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CORPORATE TRANSPARENCY ACT

What to know about the beneficial ownership reporting deadline

Is your law firm a corporation or a limited liability company? If it is either of these, get ready for new federal requirements regarding the reporting of beneficial ownership information (BOI) about those who directly or indirectly control a company that took effect on January 1, 2024. With the reporting deadline for most businesses quickly approaching, you need to brush up on the rules or risk civil and criminal penalties.

WHAT IS REQUIRED?

The BOI requirements are part of 2021's Corporate Transparency Act. According to the U.S. Treasury Department, they're intended to make it more difficult for "bad actors" to hide or benefit from ill-gotten gains through shell companies or other opaque ownership structures.

Companies covered by the requirements are referred to as "reporting companies." Such businesses must report certain identifying information about their beneficial owners.

Beneficial owners are natural persons who either directly or indirectly 1) exercise substantial control over a reporting company, or 2) own or control at least 25% of a reporting company's ownership interests. Individuals who exercise substantial control include senior officers, important decision-makers, and those with authority to appoint or remove certain officers or a majority of the company's governing body.

For each beneficial owner, a reporting company must provide the individual's:

- Name,
- Date of birth,
- Residential address, and
- An identifying number from an acceptable identification document, such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of the identification document.

The reporting company must also submit an image of the identification document.

Note: Beneficial owners can obtain unique "FinCEN identifiers" after providing certain information. Reporting companies then can submit an owner's identifier instead of the otherwise required personal information, saving time and resources.

The information will be reported online to FinCEN and stored in a secure, nonpublic database. Access generally will be restricted to federal, state, local and tribal officials, as well as certain foreign officials, for authorized activities related to national security, intelligence and law enforcement.

FEDERAL COURT HALTS REQUIREMENT — FOR MINORITY OF BUSINESSES

The beneficial ownership information (BOI) reporting requirements have already been challenged by the National Small Business Association (NSBA), which sued to block them. In March 2024, a federal court ruled that the Corporate Transparency Act (CTA) exceeds the constitutional limits on Congress's power. It enjoined the U.S. Department of Treasury and FinCEN from enforcing the act against the plaintiffs.

The government is appealing, and FinCEN has indicated that it will continue implementing the CTA while the litigation is ongoing. For now, only the individuals and entities subject to the court's order won't be required to comply with the law. The NSBA claims to have more than 65,000 members, but that's a small portion of the businesses subject to the law. Most business owners should plan on complying with the BOI reporting requirements until the courts issue a definitive decision.

While annual reporting isn't required, you must update your filing with any changes to the required information you've previously reported about your company or its beneficial owners. Updated reports are due no later than 30 days after the date of the change.

WHICH BUSINESSES MUST REPORT?

Your law firm generally will need to report information on its beneficial owners if it's a corporation, limited liability company, or was otherwise created in the United States by filing a document with a secretary of state or any similar office under the laws of a state or Indian tribe. Foreign companies registered to do business in any state also are subject to the requirements.

Almost two dozen types of entities are exempt from reporting, though. These are mainly organizations for which the government already has access to ownership information. Exempt entities include publicly traded companies meeting specified requirements, many nonprofits and certain large operating companies. The large operating company exemption requires that the entity itself employed more than 20 full-time employees in the United States and reported more than $5 million in gross receipts on its previous year's tax return.

WHAT ARE THE POTENTIAL PENALTIES?

Willful violations of the BOI reporting requirements can trigger civil penalties of up to $500 for each day that the violation continues (adjusted annually for inflation). A person who willfully violates the BOI reporting requirements also may face criminal penalties of up to two years imprisonment and a fine of up to $10,000.

Potential violations include willfully:

- Failing to file a BOI report,
- Filing false BOI, or
- Failing to correct or update previously reported BOI.

Both individuals and corporate entities can be held liable for willful violations. This can include an individual who files false information with FinCEN and anyone who willfully provides the filer with false information to report.

ACT NOW

If your firm was created before 2024, your reporting deadline is January 1, 2025; businesses created this year generally must report within 90 calendar days of creation. If you haven't yet collected and filed the requisite information, get started now. •

Out of office

MAKING A HYBRID WORK ENVIRONMENT WORK FOR YOU

The COVID-19 pandemic broke the barrier to remote work for many lawyers and staff. While some firms have returned to the office, others have continued with remote work in some form. Here are some best practices to make or keep your hybrid work environment successful.

