CORPORATE TRANSPARENCY ACT REQUIRES ACTION BY YEAR END: YOUR ESTATE PLAN COULD BE IMPACTED

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US Estate Planning and Trusts and Estates Alert

If you manage or own an interest in a limited liability company (LLC) or another type of entity that does not already have a public filing requirement (a Reporting Company), you may be subject to a reporting requirement under the Corporate Transparency Act (the CTA) enacted earlier this year. Many estate plans include entities that are subject to these new reporting requirements. The CTA has broad civil and criminal penalties for failure to comply. Care should be taken to ensure compliance.

Many entities must comply with the CTA by 1 January 2025, and entities formed this year may have an earlier reporting deadline.

THE CTA (GENERALLY)

The CTA became effective 1 January 2024. It requires newly formed and already existing Reporting Companies to disclose information regarding ownership and control of the Reporting Company to the US Department of Treasury. The CTA applies both to newly formed and already existing US entities and to foreign entities doing business in the United States.

PENALTIES FOR FAILURE TO FILE

A person who willfully violates the Beneficial Ownership information (BOI) reporting requirements may be subject to civil penalties of up to US$500 for each day of violation. The penalty is adjusted for inflation. A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to US$10,000. Potential violations include willfully failing to file a BOI report, willfully filing false beneficial ownership information, or willfully failing to correct or update information previously reported.

WHAT IS A REPORTING COMPANY UNDER THE CTA

A “Reporting Company” is generally any corporation, LLC, or similar entity that is created by filing a document with the secretary of state or similar office of a state or Indian tribe that is not a listed exempt entity. The requirements also apply to a foreign entity registering to do business in the United States.

A trust, generally, is not a Reporting Company. However, the parties to a trust may have reporting obligations under the CTA. A trustee of a trust that holds an interest in an LLC may need to work with the manager or managing member of the LLC or corporation to ensure compliance with the CTA.

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A charitable foundation organized under section 501(c)(3) of the Internal Revenue Code is also not generally a Reporting Company, but likewise may have reporting requirements with respect to any interest it owns in another entity that is a Reporting Company.

REPORTING DEADLINES

- All Reporting Companies formed *prior* to 1 January 2024 must comply with the CTA by 1 January 2025.
- All Reporting Companies formed *between* 1 January 2024 and 31 December 2024 have 90 days after formation to comply with the CTA.
- All Reporting Companies formed *on or after* 1 January 2025 have 30 days after formation to comply with the CTA.
- After the BOI report is filed, there is no requirement to file additional reports, unless there has been a change in the beneficial ownership or other information relating to the entity.

WHAT NEEDS TO BE REPORTED

Reporting Companies must provide information to the US Department of Treasury about the entity itself and all Beneficial Owners of the entity. A Beneficial Owner is any individual who, directly or indirectly: (i) exercises substantial control over a Reporting Company; or (ii) owns or controls at least 25% of the ownership interests of a Reporting Company. Often it is straightforward to determine who is a Beneficial Owner, but the analysis may be more complex if the ownership interest is held through a trust or other entity.

A US Reporting Company must also submit information about a Company Applicant, who is each individual who (i) directly files the formation document and (ii) is primarily responsible for directing or controlling the filing.

WHERE TO FILE THE REPORT

A Reporting Company can file the required report using the BOI E-Filing System found here. There is no fee for submitting a report.

CONSIDER OBTAINING FINCEN ID

If you are filing a report for multiple entities or may form additional entities in the future, you may want to obtain a FinCEN ID, which is optional. Individuals may obtain a FinCEN ID on the same website used to file BOI reports. Additionally, Reporting Companies may request a FinCEN identifier by checking a box on the BOI report upon submission.

HOW CAN WE HELP

Our team is here to help you with the analysis and to identify any required reporting under the CTA. Please reach out to one of our lawyers if you would like assistance with the analysis of what information you may be required to report to the US Department of the Treasury. Our team will look to you to submit any required filings with the US

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Department of Treasury. Please note that unless you specifically request that we provide legal services to you or your related entities regarding the CTA, we will not provide further information or advice to you or your related entities with respect to the CTA.

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