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Mandatory BE-10 Benchmark Survey of U.S. Investment Abroad Due May 29, 2020

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In a development that may catch many by surprise, a little-known, but mandatory, U.S. Government filing called the BE-10 Benchmark Survey of U.S. Direct Investment Abroad is due May 29, 2020.¹ With few exceptions, **any U.S. business** that, at the end of its Fiscal Year 2019, owned 10% or more of the voting securities of any foreign business (directly or indirectly) is required to file a report, **whether or not it is contacted by the U.S. Government agency responsible for administering the reporting program.** (U.S. businesses filing 50 or more foreign affiliate reports have until June 30, 2020 to file their BE-10 survey.)

I. BEA Background

The Bureau of Economic Analysis (the “BEA”) is an unheralded agency within the U.S. Department of Commerce that prepares official U.S. economic statistics for the U.S. Government. The BEA relies on information collected from its surveys of U.S. direct investment abroad and foreign direct investment in the United States. While it might be small in stature, the BEA has a bite—and a subpoena power. Response to its surveys is mandatory and, as discussed below, failure to comply can carry civil and even criminal penalties.

The BEA conducts several surveys that require transaction-related, quarterly, annual, and benchmark filings. Benchmark surveys (like the BE-10) are conducted every five years. Moreover, unlike the quarterly and annual versions (the BE-11 and BE-577), responses must be provided regardless of whether the company is notified by the BEA.

II. BE-10 Summary

The BE-10 benchmark survey is the BEA’s most comprehensive survey of U.S. direct investment abroad. The BE-10 due this year covers information from the 2019 fiscal year.

The BE-10 covers U.S. businesses that own **10% or more of the voting securities of any foreign business (directly or indirectly)**. The BE-10 also generally covers renting or leasing foreign real estate to others, as well as managing, selling, buying, or renting foreign real estate for others. There are limited exceptions to filing related to U.S. holdings in foreign private funds which do not hold an operating company.

U.S. businesses that would normally file the BE-11 annual survey file the BE-10 benchmark survey when it is conducted instead.



III. Which BE-10 Forms to File

Each U.S. business required to file must file a **BE-10A** survey regarding its own business, and one or more of forms BE-10B, BE-10C, and BE-10D regarding its foreign affiliates. The U.S. business can consolidate certain foreign business enterprises for reporting purposes under certain conditions.

- The **BE-10B** filing is filed for majority-owned foreign affiliates of a U.S. business that have assets, sales, or net income of more than \$80 million (positive or negative).
- The **BE-10C** filing is filed for foreign affiliates of U.S. parents that have assets, sales, or net income of more than \$25 million (positive or negative), except majority-owned foreign affiliates that trigger a BE-10B filing.
- The **BE-10D** filing is filed for foreign affiliates that have assets, sales, or net income of less than \$25 million (positive or negative).

IV. When to File

The BE-10 is due May 29, 2020 (or by June 30, 2020, for U.S. businesses filing 50 or more foreign affiliate reports). The BEA may grant an extension if that request is received by May 29, 2020.

V. Confidentiality

By federal statute, reports to the BEA are confidential and are used only for analytical and statistical purposes.² Unless the submitting business gives its prior written consent, the BEA must not present information contained in a report in a manner that allows it to be individually identified. Further, these reports cannot be used for purposes of taxation, investigation, or regulation.

VI. Penalties

Failure to supply the information required in the BE-10 carries both civil and criminal penalties. A person who fails to file may face civil penalties of between approximately \$4,800 and \$50,000 and BEA is authorized to seek injunctive relief compelling a response. Willful violations can carry criminal penalties of up to \$10,000 and, for individuals (including officers, directors, employees, or agents of a corporation who knowingly participate in a violation), imprisonment of up to one year, or both.³

We are available to assist our clients with interpreting the filing requirements or completing a filing, if required.





If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Washington, D.C. lawyers:

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¹ The BE-10 filing forms are available here: <https://www.bea.gov/be-10-benchmark-survey-us-direct-investment-abroad>.

² 22 U.S.C. § 3104(c); *see also* 15 C.F.R. § 801.5.

³ 22 U.S.C. § 3105.

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