The Corporate Transparency Act: What Companies with Trusts as Owners Need to Know

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The Corporate Transparency Act (CTA), newly effective in 2024, requires certain businesses to disclose information about their owners to the Financial Crimes Enforcement Network (FinCEN). For a brief overview of the CTA see Reinhart's October 2023 alert. The CTA was enacted as a part of an international effort to create transparency in business ownership and combat money laundering and tax evasion.

If subject to the CTA's reporting requirements, a business (the Reporting Company) is responsible for reporting the names and identifying information of all individuals who own 25 percent or more of the business, directly or indirectly, or who hold substantial control over the business. The CTA considers those individuals the "Beneficial Owners" of the Reporting Company. Exemptions from reporting are available to certain types of businesses, such as large operating companies, regulated entities, certain types of tax-exempt entities (e.g., 501(c) organizations), and inactive entities with no funds. However, most smaller entities, like LLCs, partnerships and other private, closely held businesses, are not exempt. See FinCEN's Small Business Compliance Guide for information about which business entities qualify as a Reporting Company and which are exempt from the reporting requirements.

A Reporting Company is required to report either: (1) each Beneficial Owner's name, date of birth, address, a unique identifying number (like a passport or driver's license number), and a photo image of the document associated with the identifying number; or (2) each Beneficial Owner's FinCEN Identifier (i.e., a unique identifying number that a Beneficial Owner may request from FinCEN).

Generally, a trust is not a Reporting Company in its own right, unless it is formed under a state statute that requires a filing with the state (e.g., a Delaware Statutory Trust). However, a trust is considered a Beneficial Owner of a Reporting Company when it owns 25 percent or more of the entity or has substantial control over it. In that case, providing the name of the trust is not sufficient to meet the CTA's reporting requirements. Rather, the CTA "looks through" the trust to identify key parties to the trust, whose information must be reported by the Reporting Company. This includes:

1. A trustee, trust protector, directing party or other individual with authority

to dispose of trust assets. For example, this includes a trustee with the power to sell an interest in the Reporting Company, transfer the interest to a beneficiary, or even abandon the interest.

2. A beneficiary who is the sole permissible recipient of trust income and principal. Importantly, this does not include multiple beneficiaries of a "pooled" trust, or contingent beneficiaries who do not have any current beneficial right to income or principal.

3. Any individual with the power to withdraw or direct the current disposition of substantially all of the trust assets. For example, this includes a beneficiary with a withdrawal right over all of the trust's assets, a grantor of a revocable trust who has the right to revoke the trust, or a grantor of an irrevocable trust with a substitution power.

4. Any individual with the power to exercise substantial control over the Reporting Company (e.g., the power to vote stock or authority regarding important decisions such as reorganization, major expenditures, compensation of senior officers, or amending governing documents).

5. Any individual whose ownership interests meet the 25 percent threshold by aggregating the individual's ownership interests in trust with any interests that the individual owns or controls directly or indirectly outside of the trust. For example, if an individual (a) owns 10 percent of the Reporting Company individually; and (b) is the sole income and principal beneficiary of a trust that owns 15 percent of a Reporting Company, then these percentages are aggregated to total 25 percent, which qualifies the individual as a Beneficial Owner whose information must be reported.

The individual trust parties must be reported in addition to any other Beneficial Owners outside of the trust that meet the ownership or control requirements. Therefore, when a trust is involved in the ownership or control of a Reporting Company, determining the business's Beneficial Owners will not only require review of its governing documents and ownership structure, but also the terms of the trust agreement and related trust documents.

Non-compliance with the CTA can result in significant penalties, including fines and even criminal charges for willful violations. Although the Reporting Company is ultimately responsible for filing any required reports, trust fiduciaries must be cognizant of how non compliance may affect the trust and its beneficiaries. Trust parties should carefully assess how the CTA impacts trust operations and consult with advisors and legal counsel to ensure compliance with the CTA's reporting requirements.

For general questions about the CTA, contact your Reinhart representative for assistance or for a referral to a member of our CTA Compliance Team: John Tokarz, Bob Henkle and Peter Soukenik. If you have questions or concerns regarding a trust's ownership or control over a business entity that is subject to the CTA's reporting requirements, please contact a member of our Trusts and Estates Practice or your Reinhart attorney.