

CLIENT MEMORANDUM

U.S. Commerce Department Announces Filing Extension for the BE-10 Survey

May 29, 2015

AUTHORS

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

The U.S. Commerce Department's Bureau of Economic Analysis (the "BEA") has extended the filing deadline for the BE-10, Benchmark Survey of U.S. Direct Investment Abroad, to June 30, 2015 for all "new filers" (*i.e.*, U.S. entities that have never filed any BEA survey of U.S. direct investment abroad). 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 changes in, U.S. direct investment abroad, and assess its impact on the U.S. and non-U.S. economies.

A U.S. "person" 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. person had direct or indirect ownership or control of at least 10% of the voting stock of a non-U.S. business enterprise or an equivalent interest in an unincorporated non-U.S. business enterprise (referred to as "non-U.S. affiliates").¹ The BEA defines a "person" "in the broad legal sense" to include "any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state), and any government (including a foreign government, the United States Government, a state or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency.)"

¹ For a description of the BE-10 survey, please see our firm's client memorandum *U.S. Commerce Department BE-10 Reporting for U.S. Direct Investment Abroad*, Feb. 18, 2015, [here](#).

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Unlike other BEA surveys, the BE-10 survey does not have a dollar-threshold requirement for filing reports. All non-U.S. affiliates that meet the ownership or control threshold must be reported, whether owned or controlled directly or indirectly as subsidiaries or affiliates of another non-U.S. entity. There are separate BE-10 forms on which to report depending on the assets, sales, or net income of the non-U.S. affiliate. A U.S. person is also required to file the applicable BE-10 survey if during the reporting period a non-U.S. affiliate was established, acquired, liquidated, sold or inactivated during the U.S. person's 2014 fiscal year.

For a U.S. entity with fewer than 50 non-U.S. affiliates, which does not qualify as a new filer, the applicable BE-10 survey was due by May 29, 2015. U.S. entities with 50 or more non-U.S. affiliates -- and now "new filers" -- have until June 30, 2015 to file the survey. For entities that were subject to the May 29 filing date and have not yet filed, the BEA has a process for accepting "reasonable" requests for extensions. The BEA has been granting extensions of 30-45 days in such situations.

The BE-10 survey can apply in situations that are not readily apparent, and the recent extension may reflect difficulties that potential filers have encountered with this reporting requirement. 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 C. 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.

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