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In reference to Docket Number FINCEN-2021-0005 and RIN 1506-AB49.

In response to the proposed rulemaking mentioned above and the questions asked as part of the process, please accept the following comments in consideration towards a final rulemaking.

Background information

TMMT NM LLC is a corporate service provider that assists mainly foreign clients to register their business entity in the United States as part of their international tax planning and business strategy and assist them in keeping it compliant to US federal, state and local legislation and procedures. In this position we would most likely be the responsible party to file the required information with FinCEN on behalf of our clients.

The majority of our clients are so-called location independent entrepreneurs, otherwise also known as transient entrepreneurs, digital nomads, perpetual travelers who face some additional challenges by this rule that are not apparent when having a classical business owner in mind, e.g. someone running a local restaurant or a consulting agency.

We fully support transparency and the efforts of FinCEN and the US government to use the collected information to fight crime in all areas, including money laundering, tax evasion, etc. With our comments we want to assure that our clients will be able to become compliant with all requisites of the new rules.

Comment on question 4 (<https://www.federalregister.gov/d/2021-26548/p-330>)

Many of our clients have transient living arrangements. In many cases they have emigrated from their home country and have not taken a new permanent place to live, either because they are still in the process of doing so, or because this allows them certain tax benefits. Many countries outside the United States have a so-called residency based tax system, which means that they only tax people living in these countries. When clients leave one of these countries, they relinquish their tax residency (and by this their “residential address for tax purposes”) without being required to provide a new address for tax purposes to the government of that country. This leads to the effect that they simply do not have such a residential address for tax purposes, by splitting their time in a year between different countries where they live for such a short time, that they do not become a tax resident of that country according to local laws.

As an actually existing example from one of our clients (dates and countries changed to maintain anonymity): A citizen of Austria emigrated from Austria at the end of 2020, therefore relinquishing their tax residency and their residential address for tax purposes in Austria as of January 1st 2021.

They spend 3 months in Mexico, one month in the United States (as a tourist visitor under the Visa Waiver Program), 3 months in Panama, 3 months in Thailand, one month in Jamaica and two weeks each in Austria and the Russian Federation.

In this example:

- they will not become a tax resident in Mexico, since Mexico starts taxing people only after spending 180 days or more per year in the country.
- they will not become a tax resident in the United States, as they do not pass the substantial presence test.
- they will not become a tax resident in Panama, since Panama starts taxing people only after spending 183 days or more per year in the country.
- they will not become a tax resident in Thailand, since Thailand starts taxing people only after spending 183 days or more per year in the country.
- they will not become a tax resident in Jamaica, since Jamaica starts taxing people only after substantial visits of 3 months or more (or after 183 days).
- they will not become a tax resident of Austria again, since their visit of two weeks does not restart their tax obligations.
- they will not become a tax resident of the Russian Federation, since the Russian Federation starts taxing people only after they are in the country for 183 days or more during any period of consecutive 12 months.

While living in these countries, they use either vacation rentals and/or hotel stays or services like AirBnB, not establishing their own personal residence in the form of a long term rental apartment or acquired real estate in the country.

In this case, these individuals do not have a residential address for tax purposes they could report. Reporting any of the vacation rentals, hotel addresses or AirBnB stays as an address of residency for tax purposes would obviously qualify as submitting false information and being punishable as defined in the proposed rulemaking.

Supplying some kind of mailbox or correspondence address could be a solution to reach these persons in case FinCEN or another government entity needs to reach them by postal mail, however, law enforcement will obviously not encounter these persons at that address in case a need for that arises.

Supplying the current address of living (vacation rental, hotel, AirBnB, etc.) might create three challenges.

At first, in case of short time stays (e.g. in the example of the two weeks in Austria and the Russian Federation) the information will already be out of date when it reaches FinCEN as the person has moved on.

Second, it would create a significant burden for the individual to report every single address change, even if staying in a hotel for just a few days to FinCEN. When moving on, the person is obviously aware that the information in the FinCEN database is now incorrect.

Third, we as a service provider helping to keep the person and company in compliance with the rulemaking have to constantly check with our clients to inquire their whereabouts as we might be liable for not reporting a change of address within the designated time, or not at all.

Supplying the address of a registered agent (like the one serving their US company) might be an option to ensure service of process (which might be impossible to a mailbox) to these individuals, while still not being able to encounter these persons at the given address.

Suggestions (partly answering Question 33 as well)

<https://www.federalregister.gov/d/2021-26548/p-364>

We suggest that FinCEN in these cases eases the burden to the affected persons by only letting them report addresses where they plan to stay for three months or more.

