

## Trusts & Estates Alert

May 2020

# Upcoming Survey for U.S. Direct Investment Abroad

The Bureau of Economic Analysis (BEA) under the U.S. Department of Commerce requires U.S. persons with investments abroad to complete a survey every five years on form BE-10. This filing requirement is coming due as early as May 29 (or June 20 depending on the number of forms that are required to be filed, discussed below), although an extension until Aug. 31 may be obtained by filing the request by the original applicable due date.

### Who Must File?

Any "U.S. person" that had a "foreign affiliate" (defined below) at the end of the 2019 fiscal year must complete the survey. It is important to note that individuals can have a foreign affiliate even in their individual capacity if they own interests in a foreign business directly.

**U.S. Person:** A U.S. person for purposes of the survey means any individual, branch, partnership, associated group, association, estate, trust, corporation or other organization, and any government, that is a resident of the U.S. or subject to its jurisdiction. Generally, an individual's residence is based upon where they are located as opposed to their country of citizenship, subject to the following qualifications:

- Individuals who reside, or expect to reside, outside of their country of citizenship for less than one year are considered to be residents of their country of citizenship.
- Individuals who reside, or expect to reside, outside of their country of citizenship for one year or more are considered to be residents of the country in which they reside, except that the individuals will nonetheless be treated as residing in their country of citizenship if (a) they are residing outside of their country of citizenship in order to conduct a business for an enterprise from their country of citizenship and intend to return within a reasonable time period, or (b) they are government



employees (such as diplomats, consular officials or members of the armed forces) or immediate family of government employees residing outside of their country of citizenship.

**Foreign Affiliate:** A foreign affiliate means an incorporated or unincorporated foreign business enterprise in which the U.S. person owned, directly or indirectly, at least 10% of the vote at the end of the U.S. person's 2019 fiscal year. A business enterprise is defined broadly as any organization, association, branch or venture which exists for profit-making purposes or to otherwise secure economic advantage. Note that this would include a business enterprise that holds real estate, except, generally speaking, one that holds real estate exclusively for personal use.

### Which Form BE-10 Must Be Filed?

There are actually several different BE-10 forms, and the correct one depends on the facts and circumstances. Each U.S. person who had a foreign affiliate at the end of the 2019 fiscal year must complete Form BE-10A. In addition, each U.S. person must complete a separate Form BE-10B, Form BE-10C or Form BE-10D for each

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foreign affiliate, depending on the size of the operations of the foreign affiliate and its ownership. The precise determination of which specific form must be filed is made as follows:

- **Form BE-10B:** A BE-10B must be filed for each majority-owned foreign affiliate if (i) its total assets, (ii) its total sales or gross operating revenues, or (iii) its net income after payment of taxes exceeded \$80 million at the end of the affiliate's 2019 fiscal year. A foreign affiliate is majority-owned if all of the U.S. persons together own more than 50% of such foreign affiliate.
- **Form BE-10C:** A BE-10C must be filed (i) for each majority-owned foreign affiliate if any of its total assets, gross revenues or net income exceeded \$25 million and none exceeded \$80 million at the end of the affiliate's 2019 fiscal year; (ii) for each minority-owned foreign affiliate if any of its total assets, gross revenue or net income exceeded \$25 million at the end of the affiliate's 2019 fiscal year; or (iii) for each foreign affiliate that is a foreign affiliate parent of another foreign affiliate that must be reported on BE-10B or BE-10C.
- **Form BE-10D:** A BE-10D must be filed for each foreign affiliate that does not meet the threshold amounts discussed above for required reporting on a BE-10B or BE-10C.

If a U.S. person did not have a foreign affiliate at the end of the 2019 fiscal year but was notified by the BEA to complete the survey, the U.S. person must complete a "BE-10 Claim for Not Filing."

The forms may be filed electronically through the BEA website at [www.bea.gov/efile](http://www.bea.gov/efile) or by mail. Due to the COVID-19 pandemic and the BEA's limited ability to receive physical copies of the survey, the BEA is encouraging filers to complete the survey through their website.

## Applicable Due Dates and Extensions

If the U.S. person is required to file fewer than 50 total forms, the survey must be completed by May 29. If the U.S. person is required to file 50 or more total forms, the survey must be completed by June 30.

U.S. persons may file reasonable requests for extension by the original due date. The BEA is accepting extensions to Aug. 31. The request may also be submitted through the BEA's e-filing system on its website.

Additional information regarding the upcoming filing requirements may be found on the [BEA's website](#).

Please contact our International Trust & Estate Planning team if you have any questions or need further assistance.

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## Related Professionals

Rachel Harris. . . . . rharris@loeb.com

David Khanjyan . . . . . dkhanjyan@loeb.com

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