

ALERTS

Corporate Transparency Act Update: FinCEN Issues Guidance for Reporting Companies That Are Disregarded Entities for US Tax Purposes

July 31, 2024

On July 24, 2024, the US Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") issued updates to its Frequently Asked Questions ("FAQs") [1] regarding the beneficial ownership information ("BOI") reporting requirements of the Corporate Transparency Act (collectively, with its implementing regulations, the "CTA").[2] These FAQs provide (i) clarity on the type of taxpayer identification number ("TIN") information required to be reported by an entity that is disregarded as an entity that is separate from its sole tax owner for US federal tax purposes ("DRE") and (ii) relief to certain types of entities relating to this TIN reporting obligation.

Background and Overview

The CTA requires certain legal entities formed or registered to do business in the United States (each, a "Reporting Company") to file beneficial ownership information reports ("BOI Reports") with FinCEN. Such BOI Reports must include a TIN for each Reporting Company.

Earlier in 2024 certain Reporting Companies classified as DREs that attempted to file their BOI Reports were rejected by the FinCEN system because the system requires a unique TIN for each Reporting Company and these DREs either left the TIN blank or included the TIN of another entity. This FinCEN system requirement is inconsistent with the rules of

the Internal Revenue Service (“IRS”), which generally do not require an entity without US-based employees to obtain a separate TIN if it is a DRE*.

**A DRE is an entity that is disregarded as separate from its regarded owner for US federal tax purposes and must use its regarded owner’s TIN for all US federal income tax purposes, including information returns and reporting related to income tax. While a DRE may, or may be required to, obtain its own TIN – for example, if needed for employment or excise tax purposes, to file certain IRS forms and elections, or for banking or state law purposes – a DRE generally is not otherwise required to have a TIN for US federal tax purposes.*

Guidance from FinCEN

FinCEN’s FAQ explains that a DRE that is a Reporting Company must provide one of the following types of TINs (each, a “US TIN”) on its BOI Report if it has been issued a TIN: (1) an Employer Identification Number (“EIN”); (2) a Social Security Number (“SSN”); or (3) an Individual Taxpayer Identification Number (“ITIN”). However, consistent with IRS rules regarding the use of TINs, FinCEN explains that different types of tax identification numbers may be reported for DREs under different circumstances:

- If the DRE has its own EIN, it may report that EIN as its TIN. If the DRE does not have an EIN, it is not required to obtain one to meet its BOI reporting requirements so long as it can instead provide another type of US TIN or, if a foreign Reporting Company has not been issued a US TIN, a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction.
- If the DRE is a single-member limited liability company or otherwise has only one owner that is an individual with an SSN or ITIN, the DRE may report that individual’s SSN or ITIN as its TIN.
- If the DRE is owned by a US entity that has an EIN, the DRE may report that other entity’s EIN as its TIN.
- If the DRE is owned by another DRE or a chain of DREs, the DRE may report the TIN of the first owner up the chain of DREs that has a TIN as its TIN.

Timely Obtaining US TINs

FinCEN also issued updates to an FAQ addressing how a Reporting Company can quickly obtain a US TIN for purposes of timely filing an initial BOI Report.

FinCEN explains that there are different methods for obtaining a US TIN, including: (a) online application for an EIN (which is usually limited to US vehicles with a responsible individual who has an SSN or ITIN); (b) submission of Form SS-4 by fax (suggesting a response time of 4 business days), or (c) submission of Form SS-4 by mail (suggesting that applicants should receive their EIN in 4-5 weeks, although, in some circumstances, this may take 6-8 weeks). FinCEN notes that, as a result, in some limited circumstances, a Reporting Company with no TIN meeting FinCEN's requirements may not be able to obtain its EIN by its BOI Report filing deadline.

In addition to making all reasonable efforts to file its BOI Report in a timely manner (including requesting all necessary information as early as practicable), FinCEN notes, the Reporting Company should file its BOI Report as soon as it receives its EIN. FinCEN highlights that as a best practice, the Reporting Company may consider retaining documentation associated with its efforts to comply with the BOI reporting requirements in a timely manner.

Guidance Relevant for Newly-Formed Entities and Reporting Companies Existing Prior to Jan. 1, 2024

The guidance in these FAQs takes on significant importance as a Reporting Company formed or registered to do business in the United States before Jan. 1, 2024 must file its initial BOI Report by Jan. 1, 2025. The responses make clear that FinCEN continues to expect reporting to occur by the applicable deadline, and if reporting is not possible due to the inability to timely obtain a US TIN, then the Reporting Company should at least document its reasonable efforts to comply.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] FinCEN, Beneficial Ownership Information, Frequently Asked Questions F.13 and G.3 (last updated July 2024), available [here](#).

[2] For a fuller discussion of the CTA, see our prior *Alerts*: (1) “Passage of Anti-Money Laundering Act of 2020 Includes Comprehensive BSA/AML Reform Measures,” available [here](#); (2) The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule,” available [here](#); (3) “The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule,” available [here](#).

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