The Corporate Transparency Act of 2024 and Bona Fide Residents of Puerto Rico: What You Need to Know

The Corporate Transparency Act of 2024 (CTA) is being heralded as a game changer in the fight against financial crime. Effective January 1, 2024, the CTA mandates the creation of a national database exposing the true owners of US companies and companies authorized to do business in the US, known as beneficial owners (BOs).

The CTA was enacted to combat the use of shell companies for illicit purposes, such as money laundering, terrorism financing, and other illegal activities. It requires certain entities to disclose the identifying information about the people who own or control them, and the identity of certain individuals who form or register them, to the Financial Crimes Enforcement Network (FinCEN).

This raises questions for US taxpayers who are bona fide residents of Puerto Rico. If you are a bona fide resident of Puerto Rico and own or control a US company, or a company registered to do business in the US, does the CTA apply to you? What if you own a Puerto Rico entity? What if you are a joint owner? If so, what do you need to file, and when?

Who Must File

The CTA reporting requirements apply to Reporting Companies that are not exempt. For this purpose, a Reporting Company means "a corporation, limited liability company, or other similar entity that is— (i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe."[1] For purposes of this definition, the term 'state' includes the Commonwealth of Puerto Rico, and any other commonwealth, territory, or possession of the United States.[2] Therefore, an entity formed in Puerto Rico, that is not exempt, will constitute a Reporting Company for this purpose.

[1] 31 U.S.C. 5336(a)(11).
[2] 31 U.S.C. 5336(a)(12).

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Exemptions to the definition of a Reporting Company include, but are not limited to:

- Securities reporting issuer.
- Money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.
- Any broker or dealer, as those terms are defined in Sec. 3 of the Securities Exchange Act of 1934, that is registered under Sec. 15 of that Act.
- Any entity that is: (a) an investment company as defined in Sec. 3 of the Investment Company Act of 1940, or is an investment adviser as defined in Sec. 202 of the Investment Advisers Act of 1940, and (b) registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.
- Any investment adviser that: (a) is described in section 203(l) of the Investment Advisers Act of 1940, and (b) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.
- A large operating company. This is defined as a company physically present in the US that employs more than 20 people in the US and reported gross revenue (or sales) of over $5,000,000 on the prior year's tax return.

This list is not comprehensive, and it is important to examine the requirements for exemption and apply them to the details of each entity to determine the entity's CTA filing requirements.

Information Required to Be Reported

If your entity qualifies as a Reporting Company, your entity will be required to file reports disclosing information on each BO, including name, date of birth, address, and a government-issued ID (the "CTA Report"). This information will be stored securely but accessible to law enforcement and authorized government officials. In addition, the Reporting Company must also disclose certain information about the "Company Applicants", depending on the formation date of the Reporting Company.[3]

[3] An individual is a Company Applicant if they (1) are the individual who directly files the document that creates or registers the company; and (2) if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing. 31 C.F.R. 1010.380(e).

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Identifying the BO

A BO is any individual who, directly or indirectly:

- owns or controls at least 25 percent of the ownership interests of a Reporting Company; or
- exercises substantial control over a Reporting Company.

For this purpose, an individual has substantial control if they (1) are a senior officer; (2) have authority to appoint or remove certain officers or a majority of directors of the company; (3) are an important decision-maker; or (4) have any other form of substantial control over the Reporting Company.

Understanding how the CTA affects you specifically requires careful consideration of your unique circumstances. Are you the sole owner of your company, or do you share control with others? Does your business fall under certain exemption categories, such as being publicly traded or already subject to similar reporting requirements? Who formed or registered your company? These nuances can significantly impact your filing obligations.

Timing of Filings

The timing of the required filings is dependent on the formation dates of the Reporting Companies. The general rules are as follows:

Domestic Reporting Company

1. A domestic reporting company created before January 1, 2024 must file a report not later than January 1, 2025.
2. A domestic reporting company created on or after January 1, 2024 but before January 1, 2025 must file a report within 90 calendar days of formation.
3. A domestic reporting company created on or after January 1, 2025 must file a report within 30 calendar days of formation. [4]

[4] 31 C.F.R. 1010.380(a)(1)(i)-(ii). On September 28, 2023, FinCEN proposed a new rule giving an additional 60 days for initial CTA Reports for entities formed between January 1, 2024 and December 31, 2024. 88 FR 66730.

