means of an Executive Decree;

In this regard, the form, term and conditions in which the reporting parties must submit the informative beneficial ownership affidavit to SUNAT must be regulated; enable virtual access to notaries public so that, in the exercise of their duties, they can verify the submission of the aforementioned affidavit to SUNAT, as well as establish the form, term and conditions in which notaries public notify SUNAT on non-compliance with such submission;

Thus, in use of the powers conferred in Sections 3 and 9 of Legislative Decree 1372, which regulates the obligation of legal persons and/or legal arrangements to report on the identification of their beneficial owners; paragraph 4.4 of Section 4 of the Regulations of Legislative Decree 1372, approved by Executive Decree 003-2019-EF; subparagraph 15 of Section 87 of the Tax Code, the Consolidated Text of which was approved by Executive Decree 133-2013-EF, as amended; Section 11 of Legislative Decree 501, General SUNAT Act, as amended; Section 5 of Law 29816, Act for the Strengthening of SUNAT, as amended, and subsection o) of Section 8 of the Regulations of Organization and Functions of SUNAT, as approved by Superintendence Resolution 122-2014/SUNAT, as amended;

#### **IT IS HEREBY RESOLVED:**

### **CHAPTER I GENERAL PROVISIONS**

#### **Section 1. Definitions**

For the purposes of this Resolution, the following definitions will be considered:

- a) Beneficial owner : It means the individual who actually and ultimately owns or controls legal persons or legal arrangements referred to in item a) of paragraph 2.1 of Section 2 of the Regulations.

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- b) Chain of Ownership : It means the one referred to in paragraph 5.2 of Section 5 of the Regulations.
- c) Chain of Control : It means the one referred to in paragraph 5.4 of Section 5 of the Regulations.
- d) User Code : It means the text made up of numbers and letters, which allows for identifying the user who accesses the SUNAT Online Operations portal, to which reference is made in subparagraph d) of Section 1 of Superintendence Resolution 109-2000/SUNAT, as amended.
- e) SOL Password : It means the text made up of numbers and/or letters—only known by the user—that, associated with the User Code or the number of the National Identity Card (DNI), as appropriate, grants privacy in access to SUNAT Online Operations, to which reference is made in subparagraph e) of Section 1 of Superintendence Resolution 109-2000/SUNAT, as amended.
- f) Communication : It means the one referred to in subparagraph b) of paragraph 7.1 of Section 7 of the Regulations.
- g) Affidavit : It means the informative beneficial owner affidavit referred to in subparagraph c) of paragraph 2.1 of Section 2 of the Regulations.
- h) Legislative Decree : It means Legislative Decree 1372, which regulates the obligation of legal persons and/or legal arrangements to report on the identification of beneficial owners.
- i) Legal arrangement : It means one of the reporting parties obliged to submit the beneficial owner affidavit referred to in subparagraph g) of paragraph 2.1 of the Regulations.
- j) Form : It means the one referred to in subparagraph a) of paragraph 7.1 of Section 7 and paragraph 8.4 of Section 8 of the Regulations.
- k) Regulations : It means the Regulations of Legislative Decree 1372, as approved by Executive Decree 003-2019-EF.
- l) RUC : It means the Tax ID Number regulated by Legislative Decree 943 and its regulatory provisions.
- m) SUNAT Online Operations : It means the computer system available on the Internet that allows telematic operations between the user and SUNAT.
- n) Virtual SUNAT Portal : It means SUNAT's Internet portal, which can be accessed at the following URL: <http://www.sunat.gob.pe>.

## **Section 2. Purpose**

The purpose of this Resolution is:

- 2.1 To approve the form to submit the affidavit.
- 2.2 Establish the form, term and conditions for:
  - a) the reporting parties to submit the affidavit to SUNAT.
  - b) notaries public to notify SUNAT of non-compliance with the submission of the affidavit.
- 2.3 To establish the virtual access that SUNAT must grant to notaries public in order to verify the submission of the affidavit to SUNAT.

