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Think Public and Large Companies Are Entirely Exempt From the Corporate Transparency Act? Think Again.



Key portions of the Corporate Transparency Act (CTA) will take effect on January 1, 2024, requiring an estimated 30 million "reporting companies" to disclose to the federal government information and documentation about the entities' beneficial owners and keep that information current.

[1] By broadly requiring entities to identify the individuals that own or control them and also giving the act some teeth—civil and criminal penalties may be imposed on anyone who willfully violates the CTA or causes another to violate the act—Congress intended for the CTA to help prevent bad actors from using the anonymity that is provided by corporate vehicles for illicit purposes.

Not all entities, however, will be required to report beneficial ownership information. Many large companies have presumed that they do not need to evaluate the CTA because they will be able to take advantage of the "large operating company" exemption (among other exemptions that may exclude them from reporting requirements). These companies often overlook that these exemptions are highly nuanced and typically apply on an entity-by-entity basis rather than to a group of affiliated companies. In many corporate families, there will be entities within an enterprise that do not qualify for an exemption and are subject to the CTA's beneficial ownership reporting requirements. Moreover, even if an exemption applies to an entity when the reporting obligations take effect, it may not in the future, in which case the newly nonexempt entity would be obligated to report beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), the bureau within the U.S. Department of the Treasury charged with enforcing the act. The bottom line is that every company needs to conduct an entity-by-entity analysis of the application of the CTA.

Given the fast-approaching effective date for these rules, large companies should evaluate now how the CTA may apply to the enterprise's existing corporate structure—and consider how future entities that may be formed will be evaluated with regard to CTA reporting as well. Importantly, entities formed before January 1, 2024, will have until January 1, 2025, to report. Any entities formed after the first of the coming year will have 90 days to file their reports in 2024 and 30 days to file reports and make required updates thereafter. For this reason, every

company will need to adopt risk-appropriate measures to document exemption decisions and monitor for future activities or events (including new entity formations) that trigger CTA reporting or updating obligations.

Overview of Reporting Obligations

In short, the CTA, as implemented via regulations, requires "reporting companies" to identify for FinCEN certain information and documentation about the reporting company's "beneficial owners":[\[2\]](#)

- The CTA's definition of a "reporting company" includes any domestic entity created by the filing of a document with a secretary of state or the tribal equivalent and any foreign entity registered to do business in the United States with a secretary of state or the tribal equivalent.
- A "beneficial owner" is any individual who, directly or indirectly, either exercises "substantial control" over a reporting company or owns or controls at least 25% of its ownership interests.

For each beneficial owner, the reporting company must provide their full legal name, date of birth, and current residential address. Additionally, they must provide a unique identifying number from an acceptable identification document (e.g., a driver's license or passport) and a copy of that document—or the individual's FinCEN identifier.[\[3\]](#)

The deadline for filing initial beneficial ownership reports with FinCEN depends on when the entity was formed or, in the case of foreign entities, first registered with a secretary of state (i.e., through a registration to do business):

- Reporting companies first formed or registered on or after January 1, 2024, will have 90 days after formation/registration to file an initial beneficial ownership report with FinCEN. Reporting companies formed and registered in subsequent years will have 30 days.
- Entities formed prior to 2024 will have until January 1, 2025, to report.

In addition to the initial reporting, reporting companies must report any changes to the information in the entity's CTA reports within 30 days of the change, including the loss or new application of any exemption to the reporting requirements. For instance, reporting companies must update the information on file with FinCEN if a beneficial owner's name or residential address changes.

Violations of the CTA reporting obligations can be met with penalties of \$500 per day for each day a violation is outstanding up to a maximum of \$10,000 and criminal penalties of up to two years' imprisonment. The CTA only penalizes willful violations, not negligent failures. But a willful violation could include circumstances involving "willful blindness" that lead to a failure to file or the filing of a beneficial ownership report with false or misleading information.

For a broader overview of the CTA, please see our [broader analysis](#).

Exemptions to Reporting Requirements

Not all entities are subject to the CTA's reporting requirements. The CTA provides 23 exemptions from the definition of a reporting company. For large enterprises, three exemptions are particularly relevant: (1) the large operating company exemption, (2) the public company exemption (a.k.a. the securities reporting exemption), and (3) the subsidiary exemption.

1. Large operating company exemption. The large operating company exemption covers entities that have sufficient employee headcount, operating presence, and revenue. An entity must meet all three criteria in order to

qualify for the large operating company exemption.

a. Number of employees. A large operating company must have more than 20 employees on a full-time basis in the United States. FinCEN borrows the definition of "full-time employee" from the Internal Revenue Service (IRS), defining it to mean anyone who works at least 30 hours per week or 130 hours per month. ***But the CTA does not permit companies to consolidate employee headcount across affiliated entities.*** Whether an entity employs more than 20 employees is determined on an entity-by-entity basis. Thus, for instance, parent companies cannot count employees of their subsidiaries, and sister companies cannot aggregate their employees.