Compared to a sedentary business owner, this seems like a reasonable trade off, since this sedentary person could also be on a two to four week vacation from this primary place of residence and having some business travel before or afterwards at the time where law enforcement will try to encounter them at their usual primary address of residence for tax purposes, leaving no difference between the absence of the sedentary person from their “home” to the unavailability of the transient person at the address they last reported.

In case they plan not to return to the address they last reported within the next three months, they will - if possible in advance - report this information to FinCEN and - if already known - the next address where they will live for a longer duration (three months or more) in the future.

In case that there is not a single address in a year where that individual plans to stay for at least three months, the person should report this information to FinCEN nominating either a registered agent where service of process is possible or at minimum a correspondence address and (optional) phone number or e-mail address.

While there may still be some cases, where people move every few weeks, the likelihood to do so with the only intention to evade the reporting requirement can be deemed very low, as this creates probably a higher financial and personal burden to these individuals than simple compliance to the rulemaking.

From a practical point of view, when filing the report, the person should be able to “tick a box” stating that the given address is not their “residential address for tax purposes”, so that FinCEN and other government bodies may be aware of the more transient character of the address.

Comment on question 6 <https://www.federalregister.gov/d/2021-26548/p-332>

The same challenge as discussed in our comment to question 4 applies to our clients with transient living arrangements. In this case, after relinquishing their tax residency in a specific country without taking up residence in a new country, they simply do not have a current TIN.

As long as the collection of TINs is voluntary, this is not a great issue, but FinCEN may want to provide an option to specify “I do not have a TIN”. This way it could be differentiated if the person was unwilling (for whatever reason) to supply the voluntary information or if they would have been willing but are unable to do so. In case the collection of TINs should become mandatory in a future version of the rulemaking, it should be investigated, if it could make sense to let foreign transient individuals apply for a US ITIN number with the Internal Revenue Service for the sole purpose of identification purposes under the rulemaking, as for now, IRS regulations would not allow this kind of application as a valid reason to issue an ITIN.

Since individuals are used to supply their TIN as a means of identification in many other aspects (e.g. they supply their SSN or ITIN when applying for their company EIN) there should not be additional resistance to supply that information.

Collection of TINs may be useful to track down international tax evasion strategies, e.g. holding a US company and not reporting the possession of this company to the tax authorities of the country of residence of the ultimate beneficial owner of that company. In case of international cooperation and data sharing with international tax authorities, the UBO could be more easily identified by the foreign country using the foreign TIN.

Comment on question 8 <https://www.federalregister.gov/d/2021-26548/p-334>

Continuing with the same challenge discussed in our comment on question 4, our clients with transient living arrangements are often location independent entrepreneurs, which means they do not require a fixed office space to do business. Wherever they open their laptop computer or use their cell phone is where their current business address is, which changes at the same pace as their address of personal residence, so the same burden or challenge applies to keep this information current or valuable to FinCEN and other users of the database.

We suggest applying the same approach when reporting the business address as reporting an address not being the residency address for tax purposes (three month rule or using registered agent as a backup). This would correlate to all business owners working from home, who will be unavailable at their business location during (vacation or business) travel with nobody else to attend potential visitors.

As for the wording “principal place of doing business” would be more clear than “business street address”.

Comment on question 9 <https://www.federalregister.gov/d/2021-26548/p-335>

For international business setups it would be most beneficial to record the address where the management operations of the foreign company takes place, no matter if this address is in the United States or a foreign country. If e.g. a foreign company has just a representative or employee in the United States that has no power to make decisions on their own, visiting this person may be less helpful than directly addressing foreign management. In case of correspondence, this would cut on mail processing time, since FinCEN would not send a letter to the US address which then would need to be separately forwarded to the management in the foreign country.

Comment on question 12 <https://www.federalregister.gov/d/2021-26548/p-338>

Yes, the company should be required to use the FinCEN identifier in lieu of the itemized pieces of information, since the person getting a FinCEN identifier may have reasonable cause that the reporting company does not receive the itemized information (e.g. they do not want to disclose their primary place of residence or citizenship to the company officials for privacy concerns.)

Comment on question 14 <https://www.federalregister.gov/d/2021-26548/p-340>

In case of a deceased company applicant, FinCEN should allow that the report contains limited information, just as much as the person filing the report could acquire with reasonable effort. This amount of information may differ in individual cases, e.g. it might be much harder to come by the last street address of a deceased company applicant that died 30 years ago and that had no more contact with the company management and owners after opening the company, comparing to a recently deceased company applicant that was a good friend of the company management.

