

October 7, 2022

October Private Client Update

Estate Planning Inflation Adjustments for 2023

Following a year of increased inflation, the estate and gift tax exemption, the annual gift tax exclusion and other statutory thresholds are expected to increase significantly in 2023. The estimated inflation adjustments are as follows:

- The basic exclusion amount, which is the amount exempt from the federal estate and gift tax as well as the amount of exemption available from the generation-skipping transfer tax, will increase to \$12,920,000 in 2023. This is a \$860,000 increase from 2022.
- The gift tax annual exclusion amount will be \$17,000 in 2023, up \$1,000 from 2022.
- The annual exclusion for gifts to non-U.S. citizen spouses will increase to \$175,000, up \$11,000 from 2022. Other international-related inflation adjustments include the increase to \$18,567 of the value of foreign gifts that must be reported by U.S. persons who receive them; and the increase to \$190,000 of the 5-year average annual income tax that triggers “covered expatriate” status for purposes of determining whether an exit tax applies upon expatriation from the United States.

These estimates are based on the Consumer Price Index data published by the Bureau of Labor Statistics and are expected to become official in the coming weeks.

Final Regulations Issued under the Corporate Transparency Act

The Corporate Transparency Act (the CTA) became law in January 2021, as part of the National Defense Authorization Act. The CTA will require certain companies (“**Reporting Companies**”) to report their beneficial owners and other information to the Financial Crimes Enforcement Network (“**FinCEN**”), a bureau of the Treasury Department. The CTA was enacted primarily to combat money laundering, tax fraud and other illicit activities, and to bring the United States in compliance with international standards that share that goal.

“The reporting obligations under the CTA will affect any estate planning structure that includes family partnerships, LLCs, corporations or any other entity created by the filing of a document with a secretary of state (or similar office). The identity of any individual who owns or controls these types of entities may become subject to disclosure. Similarly, if a trust owns an interest in a reportable entity, the identity of the grantor, the trustees and the beneficiaries may also be reportable. Because these reporting requirements aim to collect and maintain a record of the reportable entities’ beneficial owners over time, any transaction that results in a change in the reportable entity’s beneficial ownership—such as gifts, sales, in-kind distributions and testamentary transfers—may also trigger reporting obligations under the CTA.”

In our [January Alert](#), we summarized proposed regulations issued by FinCEN on December 8, 2021. On September 30, 2022 FinCEN issued final regulations.

Under the final regulations, the reporting requirements under the CTA will go into effect starting **January 1, 2024**. In anticipation of that date, individuals, trustees and practitioners should become familiar with the CTA, consider how it will affect them and arrange for compliance once it comes into effect.

Below is a summary of the CTA's reporting requirements under the final regulations:

- **What entities are subject to the new reporting obligations?** The CTA imposes reporting obligations on so-called "Reporting Companies." The CTA defines a Reporting Company as any corporation, LLC or other similar entity that is either (i) created by the filing of a document with a U.S. State or Indian Tribe (a "**Domestic Reporting Company**"), or (ii) formed in a foreign country but registered to do business in the United States by filing of a document with a U.S. State or Indian Tribe (a "**Foreign Reporting Company**"). Consistent with the proposed regulations, the final regulations expand this definition to include any entity that meets either criteria, regardless of whether it is "similar" to a corporation or LLC.

The final regulations do not change significantly the list of entities that are exempt from the CTA reporting requirements. There are twenty-three exceptions from the definition of Reporting Company, which capture banks, publicly traded companies, broker-dealers, and several other entities that are deemed to be subject to sufficient regulatory oversight. The final regulations did not expand this list to include the type of unregulated holding company that is commonly used for estate planning purposes, which is therefore squarely within the reporting scope of the CTA.

- **What must be reported by a Reporting Company?** Under the CTA, a Reporting Company will have to report information about itself, its "Beneficial Owners" and its "Applicants." Under the final regulations, the reportable information will generally include:
 - **For the Reporting Company:** Full name, address, jurisdiction of formation (and registration) and U.S. Taxpayer Identification Number ("TIN"), or if the company is foreign and has no U.S. TIN, a tax identification number issued by a foreign jurisdiction. The final regulations drop DUNS Numbers and LEIs as acceptable alternatives to U.S. TINs. The final regulations also clarify that the reportable address is the address of the company's principal place of business in the United States, or if no such place exists, the primary location in the United States where the company conducts business.
 - **For each Beneficial Owner:** Full name, date of birth, residential address and a unique identifying number (e.g., passport number, driver's license number) and the image of a document containing the identifying number.
 - **For each Applicant:** The same information as for Beneficial Owners, except that certain Applicants may use a business address instead of a residential address. The final regulations create a major exception that exempts Applicant information from being reportable if the Reporting Company was created or registered before January 1, 2024.

