

Every US company, whether it is headquartered in the US or is a subsidiary of a foreign company, must complete a US Department of Commerce Bureau of Economic Analysis (BEA) 2014 Benchmark Survey of US Direct Investment Abroad ("BE-10 Survey"), if it has even just one foreign affiliate. The May 29, 2015 deadline is fast approaching for companies that are required to submit fewer than 50 forms. However, BEA has indicated that it will likely grant reasonable requests for an extension, so long as the request is received before the applicable deadline.

BEA collects data on US investment through a variety of surveys. While many of these surveys only require a response if the US company is contacted by BEA, US companies subject to the reporting requirements of the BE-10 Survey are *required* to submit a response whether or not they are contacted.

The BE-10 Survey is required every five years. A US person, meaning any person (defined broadly to include many types of entities) resident in the US or subject to the jurisdiction of the US, must file a BE-10 report if it had a foreign affiliate at any time during the US person's 2014 fiscal year. A US person is considered to have had a "foreign affiliate" if it had direct or indirect ownership or control of at least 10% of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise.

There are penalties for a US company's failure to submit a BE-10 report. These penalties can include fines, imprisonment and/or injunctive relief requiring the company to comply with the filing requirements, depending on the circumstances. However, such penalties are rarely imposed on companies that make inadvertent mistakes.

For a US person required to file fewer than 50 forms, the BE-10 report is due no later than May 29, 2015. For a US person required to file 50 or more forms, the due date is June 30, 2015.

## Reminder of Filing Requirements for Foreign Investments in the US

The BEA also administers the Survey of New Foreign Direct Investment in the United States ("BE-13 Survey"), and reporting is *required* whether or not a US entity is contacted by BEA. US entities must report if (1) a foreign direct investment in the United States relationship is created or (2) an existing US affiliate of a foreign parent establishes a new US legal entity, expands its US operations or acquires a US business enterprise. Additionally, similar to the BE-10 Survey, BEA administers a benchmark survey of foreign direct investment in the US, known as the "BE-12 Survey," every five years. The last BE-12 survey covered the fiscal year ending in 2012.

As a reminder, foreign investment in the US is subject to other notice, clearance and compliance requirements, including:

- Notice to the Committee on Foreign Investment in the United States;
- Clearance with the Department of Defense's Defense Security Service to mitigate or negate foreign ownership, control and influence for cleared US companies; and
- Notice to the Department of State's Directorate of Defense Trade Controls for US companies engaged in defense articles or defense services.

For further information or if you have questions about these reporting requirements, please contact one of the individuals listed in this publication.

## Contacts

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