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REMINDER: *An entity formed in Puerto Rico constitutes a Domestic Reporting Company.*[5]

Previously Exempt Company

Any entity that was once exempt and no longer meets the exemption criteria must file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.[6]

A Reporting Company will need to file updated and corrected CTA Reports if there are changes or corrections to the information filed in the initial CTA Report, by certain specified due dates. This includes a change to a BO's name, a BO's address, and any new BO of a Reporting Company.

Examples:

Facts: As of January 1, 2024, Colin is a bona fide resident of Puerto Rico and has an Act 60 company (PR LLC). Colin is also the sole owner of 3 entities in the US (the "US Entities") and an entity in the US that qualifies as SEC-registered investment adviser (the "Investment Adviser Entity"). All entities were formed prior to January 1, 2024.

Example 1: Colin is a BO with respect to PR LLC, the US Entities and the Investment Adviser Entity. Colin, as sole owner of these entities, will need to file CTA Reports for the PR LLC and the US Entities. Colin does not need to file a CTA Report for the Investment Adviser Entity because it is exempt from the CTA requirements. These CTA Reports must be filed no later than January 1, 2025.

Example 2: Same facts as above. On March 1, 2025, Colin realizes he forgot to file CTA Reports for PR LLC and the US Entities because he was busy celebrating the Chicago Bears' Superbowl LIX victory. Colin faces escalating fines ranging from $500 to $10,000 per violation and jail time of up to two years.

Example 3: Same facts as above. Colin forms a new PR LLC on June 1, 2024 (the "2024 PR LLC") of which he is the sole owner. The 2024 PR LLC is a Reporting Company and Colin is a

[5] Different rules apply to Foreign Reporting Companies, which are outside the scope of this publication.
[6] 31 C.F.R. 1010.380.

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BO. Because the 2024 PR LLC was formed after January 1, 2024, Colin will need to file a CTA Report no later than September 1, 2024 for this entity.

Example 4: Same facts as above. Colin moves to a bigger house on August 1, 2025, to accommodate his growing family. Colin will need to file an updated CTA Report with his new address for PR LLC, 2024 PR LLC, and the US Entities no later than September 1, 2025.

Example 5: Same facts as above. Colin used his passport as identification for the prior filed CTA Reports. Colin's passport is about to expire, so he gets a new one on April 1, 2025. Colin will need to file an updated CTA Report for PR LLC, 2024 PR LLC and the US Entities with Colin's new passport information no later than May 1, 2025.

These are very simple examples to provide a basic introduction to the CTA filing requirements. Most situations will be much more complex due to the ownership structure, control, and formation specifics of both the PR and US entities owned by bona fide residents of Puerto Rico.

Next Steps to Implement Now

Navigating the CTA's intricacies can be complex, so consulting with a qualified attorney is crucial. They can analyze your specific situation, determine your reporting requirements, and guide you through the filing process. Remember, failing to comply with the CTA can lead to hefty fines and potential criminal penalties. All US taxpayers who are bona fide residents of Puerto Rico should discuss the new CTA reporting requirements with their US counsel to ensure a smooth and compliant transition into this new era of corporate transparency. At a minimum, be prepared to file a CTA Report for your Puerto Rico Act 60 companies, as well as any other US entities that you own no later than January 1, 2025, and possibly earlier for newly formed entities. Also, don't forget to update those filings if the information changes.

About Tom Duffy, C.P.A., P.A. & P.C.

Tom Duffy C.P.A., P.A. & P.C. is a Greater Chicago-based firm that specializes in international taxation with a particular focus on U.S. possessions. In addition, the firm is one of the few CPA firms in the country that specializes in representing residents of Puerto Rico during IRS examinations, specifically those taxpayers granted tax incentives under Puerto Rico's Act 60 (formerly Act 20/22).

Our foreign clients rely on our knowledge and expertise in complying with their U.S. tax obligations. Tom Duffy has over fifteen years of experience in international tax planning and associated U.S. tax return preparation. The firm

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services clients in the United States, its possessions, and throughout the world. Tom Duffy is a member in good standing with the American Institute of CPAs and the Puerto Rico Society of CPAs. He is licensed to practice in Florida, Illinois, and Puerto Rico.

For more information and tax-related articles on Puerto Rico's Act 60 program, please visit us at www.tomduffycpa.com

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