

Updated Filing Requirements in Connection with U.S. Inbound and Outbound Investment

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May 12, 2015

Bureau of Economic Analysis Forms BE-13 and BE-10

Companies should take note that the U.S. Bureau of Economic Analysis (BEA) has announced two updated filing requirements relating to cross-border investment: BE-13 (Survey of New Foreign Direct Investment in the United States) and BE-10 (Benchmark Survey of U.S. Direct Investment Abroad). 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.

In light of these changes, clients are reminded to regularly review their activities in connection with all BEA and Department of the Treasury reporting requirements to ensure they are in compliance. BEA/Treasury Department 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.

BE-13 Survey of New Foreign Direct Investment into the United States

The BEA has reinstated the reporting requirement that parties engaging in certain investment activities into the U.S. file a BE-13 report. This requirement had been discontinued in 2009. The BE-13 survey collects information on the acquisition or establishment of U.S. business enterprises by foreign investors and on expansions by existing U.S. affiliates of foreign companies. Unlike some other BEA surveys, this mandatory survey requires a filing from persons subject to the BE-13 reporting requirements whether or not they are contacted by BEA.

The BEA has stated that the data collected in this survey will be used to measure the amount of new foreign direct investment into the United States and will also identify new U.S. affiliates of foreign companies that meet reporting criteria for BEA's related benchmark (Form BE-12), annual (Form BE-15), and quarterly (Form BE-605) surveys of foreign direct investment.

Reporting Triggers

A BE-13 filing requirement is triggered if (i) there is acquisition of ownership or control (by way of acquisition, establishment, merger, expansion), directly or indirectly, by one foreign person of 10% or more of the "voting securities" of a United States business enterprise; and (ii) the cost of such investment transaction is greater than \$3 million. Depending on the type of investment transaction (for example, acquisition, establishment, merger, expansion), United States affiliates need to report their information on one of six different forms. If the cost of the investment transaction did not exceed \$3 million but the 10% threshold was reached, then a BE-13 Claim for Exemption should be filed. If you are contacted by BEA as part of its survey efforts but did not meet the requirements for filing the BE-13, then you need to file a Form BE-13 Claim for Exemption in any event.

In the private investment fund context, if there is an offshore feeder fund investing into a U.S. master fund, then a BE-13 filing may be required. In addition, if a non-U.S. entity is the general partner or managing member of a U.S. fund, then such U.S. fund may need to report on BE-13. Generally, a limited partnership or membership interest investment by an offshore investor in a U.S. limited partnership or limited liability company would not require reporting because the limited partnership or LLC is deemed to have all of its "voting securities" controlled by the general partner or managing member, but the particular limited partnership, limited liability company or other organizational documents need to be examined on a case-by-case basis to ultimately determine if reporting is necessary.

Filing Deadline

The BE-13 forms are due no later than 45 days after the acquisition is completed, the new legal entity is established, or the expansion is begun. **Data on the Form BE-13 is being retroactively collected to January 1, 2014. Entities with reporting obligations relating to activities from January 1, 2014 to date that have not already filed should complete the filing now promptly.**

Penalties

Whoever fails to report as required by the BEA is subject to a civil penalty of not less than \$2,500, and not more than \$32,500, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report is subject to a fine of not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment, or both.

More Information

For more information on the Form BE-13 [click here](#) or visit www.bea.gov.

BE-10 Benchmark Survey of U.S. Direct Investment Abroad

The BE-10 is a benchmark survey which is conducted every five years. The current survey effort will cover 2014. The benchmark survey covers the universe of U.S. direct investment abroad. Unlike some other BEA surveys, a response is required from persons subject to the reporting requirements of the BE-10 whether or not they are contacted by BEA.

Reporting Triggers

A BE-10 report is required of any U.S. person that had a foreign affiliate in 2014 (that is, that had direct or indirect ownership or control of at least 10% of the voting stock of a foreign business enterprise **at any time** during the U.S. person's 2014 fiscal year). Reports are required even if the foreign business enterprise was seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 2014 fiscal year. The amount and type of data required to be reported vary according to the size of the U.S. reporter or foreign affiliate, and, for foreign affiliates, whether they are majority-owned or minority owned by U.S. direct investors.

If a United States feeder fund invests in an offshore master fund or a private investment fund owns at least 10% of the voting stock of a foreign enterprise, then it may have BE-10 reporting obligations depending on the exact nature of the ownership interests held. Generally, a limited partnership or membership interest investment would not require reporting because the limited partnership or LLC is deemed to have all of its "voting securities" controlled by the general partner or managing member, but the particular limited partnership, limited liability company or other organizational documents need to be examined on a case-by-case basis to ultimately determine if reporting is necessary.

Investment adviser clients should note that the BEA has stated that they will consider what additional guidance it can offer to hedge fund filers, possibly in the form of Frequently Asked Questions (FAQs). We will provide an update if these FAQs are released.

Data collected from Form BE-10 will be used to identify entities that meet reporting criteria for BEA's related annual (Form BE-11) and quarterly (Form BE-577) surveys of U.S. direct investment abroad.

Filing Deadline and Penalties

The BE-10 forms are due no later than May 29, 2015 for U.S. reporters required to file fewer than 50 forms and June 30, 2015 for U.S. reporters required to file 50 or more forms. The penalties for failing to report are substantially the same as the Form BE-13 penalties with a maximum civil penalty of not more than \$25,000.

More Information

For more information on the Form BE-10 [click here](#) or visit www.bea.gov.

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