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# Tax Alert – Canada

## New transparency register requirements in Ontario

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

Starting 1 January 2023, important changes to Ontario's *Business Corporations Act* (OBCA) have come into effect, requiring Ontario private corporations to prepare and maintain a register of individuals with significant control (ISC) over the corporation. This so-called “transparency register” is part of an overall effort at the federal,<sup>1</sup> provincial and territorial levels to combat money laundering, terrorist financing, tax evasion or avoidance, and other illicit activities.

### Who is an individual with significant control?

An individual will generally be an ISC if they meet either of the following two tests:

1. The individual is the registered holder of, beneficial owner of, or has direct or indirect control over shares that:
  - a. Carry 25% or more of the voting rights attached to all of the corporation's outstanding voting shares; or
  - b. Have a fair market value equal to 25% or more of all the corporation's outstanding shares; or
2. The individual has any direct or indirect influence that, if exercised, would result in control in fact of the corporation.

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<sup>1</sup> For more information on the changes made to the *Canada Business Corporations Act*, see [EY Tax Alert 2019 Issue No. 29](#).

To determine whether an individual has “control in fact” of a corporation, the legislation provides that all relevant factors should be taken into consideration. Notably, the relevant factors do not need to include the individual’s ability to effect a change in the board of directors of the corporation.

Two or more individuals may generally be considered to be ISCs if:

1. They jointly hold rights or interests (or a combination thereof) in respect of shares that satisfy the 25% threshold above;
2. They are parties to an agreement or arrangement to exercise rights “jointly or in concert” with respect to shares that satisfy the 25% threshold above; or
3. They are “related persons” who together hold rights or interests (or a combination thereof) in respect of shares that satisfy the 25% threshold above. Related persons, as defined under the OBCA, include spouses, children and other relatives of a person or their spouse who live in the same home as the person.

As the definition of ISC refers specifically to individuals and not corporations or other entities, it’s important to review the ownership of the shares and rights “up the chain” to identify which individuals, if any, satisfy the tests above. Where there are multiple levels of holding companies, there may be ISCs who hold their interests indirectly through different entities.

## **What information must be included in the transparency register?**

A corporation’s transparency register must generally contain the following information for each ISC of the corporation:

- ▶ Name;
- ▶ Date of birth;
- ▶ Latest known address;
- ▶ Residence for tax purposes;
- ▶ Day on which an ISC became and ceased to be an ISC, as the case may be; and
- ▶ Description of how each individual is an ISC, including a description of their interests and rights in respect of shares of the corporation.

The transparency register must be maintained at the corporation’s registered office or at such other location in Ontario as designated by the directors. The register must be updated at least once each financial year, and corporations must update the register for any new information with respect to an ISC within 15 days of becoming aware of such information. If an individual ceases to be an ISC, the corporation must generally dispose of that person’s personal information within one year after the sixth anniversary of the individual ceasing to have significant control over the corporation.

The corporation must take reasonable steps to ensure it has identified all ISCs and that the information it has obtained is accurate. To assist the corporation with meeting this requirement, the OBCA requires shareholders who receive a request from the corporation for any required information to “promptly and to the best of their knowledge” reply to the request “accurately and completely”.

## **Who has access to the transparency register?**

While a corporation’s transparency register need not be made publicly available, certain governmental bodies and inspecting officials are allowed to obtain disclosure of the register for specified permitted purposes. These governmental bodies and officers include:

- ▶ The Ontario Minister and authorized representatives;
- ▶ Members of police forces, First Nations Constables or members of the Royal Canadian Mounted Police;
- ▶ Federal and Ontario tax authorities; and
- ▶ Certain specified regulatory bodies, including the Ontario Securities Commission, the Financial Services Regulatory Authority of Ontario and the Financial Transactions and Reports Analysis Centre of Canada.

## **Penalties**

Failure by a corporation to comply with the requirements to properly maintain the transparency register or comply with inquiry requests and OBCA disclosure obligations can result in penalties of up to \$5,000.

In addition, directors and officers who knowingly authorize, permit or acquiesce in (i) a corporation’s failure to prepare and maintain the transparency register; (ii) the recording of false or misleading information in the transparency register; or (iii) the provision to any person or entity of false or misleading information in relation to the transparency register can face penalties of up to \$200,000 and/or imprisonment of up to six months.

Similarly, shareholders who fail to provide complete and accurate information to the corporation upon request can face penalties of up to \$200,000 and/or imprisonment of up to six months.

## **Looking ahead**

In addition to the new transparency register requirement, Ontario corporations are still required to meet their existing record-keeping obligations, including filing of their annual corporate return and maintaining a register of all ownership interests in land situated in Ontario.

As a reminder, a corporation's annual corporate return is generally due six months after the fiscal year-end and is filed separately from the corporation's tax filings.

## **Learn more**

For more information, please contact your EY or EY Law advisor or one of the following professionals:

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