

CLIENT ALERT

Bureau of Economic Analysis Form BE-10 Due Starting at the End of May

May 16, 2025

AUTHORS

Matthew Comstock | Jakob Edson

U.S. institutional investors and investment managers may have an upcoming filing obligation under the so-called “BE system” of the U.S. Department of Commerce’s Bureau of Economic Analysis (the “BEA”). BEA forms gather data on U.S. direct investment abroad, foreign direct investment in the United States, and industry-specific U.S. international service transactions. The BEA makes aggregate statistical data that it collects from BE filings available to the public on its website; the BEA does not make data available by individual reporting entities and each reporting entity’s information must be kept confidential by law.¹

The BE-10 Benchmark Survey (Form BE-10), which is conducted once every five years in lieu of the BE-11 Annual Survey, is intended to obtain data on the financial and operational characteristics of, and on positions and transactions between, U.S. parent companies and their foreign affiliates. The survey is intended to collect data on U.S. persons who own or control foreign operating companies, rather than foreign private funds that themselves do not own or control foreign operating companies, as discussed further below. For that reason, we do not expect that

¹ A Guide to BEA’s Direct Investment Surveys, at 1-3, available [here](#).

institutional investors and investment managers with a hedge fund or domestic private equity strategy would be required to report.

The BEA is currently conducting the BE-10 Benchmark Survey for fiscal years ending in 2024. Every U.S. person, which includes an entity who held a direct investment² in a foreign affiliate³ at any time during a fiscal year ending in 2024 must file a Form BE-10 (there are multiple BE-10 forms, as discussed below). A response is required from entities subject to the reporting requirements, whether or not contacted by the BEA. If the U.S. person was contacted by the BEA but did not have any foreign affiliates during the relevant fiscal year, it must file the BE-10 Claim for Not Filing.⁴

The filing deadlines for the current BE-10 survey are May 30, 2025, for a U.S. Reporter required to file fewer than 50 BE-10 forms, and June 30, 2025, for a U.S. Reporter required to file 50 or more BE-10 forms.⁵ The number of BE-10 forms that a U.S. Reporter is required to file may depend on whether the foreign affiliate is majority-owned, the number of foreign affiliates owned by the U.S. person, and the assets, sales, or net income of those foreign affiliates.

Determination of Ownership Interests

For purposes of the BE-10 forms described below, a U.S. person (which includes entities) (“U.S. Reporter”)⁶ may hold its interest in a foreign business enterprise directly, indirectly, or both.⁷ Ownership is direct if the U.S. Reporter itself holds the ownership interest in the foreign business enterprise. Ownership is indirect if the U.S. Reporter holds an ownership interest in a foreign business enterprise that, in turn, owns an interest in the given foreign business enterprise.

Indirect ownership in a given foreign business enterprise is the product of the direct ownership percentage that the U.S. Reporter has in the foreign business enterprise in the ownership chain, *multiplied by* that first enterprise’s direct ownership percentage in the second enterprise in the chain, *multiplied by* the direct ownership percentages for all other intervening enterprises in the ownership chain, *multiplied by* the last intervening enterprise’s direct ownership percentage in the given foreign business enterprise.⁸ For example, if the U.S. Reporter has a direct ownership

² Direct investment means the “ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.”

³ Foreign affiliate means “an affiliate located outside the United States in which a U.S. person has direct investment.”

⁴ U.S. Bureau of Economic Analysis, 2024 Benchmark Survey of U.S. Direct Investment Abroad Instructions (Jan. 2025), available [here](#) (“Form BE-10 Instructions”), at 1.

⁵ Form BE-10 Instructions at 9. U.S. persons that are contacted by the BEA, but are not required to report (because they do not meet the filing thresholds), must complete a BE-10 Claim for Not Filing.

⁶ The U.S. Reporter is “the U.S. person that has direct investment in a foreign business enterprise, including a branch. If the U.S. person is an incorporated business enterprise, the U.S. Reporter is the fully consolidated U.S. domestic enterprise.” Form BE-10 Instructions at 5.

⁷ *Id.* at 2.

⁸ *Id.*

interest of 75% in Foreign Affiliate A that, in turn, has a 50% ownership interest in Foreign Affiliate B, the U.S. Reporter has a 37.5% indirect ownership interest in Foreign Affiliate B (75% x 50%).

A U.S. institutional investor or investment manager with at least one foreign affiliate needs to determine if the alternative filing thresholds for any of the BE-10 forms below applies.

