

# ClientAlert

## Mergers & Acquisitions

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### BEA Reporting Requirements for US Direct Investment Abroad and New Foreign Direct Investment in the United States

The US Department of Commerce's Bureau of Economic Analysis (BEA) has announced changes to the reporting requirements for the 2014 BE-10 Benchmark Survey of US Direct Investment Abroad and the BE-13 Survey of New Foreign Direct Investment in the United States. Most notably, unlike previous surveys, those subject to the applicable reporting requirements must respond whether or not they are contacted by BEA.

As a result of this change, US domestic business enterprises (including corporations, hedge funds and investment managers) need to be aware of these reporting requirements, as they may not receive a BEA request as they have in the past. Failure to submit the BE-10 or BE-13 report could result in civil penalties, and willful failures to report could result in criminal penalties.

#### BE-10 Survey: Basic Requirements and Deadlines

BE-10 benchmark surveys are conducted every five years. This survey covers US direct investment abroad, and is BEA's most comprehensive survey of such investment in terms of subject matter. The purpose of the survey is to obtain data on the financial and operating characteristics of US parent companies and their foreign affiliates, and assess the impact of such investment on the US and foreign economies.

A BE-10A form must be filed by any US person that had a foreign affiliate at any time during the US person's 2014 fiscal year. Direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise will trigger the affiliation requirement. The report must be filed by "the fully consolidated US domestic business enterprise," which is known as the "US Reporter."

Forms BE-10B, BE-10C and BE-10D must be filed by the foreign affiliates of the US Reporter. Parties must determine which form is appropriate based on the criteria set out by BEA. These criteria include the degree of affiliation (minority or majority ownership), the value of assets, sales or net income, and if the foreign entity is a foreign affiliate parent of another foreign affiliate filer.

A fully completed and certified BE-10 report (including the BE-10A and any BE-10 reports required from foreign affiliates) is due no later than **May 29, 2015**, for US Reporters required to file fewer than 50 forms. It is due on **June 30, 2015**, for US Reporters required to file 50 or more forms. BEA typically grants extensions to parties upon request, but has stated that extensions to respond to the report should be submitted by the deadline for filing the report.



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## BE-13 Survey: Basic Requirements and Deadlines

BEA has also reinstated the BE-13 Survey of New Foreign Direct Investment in the United States, which had been discontinued in 2009. The BE-13 survey captures information about new investments made when a foreign investor establishes or acquires a US business (either directly, or indirectly through a US business it already owns) or expands an existing US business. This information is used to assess the impact of foreign direct investment on the US economy and to develop national policy and state programs to attract foreign direct investment.

BE-13 forms must be filed only by US entities, not foreign investors. US entities are required to complete the survey 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. Foreign direct investment is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated US business enterprise, or an equivalent interest of an unincorporated US business enterprise, including a branch. Depending on the type of investment, US entities are required to report their information on one of six forms: BE-13A; BE-13B; BE-13C; BE-13D; BE-13E; or BE-13 Claim for Exemption.

Unlike the BE-10 survey, which is conducted every five years, BE-13 surveys are required to be completed within 45 days after the acquisition is completed, the new legal entity is established, or the expansion is begun. The survey requirement also applies retroactively to any transaction completed in 2014. For transactions completed between January 1, 2014, and November 24, 2014, the survey was due by January 12, 2015. As with the BE-10, US entities subject to the reporting requirements must complete a BE-13 form regardless of whether they are contacted by BEA. BEA typically has granted extension requests and accepted late filings without any penalty provided the filer exhibits cooperation and good faith in submitting the required information. Additional BEA reporting requirements could apply after the BE-13 has been filed.

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