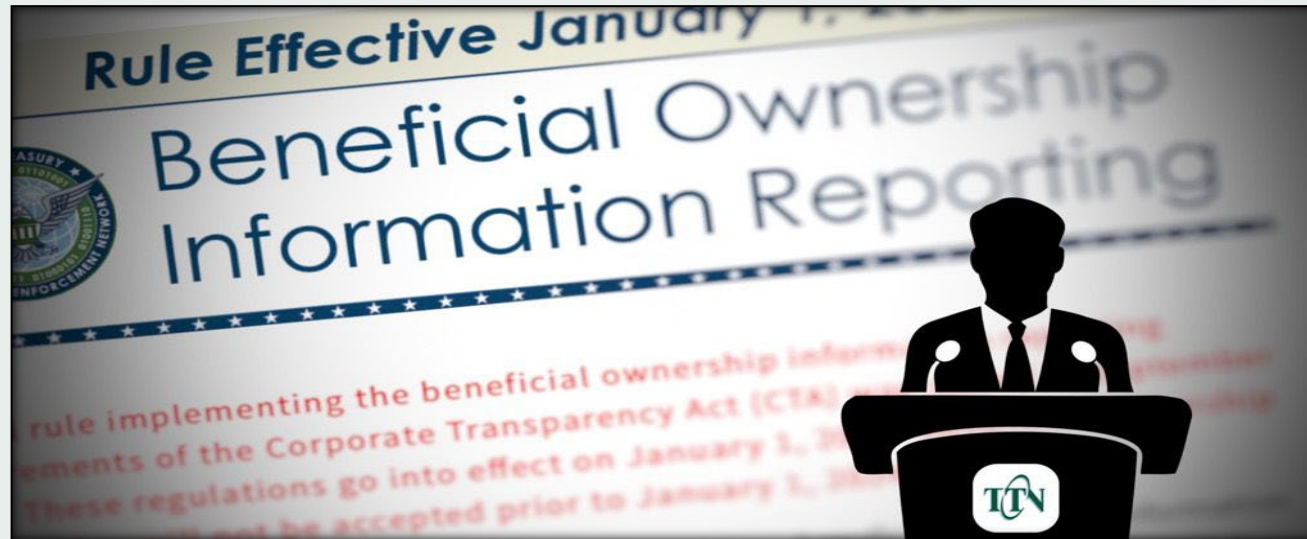




TRANSNATIONAL TAXATION NETWORK
A WORLD WIDE ORGANIZATION OF INDEPENDENT PROFESSIONAL FIRMS

U.S. Corporate Transparency Act (CTA)



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MAY 26, 2023

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

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 (includes signatory and those who gave instructions)

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?

Impact

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

Questions:

1. Information Sharing
2. Foreign corporation qualified to do business in the U.S.
3. Foreign corporation that should be qualified to do business in the U.S. but is not so qualified.
4. Foreign corporation registers with Secretary of State only for registered agent purposes.
5. U.S. lawyer asks paralegal to form U.S. corporation? Who is applicant?
6. Non-U.S. lawyer asks paralegal to form foreign corporation to then qualify in the U.S.? Who is applicant?
7. IRS tax number delays
8. Is there a filing fee?
9. Portal?
10. Applicant address changes. Who must update?
 - a. Company?
 - b. Applicant?
 - c. What are penalties?
11. Will FinCen be ready by 2024?