

# New Mandatory Form BE-12 Reporting Requirement for U.S. Persons with Foreign Owners

Insights

May 8, 2018

## ***New Mandatory Form BE-12 Reporting Requirement for U.S. Persons with Foreign Owners***

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 in which a foreign entity directly and/or indirectly held a voting ownership interest (or the equivalent) of 10 percent or more at any time during that U.S. person's 2017 fiscal year. All such U.S. persons must file Form BE-12 with the BEA by **May 31, 2018** or by **June 30, 2018** if using the BEA eFile system at [www.bea.gov/efile](http://www.bea.gov/efile).

Below is a Q&A to assist in understanding the general scope and requirements of Form BE-12.

### ***What is Form BE-12?***

The Form BE-12 is part of a 5-year benchmark survey designed by the BEA to gather current economic data on foreign direct investment into U.S. business enterprises. All U.S. reporters with one or more foreign 10% owners during their 2017 fiscal year must make a Form BE-12 filing regardless of whether they were contacted by the BEA. Any filer who would normally file a BE-15 annual survey must file the BE-12 benchmark survey instead for 2017.

## ***Who is required to report on the Form BE-12?***

Any U.S. business enterprise of which 10% or more of the voting securities were directly and/or indirectly owned by a foreign entity during 2017 is considered to be a “U.S. affiliate” and must file a Form BE-12A, BE-12B, BE-12C or Claim for Not Filing, as applicable. The ownership percentages of multiple foreign owners of a U.S. business are not aggregated for the purpose of determining whether to file a BE-12 survey and if no single foreign person holds 10% or more of the voting securities of a U.S. business, then such U.S. person need only file a BE-12 survey if contacted by the BEA. Each BE-12 filing must cover the U.S. affiliate’s fully consolidated U.S. domestic business enterprise, including all majority-owned U.S. subsidiaries sharing common ownership. Certain narrow exceptions apply to this requirement, though any U.S. entity falling into an exception is required to report through the Treasury International Capital system rather than to the BEA.

## ***Is the information reported on Form BE-12 confidential?***

The information that is collected on Form BE-12, including identification of foreign parents, major products and services provided by the U.S. affiliate and certain financial information, is confidential and may be used only for analytical and statistical purposes, and access to the information will be available only to the BEA.

## ***What is the due date for filing the Form BE-12?***

A complete Form BE-12 must be delivered to the BEA by **May 31, 2018** or by **June 30, 2018** if the filing is being submitted through the BEA’s electronic filing system at [www.bea.gov/efile](http://www.bea.gov/efile). Reasonable requests for extension of the filing deadline may be granted if requested through the eFile system before May 31, 2018.

## ***What are the penalties for failing to report?***

Failure to comply with the BEA’s filing requirements may result in civil penalties and potentially criminal penalties for a willful failure to report. Officers, directors, employees or agents of an entity who knowingly participates in a willful failure to file may also be subject to criminal penalties.

## ***How must the reports be submitted?***

Form BE-12 may be electronically transmitted to the BEA via the BEA website, at [www.bea.gov/efile](http://www.bea.gov/efile). Reports may also be filed by mail through the U.S. Postal

Service to:

U.S. Department of Commerce  
Bureau of Economic Analysis  
Direct Investment Division, BE-49(A)  
4600 Silver Hill Road  
Washington, DC 20233

Reports filed by a delivery service other than the U.S. Postal Service should be sent to:

U.S. Department of Commerce  
Bureau of Economic Analysis  
Direct Investment Division, BE-49(A)  
4600 Silver Hill Road  
Suitland, MD 20746

***Where can I find additional information regarding Form BE-12 and the reporting requirements?***

The complete *2017 Benchmark Survey of Foreign Direct Investment in the United States (Forms BE-12A, 12B and 12C)* and its related instructions may be downloaded at [https://www.bea.gov/surveys/respondent\\_be12\\_be15.htm](https://www.bea.gov/surveys/respondent_be12_be15.htm). The instructions provide detailed information about the reporting requirements for each Form BE-12, as well as specific instructions for their completion and submission. Guidance on which Form BE-12 to file can be found at <https://www.bea.gov/surveys/pdf/be12/which-form-do-i-file-2017.pdf>. We encourage all of our clients to carefully review these instructions and related publications to determine if you have a BE-12 reporting obligation and, if so, how to complete Form BE-12A, 12B, 12C or Claim for Not Filing, 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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Colman L. Lynch  
PARTNER  
P +1 212 430 3163



Dan O'Connor  
PARTNER  
P +1 650 463 5470

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