Cooley

May 8, 2015

Every five years, the US Commerce Department's Bureau of Economic Analysis ("BEA") conducts a "Benchmark Survey" of US direct investment abroad, from which BEA compiles the US economic accounts and analyzes the activities of multinational enterprises. The Benchmark Survey collects financial and operational data from certain US parent companies and their foreign subsidiaries and affiliates. ***Because 2014 was a "benchmark" year, US companies with reporting obligations must prepare and submit the appropriate variants of BEA Form BE-10 as early as May 29, 2015.***

Data reported to BEA on Form BE-10 are confidential, exempt from disclosure under FOIA, and may be used only for analytical or statistical purposes. The information cannot be used for taxation, investigation, or other regulatory purposes.

Who must submit reports

As a general matter, a mandatory reporting requirement is triggered if a US person (a "US Reporter") directly or indirectly owned 10% or more of the voting interest of a foreign business enterprise (a "Foreign Affiliate") at *any time* during the US Reporter's 2014 fiscal year. The Benchmark Survey is concerned with *any* qualifying ownership interests held at any time during fiscal 2014—not just those interests that were *acquired* in fiscal 2014. The BEA defines the term "US person" broadly to include any individual or entity that resides in the United States or is subject to the jurisdiction of the United States.

The 10% voting interest threshold applies without regard to the financial value of that interest. Although there is no general reporting exemption for foreign entities with minimal assets, sales, or net income, foreign entities whose assets, sales, and net income fall below certain thresholds may qualify for less onerous reporting requirements.

Completing and submitting a BE-10 survey

Reporting is accomplished by completing the appropriate variants of BEA Form BE-10. Each US Reporter that triggered a reporting requirement in 2014 must file the following:

- a Form "BE-10A" for itself; and
- a separate Form BE-10 for *each* of its Foreign Affiliates.

The reporting requirement applies regardless of whether the BEA contacts a US person to request a report. If a US person is notified by BEA of the need to complete a BE-10 survey, but had no Foreign Affiliates during its 2014 fiscal year, it must file a "BE-10 Claim for Not Filing."

Generally speaking, the factors that determine the appropriate variant of Form BE-10 to file for a Foreign Affiliate include (i) whether the US Reporter has a majority or minority interest in its Foreign Affiliate and (ii) whether the Foreign Affiliate's total assets, sales, or net income exceed or fall below certain thresholds. Detailed guidance on the selection of the appropriate BE-10 form is available on BEA's website. See "BE-10 Instruction Booklet (PDF)." Copies of the forms are provided there as well. Note that BEA estimates that the average US Reporter will spend 144 hours completing the required forms.

Filing deadlines, extensions, and penalties

The deadline for submitting BE-10 forms depends on the number of Foreign Affiliates the US Reporter had in 2014. US Reporters that are required to file fewer than 50 BE-10 forms must submit all of their forms by May 29, 2015. US Reporters required to file 50 or more BE-10 forms must submit their forms by June 30, 2015. The "BE-10 Claim for Not Filing" is due on May 29, 2015. Extensions may be requested by submitting a "BE-10 Request for Extension for Filing" form, available on the BEA website.

Failure to submit required reports may result in civil fines of up to $25,000. Willful failure to report can result in a $10,000 criminal penalty and up to one year imprisonment.

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