WORKING ADVANTAGES

Most firms that go hybrid allow their attorneys, and sometimes staff, to split their time between remote and in-office work. The percentages vary by firm, but the trend is to allow people to work from home 20% to 50% of the time.

The advantages are numerous. To begin with, top-level attorneys and support staff increasingly demand such arrangements. Remote work means firms can more easily recruit people in other cities or states, too.

The absence of office disruptions can lead to higher levels of concentration for remote workers.

Some firms have experienced a boost in performance from veteran and new attorneys working remotely. The absence of office disruptions can lead to higher levels of concentration for remote workers, and they're happier without the stress of commuting.

Fewer workers in the office every day usually shrinks the real estate footprint required. Expenses related to overhead, business meals and travel also drop.

Professional development can benefit as well. After all, it's easier and less expensive for associates to participate in virtual depositions and client meetings than in-person ones.

FINDING THE RIGHT FIT

Remote work isn't right for everyone. Many remote workers struggle with the isolation and lack of in-person supervision. Moreover, younger attorneys may find it hard to sustain mentor relationships, which could hinder their advancement. To mitigate this risk, firms can designate one or two days per week as in-office days when everyone must come in. Work on those days should focus on collaboration and training, rather than more solitary work that can be performed remotely.

Leaders may need training on how to manage in the new environment. Associates, in turn, should receive coaching on how to create and nurture vital relationships with higher-ups and form appropriate work habits to avoid the pitfalls of remote work. Knowledge management systems can help them learn about such matters as the billing system and other essential software and tools.

DESIGNING OFFICE SPACE

Employing hybrid workers allows for changes in office design. The main offices of hybrid firms will be used more for interacting with other staff than working alone at a desk.

Consider shifting from a layout where people are holed up in their separate offices to a more open workspace with greater opportunities for casual exchanges. Likewise, you might set up "project rooms" for team collaboration instead of just dedicated workspace for individuals.

If you'll be reducing your office space, consider "hoteling" systems. These allow staff to schedule the use of workspace for when they're in the office.

CULTIVATING RESPECT

Hybrid work arrangements can generate resistance, resentment, confusion and controversy. For example, in-office workers may believe (often wrongly, according to studies) that their remote counterparts aren't working as hard. And new employees may find it difficult to form connections with their colleagues.

Firm leaders must devote some forethought to how they can foster bonds to cultivate and maintain the culture they want. Formal firm- or practice-wide team-building initiatives can help bring your staff together.

IMPLEMENTING CYBERSECURITY

The move to hybrid work environments comes with mounting cyber risks spread out over your main office and numerous remote offices. Budget for real-time threat monitoring on all devices used in and out of the office.

Require remote workers to update software applications on a timely basis (including non-work apps used on the same device as work apps). Finally, provide employees at all levels with ongoing training to identify and avoid phishing schemes.

MAKING ADJUSTMENTS

One firm's version of a hybrid work environment may not work for another firm. It may take some trial and error to get the right fit for you. We can help you review your needs and implement a winning system. •

ERC update: How should you proceed?

The IRS's employee retention credit (ERC), created during the COVID-19 pandemic, seemed to offer a lucrative opportunity for many employers. That's certainly the impression that the many promoters that sprung up in response presented. But the IRS has discovered that a large percentage of the claims are invalid. Here's what you need to know if your law firm made a claim.

ERC'S CHECKERED HISTORY

The ERC is a refundable tax credit targeted at businesses that 1) continued paying their employees when they were shut down due to the pandemic in 2020 or 2021, or 2) suffered significant drops in gross receipts from March 13, 2020, to December 31, 2021. The maximum per-employee credit was $5,000 for 2020 and $7,000 per quarter for the first three quarters of 2021 — a total of $26,000 for each retained employee.

The requirements for the credit are strict, though, something that promoters often downplayed. As a result, many claimants are at risk of liability for repayment, penalties and interest, as well as a domino-effect of other tax problems.

Recently, the agency looked at over a million ERC claims representing more than $86 million. It found that 10% to 20% of the claims showed clear signs of being erroneous, and another 60% to 70% demonstrated an unacceptable level of risk. The agency announced that tens of thousands of the

erroneous claims would be denied, and those with an unacceptable risk would undergo further analysis.

