

Investment Management Alert

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Bureau of Economic Analysis Mandatory 2019 BE-10 Survey Reporting Requirement Deadline Approaches for a “Benchmark Year”

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Key Points

- The BEA requires all U.S. persons that own or control more than 10 percent of the voting securities¹ of a “foreign” business enterprise to file a report on its BE-10 Benchmark Survey of U.S. Direct Investment Abroad for the fiscal year 2019.
- Although private funds are generally subject to the reporting requirements, private funds meeting the conditions described below are exempt from reporting.
- Form BE-10 is due by May 29, 2020, for respondents reporting fewer than 50 foreign affiliate forms (as discussed below) and June 30, 2020, for 50 or more forms.
- Official BE-10 forms and instructions can be found [here](#), on the BEA website.

Purpose and Applicability

The BE-10, Benchmark Survey of U.S. Direct Investment Abroad (the “BE-10 Survey”), is a mandatory survey conducted once every five years by the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce under the International Investment and Trade in Services Survey Act (the “Act”). The purpose of the BE-10 Survey is to obtain economic data—financial and operating characteristics—of, and information on positions and transactions between, U.S. parent companies and their foreign affiliates. The scope of the form also captures investment funds, both as reporting persons and as foreign affiliates of a reporting person, if they directly or indirectly own more than 10 percent of the voting securities (a “Direct Investment”) of a foreign operating company. The BE-10 Survey collects a large amount of information regarding the Direct Investment and “enterprise-level information” regarding the business enterprise in which the Direct Investments were made.

Any U.S. person (including its fully consolidated U.S. domestic enterprise,² a “Reporter”) with 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 (a “Foreign Affiliate”), at the end of, or

Contact Information

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for, during such Reporter's 2019 fiscal year is required to file a BE-10 report consisting of a Form BE-10A and Form(s) BE-10B, BE-10C or BE-10D, as applicable (a "BE-10 Report"). As this 2019 was a "benchmark year," this reporting is required of all relevant persons in 2020, regardless of whether the Reporter has been contacted by the BEA to do so. Official BE-10 forms and instructions can be found [here](#).

Reporters are not required to report Foreign Affiliates that are private funds³ if both of the following are true: (i) 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 a Direct Investment, and (ii) if the Reporter owns the private fund indirectly (through one or more business enterprises), there are no "operating companies" between the Reporter and the indirectly-owned foreign private fund. For more guidance regarding whether a Direct Investment in a private fund must be reported, see the BEA's flowchart "U.S. Investments in Foreign Private Funds" available [here](#).

Reporters: Form BE-10A

A Reporter must file a complete Form BE-10A if any of the (i) total assets, (ii) sales or gross operating revenues excluding sales taxes or (iii) net income after provision for U.S. income taxes ((i), (ii) or (iii), the "Measurement Factor") of a consolidated U.S. business enterprise was greater than \$300 million (positive or negative) at the end of, or for, such Reporter's 2019 fiscal year. If a Reporter does not meet the foregoing requirements, such Reporter's reporting requirements would be reduced, and it would only be required to complete a partial Form BE-10A. If two or more Reporters jointly own, directly or indirectly, a foreign affiliate, each Reporter must file a Form BE-10A.

Foreign Affiliates: Forms BE-10B, BE-10C and BE-10D

Regardless of whether a Reporter is filing a complete or partial BE-10A, each Reporter must also complete a Form BE-10B, BE-10C or BE-10D for each Foreign Affiliate. The appropriate form to be filed for any Foreign Affiliate depends on whether the threshold for such form was reached at the end of, or for, such Foreign Affiliate's 2019 fiscal year. The following forms must be filed by the Reporter, as applicable, and in addition to Form BE-10A to complete the BE-10 Report:

- **Form BE-10B** must be filed for majority-owned Foreign Affiliates of U.S. parent entities with any of the Measurement Factors for the Foreign Affiliate exceeding \$80 million (positive or negative).
- **Form BE-10C** must be filed for (i) Foreign Affiliates with any of the Measurement Factors exceeding \$25 million (positive or negative) and, only in the case of majority-owned Foreign Affiliates, all of the Measurement Factors are less than \$80 million (positive or negative) and (ii) for minority-owned Foreign Affiliates for which none of its Measurement Factors is 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** must be filed for Foreign Affiliates for which none of its Measurement Factors are greater than \$25 million (positive or negative) and that is not a Foreign Affiliate parent of another Foreign Affiliate being filed on Form BE-10B or BE-10C.

