Introduction to the Corporate Transparency Act

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A KEY ESTATE PLANNING GUIDE

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Corporate Transparency Act

- The Corporate Transparency Act (“CTA”) is a new federal law that will impact the owners, principles and other control persons involved in almost all limited liability companies (LLCs), corporations (both C and S corporations), limited partnerships (LPs), and other closely held entities.
- Congress enacted the CTA in 2021 as part of the National Defense Authorization Act for Fiscal Year 2021. The purpose of the CTA is aims to strip U.S. shell companies of anonymity that can hide illicit financial activity and for use in financing terrorist activities.
- But the reach will be very broad to accomplish this. There are exceptions to these filing requirements for companies subject to other detailed reporting. However, most of the entities created as part of an investment plan (e.g., a holding company for securities or a small business, or owning rental real estate), an estate plan (e.g., an LLC designed to hold various investments to facilitate trust funding or administration), or asset protection planning (any entity created to insulate the assets it holds, or to insulate those who own the entity for claims arising from the assets the entity holds) likely will be subjected to the new reporting rules.

Corporate Transparency Act

- FinCen estimates that 32 million existing entities may face filing obligations. That will be increased by all new entities formed in the future. Thus, the CTA will impact a wide swath of Americans and their advisers as all try to grapple with this broad new requirement.
- Existing entities will have until January 1, 2025, to comply. But as discussed in more detail below, entities and owners/control persons should begin planning for the filings now. New entities formed after January 1, 2025, have 30 days to report. FinCen has proposed increasing this to 90 days from formation to file for entities created or registered on or after Jan. 1, 2024, and before Jan. 1, 2025.
- Considering the severe penalties for non-compliance anyone who may even possibly be affected should proactively address the requirements.
- Most if not all small businesses will be subject to the new rules (other than proprietorships and general partnerships), including “business” entities that are formed as part of what most practitioners consider regular, everyday estate planning. The couple who purchases a weekend home but uses an LLC to insulate themselves from liability for anything occurring on the property, will be subject to these rules.

What Companies Report

- The information that will have to be included in company reports includes:
  - Legal name and any trade names such as DBAs (doing business as).
  - Street address for company’s principal place of business (not a P.O. box or lawyer or other adviser’s address).
  - State of formation.
  - Tax Identification Number. A passthrough entity, like single member LLC that doesn’t have a tax identification number, may have to obtain and provide a unique identifying number.
  - An identifying document from an issuing jurisdiction (e.g., a certificate of incorporation) and the image of that document

What Individual BOIs Report

- The CTA provides that reporting companies will also have to file reports for "beneficial owners." This is a term defined by the CTA that has broad, as and of yet, uncertain reach.
- The information to be reported for each beneficial owner will consist of:
  - Full legal name. This requires the "full legal name" not initials.
  - Date of birth.
  - Home address (not a P.O. box or lawyer or other adviser's address).
  - PDF (photocopy) of the individual's U.S. passport or state driver's license

Additional information

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