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TAX ALERT – February 23, 2021

US Congress Enacts Corporate Transparency Act Requiring Disclosure to US Treasury Department of Beneficial Owners of Corporations and Limited Liability Companies

On January 1, 2021, the United States ("**US**") Congress enacted the "**Corporate Transparency Act**" (the "**Act**"). The Act requires the disclosure of identifying information concerning beneficial owners of certain US corporations and limited liability companies. While the purpose of the Act is to combat terrorism, money laundering and serious tax fraud by requiring beneficial ownership disclosure, the Act's scope and impact will be far-reaching.

Scope of the Report

A "reporting corporation" must file a report with FinCEN, a branch of the US Treasury Department responsible for FBAR compliance, containing a list of the individuals who are the "beneficial owners" of the entity. The report must include for each such individual: (i) full legal name, (ii) date of birth, (iii) current residential or business street address, and (iv) the identifying number from a non-expired:

(a) US passport,
(b) State driver's license, or
(c) Personal identification card, or
(d) In the absence of (a)-(c), a non-expired passport issued by a foreign government.

In addition, FinCEN may issue special identifying numbers to individuals and entities to facilitate ongoing reporting.

Meaning of "Reporting Corporation"

A "reporting corporation" includes a corporation, limited liability company or similar entity that is:

(a) created by the filing of a document with a State, or
(b) formed under foreign country law and that is registered to do business in the US via the filing of a document with a State.

A reporting corporation would thus include a Delaware corporation or limited liability company (or a corporation or limited liability company organized in another State) as well as a foreign corporation registered to do business in any State.

The Act, however, excludes many types of entities, and their affiliates, that are regulated under US law (e.g., by the US SEC) and, therefore, already provide detailed information to the US government. Also excluded from reporting corporation status are significant operating US entities that:

(a) employ over 20 full-time, US based employees,
(b) have more than $5 million in gross receipts or sales per prior year's filed US tax return (the $5 million includes receipts of other entities the reporting corporation owns or operates through), and
(c) have a physical office in the US.

It remains to been seen whether the Regulations or subsequent changes to the law add further exclusions from the reporting corporation definition, given the broad sweep of the term "reporting corporation" vs. the specified goals of the Act. Based on the Act's definition, a reporting corporation would a include a Delaware corporation that merely owns investments (whether in the US or abroad) as well as a privately owned foreign corporation that has registered to do business in the US solely to avail itself of the US courts.

Meaning of "Beneficial Owner"

A "beneficial owner" means an individual who directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise:

a) "exercises substantial control" over the relevant entity, or
b) owns or controls not less than 25% of the ownership interests of such entity.

Excluded are minors (if their parents or guardians are reported); nominees, agents, etc.; and employees whose control over an entity derives solely from their employment status. Regulations are expected to interpret the meaning of the phrase "exercises substantial control."

Effective Date

FinCEN is given one year from the date of enactment to issue Regulations under the Act. From the effective date of the Regulations, new reporting corporations will be required to file their report with FinCEN at the time of their creation or registration, and pre-existing reporting corporations will have no more than two years to file their initial report with FinCEN. Reporting corporations will have one year to update their report if any of the information provided in their report to FinCEN has changed.

Sharing of Information

In furtherance of the purpose of the Act, FinCEN is allowed to share the reports with Federal regulators and Federal and State law enforcement agencies; Federal agencies on behalf of foreign courts and governmental bodies requesting assistance pursuant to US treaties; and, with the consent of the reporting corporation, financial institutions satisfying customer due diligence requirements.

Penalties

The penalties are steep for willful failure to file initial and updated reports or filing false reports. They include civil penalties of $500 per day that the violation continues or has not been remedied and fines of not more than $10,000 and imprisonment of not more than two years, or both.

Under a safe harbor, a person is not subject to civil or criminal penalty if such person has reason to believe that the report contains inaccurate information and, in accordance with the Regulations, submits a report containing corrected information, voluntarily and promptly but no later than 90 days after the person submitted the inaccurate report. The safe harbor is unavailable if a person submitted the inaccurate report for the purpose of evading the Act's requirements and had actual knowledge that any information contained in the report was inaccurate.

This content is for general information purposes only and does not constitute tax advice.

If you have any questions or would like additional information on the topics covered in this alert, please contact your engagement partner.

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New York
350 Fifth Avenue, 41st Floor
New York, NY 10118

Miami
1221 Brickell Avenue, Suite 1160
Miami, FL 33131

Roma
Via Po, 102
00198 Rome
Italy

Milano
Piazza Diaz, 5
20123 Milan
Italy

www.funaro.com