Attention Businesses: FinCEN Wants Your Information

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The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") will require many businesses to report ownership and control information in 2024. Historically, federal law enforcement has lacked a comprehensive centralized database of ownership and control for companies conducting business in the U.S. The Corporate Transparency Act ("**CTA**") will take significant steps to build such a database through the implementation of the Business Information Reporting Rule (the "**BOI Reporting Rule**").

Reporting obligations with FinCEN will be mandatory and ongoing for "Reporting Companies," a term more fully descried below. While companies existing prior to January 1, 2024, will have the entire year to comply, Reporting Companies formed after that date will have short compliance deadlines to electronically file with FinCEN.

What is a Reporting Company?

The basic definition of "Reporting Company" is broad and includes both domestic and certain foreign companies. A "Domestic Reporting Company" is any entity created by the filing of a document with a secretary of state or similar office under the laws of a State or Indian Tribe. These are typically corporations and limited liability companies. A "Foreign Reporting Company" is any entity created outside of the U.S. that has registered to do business with a secretary of state or similar office.

Whose Information is Targeted in the Reporting?

Each Reporting Company will be required to electronically report information to FinCEN regarding two types of individuals: (1) those holding an ownership stake of at least 25% percent; and (2) those who can exert control over the Reporting Company. Individuals who exert control will include directors, governors, senior officers and managers, and less obvious control persons, such as those who have the power to elect directors.

Who is Exempt from Reporting?

The exemptions generally fall into three categories: (1) the highly regulated; (2) the tax exempt (non-profits and their supporting entities); and (3) the large company (as defined in the CTA). Highly regulated entities include banks, insurance companies, investment companies, and publicly traded companies. The large company exemption generally will only apply if a company has $5 million or more in sales reflected on its prior year tax return, not less than 20 full-time employees working in the U.S., and a domestic office location. Wholly owned subsidiaries of certain exempt companies are also exempt.

What are the Deadlines for Compliance?

Reporting Companies formed prior to January 1, 2024, must comply before January 1, 2025. Those formed on or after January 1, 2024, but before January 1, 2025, will be required to make their first filing within 90 days of formation. On and after January 1, 2025, the first filing deadline reverts to 30 days. Once reporting starts, each subsequent reportable event (e.g., election of new directors) must be reported to FinCEN within 30 days.

What are the Penalties for Non-compliance?

FinCEN can impose a penalty of $500 per day, up to $10,000, for non-compliance. The CTA also provides for criminal penalties for knowingly and willfully filing false information.

Conclusion

This article is intended to provide a general overview of the new rules. If you have questions about how to prepare your company for the CTA, please contact your Moss & Barnett attorney. Otherwise, we will be reaching out to our active clients in 2024 to help them navigate the requirements of the BOI Reporting Rule.

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