

Impending Deadline for Bureau of Economic Analysis Surveys May Cause Unprepared U.S. Companies to Be Subject to Penalties

May 29, 2015

Every five years, the U.S. Bureau of Economic Analysis of the U.S. Department of Commerce (BEA) conducts a “benchmark” survey regarding U.S. direct investment abroad by country and industry. The purpose of the survey is to collect financial and operational data regarding U.S. companies and their foreign affiliates. Prior to the 2014 benchmark year, only those U.S. persons and entities that were contacted by the BEA were required to complete the survey. With respect to the 2014 fiscal year, for the first time, the BEA required filings even if the agency did not contact a required filer. Accordingly, “U.S. Reporters” must submit surveys on Form BE-10 or requests for extension by either May 29, 2015 or June 30, 2015.

Civil penalties ranging from \$2,500 to \$25,000 may be imposed on U.S. Reporters that fail to file, and criminal penalties may be imposed on U.S. Reporters, including officers, directors, and employees, for willful violations.

This filing is in addition to the Report of Foreign Bank and Financial Accounts (FBAR) that is required to be filed each year by June 30. Filing an FBAR report will not exempt a company from penalties for failure to file timely the Form BE-10.

All “U.S. persons” (including individuals, corporations, partnerships, trusts, and estates) that directly or indirectly owned or controlled at least 10 percent of the voting stock of, or an equivalent interest in, a foreign business enterprise at any time during the 2014 fiscal year must file a Form BE-10 series survey. Notably, the definition of business enterprise includes any corporation, partnership, and organization with a profit-making purpose, as well as ownership of any foreign real estate that is not used as a residence for the owner. A separate survey is due for each foreign affiliate. The type of survey that must be filed depends on the

financial metrics of the foreign affiliate and whether the U.S. Reporter is a majority or minority owner of the foreign affiliate. **However, there is no exception to this filing based on the size of the foreign affiliate or the U.S. Reporter.**

U.S. Reporters filing fewer than fifty Form BE-10 series surveys were originally required to file by May 29, 2015. The BEA recently extended the deadline for new filers until June 30, 2015. **The deadline for U.S. Reporters filing more than fifty Form BE-10 series surveys is June 30, 2015.**

All U.S. persons and companies with foreign affiliates are potentially required to file and should determine their filing obligations immediately. The BEA estimates that the average filer will spend 144 hours on their response. U.S. Reporters may request filing extensions no later than the original due date of their submission by phone, fax, or through the BEA’s eFile system.

Additional information is available on the BEA’s website: http://www.bea.gov/surveys/respondent_be10.htm.

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