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## **CHAPTER II AFFIDAVIT**

### **Section 3. Approval of the Form**

Virtual Form 3800 – Beneficial owner affidavit, which will be available to the parties concerned in the Virtual SUNAT Portal as of December 1, 2019.

### **Section 4. Reporting Parties**

The legal persons and legal arrangements referred to in Section 3 of the Regulations are obliged to submit the affidavit.

### **Section 5. Term for the Submission of the Affidavit**

- 5.1 The submission of the affidavit by the reporting parties will be carried out gradually.
- 5.2 Legal persons that are classified as main taxpayers as of November 30, 2019, must submit the affidavit containing the information of the beneficial owners as of that date. The aforementioned affidavit must be submitted in the month of December, taking as expiration dates those established in Annex I to Superintendence Resolution 306-2018/SUNAT for the monthly settlement tax obligations corresponding to the November 2019 tax period.
- 5.3 Other legal persons and legal arrangements must submit the affidavit within the term established by SUNAT by means of the corresponding superintendence resolution.
- 5.4 Legal persons that, after November 30, 2019, cease to be a main taxpayer will keep the obligation to submit the affidavit, including the one referred to in Section 9.

### **Section 6. Form and Conditions for the Submission of the Affidavit**

- 6.1 The affidavit must be submitted using Virtual Form 3800 – Beneficial owner affidavit. For this purpose, the reporting parties must have their corresponding RUC.
- 6.2 Submission of the affidavit must be made through SUNAT Online Operations, for which the following steps must be followed:
  - a) Enter SUNAT Online Operations with the User Code and SOL Password.
  - b) Search for the option: My informative affidavits / Submit my informative affidavits / Informative / Submission of Informative Affidavits.
  - c) Select Virtual Form 3800 – Beneficial owner affidavit.
  - d) Enter the information required by Virtual Form 3800 – Beneficial owner affidavit.
- 6.3 In order to submit the affidavit, the technical specifications of the instructions handbook entitled “Registration of information in Virtual Form 3800 – Beneficial owner affidavit” must be followed, which will be published in the Virtual SUNAT Portal.
- 6.4 The information is entered directly in Virtual Form 3800 – Beneficial owner Affidavit as long as only one (1) beneficial owner residing in Peru is declared, and who holds directly at least ten percent (10 %) of the capital stock of the legal person. For this purpose, it is considered that the individual resides in Peru if has his/her domicile in the country in accordance with the common law provisions.

In all other cases, information must be attached to the aforementioned form through flat files generated by an Excel application that must be downloaded from the Virtual SUNAT Portal, the sizes of which must not exceed two (2) megabytes (Mb).
- 6.5 When reporting parties declare the beneficial owner who holds ownership or control through a Chain of Ownership or Chain of Control, the Excel file entitled “Information on the Chain of Ownership and/or Chain of Control” must be attached to the aforementioned form, where data related to the chain of ownership and/or control must be detailed, as appropriate. The size of the aforementioned file must not exceed two (2) megabytes (Mb).

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- 6.6 The affidavit is considered submitted when the certificate of submission issued by the SUNAT system is obtained.

#### **Section 7. Grounds for rejection of Virtual Form 3800 – Beneficial owner affidavit**

- 7.1 It is considered grounds for rejection of Virtual Form 3800 – Beneficial owner affidavit when the information recorded therein does not comply with the structure and consistency validations defined for said form in the instructions handbook referred to in paragraph 6.3 of Section 6.
- 7.2 The affidavit is considered as not submitted when the grounds for rejection occur.

#### **Section 8. Certificate of Submission**

- 8.1 If there are no grounds for rejection, the certificate of submission is generated by the SUNAT system and is sent to the electronic mailbox of the reporting parties.
- 8.2 The certificate of submission for the affidavit can be downloaded in PDF format and printed.

#### **Section 9. Updating of the Declared Information**

The information declared must be updated within the deadlines established in Section 9 of the Regulations. For this purpose, a new affidavit must be submitted as provided for in Section 6.