Form BE-10A

A U.S. Reporter, such as a U.S. institutional investor or investment manager, that has at least one foreign affiliate must file a complete Form BE-10A for the fully consolidated U.S. domestic business enterprise⁹ if any one of the following three items (the “Threshold Items” and each, a “Threshold Item”) of the fully consolidated U.S. domestic enterprise was greater than \$300 million at the end of, or for, the U.S. Reporter’s 2024 fiscal year:

- (i) Total assets,
- (ii) Sales or gross operating revenues excluding sales taxes, or
- (iii) Net income after provision for foreign income taxes.¹⁰

If none of the Threshold Items was greater than \$300 million (positive or negative) at the end of, or for, the U.S. Reporter’s 2024 fiscal year, the U.S. Reporter must complete only items 1 through 42 and items 1 through 11 of Form BE-10A.¹¹

Form BE-10B

Form BE-10B is filed for each majority-owned foreign affiliate of a U.S. Reporter if any one of the Threshold Items was greater than \$80 million (positive or negative) at the end of the affiliate’s fiscal year.¹²

Form BE-10C

Form BE-10C is filed for

- each majority-owned foreign affiliate of a U.S. Reporter, whether owned directly or indirectly, for which any one of the Threshold Items was greater than \$25 million (positive or negative) but for which no Threshold Item was greater than \$80 million at the end of, or for, the affiliate’s 2024 fiscal year;

⁹ The fully consolidated U.S. domestic business enterprise is defined as follows:
1) the U.S. business enterprise whose voting securities are not owned more than 50 percent by another U.S. business enterprise, and
2) proceeding down each ownership chain from that U.S. business enterprise, any U.S. business enterprise (including Foreign Sales Corporations located in the United States) whose voting securities are more than 50 percent owned by the U.S. business enterprise above it.
Id. at 1.

¹⁰ 2024 Benchmark Survey of U.S. Direct Investment Abroad BE-10A at 5, available [here](#).

¹¹ *Id.*

¹² 2024 Benchmark Survey of U.S. Direct Investment Abroad BE-10B (Report for Foreign Affiliate of U.S. Reporter) at 1, available [here](#).

- each minority-owned foreign affiliate of a U.S. Reporter, for which any one of the Threshold Items was greater than \$25 million (positive or negative) at the end of, or for, the affiliate's 2024 fiscal year; and
- each foreign affiliate of a U.S. Reporter for which no Threshold Item was greater than \$25 million (positive or negative) at the end of, or for, the affiliate's 2024 fiscal year that is a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C.¹³

Form BE-10D

Form BE-10D must be filed for all foreign affiliate(s) of a U.S. Reporter for which no Threshold Item was greater than \$25 million (positive or negative) at the end of, or for, the affiliate's 2024 fiscal year, and which affiliate is not a foreign affiliate parent of another foreign affiliate for which a filing is being made on Form BE-10B or BE-10C.¹⁴

BE-10 Claim for Not Filing

If the U.S. Reporter was contacted by the BEA but did not own or control 10 percent or more of the voting securities of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise (including a branch or real estate held for other than personal use) at the end of its fiscal year, it would file BE-10 Claim for Not Filing.¹⁵

If a U.S. Reporter owns one or more foreign affiliates and has been contacted by the BEA but (i) the foreign affiliate is a private fund; (ii) the private fund foreign affiliate does not own, directly or indirectly through another business enterprise, an "operating company"—i.e., a business enterprise that is not a private fund or a holding company—in which the consolidated U.S. Reporter owns at least 10 percent of the voting interest; and (iii) if the U.S. Reporter owns the private fund indirectly (through one or more other business enterprises), there are no "operating companies" between the consolidated U.S. Reporter and the indirectly owned foreign private fund, then the U.S. Reporter needs to complete page 3 of the BE-10 Claim for Not Filing. The U.S. Reporter's investment in the foreign private fund may need to be reported on Treasury International Capital surveys.

Conclusion

The current BE-10 Benchmark survey covers fiscal years ending in 2024, with filing deadlines of May 30, 2025, and June 30, 2025, depending on the number of forms required. It is important for institutional investors and investment managers to determine whether they have a filing obligation to ensure their compliance and avoid penalties. Our firm is ready to assist in navigating these complex reporting requirements and ensuring timely and accurate submissions.

¹³ 2024 Benchmark Survey of U.S. Direct Investment Abroad BE-10C (Report for Foreign Affiliate of U.S. Reporter) at 1, available [here](#).

¹⁴ 2024 Benchmark Survey of U.S. Direct Investment Abroad BE-10D (Report for Foreign Affiliate(s)) at 1, available [here](#).

¹⁵ 2024 Benchmark Survey of U.S. Direct Investment Abroad BE-10 Claim for Not Filing, at 1, available [here](#).

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

Matthew Comstock

Jakob Edson

202 303 1257

202 303 1163

mcomstock@willkie.com

jedson@willkie.com

WILLKIE

BRUSSELS CHICAGO DALLAS FRANKFURT HOUSTON LONDON LOS ANGELES MILAN
MUNICH NEW YORK PALO ALTO PARIS ROME SAN FRANCISCO WASHINGTON

Copyright © 2025 Willkie Farr & Gallagher LLP. All rights reserved.

This alert is provided for educational and informational purposes only and is not intended and should not be construed as legal advice, and it does not establish an attorney-client relationship in any form. This alert may be considered advertising under applicable state laws. Our website is: www.willkie.com.