

April 2024

Client Update

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News & Announcements

The Corporate Transparency Act Doesn't Apply to Trusts, Right?

It is true that trusts will not generally be reporting companies under the Federal Corporate Transparency Act (CTA). To be a reporting company, an entity must be a domestic entity “created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe” or a foreign entity that registers in the US by similar means. Most trusts are formed by the relevant parties entering into a trust agreement, and no public filing is required.

But this does not mean that trusts (and their trustees) can ignore the CTA. Even though not directly a reporting company, a trust may have sufficient ownership in or control over a reporting company such that its beneficial ownership information report must address issues regarding the trust. Reporting companies must provide information on each person who owns 25% or more of the entity or who exercises substantial control, both of which are given an expansive reading. For example, in a complex equity structure (e.g., multiple classes of stock), someone may be considered to have sufficient ownership even if less than 25% of the entire economics of the company. And, substantial control can include any individual who is an “important decision-maker.”

For any trust that owns or exercises control over an entity, the first question to ask is whether that entity is actually a reporting company or if it fits any of the available exceptions. Assuming the entity is a reporting company, the next

question is whether the trust has sufficient ownership or control to put it on the reporting radar. If so, then you come to the real problem that trusts must deal with when seeking to comply with the CTA.

Reporting companies must provide information on their “beneficial owners,” and “beneficial owners” need to be natural persons. If a trust otherwise should report, then whose information is it actually supposed to provide? At a minimum, it is the trustee or trustees, since they have control over the trust, even though they may not have any economic interest in the trust’s assets. Additional potential disclosures are:

- A beneficiary¹ who is the sole permissible recipient of income and principal. (If there are multiple beneficiaries, you cannot say with certainty what economic interest any one beneficiary holds.)
- If more than one beneficiary, any beneficiary who has the right to demand a distribution of or withdraw substantially all of the assets from the trust.
- A grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust.
- Holders of an *inter vivos* power of appointment.
- Potentially, trust protectors and other special power holders depending on their powers. FinCEN Regulations include any person “with the authority to dispose of trust assets.”

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If you have questions about your reporting obligations, SSRGA is here to help. Please reach out to your regular contact partner or any of the members of SSRGA’s CTA Working Group:

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¹ If a beneficial owner is a minor, which might be true of many trust beneficiaries, you can report the required information of a parent or legal guardian. An amended filing would then be owed when the individual reaches the age of majority.

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