



New Mandatory Form BE-10 Reporting Requirement for U.S. Persons with Foreign Investments

May 2015

The U.S. Department of Commerce's Bureau of Economic Analysis (the "BEA") is conducting a mandatory survey that imposes reporting requirements on U.S. persons who owned or controlled a "foreign affiliate" during that person's 2014 fiscal year. All U.S. persons who directly or indirectly owned or controlled 10% or more of the voting securities of a foreign affiliate during 2014 must file Form BE-10 with the BEA by **May 29, 2015** for a U.S. reporter making fewer than 50 foreign affiliate filings or by **June 30, 2015** for a U.S. reporter making 50 or more foreign affiliate filings.

Below is a Q&A to assist in understanding the general scope and requirements of Form BE-10.

What is Form BE-10?

The Form BE-10 is part of a 5-year benchmark survey designed by the BEA to gather current economic data on the foreign investment operations of U.S. parent companies and their foreign affiliates. In prior years, a Form BE-10 filing was only required by those U.S. persons directly contacted by the BEA. For the current survey, however, all "U.S. reporters" with one or more foreign affiliates during their 2014 fiscal year must make Form BE-10 filings regardless of whether they were contacted by the BEA.

Who is required to report on the Form BE-10?

Any U.S. person who directly or indirectly owned or controlled 10% or more of the voting securities of a foreign affiliate during 2014 is considered to be a "U.S. reporter" and must file a Form BE-10A, as well as a Form BE-10B, BE-10C or BE-10D, as applicable, for each of its foreign affiliates. For purposes of these forms, a "U.S. person" is any individual, entity, association, branch, estate, trust, corporation, associated group or other organization resident in the United States or subject to the jurisdiction of the United States.

What is a "foreign affiliate" for purposes of this survey?

A "foreign affiliate" means any business enterprise located outside of the United States in which the U.S. person directly or indirectly owned or controlled 10% or more of the voting stock or equivalent equity of such foreign enterprise. A "business enterprise" means any organization, association, branch or venture that exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

What does the report on Form BE-10 consist of?

Form BE-10 consists of 4 forms, Forms BE-10A, BE-10B, BE-10C and BE-10D. Form BE-10A is used to report data and information regarding the U.S. reporter, and a Form BE-10B, BE-10C or BE-10D, as applicable, must be completed for each of the U.S. reporter's foreign affiliates. Form BE-10B, BE-10C or BE-10D is used depending on the foreign affiliate's assets, sales or net income.

Is the information reported on Form BE-10 confidential?

The information that is collected on Form BE-10 is confidential and may be used only for analytical and statistical purposes, and access to the information will be available only to the BEA. The results of the survey will be made available to the general public at an aggregated level so that neither U.S. persons providing information nor their foreign affiliates can be identified.

What is the due date for filing the Form BE-10?

A complete Form BE-10 must be delivered to the BEA by **May 29, 2015** for a U.S. reporter making fewer than 50 foreign affiliate filings and by **June 30, 2015** for a U.S. reporter making 50 or more foreign affiliate filings. The BEA has indicated in its instructions that it will consider reasonable requests for extensions of the filing deadline if such extension requests are received by the BEA no later than the original due date of the report and enumerate substantive reasons necessitating the extension. The form to request an extension may be downloaded at http://www.bea.gov/surveys/pdf/be10/BE10_Extension%20Request%20Form.pdf.

What are the penalties for failing to report?

Failure to comply with the BEA's filing requirements may result in civil penalties of between \$2,500 and \$25,000, and injunctive relief forcing compliance, or both, and potentially criminal penalties for a willful failure to report of not more than \$10,000 and, if an individual, imprisonment for not more than one year, or both.

How must the reports be submitted?

Form BE-10 may be electronically transmitted to the BEA via the BEA website, at www.bea.gov/efile, if you have a user name and login. If you are a new filer of BE-10 forms, you are not eligible to file the forms electronically through the BEA e-file system unless you contact the BEA to set up an account. The BEA staff may be reached at (202) 606-5566. Reports may also be filed by mail through the U.S. Postal Service to:

U.S. Department of Commerce
Bureau of Economic Analysis
BE-69(A)
Washington, DC 20230

Reports filed by private delivery should be sent to:

U.S. Department of Commerce
Bureau of Economic Analysis, BE-69(A)
Shipping & Receiving Section M-100
1441 L Street, NW
Washington, DC 20005

Where can I find additional information regarding Form BE-10 and the reporting requirements?

The complete 2014 *Benchmark Survey of Direct Investment Abroad (Forms BE-10A, 10B, 10C and 10D)* may be downloaded at http://www.bea.gov/surveys/respondent_be10.htm and instructions to the Forms may be downloaded at <http://www.bea.gov/surveys/pdf/be10/BE-10%20Instructions.pdf>. The *Guide to Industry Classifications for International Surveys, 2012*, which contains industry classifications, may be downloaded at http://www.bea.gov/surveys/pdf/be10/2012_industry_code_guide.pdf. The instructions provide detailed information about the reporting requirements for each Form BE-10, as well as specific instructions for their completion and submission. We encourage all of our clients to carefully review these instructions and related publications to determine if you have a BE-10 reporting obligation and, if so, how to complete Form BE-10A and Forms BE-10B, 10C and 10D, as appropriate.

Please do not hesitate to contact one of your Gunderson Dettmer attorneys if you have questions about this update.

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