

# KIRKLAND & ELLIS

Kirkland Alert

## Estate and Gift Tax Update

08 February 2024

1. Effective for 2024, the “annual exclusion amount” (the maximum amount any donor may gift to any person without gift tax consequences or reporting requirements) has been increased from \$17,000 to \$18,000. If you are in the habit of making annual exclusion gifts to an irrevocable trust each year, you may use the increased amounts for these gifts in 2024.
2. The unified estate and gift tax exemption has been increased from \$12.92 million to \$13.61 million. Therefore, even if you had used the entirety of your exemption in 2023, you now have an additional \$690,000 of exemption to utilize in 2024.
3. Under the 2017 Tax Cuts and Jobs Act, the unified estate and gift tax exemption is currently scheduled to be reduced by 50% at the end of 2025. Of course, Congress could enact legislation in 2024 or 2025 to change this.

## Important Update on New CTA Reporting Requirement

Effective January 1, 2024, the Corporate Transparency Act (CTA) may require your legal entities to report “Beneficial Ownership Information” (“BOI”) to the U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN). Noncompliance carries a maximum civil penalty of \$500 per day that the violation continues, and criminal penalties up to \$10,000 and imprisonment up to two years.

You are responsible for determining your CTA compliance obligations and for timely compliance on behalf of your reporting companies.

***Generally, all of your LLCs, corporations and limited partnerships, owners of more than 25% and those with “substantial control” must register and report to FinCEN by December 31, 2024, and future changes of ownership (including trustee changes for trust owners) and changes of managers, general partners, directors and officers may require reporting. This includes entities that own***

***active businesses, but also entities that are simply joint investment vehicles, own boats/planes/autos, own real estate, employ family office and household workers, and subsidiaries of these entities.***

All “reporting companies” must file.

“Reporting companies” include (1) domestic entities created by the filing of a document with a secretary of state or any similar office in a state or Indian tribal jurisdiction (e.g., any domestic corporations, limited liability companies (LLCs) or partnerships), and (2) foreign entities that are registered to do business in the U.S.

Are there any exceptions?

There are 23 categories of exceptions, including publicly traded companies, banks and credit unions, securities brokers/dealers, public accounting firms, tax exempt entities, certain large operating entities, and certain inactive entities. These are not wholesale exemptions, and many of these entities are already subject to other government reporting requirements.

Other types of legal entities that are not formed or registered via a state filing are generally excluding from filing, which would include most trusts.

When are reports due?

Reporting companies must file their BOI report with FinCEN as follows:

- Entities that existed prior to 2024: By December 31, 2024.
- Entities that are formed in 2024: Within 90 days of formation.
- Entities that are formed in 2025 and beyond: Within 30 days of formation.
- **Any changes in reportable information must be reported within 30 days of the change, after the initial report is filed.**

Whose information must be reported?

Personal information for the beneficial owners and applicants (“BOAs”) is required to be reported:

- A **“beneficial owner”** is any individual who, ***directly or indirectly*** (i.e., by tracing an individual’s interest up through other entities such as sub-LLCs), either:

(1) has **“substantial control”** over a reporting company, OR

(2) **owns or controls** at least 25% of the ownership interests of a reporting company.

For example, a trustee of a trust that holds 25% of an LLC would have “substantial control” of the LLC.

- The **“applicant”** is the person (or persons) creating the entity via a government filing or, in the case of a foreign reporting company, the person registering the entity to do business in the U.S. All persons primarily responsible for directing or controlling the filing are considered to be applicants.

What information must be reported?

- **Reporting company information:** (1) full legal name of the company, (2) any trade or “doing business as” name, (3) business street address (cannot be a P.O. Box), (4) the state, tribal or foreign jurisdiction of formation (or registration for a foreign reporting company), and (5) Taxpayer Identification Number (“TIN”).
- **Beneficial owner and applicant information:** (1) full legal name, (2) date of birth, (3) current residential address, (4) unique identifying number and issuing jurisdiction of a passport, driver’s license or other government issued identifying document, and (5) a scanned picture of the applicable identifying document.

How does an entity file the Beneficial Ownership Information?

File via FinCEN’s [BOI E-Filing website](#) and select “File BOIR.”

You may find additional guidance on the reporting requirements on [FinCEN’s website](#).

What can be done to ease the burden of compliance?

**Begin acting now.** This will be time-consuming and there will be an end-of-year rush for those who delay. Gather pertinent information for each reporting company.

**Obtain FinCEN Identifiers.** In lieu of a reporting company reporting beneficial owners’ and applicants’ information (and thereafter being required to file a new BOI each time a BOA’s reportable information changes), a reporting company may report the beneficial owners’ and applicants’ FinCEN Identifiers. Then, it is up to the beneficial owners and applicants to keep their personal information updated. *It is expected that BOAs of your*

reporting companies will obtain FinCEN Identifiers. **FinCEN identifiers can be applied for [here](#).**

If you have questions regarding your compliance under the CTA, please reach out.

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## Related Services

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- Trusts & Estates

## Suggested Reading

- 10 September 2023 Article Succeeding at the Pass: Succession Planning Strategies for Family Businesses
- 20 July 2023 Award Chambers High Net Worth 2023
- 26 January 2023 Kirkland Alert Wealth Transfer Planning Update

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