When providing incomplete information, the person filing the report should confirm that all the information they provided was to their best knowledge and all reasonable efforts were made to find out the missing items of information to no avail.

In addition FinCEN should not limit this possibility of incomplete information about the company applicant to deceased applicants. There might be situations where the company applicant is still alive but e.g. left the country, changed name, is unavailable because of incapacitation, serving jail time, being hospitalized, retired, closed their business or simply not in contact with the business owners or managers anymore because the business relationship has ended a long time ago (maybe not on good terms) and no contact information exists to be able to contact that individual to request the information or the individual is unable or unwilling to provide the information needed to file a complete and truthful report. In this case FinCEN should allow incomplete submissions, since limited information is still better than no information at all, and allow the person to file the report to state reasons why the information is incomplete and cannot be provided. The person filing the report may confirm a statement to report additional information in the future about the company applicant in case it becomes available to them.

Comment on question 20 <https://www.federalregister.gov/d/2021-26548/p-351>

The definition of company applicant is not sufficiently clear.

Supposedly an individual hired our company to open a company in the US for them. We forward the documents received from the client to a local partner company that drafts the registration document and e.g. also serves as the future registered agent of the newly formed company. Our partner company gives the actual work to a freelancer that does the actual process of bringing the papers to the state government office, signing their name as the organizer (or similar term depending on the state of registration) on the formation papers.

All three entities (the freelancer, the local agent and us) could be deemed the company organizer. In this case FinCEN should provide additional guidance, which entity should be listed as the organizer (or maybe all of them) since there might be a mismatch of information if e.g. a state business register has one name in it as the company “organizer” while the report to FinCEN lists another name and thus, at a later stage when this data could automatically be checked against state business registry databases may flag a report as false. Also guidance is needed if a company name is sufficient as the company applicant (e.g. in case we do not know the actual person at the subcontractor doing the work and they do not - or did not in the past - keep track of what employee took care of a particular business formation).

Comment on question 33 <https://www.federalregister.gov/d/2021-26548/p-364>

i. While the timeline of one year is reasonable in most cases, it might not be sufficient in some circumstances:

- When some or all company owners that could be considered beneficial owners under the definition are living outside the United States it might take additional time to locate these individuals and clarify their involvement in the company and the amount of membership interests they own and control. Hereby we have to differentiate between:
 - US citizens living abroad. These might be harder to locate since they do not have an additional reporting requirement about their whereabouts.
 - US lawful permanent residents and visa holders. While they might have to report their updated residence to USCIS, this information is not available to third parties that need to file a report for a company.
 - non-US persons abroad. These are required to file Form 5472 each year if they have a significant interest in a company, whereas the IRS has a similar definition than the one supposed by FinCEN. These persons could be located by their information supplied on that form (if they adhere to their reporting requirement), within about 16 months of time (supposed they acquire the interest in the company in January, the form needs to be filed in April of the following year).
- Since membership interests, especially in limited liability companies that do not keep a “stock register”, can be easily transferred in over-the-counter transactions, maybe persons originally known to the management or company services providers like us, that were considered owners of interests in the company have already sold or otherwise transferred their interest to other owners from which no current contact information is

available and the last available contact information is not valid anymore. It might take additional time to follow the trail of transactions to locate the current beneficial owners.

FinCEN might give stakeholders the opportunity to request an individual extension to file a report because of these or similar reasons while keeping the original timing of one year, requiring to file a report at the earliest date all information becomes available or give the opportunity to file an incomplete report after the time limit of one year, since some information might be better than no information at all in the database and provide the missing items of information as soon as they become available.

Comment on question 35 <https://www.federalregister.gov/d/2021-26548/p-368>

While the timing of 14 days for such a corrected report is adequate, the process should look at circumstances where it is clear to the company or a reporting person that the information provided is incorrect, but correct information is not available (yet). E.g. it is known that a beneficial owner does not reside at a certain address anymore, but the new address is unknown or the passport of the beneficial owner is expired but no new passport has been issued yet, so no new identifying number or photograph/scan of such document can be provided to rectify the information. For this case there should be an option to alert FinCEN that some previously reported information is incorrect but cannot be rectified at the moment because the new information will not be available. Optional the person that informs FinCEN about this fact should state a possible timeframe when the new information is available (e.g. proof of address has been provided or a new passport issued) and be required to update the information as it becomes available or inform FinCEN regularly about reasons for the delay of supplying current information.