Ownership

U.S. Dollar Amount	Majority-Owned Foreign Affiliate	Minority-Owned Foreign Affiliate
At least one of the three Measurement Factors is greater than \pm \$300 million	BE-10B, except Part III	BE-10C
At least one of the three Measurement Factors is greater than \pm \$80 million but no one is greater than \pm \$300 million.	BE-10B, except Part IV	
At least one of the three Measurement Factors is greater than \pm \$25 million but no one is greater than \pm \$80 million.	BE-10C*	
All three Measurement Factors is less than \pm \$25 million.	BE-10D*	

* If a foreign affiliate for which the Reporter would file a Form BE-10D owns another foreign affiliate reported on Form BE-10B or C, the foreign affiliate would instead be required to be reported on a Form BE-10C.

Content of Report

The BE-10 Report will require the Reporter to disclose information regarding 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. Additionally, for any Form(s) BE-10B, BE-10C or BE-10D filed, the Reporter must disclose similar information pertaining to its Foreign Affiliates.

Filing and Penalties

All Reporters must file a BE-10 Report. Reporters required to file fewer than 50 total Foreign Affiliate forms must file a completed and certified BE-10 Report no later than May 29, 2020. Reporters required to file 50 or more Foreign Affiliate forms, on the other hand, must file a completed and certified BE-10 Report no later than June 30, 2020. Any U.S. Person that had no Foreign Affiliates during its 2019 fiscal year, but has been contacted by the BEA must file a “BE-10 Claim for Not Filing” to report having no Foreign Affiliate, but no other action would be required.

The BEA allows Reporters to mail in their BE-10 Reports to the U.S. Department of Commerce or, alternatively, file their BE-10 Report electronically on the BEA website.

The failure of a Reporter to fulfill its reporting obligation could result in a civil penalty or injunctive relief commanding such Reporter to comply, or both. The BEA may assess civil penalties ranging from \$2,500 to \$25,000. However, whoever willfully fails to file a BE-10 Report could be fined up to an additional \$10,000 and, if an individual, may be

imprisoned for not more than one year, or both. Any officer, director, employee or agent of any corporate Reporter who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both.

Filing During COVID-19

Acknowledging the difficulties posed to some Reporters by COVID-19, the BEA has issued the following supplemental filing guidance:

- The BEA has limited capacity to receive paper forms and, therefore, suggests using its secure e-file system or filing by facsimile.
- Reporters can request a filing extension through the BEA e-filing system. Extension requests must be received by the BEA no later than the original due date of the report and enumerate substantive reasons necessitating the extension. Thereafter, the BEA will provide a written response to such requests.
- Reporters can provide estimates if necessary because the requested data is unavailable or access to required records is limited.

Confidentiality

Information filed on Form BE-10 is available only to officials and employees (including consultants and contractors and their employees) of agencies designated to perform functions under the Act. No information contained in reports may be published or made available in such a manner that the person to whom the information relates can be specifically identified.

¹ The definition of a "Reporter" specifically includes the general partner of a limited partnership. The general partner generally controls a limited partnership and, therefore, is presumed to have 100 percent of the voting interests in the limited partnership. However, the determination of the percentage of voting interest of a general partner is based on who controls the partnership, not based on the percentage of ownership in the partnership's equity. The information reported by the general partner of a limited partnership is somewhat duplicative of the information reported by limited partners in the Treasury International Capital (TIC) forms filed with the Federal Reserve Bank of New York, but TIC forms are broader in scope of reported information.

² The "consolidated U.S. domestic business" that must file a Form BE-10A is a U.S. entity without a more than 50 percent parent, together with all U.S. subsidiaries that the U.S. entity owns more than 50 percent of the voting securities (and continuing down the chain of U.S. majority-owned subsidiaries). For example, per BEA oral guidance, a Delaware general partner of a Delaware limited partnership fund (and any U.S. subsidiary special purpose vehicles of the fund) would form one consolidated U.S. business enterprise that would be required to file a Form BE-10A. The Measurement Factors (defined below) would be calculated with reference to the consolidated U.S. domestic business enterprise as a whole (without consolidating the foreign affiliates).

³ "Private fund" refers to the same class of financial entities that must report to the Securities and Exchange Commission as private funds on Form PF: "any issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act."

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