Navigating the Corporate Transparency Act

Practical Tips and Considerations

1. **Double check to see if you qualify for an exemption**
   - The broadest exemption is the Large Operating Company exemption. To qualify, the entity must:
     - Employ more than 20 full time employees in the United States;
     - Have a physical office/presence in the Untied States where it regularly conducts business, and;
     - Have filed a federal income tax or information return demonstrating more than $5,000,000 in gross receipts or sales.
   - A total of 23 exemptions exist and cover banks, certain utilities, tax-exempt entities, and others (see question C.2 on FinCEN's FAQ for more)

2. **Consider getting FinCEN IDs for beneficial owners**
   - Reduces processing/inputting burden – only need to input beneficial owner's information once.
   - Minimizes the beneficial owner's footprint in the FinCEN database.
   - Reduces complexity and reporting burden if beneficial owner information changes.

3. **Use a passport as your identifying document**
   - Passports last for 10 years instead of 3 to 5 years for drivers licenses, thus reducing the BOI updating requirement (document on file with FinCEN has to be "non-expired").
   - Passport has less personal information on it.

4. **When it comes time to file, save your work**
   - The FinCEN platform does not email a copy of your submission, or any of the information submitted (it essentially goes into a "black box")
   - Take screenshots and save them as you complete the filing form, as well as of the receipt once the submission is completed
   - These records are important – again, there is no way for filers to independently access the FinCEN database to check if the information submitted is accurate

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5. **Review and reference the materials provided by FinCEN**
    - Beneficial Ownership Information Reporting

6. **Tax IDs / EINs for pass-throughs are complicated**
    - Some who have submitted reporting company reports for disregarded entities indicate that they have been required to obtain a unique EIN for the disregarded entity in order to complete the reporting company filing.
    - This can arise if, for example, the entity does not have its own EIN and instead uses the EIN of a parent entity

7. **When in doubt, seek advice from counsel**
    - The regulations and guidance provided by FinCEN are voluminous and complex.
    - Don't assume that because you are the sole owner of your business that you are the only beneficial owner. The definition is broad and there is considerable grey area.

8. **Don't expect much clarification from FinCEN**
    - While FinCEN offers an opportunity to submit questions for their review, our experience is that FinCEN does not get granular in its responses.
    - FinCEN's direct responses are often limited to "consult the guidance"
    - The agency's FAQs remain the best source of information, and are updated regularly

9. **In general, it's best to err on the side of caution**
    - If you are uncertain about whether your entity is a "reporting company" or an individual is a "beneficial owner" or "applicant", it's better to report than not to report. The consequences of underreporting can be severe – felony penalties, i.e., up to two years in prison can apply.

10. **Existing entities should wait until the end of the year to file**
    - Between Congress and the courts, there are multiple opportunities to still kill this statute for good. Entities formed before the start of this year have until the end of 2024 to file – there's very little to gain from filing your initial report early.
    - But, organize now. Get all of your reporting company and BOI information organized and vetted now.

11. **Establish internal compliance systems**
    - Half the battle of CTA compliance will be information management. You will have many levels of personal information for both reporting companies and beneficial owners.
    - When filing, you will need to double and triple check your FinCEN reporting forms to make sure the information is accurate and complete. A typo might make you a felon!

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