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Why Trade Credit Grantors Should Care About the Federal Corporate Transparency Act

Greetings Credit and Collection Practitioners! In this edition of "The Credit Times," we feature an article that explains the Federal Corporate Transparency Act and how it affects credit grantors.

The author is long-time contributor and friend of CCC of NY, Wanda Borges. Wanda is the principal member of the well-respected collection law firm, Borges & Associates, LLC.

Wanda is a highly regarded-speaker, panelist and legal expert to the credit industry. We're sure you'll find her article timely and informative.

~Chad Haynie, EVP Global Revenue, CCC of NY

Why Trade Credit Grantors Should Care About the Federal Corporate Transparency Act

By: Wanda Borges Borges & Associates, LLC

What the Federal Corporate Transparency Act is All About.

The Federal Corporate Transparency Act ("CTA") was enacted in 2021 to curb illicit finance, particularly money-laundering, tax fraud or even financing of terrorism. The CTA requires most "reporting companies" doing business in the United States to report information about the individuals who ultimately own or control them. This information must be reported to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. The complete reporting regulations are found at Section 6403 of the Corporate Transparency Act. Specifically, the reporting rule is found at 1010.380 in title 31 of the Code of Federal Regulations.

A "Small Business Compliance Guide" on Beneficial Ownership Information Reporting Requirements can be obtained online at https://www.fincen.gov/boi/small-entity-compliance-guide
This article will highlight some of the main characteristics of the CTA and reporting requirements.
"Reporting Companies" are those which were formed in the United States under state law or Indian Tribal law include corporations, limited liability companies, limited liability partners, limited liability limited partnerships, business trusts, and most limited partnerships. Foreign businesses may have to file a report if the business has registered to do business in any U.S. state or tribal jurisdiction.

Generally, the FCTA is aimed at businesses with up to $5 million in gross receipts or sales. Large corporations with 21 or more employees and gross receipts or sales in excess of $5 million are exempt from filing a report. There are 23 exceptions identifying which companies are exempted from the requirement to report beneficial ownership information. Those exceptions can be found in the Guide referenced above.

Reporting Companies which were established prior to January 1, 2024 must file the Beneficial Ownership Information Report by January 1, 2025. Reporting Companies established after January 1, 2024 must file the Beneficial Ownership Information Report within 90 days of their establishment.

A Beneficial Owner is an individual who owns or controls at least 25 percent of a company or has substantial control over the company. Typically, there are four bases to show substantial control:

1. Senior Officer
2. Member of a board of directors with power to appoint or remove officers or a majority interest on the board
3. Ownership or control of a majority of voting power or voting rights
4. Rights associated with financing or interest

Beneficial ownership information reporting is not an annual requirement. A report only needs to be submitted once, unless the filer needs to update or correct information. Generally, reporting companies must provide four pieces of information about each beneficial owner:

- Name
- Date of birth
- Address and
- The identifying number and issuer from either a non-expired U.S. driver's license, a non-expired U.S. passport, or a non-expired identification document issued by a State (including a U.S. territory or possession), local government, or Indian tribe. If none of those documents exist, a non-expired foreign passport can be used. An image of the document must also be submitted

The company must also submit certain information about itself, such as its name(s) and address. In addition, reporting companies created on or after January 1, 2024, are required to submit information about the individuals who formed the company ("company applicants").

Why This Is Important to Trade Credit Grantors

There are several reasons why a trade credit grantor should be interested in the CTA:

1. Your company may be a small business which is required to file a report under this new regulation. If you are a sole owner or one of the owners of that company, it is your responsibility to comply with the CTA and provide your personal information.

2. The CTA could make it easier to assess the credit worthiness of a business by providing more information about its ownership structure. A trade creditor can request its customer to consent to the release of the CTA Report which the customer has filed with FinCEN.

3. The trade creditor may be able to use the information contained in a CTA report to assess its potential risk in doing business with a particular customer.

4. Since the CTA Reporting applies to small businesses, obtaining a copy of such report will provide the trade credit grantor with one more tool to protect against a possible unrecoverable debt in the future.

5. Failure to file a CTA Report can result in civil penalties of $500 per day, or criminal fines of up to $250,000 and imprisonment for up to five years. A customer who doesn't file could face these penalties which would have a serious impact upon a small business' ability to continue its operations. A trade creditor can ask the simple question as to whether or not the report has been filed.

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