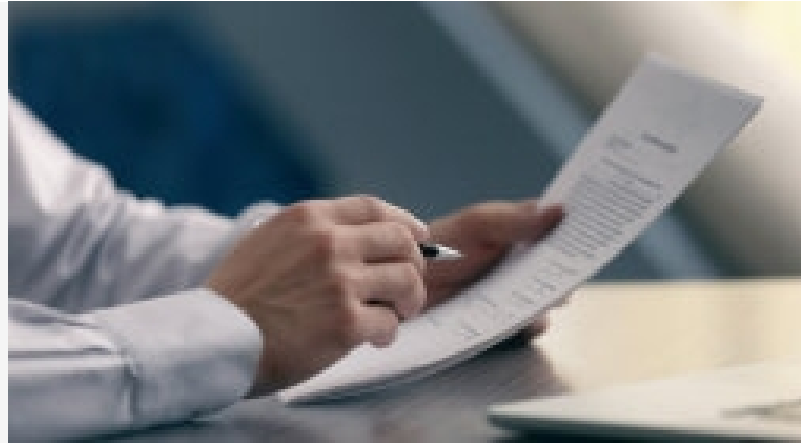


DEADLINE APPROACHING FOR US DIRECT OR INDIRECT INVESTMENT ABROAD

13 MAY 2020 • ARTICLE



Every five years, the United States Bureau of Economic Analysis (the “BEA”) collects mandatory reports from all US persons, including corporations, who own or control more than 10% of the voting securities of a foreign business. The BEA uses this information to prepare statistical reports on the health of the US economy and its role in the global marketplace. This reporting requirement impacts most US companies that own foreign entities, including those that own Marshall Islands and Liberian ship-owning companies.

"All US “persons” that, as of the end of their 2019 fiscal year, owned, directly or indirectly, 10% or more of the voting securities of an incorporated foreign enterprise or an equivalent interest in an unincorporated foreign enterprise must file a BE-10 with the BEA by either May 29 or June 30 of 2020, depending on the organization’s size."

As this deadline rapidly approaches, affected organizations must know what the US government requires in the filing, the penalties for failing to comply, and where to turn for assistance to meet these requirements.

To remain compliant, all US “persons” that, as of the end of their 2019 fiscal year, owned, directly or indirectly, 10% or more of the voting securities of an incorporated foreign enterprise or an equivalent interest in an unincorporated foreign enterprise (a “Foreign Affiliate”) must file a Benchmark Survey of US Direct Investment Abroad (the “BE-10”) with the BEA by either May 29 or June 30 of 2020,¹ depending on the organization’s size. US “persons” include, generally, any individual, branch, partnership, associated group, association, estate, trust, corporation or other organization that resides in, or is subject to the jurisdiction of, the United States. US persons subject to BE-10 requirements are referred to as “Reporters.” Reporters do not have to disclose foreign affiliate private funds on their BE-10 if both:

(1) the private fund does not own, directly or indirectly through another business enterprise, an “operating company”—a business enterprise that is not a private fund or a holding company—in which the consolidated Reporter owns at least 10% of the

voting interest; and

(2) if the Reporter owns the private fund indirectly (through one or more other business enterprises), there are no “operating companies” between the consolidated Reporter and the indirectly-owned foreign private fund.

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A Reporter's 2020 BE-10 filing covers activities for the fiscal year 2019 and discloses for itself and its Foreign Affiliates: its legal identity, sales and employment data, contract manufacturing services, financial and operating data, and export and import business, along with investments and transactions between the Reporter and its Foreign Affiliates. All information contained in the BE-10 filing will be maintained according to strict confidentiality guidelines.

The BE-10 is comprised of five forms, and persons must complete two of those forms, as applicable, in relation to its Foreign Affiliate. Which forms must be filed depends on whether the investment is majority or minority owned businesses, and the amount of the US person's (1) total assets, (2) sales or gross operating revenues excluding sales taxes or (3) net income after provision for US income taxes. A US person who had no foreign affiliates during its 2019 fiscal year but is contacted by the BEA to file a BE-10, must file a "BE-10 Claim for Not Filing."

Persons who file fewer than 50 sets of forms (not counting "BE-10 Claim for Not Filing") must submit their BE-10 by May 29, 2020. Persons who file 50 or more sets of forms (not counting "BE-10 Claim for Not Filing") must submit their BE-10 by June 30, 2020. Reporters who will need more time to comply must make a request from the BEA, which may grant an extension to as late as August 31, 2020. Failure to make a required BE-10 filing may result in civil penalties, such as a fine, and a court order mandating that a Reporter make their report and, if an individual, may be imprisoned for not more than one year, or both.

Watson Farley & Williams is available to assist with the required forms and any deadline extensions that may be necessary due to COVID-19.

Zachary Farley, a former associate in our New York office, also contributed to this article.

[1] We are advised by the BEA that the filing deadlines are not affected by the COVID-19 pandemic, though the agency is granting Reporters extensions to August 31, 2020 on a relaxed, case-by-case basis.

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