The final regulations allow individuals to obtain a FinCEN identifier number that Reporting Companies may report in lieu of the information listed above. To obtain a FinCEN identifier number, the individual must submit the same information about that individual that would otherwise be reportable by a Reporting Company. Owing to concerns of incomplete or misleading reports, the final regulations (unlike the proposed regulations) do not allow entities to use a FinCEN identifier number, at least for the time being, though they have reserved this issue for future regulations.

- **Who is a Beneficial Owner?**

A Beneficial Owner of a Reporting Company is an individual who, directly or indirectly, either:

- Exercises substantial control over the Reporting Company, or
- Owns or controls at least 25% of the ownership interests of the Reporting Company.

The final regulations largely mirror the definition of “substantial control” in the proposed regulations. Substantial control is defined to include serving as a senior officer, authority over appointment or removal of any senior officer and direction or substantial influence over important decisions affecting the Reporting Company. The final regulations clarify that indirect control over a Reporting Company includes control exercised as a trustee of a trust or similar arrangement that in turn exercises control over a Reporting Company.

The final regulations include extensive rules to define “ownership interests” and determine whether the 25% threshold is met. Expanding on the proposed regulations, the final regulations include specific rules to calculate the ownership threshold with respect to a Reporting Company that issues both capital and profit interests or multiple classes of ownership interests.

If an interest in a Reporting Company is owned by a trust, any trustee with the power to dispose of trust assets is deemed to own the trust’s interest in the Reporting Company. A trust beneficiary will also be attributed ownership if he or she is the sole beneficiary or has the power to withdraw substantially all trust assets. Finally, a trust’s settlor is treated as an owner of the trust’s interest in a Reporting Company if he or she may revoke or withdraw the trust assets, whether under the terms of the instrument, some other agreement or through ownership in one or more entities.

- **Who is an Applicant?** Generally, an Applicant is anyone who directly files the document that creates a Reporting Company or, in the case of foreign companies, anyone who directly files the document that first registers the foreign company in a State or Indian Tribe. The final regulations clarify that there can be multiple Applicants, and that the term Applicant includes not only the individual who directly files the relevant document, but also any individual who is primarily responsible for directing or controlling the filing.
- **What are the penalties for violating the CTA?** Penalties for willful reporting violations include civil monetary penalties of up to \$500 for each day the violation continues, criminal fines of up to \$10,000 and up to 2-year imprisonment.
- **When will the reporting obligations under the CTA come into effect?**
 - **Pre-existing entities.**
 - **Any Domestic Reporting Company created before January 1, 2024** will have to submit a report to FinCEN no later than January 1, 2025.
 - **Any entity that became a Foreign Reporting Company before January 1, 2024** will have to submit a report to FinCEN no later than January 1, 2025.
 - **New (or newly registered) entities.**

- **Any Domestic Reporting Company created on or after January 1, 2024** will have to submit a report to FinCEN within 30 days from the earlier of (A) the date the entity receives notice that it was created and (B) the date the secretary of state (or similar office) first provides public notice of the entity's creation (e.g., through a public registry).
- Similarly, **any entity that becomes a Foreign Reporting Company on or after January 1, 2024** must report within 30 days from the earlier of (A) the date on which it receives notice that it has been registered in a state, and (B) the date such registration becomes public.

The final regulations therefore extend the period for compliance for Reporting Companies from 14 days (as provided in the proposed regulations) to 30 days.

In addition, the following reports must also be filed starting January 1, 2024:

- **Loss of exempt status reports.** Reporting Companies that are no longer exempt from the CTA's requirements will have to file a report within 30 days from the loss of exempt status.
- **Updated reports.** Updated reports to reflect any changes in reportable information must be filed within 30 days from the date of the change. Because any change in beneficial ownership triggers the requirement to file an updated report, any gift of an interest in a Reporting Company will likely trigger a reporting obligation. Other, more specific reportable changes include the death of a beneficial owner, a beneficial owner's reaching the age of majority, and a change in the information in a previously submitted identifying document (e.g., passport, driver's license).
- **Corrected reports.** Entities that filed an inaccurate report that remains inaccurate have to file a corrected report within 30 days of becoming aware or having reason to know the original report was inaccurate.

The main change from the proposed regulations is that, under the final regulations, companies will have 30 days, rather than 14 days, to file updated reports and corrected reports.