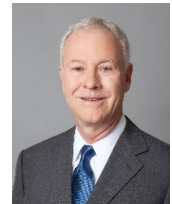


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## Table of Contents

- **FinCEN Corporate Transparency**
- **IRS Targets High-income Audits**

## **FinCEN CORPORATE TRANSPARENCY UPDATE**

In a previous Panorama edition, we briefly described the Corporate Transparency Act (“CTA”) that was enacted into law on January 1, 2021. After several unsuccessful attempts beginning in 2019 to pass this law, Congress ultimately overrode President Trump’s 2020 veto to enact the law. However, the effective date of implementation has been postponed while the needed infrastructure to administer the CTA was formalized. FinCEN (Financial Crimes Enforcement Network), a bureau of the U.S. Treasury Department, was tasked by Congress to administer the law since the CTA aligns with FinCEN’s mandate to fight money laundering.

The purpose of the CTA is to bring transparency into identifying the individuals who benefit financially, directly or indirectly, from the activities or assets of the legal entity and to those who form the entity. Historically, unless a legal entity will be engaged in a business, investment or other activity that is federally regulated, the only federal filing required upon formation of a legal entity is the Form SS-4

# Panorama

(the application for a taxpayer ID number or “TIN”). With a TIN, a legal entity can own property, can open bank accounts, and can participate in financial transactions.

Most legal entities are formed and operated for legitimate business, estate planning, asset protection, or other similar purposes. However, the historic lack of transparency of the individuals who benefit economically or effectively control legal entities in the United States has facilitated their use as vehicles to hide the spoils of illegal activities, to evade taxes, to fund terrorism, or for many other illegal purposes. These bad actors also use the reputation of the United States to represent their U.S. - based shell companies as legitimate businesses around the globe. Hence, the motivation behind passage of the CTA.

The law is scheduled to become effective as of January 1, 2024. The purpose of this update is to keep you informed about how this law might impact you. The following essential frequently asked questions are not intended to cover all the potential applications or issues, but rather only those that will most likely impact many of our clients.

- What legal entities (referred to hereafter as “Companies”) will have to report their beneficial owners?
  - Companies are required to report only if they meet the reporting rule’s definition of a “reporting company” and do not qualify for an exemption.
  - A reporting company can be a domestic or foreign company.
  - A domestic reporting company is a corporation, limited partnership or limited liability company that was formed by filing a document with a secretary of state or similar office of a state. General partnerships and trusts are not formed by filing a document with a state. Therefore, these legal entities are not considered to be reporting companies.
  - A foreign reporting company is a legal entity formed under foreign law but registered to do business in a state through a filing with the secretary of state.
  - The reporting rule exempts twenty-three (23) specific types of entities from the reporting requirements, including “inactive entities”. Generally, these include large companies or companies that are regulated by other governmental agencies.
- Who is a beneficial owner of a Company?
  - For each Reporting Company, the beneficial owners must be disclosed.
  - A beneficial owner is any individual who, directly or indirectly (1) exercises substantial control over a reporting company; OR (2) owns or controls at least 25 percent of the ownership interests of a reporting company.
  - An individual might be a beneficial owner through substantial control, ownership interests, or both.
  - Reporting companies are not required to report the reason (i.e., substantial control or ownership interests) that an individual is a beneficial owner.
  - An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the

# Panorama

- reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.
- Any of the following may be an ownership interest: equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or other non-binding privileges to buy or sell any of the foregoing; and any other instrument, contract, or other mechanism used to establish ownership.
  - There are five exceptions to the definition of beneficial owner – minor children, nominees, employees, inheritors, and creditors.
- Does my Company have to report its Company Applicants?
    - Company applicants are those individuals who file the applications to create the legal entity with a secretary of state. Generally, this means the lawyers and their paralegals you hire to create the entity, but non-lawyer individuals can also be Company Applicants.
    - A reporting company is required to report the identity of its company applicants if it is either a domestic reporting company created on or after January 1, 2024; or foreign reporting company first registered to do business in the United States on or after January 1, 2024.
    - Existing Companies, or those which will be formed before January 1, 2024, do not have to report their Company Applicants.
  - What specific information does my Company have to report?
    - For each reporting company, (1) full legal name of the Company, (2) trade name or DBA name, (3) physical address of principal place of business, (4) state of formation and (5) IRS taxpayer identification number.
    - For each individual beneficial owner, (1) full legal name, (2) date of birth, (3) physical address of principal residence, (4) photocopy of a non-expired US driver's license or passport.
  - When and how should my Company file its initial annual report?
    - The reporting rule becomes effective on January 1, 2024. FinCEN will begin accepting beneficial ownership information (“BOI”) reports electronically through its secure filing system on this date. BOI reports will not be accepted prior to January 1, 2024.
    - For Companies created before January 1, 2024, the initial report must be electronically filed before January 1, 2025.
    - For Companies created after January 1, 2024, the initial report must be electronically filed within 30 days of creation (90 days for Companies created in 2024).
  - What if there are changes to or inaccuracies in reported information?
    - After the initial filing, additional filings are only required on an “as needed” basis, meaning only when changes to information previously reported occur.
    - If there is any change to the required information about your company or its beneficial owners in a BOI report that your company filed, your company must file an updated BOI report no later than 30 days after the date on which the change occurred.
    - Examples of changes include but are not limited to updating expired passports or driver’s licenses, changes in address or ownership, and changes in control.

