

CLIENT MEMORANDUM

U.S. Commerce Department BE-10 Reporting for U.S. Direct Investment Abroad

February 18, 2015

AUTHORS

Russell L. Smith | **Scott A. Arenare** | **Anne Choe**

The U.S. Commerce Department's Bureau of Economic Analysis (the "BEA") has released the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, pursuant to which U.S. entities are required to disclose to the BEA financial and operating data on foreign investments if certain reporting thresholds have been met.

The BE-10 survey is conducted every five years and is the BEA's most comprehensive survey. The purpose of the BE-10 survey is to obtain data to measure the size of, and change in, U.S. direct investment abroad, and assess its impact on the U.S. and non-U.S. economies. The BEA is required by law not to use the information provided for any purpose other than statistical reporting. The BEA may not disclose any specific information without the consent of the reporting entity.

The BE-10 survey will apply to strategic investments outside the U.S. as well as to investment managers and private equity firms with non-U.S. holdings.

Reporting Thresholds

A U.S. entity is required to file the applicable BE-10 survey (regardless of whether it has been contacted by the BEA) if at any time during its 2014 fiscal year the U.S. entity had a non-U.S. affiliate (*i.e.*, the U.S. entity had a direct or indirect ownership or control of at least 10% of the voting stock of a non-U.S. business enterprise). For the BE-10A survey, U.S.

U.S. Commerce Department BE-10 Reporting for U.S. Direct Investment Abroad

Continued

entities with total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes greater than \$300 million, for the fully consolidated U.S. domestic business enterprise, must complete a full BE-10A survey regarding their financial and operating data. Otherwise, U.S. entities can file an abbreviated BE-10A survey. In addition to providing data about itself, a U.S. entity must file the applicable BE-10 survey for each of the non-U.S. affiliates it had during the U.S. entity's 2014 fiscal year.

Reporting Deadlines and Extensions

A U.S. entity with fewer than 50 non-U.S. affiliates must file the survey no later than May 29, 2015; U.S. entities with 50 or more non-U.S. affiliates have until June 30, 2015 to file the survey. The BEA has indicated it will consider reasonable requests for extensions. It is important to note that the purpose of the survey is to gather information, and while failure to file could result in penalties, in our experience, the BEA uses notifications and repeated contacts to obtain compliance.

If you have any questions regarding this memorandum, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Scott A. Arenare (212-728-8252, sarenare@willkie.com), Anne Choe (202-303-1285, achoe@willkie.com) or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, Houston, Paris, London, Frankfurt, Brussels, Milan and Rome. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

February 18, 2015

Copyright © 2015 Willkie Farr & Gallagher LLP.

This memorandum is provided by Willkie Farr & Gallagher LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum may be considered advertising under applicable state laws.