In addition, the IRS's review of 2020 claims revealed more than 22,000 improper claims, leading to $572 million in assessments against employers. The numbers could skyrocket when the agency reviews 2021 claims, as the maximum amount that year was $21,000.

NEXT STEPS FOR EMPLOYERS

Over a million ERC claims remain unprocessed as the IRS closely scrutinizes them. Not surprisingly, some law firms that were confident in the legitimacy of their claims when filed may now be less certain. Fortunately, for employers that overclaimed the ERC and now want to amend or correct the amount, the IRS is providing some options:

ERC Withdrawal Program. If your firm hasn't yet received the ERC, you can take advantage of the ERC Withdrawal Program. It's available to eligible employers that filed a claim but haven't received, cashed or deposited a refund. Your firm is eligible if it:

- Made the claim on an adjusted employment tax return (IRS Forms 941-X, 943-X, 944-X, CT-1X),
- Filed the adjusted return solely to claim the ERC, with no other adjustment, and
- Seeks to withdraw the entire amount of your ERC claim.

The IRS will treat withdrawn claims as if they had never been filed, and no interest or penalties will apply.

ERC Voluntary Disclosure Program (VDP). The re-opened VDP, which allows taxpayers to self-report ERC claims for tax year 2021 that they think might be improper, will run through November 22, 2024. Businesses using the VDP must repay 85% of the credit they received, and the agency will waive any penalties, interest and future audits.

Participating employers were required to pay only 80% of the credit received, with no penalties or underpayment interest. They weren't required to repay any interest on an ERC refund or amend their income tax returns to reduce wage expense, and the 20% reduction wasn't treated as taxable income. In addition, the IRS won't audit the credit on employment tax returns for the tax periods covered by the closing agreement. Notably, the IRS has indicated that the terms of a reopened VDP probably won't be as favorable for employers.

For employers that overclaimed the ERC and now want to amend or correct the amount, the IRS is providing some options.

DON'T GO IT ALONE

In virtually all its announcements and statements regarding ERC issues, the IRS has urged taxpayers to work with trusted tax professionals who understand the complex rules. We can help your firm review your claims and choose next steps. •

When to consider a nonequity partnership option

Is your firm looking to attract lateral hires or retain and reward high-achieving associates, but are intimidated by costs? If so, consider adding a nonequity partnership option.

THE PROS …

A nonequity partnership tier allows firms to retain strong attorneys who aren't necessarily effective rainmakers. It's especially appealing when such attorneys practice in lucrative niche areas.

The title conveys prestige without increasing the number of partners entitled to earnings, complicating governance or requiring capital. And firms can raise these attorneys' billing rates, thus increasing earnings.

Nonequity partners can lead teams and manage portfolios independently. Clients benefit from their experience and expertise, and equity partners have more time to expand their practices.

… AND THE CONS

Nonequity partnerships aren't without their downsides. For example, if a firm isn't careful, it can undermine profitability, because nonequity partners typically work fewer hours than equity partners and associates, despite the pay increase that comes with the title. Firms may decide to provide less frequent pay increases and incorporate performance-based variable pay.

A nonequity partnership tier risks collecting good, but not particularly talented, attorneys. To avoid this outcome, incorporate an annual rating system based on factors such as skills, productivity and experience.

Those who consistently rank lowest require some type of action, most likely an exit strategy. This should help keep a lid on the number of nonequity partners while simultaneously raising the group's performance levels as a whole.

SUCCESSFUL ODDS

If your firm decides to proceed with a nonequity partnership tier, consider the following to increase the odds of success:

Create some fanfare. Issue press releases and send announcements about the promotion to clients, other attorneys, and the new partner's friends and family. List nonequity partners on the firm website, letterhead and other marketing materials. You also can give a new nonequity partner some additional fringe benefits, such as life insurance, a firm credit card or a club membership.

Determine nonequity partners' role in governance. Consider sharing at least some financial information. Let them attend some partnership meetings and allow input on management decisions as nonvoting partners. Assign them to firm committees and base part of their compensation on firm performance.

Keep equity partnership the goal. An equity partnership must remain distinct and ultimately more desirable. You want attorneys throughout the firm to continue to strive, rather than set their eyes lower, settling for nonequity partnership for the long term.

CONTEMPLATE CAREFULLY

Deciding to implement a tier for nonequity partners isn't for all law firms. If you decide it's right for your firm, proceed with caution. •

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