Large enterprises will sometimes house their employees in one affiliated entity for administration of employee benefits and for tax purposes, then second some of these employees by contract to various entities within the corporate organization structure. There may also be dual employee arrangements that need to be considered. These arrangements should be evaluated closely to determine whether the entity can claim the "full-time employee in the U.S." based on the definition in the CTA rules, which defers to the common-law standard in the tax regulations. For consideration in these more ambiguous situations, some of the factors required by the tax regulations to be considered in making the "employee" determination include: (1) whether the entity for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished; (2) the right to discharge, which indicates that the person possessing that right is an employer rather than an employee; and (3) the furnishing of tools and of a place to work to the individual who performs the services, which are also characteristics of an employer. Finally, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if they have the right to do so. There are also specific tax regulations relating to full-time status that would be applicable to dual employee arrangements. Due to the ambiguities surrounding the application of this common-law standard and the number of factors to be applied, this may be an area for additional clarification from FinCEN through guidance or FAQs.

b. Operating presence. A large operating company must have an operating presence at a physical office within the United States, which the CTA defines as a physical location in the United States where an entity regularly conducts its business (1) that the entity owns or leases and (2) which is physically distinct from the place of business of any other unaffiliated entity.

c. Tax return showing \$5 million in gross receipts or sales. A large operating company must have filed in the previous year federal income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales—notably, unlike the employee headcount requirement, this revenue metric can be met through aggregating the returns of multiple entities if they file consolidated returns. This metric also includes gross receipts or sales from sources outside the United States.

The entity must have reported this greater-than-\$5 million amount as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or another applicable IRS form. Critically, an entity formed in 2024 will be unable to use the large operating company exemption even if it meets the employee and U.S. operating presence requirements because will not file a tax return until the following year. Once the return is filed in 2025, the reporting company can then file an updated report and claim the exemption.

2. Public company exemption. The CTA also provides an exemption for entities that are "issuer[s] of a class of securities registered under section 12 of the Securities Exchange Act of 1934" or "[r]equired to file supplementary and periodic information under section 15(d)" of that act. Functionally, this exemption covers entities that are colloquially referred to as U.S. public companies (i.e., entities that have publicly issued securities and are required to submit periodic reports to the U.S. Securities and Exchange Commission [SEC]). As noted below, this exemption will also apply to wholly owned subsidiaries of public companies. There is no

exemption in the CTA for foreign publicly traded companies registered to do business in the United States, but the large operating company exemption may be applicable if the requirements are met.

3. Subsidiary exemption. Importantly, the CTA also exempts subsidiaries with "ownership interests" that are "controlled or wholly owned, directly or indirectly," by one or more entities that are otherwise exempt under the CTA. This rule will exempt from reporting the direct and indirect wholly owned subsidiaries of any CTA exempt entity—including large operating companies and public companies—with the exception of subsidiaries of pooled investment vehicles, money services businesses/money transmitters, inactive entities, and entities assisting tax-exempt entities. Subsidiaries of these entities will have to report under the CTA or otherwise qualify for an exemption independently (i.e., as one of the 23 types of entities that are exempt from reporting).

Embedded within the text is an important limitation to the exemption's scope: it is unlikely to apply when the subsidiary is only partially owned by an exempt entity or exempt entities. While the exact contours of the "control" prong are unclear, the exemption is conceptually intended to capture only those situations where exempt entities wholly own the subsidiary or control "its ownership interests" (majority control over the board or operational decisions, for example, would seem unlikely to meet this requirement). Hopefully, FinCEN will provide clarity on the definition of "control" for purposes of this important exemption.

It also bears emphasizing that the subsidiary exemption is strictly applied to entities downstream in an ownership chain from the exempt entity: holding companies, sister companies, and other affiliates of exempt entities will not benefit from exemption unless they meet the criteria independently.

Acknowledging the burdens of reporting for complex corporate structures and desiring to avoid duplicative reporting, FinCEN has adopted a few key provisions that will ease the burden of reporting for affiliated companies.