# Panorama

- What are the consequences for failure to timely report beneficial owners of my Companies?
  - The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000.
  - Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.
- Who can access this information and for what purposes?
  - The information provided by the Reporting Companies about their Beneficial Owners and Company Applicants BOI will be maintained by FinCEN in a secure national database called the Beneficial Ownership Secure System, or “BOSS”.
  - FinCEN will permit Federal, State, and local, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions’ regulators will also have access to beneficial ownership information when they supervise the financial institutions.

In principle, this reporting seems to be an appropriate measure to combat the pervasive misuse of legal entities for illegal purposes. But in this day of rampant identity theft, you might ask whether your extremely sensitive personally identifiable information stored on FinCEN’s BOSS database really is secure? Federal agency databases have been compromised before and likely will again in the future. This is what has most people wringing their hands about complying with the new law.

The good news is that no reporting action is required until the end of 2024 for existing legal entities. FinCEN is also offering an alternative way to provide this information. Individuals may electronically apply for a “FinCEN identifier.” This is a permanent, unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FinCEN. In the application, an individual must provide the same four pieces of personal information and image that reporting companies submit about beneficial owners and company applicants in BOI reports. After an individual applies, the individual will immediately receive a FinCEN identifier unique to that individual. Once a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report the identifier number in place of the otherwise required four pieces of personal information about the individual in BOI reports.

View Capital is researching the options that may be available to individuals with reporting requirements to engage service providers who may be available to perform this service. As we have more information to report, we’ll periodically provide further updates.

# Panorama

## IRS TARGETS HIGH-INCOME AUDITS

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As part of the 2022 Inflation Reduction Act (“IRA”) funding and a thorough review of enforcement efforts, the Internal Revenue Service (“IRS”) announced the start of a sweeping, historic effort to restore fairness in tax compliance by shifting more attention onto high-income earners, partnerships, large corporations and promoters abusing the nation's tax laws. That’s what many of the 87,000 new IRS agents you’ve heard about will be doing!

The effort will focus on adding more attention to wealthy individuals, partnerships and other high earners that have seen sharp drops in audit rates for these taxpayer segments during the past decade. The changes will be driven with the help of improved technology as well as Artificial Intelligence (“AI”) that will help IRS compliance teams better detect tax cheating, identify emerging compliance threats, and improve case selection tools to avoid burdening taxpayers with needless "no-change" audits.

The IRS claims it will ensure that audit rates will not increase for those earning less than \$400,000 a year, a key breakpoint in the Biden administration. In the High Wealth Initiative, the IRS will intensify work on taxpayers with taxable income above \$1 million that have more than \$250,000 in recognized unpaid tax debt. The IRS hopes to continue its earlier audit successes that collected \$38 million from more than 175 high-income earners. The IRS will abundantly allocate new Revenue Officers focusing on these high-end collection cases in FY 2024. The IRS is working to expand this effort, contacting about 1,600 taxpayers it has identified in this category that owe hundreds of millions of dollars in unpaid taxes.

Complex structures and tax issues present in large partnerships require a focused approach to best identify the highest risk issues to apply its resources accordingly. In 2021, the IRS launched the first stage of its Large Partnership Compliance (“LPC”) program with examinations of some of the largest and most complex partnership returns in the filing population. The IRS is now expanding the LPC program to additional large partnerships.

With the help of AI, the selection of these returns is the result of collaboration among experts in data science and tax enforcement, who have been working together to apply machine learning technology to identify potential compliance risk in the areas of partnership tax, general income tax and accounting, and international tax. These taxpayer segments historically have been subject to limited IRS examination coverage. By the end of October, the IRS will open examinations of 75 of the largest partnerships in the U.S. that represent a cross section of industries including hedge funds, real estate investment partnerships, publicly traded partnerships, large law firms and other industries. On average, these partnerships each have more than \$10 billion in assets.

# Panorama

**View Capital Advisors, LLC was founded in 2004 by its principals with the mission of providing sophisticated investment asset management and financial and estate planning to our U.S. and Non-U.S. clients.**

**We seek to bring wealth planning best practices and a wide range of non-proprietary solutions to our clients. We also conduct our own research and diligence on world markets and investment alternatives.**

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