

# U.S. Corporate Transparency Act (CTA)

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# History of CTA

- ▶ Not public company governance disclosure
- ▶ More than 2M U.S. companies formed per year, but no ownership disclosure requirements
- ▶ Terrorism, drug and human trafficking, money laundering, tax evasion, fraud
- ▶ 2008 FATF issued report criticizing U.S.
- ▶ 2016 FATF report mentioned little progress, while all 28 EU nations required this information.
- ▶ Public register of BO vs. non-public
- ▶ Bad week for OECD
  - ▶ International Court of Justice Ruling: (1) Netherlands, (2) Luxembourg
  - ▶ United Nations: (1) Economic & Financial Committee to study tax cooperation, transparency, and avoidance of double taxation, (2) direct rebuke to OECD

# What Types of Entities Report?

- ▶ Any entity that files a document with a U.S. state's Secretary of State
- ▶ Exceptions for large companies (who already report most information)
  - ▶ Must have over \$5M annual gross revenue and 20+ employees not to report
- ▶ Domestic and Foreign
- ▶ Trusts do not report, but...

# Whose Information Must be Reported?

- ▶ Beneficial owners
  - ▶ Owns or controls at least 25% of ownership interest
  - ▶ Exercises substantial control over a reporting company
- ▶ Substantial Control
  - ▶ Officers, Directors, Decisionmakers
- ▶ Applicants

# What Information Is Reported?

- ▶ Name
- ▶ Birthdate
- ▶ Address
- ▶ Passport or other identification document

# How Is The Information Reported?

- ▶ An online filing system with FINCEN (Financial Crimes Enforcement Network), a branch of the U.S. Treasury. It is being developed.
- ▶ Upon first entry, an individual will receive a “FINCEN identifier” which can be used for subsequent filings.

# When Will It Be Reported?

- ▶ For existing companies, must submit by January 1, 2025
  - ▶ No applicant information required
- ▶ For companies formed January 1, 2024 or later must submit with 30 days of formation
  - ▶ Applicant information required
- ▶ Obligation to update information within 30 days of a change.

# Penalties

- ▶ \$500 per day per company if willful. A determination of willfulness will be made on a case-by-case basis by FINCEN.
- ▶ Attributed to “senior officer” and individual who caused the penalty



# Inactive Companies

- ▶ If inactive for more than 1 year, no need to continue updating
- ▶ What is inactive (under the regs)?
  - ▶ No ownership changes in 12 months
  - ▶ Formed before 1/1/2020
  - ▶ No assets held of any kind
  - ▶ Does NOT apply if Foreign Owned (!!!)

# Other International Concerns

- ▶ Each entity submitting report must have a TIN
  - ▶ Either foreign TIN, or
  - ▶ Obtain U.S. TIN
- ▶ The IRS, which will receive \$80BN in recent additional funding:
  - ▶ Will be reportedly focusing on international taxpayer compliance
  - ▶ May want to see tax returns filed
- ▶ Future Information Sharing? EU Court holding provides some hope

# Impact

- ▶ Increased compliance costs ultimately born by clients
- ▶ Increased risk in sensitive information disclosure
- ▶ Potential reorganization of structures or control of them