

BE-12 Benchmark Survey of Foreign Direct Investment in the U.S. Due May 31, 2018

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Companies should take note that the U.S. Bureau of Economic Analysis (BEA) is conducting its 5 year benchmark survey relating to cross-border investment: BE-12 (Survey of Foreign Direct Investment in the United States). The BE-12 survey occurs every 5 years, taking the place of the BE-15 Annual Survey of Foreign Direct Investment in the United States. The survey forms are available here and responses are due by **May 31, 2018**. A response is required from persons subject to the reporting requirements, whether or not they are contacted by BEA. The BEA is an agency of the United States Department of Commerce and provides statistics for U.S. economic accounts including data regarding cross-border economic activity.

A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person or entity at the end of calendar year 2017 owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise (or an equivalent interest if an unincorporated U.S. business enterprise).

Certain private funds may be exempt from filing if all of the following apply:

- The U.S. business enterprise is a private fund
- The private fund does not own, directly or indirectly through another business enterprise an “operating company” (being a business enterprise that is not a private fund or a holding company- in which the foreign parent owns at least 10 percent of the voting interest)
- If the foreign parent owns the private fund indirectly (through one or more other U.S. business enterprises), there are no U.S. “operating companies” between the foreign parent and the indirectly-owned private fund.

More information on private funds BEA filing requirements is available here.

Clients are reminded to regularly review their activities in connection with all BEA/Department of Treasury reporting requirements to ensure they are in compliance. BEA reporting may apply to companies that have cross-border structures or investments, and may also apply to investment managers directing the investment activities of their clients. In particular, clients are reminded that the BE-13 Survey of **New** Foreign Direct Investment in the United States is due no later than 45 days after the acquisition is completed, the new legal entity is established, or the expansion is begun. For further information on the BE-13 requirement, please refer to our previous Foley Adviser.

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