

Form BE-12 Reporting Requirements as Applied to Private Funds

Insights

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Form BE-12 Reporting Requirements as Applied to Private Funds

The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) is conducting a mandatory survey that imposes reporting requirements on any U.S. business entity (including a fund, general partner entity or management company) in which a foreign person directly or indirectly held a voting interest of 10 percent or more at any time during the 2017 fiscal year. Unless the U.S. business entity is eligible for an exemption, all such foreign-owned U.S. business entities are required to file Form BE-12 with the BEA by May 31, 2018 for paper filings or June 30, 2018 using the BEA eFile system.

Many funds will be eligible to rely on an exemption available to certain U.S. private funds. The BEA has provided a flowchart to determine which U.S. private funds will be obligated to file a Form BE-12.

It is important to note two things when utilizing the flowchart:

- The general partner of a private fund is deemed to hold all voting interests in the fund. The ownership of limited partners may be ignored when determining whether a foreign person holds a voting interest of 10 percent or more in a fund.
- When calculating the indirect voting interest of a foreign person in an operating company, the voting interests in each entity in the chain of ownership are multiplied. For example: Assume a foreign managing member holds 50% of the

voting power of a U.S. general partner entity, which controls a U.S. private fund, which holds 30% of the voting interests in an operating company. The foreign managing member would hold 15% of the indirect voting interests of such operating company ($50\% * 100\% * 30\% = 15\%$).

In general, the following types of funds will not be required to file a Form BE-12:

- A fund formed outside the U.S.
- A fund formed in the U.S. whose general partner entity (a) is formed in the U.S. and (b) has no foreign managing members who hold more than 10 percent of the voting power in the general partner entity.
- A fund that does not hold a voting interest of 10 percent or more in any U.S. or foreign operating company.
- A fund that has no foreign general partner entity or foreign managing member that holds an indirect voting interest of more than 10 percent in any U.S. or foreign operating company.

In general, the following types of funds and their management entities will be required to file a Form BE-12:

- A management company entity formed in the U.S. that has a foreign member who owns at least 10 percent of the voting interests of the management company.
- (a) A fund is formed in the U.S., and (b) the fund's general partner entity is either (i) formed outside the U.S., or (ii) formed in the U.S. and has a foreign managing member who holds a voting interest of 10 percent or more in the general partner entity, and (c) such foreign general partner entity or foreign managing member holds an indirect voting interest of 10% or more in any U.S. or foreign operating company.

If a fund that is eligible to rely on the private fund exemption receives a notice from the BEA requesting that the fund file a Form BE-12, then such fund must file a Form BE-12 Claim for Not Filing, which can be found [here](#).

Funds and management company entities that are required to file a Form BE-12 can find general information regarding the purpose, method of filing, and penalties for failing to file Form BE-12 in the [Client Alert](#) circulated to Gunderson Dettmer's company clients, and additional information and instructions on the [BEA's website](#).

Please do not hesitate to contact one of your Gunderson Dettmer attorneys if you

have questions about this update.

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