

Alert

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U.S. Companies with Foreign Affiliates Face Reporting Deadline In 2020

The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) requires U.S. persons who control, directly or indirectly, at least 10 percent or more of the ownership interests in a foreign business enterprise to file a mandatory benchmark survey called Form BE-10. Each U.S. person with such ownership interests will have to file a form BE-10A; depending on the size of its ownership interest in the foreign business enterprise and a number of other factors, the U.S. person has to submit additional forms that may require extensive financial and operational information, making it imperative for companies to determine if they are required to report and, if they are, to follow further developments. The final rule establishing the BE-10 Benchmark Survey for the period ending 2019 was published in the Federal Register on November 12, 2019 (84 FR 60912).

Background

The BEA conducts a number of surveys to collect data on foreign direct investment in the United States as well as on U.S. investment abroad. Reporting to the BEA is mandatory. Any data collected is confidential, and the reporting entity's prior permission is required before the BEA can release data in any form that would allow an individual reporting entity to be identified. **Failure to participate in any mandatory survey may subject the entity, as well as its directors, officers, and employees, to civil and even criminal liability.**

BE-10

The BE-10 benchmark survey is conducted every five years and is the BEA's most comprehensive survey of U.S. investment abroad. The next BE-10 survey covers the filer's fiscal year ending in 2019. **Responses are due by May 31, 2020 (June 30, 2020, if the filer has to submit more than 50 forms to satisfy its reporting obligation).** Any U.S. person subject to the reporting requirements of the BE-10 must submit the report, regardless of whether the BEA contacted the U.S. entity to request participation in the survey.

Entities Subject to Reporting Requirements

The BE-10 has to be filed by each U.S. person who has a foreign affiliate, i.e. owns or controls, directly or indirectly, 10 percent or more of the voting securities (or an equivalent interest in an unincorporated enterprise) in a foreign business enterprise on December 31, 2019. Foreign affiliates that are private funds and display characteristics of portfolio investments do not report to the BEA, but rather through the Treasury International Capital reporting system of the U.S. Department of the Treasury. The operating companies owned by such private funds, however, remain subject to the BEA reporting requirements.

Form to be Filed

Form BE-10A

The reporting U.S. person has to file a Form BE-10A covering the fully consolidated U.S. domestic



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business enterprise. In addition, the U.S. person has to file one of the other BE-10 forms for its foreign affiliate(s), depending on the size of the investment abroad as well as the financial data of the foreign entity in question.

Form BE-10B

This form must be completed if:

- The foreign affiliate is majority-owned by one or more U.S. persons (i.e., the combined direct and indirect ownership interests of all U.S. parents of the foreign affiliate exceed 50 percent); **and**
- For the filer's fiscal year ended in 2019, any of the following items was greater than \$80 million (positive or negative):
 - Total gross assets,
 - Sales or gross operating revenues, excluding sales taxes, or
 - Net income after provision for U.S. income taxes.

Form BE-10C

This form must be completed:

- By a majority-owned foreign affiliate if any of the above items was greater than \$25 million (positive or negative), but less than \$80 million (positive or negative) for the fiscal year ended in 2019, or
- By a minority-owned foreign affiliate (i.e., the combined direct and indirect ownership interests of all U.S. parents of the foreign affiliate amount to 50 percent or less, but at least 10 percent) if any of the above items was greater than \$25 million (positive or negative) for the fiscal year ended in 2019.

Form BE-10D

This form must be completed by majority- or minority-owned foreign affiliates if none of the three items was greater than \$25 million (positive or negative) for the fiscal year ended in 2019.

Form BE-10 Claim for Not Filing

This form is filed if the BEA contacted a U.S. person regarding its reporting status, but the U.S. person is not required to file a Form BE-10 because its ownership interest in any foreign entity amounts to less than 10 percent.

The final forms are expected to be available at www.bea.gov (registration for a user account is required) in early 2020.
