

Deadline Looming for BE-10 Filing

By Ildiko Duckor

- *Mandatory reporting required by the Bureau of Economic Analysis on Form BE-10 – 2014 Benchmark Survey of U.S. Direct Investment Abroad*
- *Investment managers, general partners, hedge funds and private equity funds are among those that may have to file*

What is BE-10?

BE-10 is a benchmark survey of U.S. direct investment abroad, conducted once every five years by the Bureau of Economic Analysis (“BEA”) of the U.S. Department of Commerce. The purpose of the survey is to obtain economic data on the operations of U.S. parent companies and their foreign affiliates. The BE-10 survey is conducted pursuant to the International Investment and Trade in Services Survey Act, and the filing of reports is mandatory pursuant to Section 5(b)(2) of that Act. BE-10 reports are kept confidential and used for statistical analysis.

What is the filing deadline?

May 29, 2015 - if you are a U.S. Reporter (defined below) filing to report fewer than 50 Foreign Affiliates (defined below).

June 30, 2015 - if you are a U.S. Reporter filing to report 50 or more Foreign Affiliates.

Extensions. The BEA will consider reasonable requests for extensions if received before the applicable due date of the report. Extension requests should “enumerate the substantive reasons necessitating the extension” on the form provided by the BEA.

Who must file?

All U.S. persons that had **direct or indirect** ownership or control (each, a “**U.S. Reporter**”) of at least 10 percent¹ of the voting stock of a foreign business enterprise (a “**Foreign Affiliate**”) at any time during the entity’s 2014 fiscal year must file.

¹ A U.S. Reporter’s ownership interest in a Foreign Affiliate may be held indirectly through a directly held Foreign Affiliate that owned the given foreign enterprise. You must “look through” all intervening foreign

Any U.S. general partner or investment manager of a private fund could be a U.S. Reporter, and any hedge fund, private equity fund, or other private fund could be either a U.S. Reporter or a Foreign Affiliate, if they meet the above criteria.

Examples of U.S. Reporters and/or Foreign Affiliates:

- 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 partner² (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.

Form BE-10A – Report for U.S. Reporter. A U.S. Reporter³ that exceeds the “**\$300 Million Threshold**”⁴ 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.

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);

enterprises in the chain to determine whether you hold a foreign business enterprise to the extent of 10 percent or more. To calculate your ultimate ownership percentage, multiply the direct ownership percentage in the first Foreign Affiliate by that first Foreign Affiliate’s direct ownership percentage in the second enterprise in the chain, multiplied by the direct ownership percentage for all other intervening enterprises in the ownership chain, until you reach the ownership percentage in the final foreign business enterprise. To illustrate, if a U.S. Reporter owned 50 percent of Foreign Affiliate A directly, and A owned 75 percent of foreign business enterprise B which, in turn, owned 80 percent of foreign business enterprise C, the U.S. Reporter’s percentage of indirect ownership of B would be 37.5 percent (the product of the first two percentages), its indirect ownership of C would be 30 percent (the product of all three percentages), and B and C (as well as A) would be considered Foreign Affiliates of the U.S. Reporter.

² The BEA considers ownership of voting interest in limited partnerships to be divided equally among the general partners (if more than one), with the limited partners owning no voting interest, unless otherwise specified in the ownership agreement. The U.S. general partner of a non-U.S. limited partnership is deemed to hold 100% of the non-U.S. limited partnership’s voting interests.

³ A US Reporter includes the reporting entity’s “fully consolidated U.S. domestic enterprise,” i.e., (i) the U.S. business enterprise whose voting securities are not owned more than 50 percent by another U.S. business enterprise, and (ii) proceeding down each ownership chain from that U.S. business enterprise, any U.S. business enterprise whose voting securities are more than 50 percent owned by the U.S. business enterprise above it, excluding foreign branches and affiliates.

⁴ 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-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.

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

BEA guidance chart:

U.S. \$ amount \ Ownership	MAJORITY-OWNED FOREIGN AFFILIATE	MINORITY-OWNED FOREIGN AFFILIATE
At least one of the three items* is greater than \$300 mil. (+ or -).	BE-10B, except Part III	BE-10C
At least one of the three items* is greater than \$80 mil. (+ or -), but no one is greater than \$300 mil. (+ or -),	BE-10B, except Part IV	
At least one of the three items* is greater than \$25 mil. (+ or -), but no one is greater than \$80 mil. (+ or -),	BE-10C**	
All three items* are less than \$25 mil. (+ or -).	BE-10D**	

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?

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. 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.

Helpful information on the BEA's website:

[BE-10 Forms, Instructions, FAQs and Tutorials](#)

[Instruction Booklet](#)

[FAQs for Private Funds](#)

If you have any questions about the content of this alert, please contact an attorney in Pillsbury's Investment Funds and Investment Management Group or the author.

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