Comment on question 36 (and partially 38)
<https://www.federalregister.gov/d/2021-26548/p-369>

To ensure that all entities in the business database are active and information is current, FinCEN may make companies file a yearly confirmation statement that all reported information is still truthful and correct as of this date with would give the database an additional level of accuracy since it will not just be assumed that the data remains the same and the risk that reports to update information are forgotten, since the report to FinCEN forms a habit like a yearly tax return to the Internal Revenue Service or the annual report to the state where the company is formed and for these matters similar information is collected for these government entities anyway.

As a part of this yearly report there could be an option to mark a company as terminated. Another, more automated approach could be to automatically gather data from the public company registers of states to learn about terminated companies.

General comments on collaboration of agencies

Since different federal agencies ask partially for the same or similar information in their processes, FinCEN might try to make the sharing of information between these agencies

possible, where allowed by law and/or by specific authorization of the individual beneficial owner.

Between FinCEN and the Internal Revenue Service

Address changes and or ownership changes

When the address of a business changes, the business files Form 8822-B with the IRS. A business owner could authorize the IRS to report the change of address to FinCEN so that no separate report would need to be filed. This could be accomplished by a separate checkbox on the form. Then the IRS would report the Business Name, EIN and new address to FinCEN.

For single member LLCs or Corporations owned by just one person: When the owner of a business changes, the business files Form 8822-B. A business owner could authorize the IRS to report the change of ownership to FinCEN so that no separate report would need to be filed. This could be accomplished by a separate checkbox on the form. Then the IRS would report the Business Name, EIN and new owner (and optionally their TIN) to FinCEN.

When the personal address changes, US taxpayers file Form 8822. A taxpayer that is a beneficial owner of a company could authorize the IRS to report the change of address to FinCEN so that no separate report would need to be filed. This could be accomplished by a separate checkbox on the form and a field for that person's FinCEN identifier.

Beneficial owner information (foreigners owning US companies)

Beneficial owners that are not considered US persons file form 5472 to make their beneficial owner status known to the IRS, which has the same definition (25% of interests). A foreign beneficial owner could authorize the IRS to share the information in parts I to III with FinCEN to update business and beneficial owner information. This could be accomplished by a separate checkbox on the form, giving the choice if the TIN numbers supplied in Part II should be shared as well, since reporting these numbers to FinCEN are considered optional.

Change of Business Address

Business report address changes on their yearly tax return (Form 1120). They could authorize the IRS to share the new address stating the EIN number to FinCEN. This could be accomplished by a separate checkbox on the form.

Between FinCEN and the United States Citizenship and Immigration Services (USCIS)

Address changes

Legal permanent residents (LPR) of the United States file form AR-11 when they change their address. Such an LPR could, at the time of filing this form, authorize USCIS to report the

address change to FinCEN. This could be accomplished by a checkbox on the form and a space to enter that person's FinCEN identifier.

Between FinCEN and the Social Security Administration (SSA)

Taxpayers that have shared their TIN (SSN) with FinCEN could authorize the SSA to pass on the information to FinCEN of an address change. By submitting the TIN and the new address, it could be updated at the same time for all companies where that person is listed as a beneficial owner.

As long as all these data sharing initiatives are voluntarily agreed by the beneficial owner it should pose no legal problem from our understanding.

Additional comments not related to a specific question or covering more than one question.

- For companies that do not have a single person that holds 25 percent of interests in the company and where no other definition fits to find at least one person to report as a beneficial owner, the majority shareholder / holder of membership interest could be reported even when holding less than 25%.
- The total number of persons holding shares/interests in a company might be useful. There is a difference if 4 persons are holding 25% of a company, or there is one person holding 49% and 51 persons just holding 1% when it comes to using the power of significant control over a company.
- FinCEN identifiers should stay the same even if the name of a person changes (by marriage, divorce, legal name change) to make it easier to find "aliases".
- FinCEN may clarify, which of the information submitted may become publicly available by Freedom of Information Act (FOIA) requests.
- A FinCEN identifier should make it possible to update information of that person for all companies related to that person at the same time. E.g. If that person is the beneficial owner of 10 companies, one report should suffice to update the beneficial owner address for all 10 companies.
- Third parties submitting information on behalf of a beneficial owner or company should have the option to declare if they could verify all information submitted or not, to make sure they do not become liable if companies or beneficial owners hand them incorrect information on purpose.

We thank you for your time and consideration in this matter.

Kind regards
Matthias Will
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