First, where a reporting company is wholly or partially owned by an exempt entity (for example, a public company or a large operating company), the reporting company may include the names of the exempt entities in lieu of providing information regarding any individual beneficial owner when an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in the exempt entity. For example, where a reporting company is a partially owned subsidiary of a public or large operating company, it may not benefit from exemption, but it will not need to look through those entities to identify individual beneficial owners for purposes of its reporting; the reporting company will merely report the names of the exempt owners in its report to FinCEN. However, this will only satisfy the ownership prong of the "beneficial ownership" reporting requirements. The reporting company will still be required to report individuals who "substantially control" the entity, such as senior officers or members of the board of directors of the reporting company who hold certain control rights.

Second, where a reporting company is wholly or partially owned by another reporting company, the subsidiary reporting entity will be permitted to report the FinCEN identifier of their parent company rather than completing a duplicative report if the beneficial owners of the entities are the same. This will create significant efficiencies in complex corporate structures with many holding companies/special purpose vehicles insofar as updates can be maintained in a single CTA report filed by the parent entity. However, as with exempt entity owners, this will not alleviate the burden on the subsidiary reporting company to report any additional individuals required to be reported due to their "substantial control" of the entity to the extent that those individuals differ from those reported by the parent. Helpfully, CTA reports will be very streamlined filings, including only the basic, required information for each individual determined to be a "beneficial owner" under the rule, without reporting any information explaining the basis for or reasoning behind that determination. Thus, even if a parent reporting company identifies someone as a beneficial owner on the basis of a different role than would trigger reporting that person to the subsidiary reporting company, the reports will still be accurate as to both entities.

Takeaways

Large enterprises should carefully consider the potential application of the CTA on an entity-by-entity basis, even if the most prominent entities within an enterprise will be exempt from the act's reporting requirements.

Because the CTA's exemptions apply on an entity-by-entity basis, the fact that one entity within an enterprise is exempt does not necessarily mean that others within the larger corporate structure will similarly be exempt. Instances in which exemptions may not apply include:

- A holding company may still have reporting obligations under the CTA even if one of its subsidiaries qualifies for the large operating company exemption.
- If a joint venture is owned by an exempt entity (e.g., a public company) and a nonexempt entity, the joint venture would not qualify for the subsidiary exemption and would likely be a reporting company unless it qualified for another exemption.

In practice, subsidiary entities within the corporate organizational structure should be carefully evaluated to determine whether an exemption applies and, if not, whether a parent company FinCEN identifier may be reported in lieu of beneficial ownership information for the subsidiary. And in evaluating the application of the large operating company exemption, dual employee or employee secondment arrangements will need to be closely evaluated under the rules to determine which entity effectively controls the employee.

Additionally, even if an entity qualifies for an exemption when the regulations take effect, it may not in the future. If the exemption no longer applies, the previously exempt entity would become a reporting company and be required to submit beneficial ownership information to the government within 30 days of no longer meeting the criteria for an exemption.

In the near term, given the benefits available through the subsidiary exemption as well as subsidiary reporting efficiencies, large enterprises should consider adopting a policy that addresses new entity formations that maximize the advantages of CTA exemptions, and streamline CTA reporting through policies regarding corporate administration and potential shifts as to the individuals within the organization who hold reportable roles in various entities. In the longer term, companies may further consider whether there are opportunities to reevaluate their corporate organization structure to maximize reporting efficiencies and minimize the burden of CTA reporting.

Larger corporate organization structures and enterprises administering many entities should consider adopting a process for inventorying, evaluating, and gathering required information for all affiliated entities under their administration that were formed prior to January 1, 2024, in order to meet the January 1, 2025, reporting deadline. Beyond analysis as to reporting obligations and potential restructuring, companies should consider adopting a CTA compliance policy that sets out fundamental aspects of the company's decision-making around CTA reporting. This policy should document enterprisewide decisions resolving critical remaining ambiguities that affect reporting, designate a responsible individual and a process for documenting and periodically reevaluating exemption decisions, and discuss how the company will monitor changes to beneficial owners that may require updates to CTA reports (including changes to the application of CTA exemptions) within relatively short timeframes. Ambiguities and questions should be brought to the attention of general counsel or outside counsel. In the event of a misstep or FinCEN inquiry down the road, an organizationwide policy of this nature, along with clear documentation of its implementation and consistent application, will be a powerful tool in demonstrating good faith in reporting and rebutting any future claims that the company may have willfully failed to comply with the CTA's reporting requirements.

We are continuing to closely monitor the rollout of the CTA. We will alert you to future updates on reporting and monitoring obligations, as well as further guidance under the CTA.

Endnotes

[1] Fin. Crimes Enf't Network, [*Program Summary by Budget Activity – FY 2024*](#).

[2] Entities created on or after January 1, 2024, also have to report information about their "company applicants."

[3] FinCEN will issue individuals a unique identifier if the individual directly provides FinCEN with the same information and documentation that a reporting company would otherwise have to provide.

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