In the affidavit whereby the update is made, the reporting period will be the month on which the beneficial owner submits the form or, failing that, the date of the communication made by the reporting parties, in accordance with the provisions of Section 9 of the Regulations.

#### **Section 10. Substituting or Rectifying Affidavit**

- 10.1 The affidavit can be substituted until the date on which the term for its submission expires.
- 10.2 The affidavit can be rectified after its submission when there is an error in the information declared.
- 10.3 To substitute or rectify an affidavit, a new affidavit must be submitted indicating the reported period and order number of Virtual Form 3800 – Beneficial owner affidavit that is being substituted or rectified, and all the information requested must be entered, including that to which no amendments will be made.

### **CHAPTER III PROVISIONS FOR NOTARIES PUBLIC**

#### **Section 11. Virtual Access for Notaries Public to Verify the Submission of the Beneficial owner affidavit**

- 11.1 In order to comply with the verification of the submission of the affidavit in accordance with the provisions of the first paragraph of Section 9 of the Legislative Decree, notaries public must access SUNAT Online Operations, and follow the steps described below:
- a) Enter SUNAT Online Operations with the User Code and SOL Password.
  - b) Search for the option: My informative affidavits / Submit my informative affidavits / Informative / Search for Informative affidavit FV3800 Beneficial Owner.
  - c) Check if the reporting parties submitted the affidavit by entering their RUC.
- 11.2 The SUNAT system will provide the following information:
- a) If the affidavit was submitted:
    - i) Period of the affidavit inquired.
    - ii) Order number of the Virtual Form 3800 – Beneficial owner affidavit submitted.
    - iii) RUC of the reporting parties.
    - iv) Date on which the affidavit was submitted.

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- b) If the affidavit was not submitted, the system will display a message indicating that there is no information regarding the party being inquired.

11.3 The information provided by the SUNAT system can be printed by notaries public.

#### **Section 12. Form, Term and Conditions in which Notaries Public must Notify SUNAT of Non-compliance with the Submission of the Affidavit.**

Notaries public who, in the exercise of their duties, become aware of the non-compliance with the submission of the affidavit must report it to SUNAT through SUNAT Operations Online, in accordance with the following process:

- a) Enter SUNAT Online Operations with the User Code and SOL Password.
- b) Search for the option: My informative affidavits / Submit my informative affidavits / Informative / Search for Informative Affidavit FV3800 Beneficial Owner.
- c) Enter the following data:
  - i) Type of procedure or notarial act.
  - ii) Date of procedure.
  - iii) RUC number of the reporting parties.
  - iv) Name or trade name of the reporting parties.

Notaries public must notify SUNAT, within the first ten (10) working days of each month, on the non-compliance with the submission of the affidavit that they verified the previous month.

#### **FINAL SUPPLEMENTARY PROVISION**

##### **SINGLE PROVISION. Publication of the Instructions Handbook**

The instructions handbook entitled "Registration of Information in Virtual Form 3800 – Beneficial owner affidavit" referred to in paragraph 6.3 of Section 6 will be available to the parties concerned in the Virtual SUNAT Portal from the day following the publication of this resolution.

#### **SUPPLEMENTARY AMENDING PROVISION**

##### **SINGLE PROVISION. Incorporation of Subparagraph 54 into Section 2 of superintendence resolution 109-2000/SUNAT**

Subparagraph 54 is hereby incorporated into Section 2 of Superintendence Resolution 109-2000/SUNAT, as amended, in the following terms:

"Section 2. SCOPE (...)

- 54. Notaries public must verify the submission of the beneficial owner affidavit and report on the non-compliance thereof."

This document must be registered, communicated and published.

**CLAUDIA SUAREZ GUTIERREZ**  
**National Superintendent**  
**NATIONAL SUPERINTENDENCY OF CUSTOMS AND TAX**  
**ADMINISTRATION (SUNAT)**