

# Corporate Transparency Act Mini-Update - The Obvious Exemptions May Not Be So Obvious

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I am taking a short break between the third and fourth installment of my multi-part series on Subchapter S. Before I publish the fourth installment on that topic, my colleague Steven Nofziger and I want to alert our readers to some recent developments relative to the Corporate Transparency Act ("**CTA**").

## **CTA**

As [previously reported](#), the CTA is a new federal law that requires most U.S.-based companies, including corporations, partnerships and limited liability companies, to report information regarding their "beneficial owners" to the federal government through the Financial Crimes Enforcement Network ("**FinCEN**") and a new FinCEN IT system known as the Beneficial Ownership Secure System ("**BOSS**"). The intent of the CTA and the reporting to FinCEN is to combat money laundering, tax fraud and other illegal activities.

## **Exemptions**

The CTA contains 23 exemptions from its beneficial ownership reporting requirements. To help educate the public about the CTA and these exemptions, FinCEN published a "[BOI Small Entity Compliance Guide](#)" ("**Compliance Guide**"). It has also published some [helpful FAQs](#).

The FAQs and the Compliance Guide provide a substantial amount of detail about the CTA, using a question-and-answer format. One section of the Compliance Guide that many companies will want to carefully review is Section 1.2, which starts on page 4 - "Is my company exempt from the reporting requirements?" This part of the Compliance Guide walks readers through each of the 23 exemptions in a "yes" or "no" check box format.

Many of the exemptions are for specific types of businesses that are regulated or required to be registered under other federal laws. For example:

- Banks are exempt if they meet the definition of a "bank" under the specific sections of any of the Federal Deposit Insurance Act, the Investment Company Act of 1940 or the investment Advisers Act of 1940.

- Credit unions are exempt if they meet the definition of either a "Federal credit union" **or** a "State credit union" under the Federal Credit Union Act.
- Securities broker/dealers are exempt if: (1) the company is a "broker" or "dealer" within the meaning of the Securities Exchange Act of 1934 **and** (2) the company is registered under section 15 of the Securities Exchange Act of 1934.

### **Things May Not Be What They Appear to Be / Accounting Firms Be Aware**

Caution is warranted, as some of the exemptions described briefly in the CTA may be narrower than you would think, such that business entities that might, on the surface, appear to qualify for an exemption, will not actually qualify.

For example, accounting firms are listed under Exemption #15 in the CTA. However, the Compliance Guide states that only public accounting firms that are registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002 qualify for this exemption of the CTA. All other accounting firms need to make the required beneficial ownership reporting unless they otherwise qualify under another exemption (such as the Large Operating Company Exemption discussed below).

### **Large Operating Company Exemption**

The exemption likely to be utilized the most by businesses is the "Large Operating Company Exemption" (Exemption #21 in the CTA). To qualify for this exemption, a company is required to meet all of the following six criteria:

- The company employs more than 20 full-time employees, based on the definition of "employee" under the Affordable Care Act (i.e., employed an average of 30 hours of service per week during a calendar month).
- More than 20 full-time employees are employed in the United States (i.e., perform their jobs in the United States).
- The company has an operating presence at a physical office in the United States by (a) regularly conducting business at such location, (b) such location is owned or leased by the company and (c) such location is physically distinct from the place of business of any other unaffiliated entity.
- The company filed a U.S. federal income tax return for the prior year indicating more than \$5 million of gross receipts.
- The company reported such gross receipts (net of returns and allowances) on IRS Form 1120, Form 1120-S, Form 1065 or other applicable tax return.
- When gross receipts from sources outside the United States (as determined under federal income tax principles) are excluded, the amount of gross revenue is still greater than \$5 million.

### **Conclusion**

All companies and their advisers should carefully review the FAQs and Compliance Guide as the exemptions set forth in the CTA may not apply. The exemptions, once examined, considering the FAQs and the Compliance Guide, may not be precisely what you thought them to be. Caution is advised as you navigate through the twists and turns of the CTA.

Special thanks to Steven Nofziger for helping me illuminate these nuances of the CTA.

My next blog post will be the fourth installment of my multi-part series on Subchapter S. Stay tuned!

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