



## COMMITTEE REPORT: INTERNATIONAL PRACTICE

By **Melvin A. Warshaw** & **Trang Fernandez-Leenknecht**

# U.S. Estate Planners and Foreign Property: Part I

Non-tax and estate/inheritance tax considerations

**T**he world is changing much faster than at the beginning of our professional careers. It's vital that every U.S. estate planner understand what's happening elsewhere in the world. Increasingly, our U.S. citizen clients are making investments in or have business ties to foreign countries, or they're purchasing property located in another country.

Over the past decade, the approach of the rest of the world toward disclosure of ultimate beneficial ownership (UBO) and privacy has deviated from that of the United States. The era of full disclosure of UBO of property is prevalent elsewhere (and especially in Western Europe). Clients in Europe don't like making disclosures on these registries; however, their governments claim they need the information in fighting criminal behavior of a few nefarious actors who try to hide their wealth abroad. The government authorities of member countries in the European Union (EU) are not only concerned with who owns property but also who has significant control over properties and companies. While these European registries are often referred to in Europe as "company registries," practitioners know they encompass trusts as well.

Until recently, the focus of many U.S. private clients has been on a handful of small states that have enacted trust-friendly legislation to attract their business and on federal tax legislation and how long

the very favorable but temporary relief from estate tax will last with Democrats in control in Washington, D.C. However, U.S. estate-planning clients and their advisors are now also on the threshold of enhanced mandatory UBO disclosure to the U.S. government.

Foreign governments now enforce not only other countries' criminal laws but also the other countries' tax laws. The United States faces renewed pressure from the other industrialized nations to adopt the Common Reporting Standards (CRS), which would force our government to automatically share information about foreign taxpayers with their home governments. Eventually, the United States will have CRS reporting.

### The CTA

The U.S. Corporate Transparency Act (CTA), enacted into law on Jan. 1, 2021, will add a new layer of UBO disclosure in the United States, peeling away at an individual's right to privacy. The purpose of the CTA is to prevent illicit use of so-called shell companies to conceal illegal activity or to facilitate money laundering and tax evasion. The CTA requires certain reporting companies to annually disclose information to the Financial Crimes Enforcement Network (FinCEN) regarding their beneficial owners, as well as information regarding the applicants who form these companies. FinCEN is a bureau of the U.S. Treasury Department that collects and analyzes information about financial transactions to combat illicit activity, such as money laundering.<sup>1</sup>

The CTA amended the U.S. Bank Secrecy Act to require corporations, limited liability companies (LLCs) and similar entities to report certain information about their beneficial owners (the natural person who ultimately owns or controls the

(From left to right) **Melvin A. Warshaw** is an international tax lawyer and consultant based in Wellesley, Mass.,



and **Trang Fernandez-Leenknecht** is an attorney at Holistik Wealth Planning in Geneva