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## CLIENT ALERT

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### Bureau of Economic Analysis' Mandatory BE-10 Filing Deadline Approaches for U.S. Companies with Foreign Subsidiaries or Affiliates

#### BE-10 Filing Background

The U.S. Department of Commerce, Bureau of Economic Analysis ("BEA") conducts the BE-10 Survey every five years to obtain data to measure the size of, and change in, U.S. direct investment abroad and assess its impacts on the U.S. and foreign economies.

#### Who is Required to File

In connection with the 2014 BE-10 Survey, a U.S. company is required to report to the BEA if at any time during its 2014 fiscal year the U.S. company had a foreign affiliate (i.e., the U.S. entity had direct or indirect ownership or control of at least 10% of the voting stock of a non-U.S. business enterprise). [1] The form that must be filed by a U.S. company subject to this reporting requirement is the Form BE-10A. Any such U.S. company must also submit separate forms for each of its foreign affiliates (either Form BE-10B, Form BE-10C or Form BE-10D).

#### Filing Deadlines

U.S. companies with fewer than 50 foreign affiliates must file the relevant required forms **no later than May 29, 2015**, while U.S. companies with 50 or more foreign affiliates have until **June 30, 2015** to file the applicable forms.

#### Examples of U.S. Reporters and/or Foreign Affiliates:[2]

- A U.S. private fund with at least 10 percent ownership of voting securities in a foreign portfolio company/investment
- A U.S. investment manager holding management shares in an offshore fund
- A U.S. entity serving as the general partner (directly) of a non-U.S. limited partnership, such as an offshore master fund
- A U.S. manager that is the sole shareholder of the non-U.S. general partner entity of an offshore limited partnership
- Wholly-owned offshore subsidiaries of a U.S. investment manager/general partner
- A U.S. holding company (including investment manager/general partner) or SPV holding 10 percent or more of the voting securities of a foreign subsidiary or other company

## What forms must be completed?

Each U.S. Reporter is required to file a Form BE-10A for itself, and a BE-10B, BE-10C or BE-10D, based on the thresholds listed below, for each of its Foreign Affiliates.[3]

- **Form BE-10A** – Report for U.S. Reporter. A U.S. Reporter that exceeds the “\$300 Million Threshold” must file a complete Form BE-10A; a U.S. Reporter that does not exceed the “\$300 Million Threshold” must fill out a partial Form BE-10A: items 1 - 42 and 97 - 114. The “\$300 Million Threshold” is exceeded if any of the (i) total assets, (ii) sales or gross operating revenues excluding sales taxes or (iii) net income after U.S. income taxes is greater than \$300 million (positive or negative) at any time during the U.S. Reporter’s 2014 fiscal year.
- **Form BE-10B** – Report for majority-owned foreign affiliates of U.S. parents with assets, sales, or net income greater than \$80 million (positive or negative);
- **Form BE-10C** – Report for majority-owned foreign affiliates of U.S. parents with assets, sales, or net income greater than \$25 million (positive or negative), but no one of these items was greater than \$80 million (positive or negative); for minority-owned foreign affiliates of U.S. parents with assets, sales, or net income greater than \$25 million (positive or negative); and for foreign affiliates for which none of assets, sales, or net income was greater than \$25 million (positive or negative), and is a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C;
- **Form BE-10D** – Report for foreign affiliates for which none of assets, sales, or net income was greater than \$25 million (positive or negative), and is not a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C.

## What information is included in the forms?

BE-10 collects information regarding the U.S. Reporter’s and its Foreign Affiliates’ legal identity, activities/products/services, sales and employment data, financial and operating data, export and import business, and investment and transactions between the Reporter and its Foreign Affiliates.

## Are there penalties for not filing?

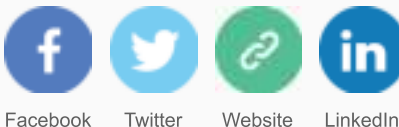
Both civil and criminal penalties may be imposed for failure to file the applicable BE-10 forms with the BEA. A non-filer is subject to **civil penalties** up to \$25,000 and injunctive relief, and willful violations may result in **criminal penalties** of up to \$10,000 and imprisonment for up to one year and could be imposed against any “officer, director, employee, or agent of any corporation who knowingly participates” in the violation. Even though the BEA has stated informally that it does not intend to penalize for failure to file, persistent failure to file may ultimately result in civil and criminal penalties.

BE-10 forms may be filed electronically on the [BEA website](#) or submitted by mail or fax to the BEA.

[1] [http://www.milbank.com/images/content/2/0/20527/MilbankClientAlert-BEA-BE-10-Filing-Deadline.pdf?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=View-Original](http://www.milbank.com/images/content/2/0/20527/MilbankClientAlert-BEA-BE-10-Filing-Deadline.pdf?utm_source=Mondaq&utm_medium=syndication&utm_campaign=View-Original)

[2] <http://www.pillsburylaw.com/publications/deadline-looming-for-be10-filing>

[3] Id.



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