

# Publications

September 12, 2024 • Updates

## Accountancy and the Corporate Transparency Act

The Corporate Transparency Act (CTA) is a new, federal, legal reporting and compliance regime touching on the ownership and control of covered reporting companies operating in the United States. These reporting companies are often smaller businesses, many of whom rely on outside accounting service providers to assist them or to “take care of” much of their financial, accounting and tax reporting compliance. For them, their outside accounting professionals frequently become their “one-stop” source of experienced advice and counsel on a broad range of business topics. The CTA has emerged as one of these topics.

For accountants and other third-party service providers, including CTA filing compliance vendors, much of the CTA’s application may fit squarely, and appropriately, within their wheelhouse of service offerings. However, several aspects of the CTA and its interpretation fall outside of these appropriate services. These taboo, unauthorized practice of law topics include: providing a legal opinion on the CTA and its regulations, the applicability of certain CTA exemptions under nuanced client-specific circumstances, and, for more complex ownership and control structures, determining who, within a reporting company’s sphere of influence, could and should be included as reportable beneficial owners.

The unauthorized practice of law (UPL) is a legal doctrine frequently at odds with the day-to-day practice of accountancy. Although accountants have, and frequently rely upon, a limited grant of authority to “interpret” tax law, this grant does not extend to providing technical or interpretive advice on other laws (such as the CTA, within the Bank Secrecy Act), which may give rise to UPL. Depending on a client’s individual circumstances, CTA compliance may require such legal advice and analysis.

The UPL aspects of the CTA will be driven by the laws of the implicated State(s) of accountancy practice. In addition to possible State law prosecution, UPL may implicate civil penalty exposure and considerations under the professional licensure of certified public accountants (CPAs), as well as the possible voiding of insurance coverages of the implicated accounting individuals and their accounting firms. The results have caused some accountants and accounting firms to take a completely hands-off approach to their clients’ CTA advising and filing needs. While other accountants and accounting firms are taking a limited approach in assisting their clients with their CTA reporting but steering

## Related People

- Philip G. Feigen

clear of advising their clients about the reporting required by the clients' implicated beneficial owners and company applicants. *Other accountants and accounting firms are working together with attorneys and law firms to "bridge the gap" between their clients' needs for accounting, legal and reporting compliance. This cooperative approach may include the use of so-called "Kovel Agreements," where a client directly engages an attorney to provide legal advice and counsel, and the attorney then engages a CPA to support the attorney's services to the client. This arrangement, when properly structured and executed, may serve to establish and attach the attorney-client privilege to the associated CTA communications among the client, the attorney and the CPA, as well as the resulting work product and advice generated in their compliance with the CTA.*

It bears note that even accountants who choose not to provide CTA-related services may face potential liability risk from their clients' CTA noncompliance, such as when an accountant ignores client requests for assistance without response. The American Institute of Certified Public Accountants (AICPA) has published its thought leadership on this topic, including the fact that CPAs should not give advice on the CTA – the opposite being a common misconception in the accounting marketplace.<sup>1</sup> However, certain errors and omissions (E&O) insurers have indicated that their malpractice policies may cover CPA firms that assist clients with completing their BOI reports in certain instances. The reader is suggested to review their own policy coverages, in addition to staying abreast of emerging guidance of this topic. *As your clients' needs for CTA compliance emerge or become apparent in the waning months of 2024, we encourage a proactive, anticipatory approach to facilitate your clients' timely CTA compliance – whether through cooperative association (including through Kovel agreements) with or referrals to attorneys focused on CTA compliance, such as our CTA Team at Polsinelli.*

[1] See <https://www.cpai.com/Education-Resources/my-firm/Tax-Services/What-accounting-firms-need-to-know-about-CTA> (last updated March 1, 2024).