

38th Annual TEI-SJSU High Tech Tax Institute
November 8, 2022

Corporate Transparency Act (CTA)

- Enacted January 1, 2021
- Part of National Defense Authorization Act (a “must pass”)
- CTA represents most significant reformation of the Bank Secrecy Act (“BSA”) and related anti-money laundering rules since US PATRIOT Act



Corporate Transparency Act (CTA) (Cont.)

- Was a long time coming and represented the culmination of a lot of international pressure including pressure from FATF (U.S. graded as non-compliant)
- Lack of BOI disclosure major vulnerability in US AML regime
- Enforced by U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN")





Privacy No More (Cont.)

- Obligated to disclose previously private information
 - Ownership
 - Control
 - Including senior officers and other controlling persons.
- Exempts certain more heavily regulated entities to avoid imposing duplicative requirements.

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Regulations Issued on 30 September

- Requires "Reporting Companies" to disclose specific information regarding their "Beneficial Owners" and "Company Applicants" to FinCEN
- Final Regulations also require specific information on the Reporting Company itself to be reported to FinCEN.

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Regulations Issued on 30 September (Cont.)

- Final Regulations mention an upcoming revamp to the existing “Consumer Due Diligence” rules for banking institutions with respect to BOI information of customers so as to bring the CDD rules into conformity with the AML Act as a whole, including the CTA, which will be done through future rule making by FinCEN.



Regulations Issued on 30 September (Cont.)

- Effective 1 January 2024
- FinCEN has decided to collect various identifying details, including identifying numbers. The final regs require the reporting of the TIN in virtually every case. Only foreign companies without a TIN are spared and have to provide a foreign tax ID number and issuing jurisdiction instead
- Initial reports are required within 30 days of creation, for companies created on or after the effective date. Pre-existing companies have until 1 January 2025



Beneficial Ownership Secure System (BOSS)

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Who Must File A Report?

- Domestic Reporting Company - A corporation, LLC, or "other similar entity" created by the filing of a document pursuant to the laws of a US state or Indian Tribe.
 - Intended to apply to LP, LLP, LLLP and business statutory trusts.
 - FinCEN has interpreted "other similar entity" to apply to any other entity that is "created by the filing of a document with the secretary of state or any similar office under the law of a State or Indian Tribe".
 - Therefore, common law trusts are not included as a Reporting Company, but some trusts are captured under the "Beneficial Owner" definition in Final Regulations.



Who Must File A Report? (Cont.)

- Foreign Reporting Company - A corporation, LLC, or "other similar entity" that is:
- Formed under the law of a foreign country, and
- Registered to do business in any State or tribal jurisdiction by the filing of a document with the secretary of state or any similar office under the law of a State or Indian Tribe.



- The person who files the document that forms the domestic reporting company.
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“Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise



Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Service as a senior officer;
- Authority over the appointment or removal of any senior officer or a majority of the board of directors





SUBSTANTIAL CONTROL INCLUDES

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Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Any other form of substantial control over the reporting company whether direct or indirect.



Excluded from BO

- Minor children (reporting company must provide information of a parent or legal guardian individual acting as nominee).
- Nominees, intermediaries, custodians, or agents
- Employees acting solely as employees and not as senior officers.
- Individuals whose only interest in a reporting company is a future interest through the right of inheritance.
- Creditors of a reporting company (but not if there is an equity kicker).



23 Exemptions Including

- Banks and bank-type entities.
- Tax-exempt entities - IRC §501(c) organizations that are tax exempt under IRC §501(a) (regardless of whether they have applied for exempt status on IRS Form 1023, 1024, or 1024A), political organizations under IRC §527, and trusts under IRC §4947(a)(1) or (2) (note: common law trusts are not excluded as exempt; rather, they fall outside the definition of Reporting Company).

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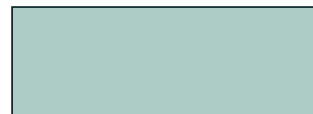
23 Exemptions Including (Cont)

- Accounting firms registered under §102 of the Sarbanes-Oxley Act of 2002.
- Publicly traded companies.
- Large Operating Company – Company employing more than 20 employees in the U.S., with gross receipts or sales over \$5M and physical present in the U.S.

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Example





Reporting Requirements: BO & Company Applicant (Cont.)

BENEFICIAL OWNERS AND APPLICANTS (REQUIRED BY CTA AND FINAL REGULATIONS):

- Residential address for other Applicants
- Unique identifying number from an acceptable identification document (e.g., unexpired passport number) or FinCEN identifier
- Image of document with ID number





Reporting Deadlines (Cont.)

NEW ENTITIES

- Formed after the effective date of FinCEN's final regulations.
- Due 30 days after the date of initial filing with the Secretary of State (or similar authority)
 - Foreign Reporting Company: within 30 calendar days of the date it first became a foreign reporting company.
 - Domestic Reporting Company: within 30 calendar days of the date the company was formed as specified by a secretary of state or similar office.
 - Potential issue: IRS procedure for a) Domestic entities; with b) Foreign "Responsible person". EIN turn around time. No phone/no online.



Reporting Requirements: Corrections & Updates

- Corrections to a previously submitted report containing inaccurate information must be filed within 30 calendar days after the date on which the company becomes aware or has reason to know that any required information contained in any report was inaccurate.
- Updates to previously filed correct information must be filed within 30 calendar days after the date on which there is any change.



CIVIL PENALTIES

Maximum civil penalty of \$500 each day the violat(636.72..5(d)-0.1)-M



What about? (Cont.)

- Exempt entities. (i) Reporting company owned by exempt entity. If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.

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Who Can See The Data?

NON-PUBLIC DATA BASE. FINCEN CAN DISCLOSE THE INFORMATION:

- Federal agencies: when acting in furtherance of national security, intelligence, or law enforcement activity.
- State, local, and Tribal law enforcement agencies: after receiving authorization from a court of competent jurisdiction as part of a criminal or civil investigation.
- Foreign government: foreign law enforcement agencies, prosecutors, and judges in specified circumstances through a request to a federal agency.

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- Financial institutions: to facilitate compliance with customer due diligence requirements under applicable law, with the consent of the reporting company.
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Unauthorized Practice of Law

- This is not a tax form. Title 31 not Title 26 (tax code).
- Although FBAR has been accepted as a quasi-tax form, unclear if the same will be true for filling out CTA documentation
- Arguably, this is more of a legal determination than FBAR (which is largely reporting amounts although there are plenty of legal determinations built into FBAR)
- FinCEN did not consider/ignored in Final Rules





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