

## Important but Frequently Overlooked Reporting Requirements for Inbound and Outbound Direct Investment Involving US Entities

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Pursuant to the requirements of the International Investment and Trade and Services Survey Act and related statutes, the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) collects information on international trade in services, foreign direct investment in the United States and outbound U.S. investment overseas. BEA uses this information to compile a number of different economic and statistical reports that are, in turn, used for budgetary purposes and to help set U.S. economic and monetary policy. Information submitted to BEA is confidential and is to be used for such economic and statistical reporting purposes only.

Recently, BEA revived two key reporting requirements that are applicable to most foreign investors in the United States and to certain U.S. investors overseas. Companies, investors and fund managers in all sectors should be aware of these requirements and take steps to ensure timely compliance. Failure to file applicable reports with BEA can lead to civil penalties of up to \$25,000 per violation and criminal penalties (for willful violations) of up to \$10,000 and one year in prison.

### Foreign Direct Investment in the United States

Effective November 26, 2014, BEA reinstated mandatory reporting of foreign direct investments that equal or exceed a 10 percent voting interest (or equivalent) in a U.S. business enterprise or real estate (improved or unimproved, except residential real estate held exclusively for personal use or not-for-profit purposes). Reports are required for all such investments made on or after January 1, 2014.

If the cost of a foreign direct investment exceeds \$3 million, the U.S. entity must file the applicable version of Form BE-13. The specific version of Form BE-13 that must be filed depends on whether the investment (i) was in an existing U.S. entity, (ii) was in a new U.S. entity, (iii) resulted in a merger with an existing foreign-invested U.S. entity or (iv) resulted in an expansion of an existing foreign-invested U.S. entity. If the cost of the foreign investment was less than \$3 million, the U.S. entity must file a claim for exemption with BEA.

Updates to prior filings of Form BE-13 may be required where the U.S. entity is under construction at the time of an initial filing. In addition, filers of Form BE-13 may subsequently be contacted by BEA and requested to file responses to quarterly, annual and five-year benchmark surveys of foreign direct investment in the United States.

For all applicable foreign direct investments that took place between January 1, 2014, and November 26, 2014, the deadline for filing Form BE-13 (or a claim for exemption) was January 12, 2015. Investments that take place after November 26, 2014, must be reported within 45 days of the investment. U.S. entities that require additional time to file Form BE-13 or a claim for exemption should contact BEA to request an extension of time.

### U.S. Direct Investment Abroad

Effective November 20, 2014, BEA also has reinstated mandatory reporting of U.S. direct investment abroad through a Form BE-10 benchmark survey. The reinstated

reporting requirement applies to any U.S. person who had 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), including a branch, at any time during the U.S. person's 2014 fiscal year.

Notably, BEA has made clear that the reporting requirement applies to U.S.-based hedge funds and other U.S. investment funds. BEA has indicated that it may issue specific guidance on completing Form BE-10 for such funds. As of the date of this publication, BEA has not yet done so.

Responses to Form BE-10 are mandatory and are due by May 29, 2015 (for U.S. persons who are required to file fewer than 50 such responses), or June 30, 2015 (for U.S. persons filing 50 or more such responses).