

CORPORATE TRANSPARENCY COMES TO AMERICA

Beginning January 1, 2024, the United States (US) Corporate Transparency Act (CTA) will require certain entities to disclose beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau within the US Department of the Treasury. Per the FinCEN the CTA was enacted:

“.....to enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use and provide essential information to national security, intelligence, and law enforcement agencies; state, local, and Tribal officials; and financial institutions to help prevent drug traffickers, fraudsters, corrupt actors such as oligarchs, and proliferators from laundering or hiding money and other assets in the United States.”

WHAT ENTITIES ARE REQUIRED TO REPORT?

The CTA breaks Reporting Companies (RCs) into two categories:

- Domestic RCs – Any entity created by filing of a document with a secretary of state or similar office of a jurisdiction within the US; and
- Foreign RCs – Any entity created under the law of a foreign jurisdiction and registered to do business in the US.

The regulations provide for 23 exemptions from reporting for RCs meeting the above definitions. The exemptions mostly do not apply to typical private client structures. They include large operating companies, public companies, non-profit entities and wholly owned subsidiaries of RCs.

Under the above definition, trusts are not RCs. However, should a trust structure hold a reporting company, it is likely that some information on trustees, grantors and beneficiaries may need to be disclosed.

WHAT ARE THE REPORTING REQUIREMENTS FOR RCS?

Each RC will be required to submit Beneficial Ownership Information (BOI) reports to FinCEN. The exact submission process has not been finalized, but the reports are expected to be filed electronically through an online interface.

Each BOI report must disclose certain information about the RC including:

- Full legal name;
- Doing business as name (if applicable);
- Current business address;
- Domestic RCs - jurisdiction of formation;
- Foreign RCs – jurisdiction of formation and jurisdiction of first registration in US; and
- US taxpayer identification number (TIN) or Foreign TIN if no US TIN.

Individuals related to RCs who must report are broken into categories and subcategories as follows:

- Company Applicants (CA):
 - Domestic RCs - Individual who files the document that creates the entity. Typically, this the person at the service provider that are in the business of forming entities for a fee.
 - Foreign RCs - Individual who files the registration.

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- Beneficial Owners (BO):
 - Exercises substantial control over the RC.
 - Owns or controls at least 25% of the ownership interest of a RC.

Both of the above BO types must be reported.

Substantial control speaks to decision makers who exercise control of the entity based on their position.

The definition of financial ownership is not simply “equity” ownership and the ownership interest can be direct or indirect. As with other beneficial ownership legislation in other jurisdictions, the CTA is meant to disclose the living, breathing persons behind the entity.

The information disclosed for each individual includes:

- Full legal name;
- Date of birth;
- Current residential address for BOs and business address CAs. P.O. Boxes are not allowable;
- Unique identifying number from an acceptable identification document;
- Type of acceptable identification document;
- Jurisdiction issuing acceptable identification document; and
- Image of acceptable identification document.

An acceptable identification document includes a driver’s license, passport or other government issued document.

Notably, tax identification numbers are not required to be disclosed. This is because the stated purpose of the legislation is law enforcement not tax compliance.

WHERE IS THE INFORMATION REPORTED?

The FinCEN has established the Beneficial Ownership Secure System (BOSS). BOSS is confidentially maintained by FinCEN. Federal agencies may only obtain access for national security, intelligence or law enforcement reasons.

WHAT IS THE TIMELINE FOR COMPLIANCE FOR RCS?

Existing entities formed prior to Jan. 1, 2024, will have one year from that date to file their initial BOI report.

New entities formed on or after Jan. 1, 2024, must file their initial BOI report within 30 days after their formation or registration. But on Sept. 28, 2023, FinCEN proposed extending this deadline to 90 days for entities formed or registered in calendar year 2024.

After the initial report, there is no annual or quarterly filing requirement. However, RCs must file an amendment within 30 days after any change to their reported information.

CONCLUSION

When it comes to corporate transparency in the U.S., the CTA is only the beginning. To date, New York has proposed a similar transparency act. If enacted into law by the governor, the law would require only LLCs formed or registered to



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do business in New York to submit the same BOI report required by the CTA. However, the New York's proposed legislation will make the name and address of each beneficial owner publicly available in a searchable database. California has also proposed, but has not yet passed, its own corporate transparency act. Other states are sure to follow.

Stonehage Fleming is already preparing for implementation of CTA for existing structures we oversee. We encourage our clients, colleagues and friends to reach out to us with any questions or to request assistance with specific a matter.



Jeffrey A Hollowniczky, CPA

Director – US Head of Tax Compliance and Reporting

Jeffrey is a Director and US Head of Tax Compliance and Client Reporting. He assists families and other private clients in U.S. tax planning and related compliance issues with an emphasis on cross border taxation and compliance. He assists his attorney colleagues in the tax and financial planning portion of the advice they provide. He also oversees the management of various client investment structures.

Jeffrey joined the Group in 2011 after several years working for a U.S. based private multi-client Family Office. Prior to this he spent several years in public accounting serving private clients. He is a Certified Public Accountant and holds a B.S. in Accounting from Rutgers University. He is a Certified Management Accountant (CMA) and a member of both the American Institute of Certified Public Accountants (AICPA) of Society of Trust and Estate Practitioners (STEP).

CONTACT US

If you think we may be able to help you and your family, please contact us for a discussion.

Jeffrey A Hollowniczky, CPA | Director – US Head of Tax Compliance and Reporting

| Jeff.Hollowniczky@stonehagefleming.com | +1 215 665 7270

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