

AN ALERT FROM THE BDO INTERNATIONAL TAX PRACTICE

BDO KNOWS:

INTERNATIONAL TAXATION

SUBJECT

U.S. DEPARTMENT OF COMMERCE BUREAU OF ECONOMIC ANALYSIS - REPORTING REQUIREMENTS FOR U.S. OUTBOUND AND INBOUND INVESTMENTS

DATE/TIMING

The Commerce Department requires United States businesses to file Form BE-10, Benchmark Survey of the U.S. Direct Investment Abroad ("BE-10"), with the Bureau of Economic Analysis ("BEA") if certain prerequisites on outbound investments are met. The BE-10 reports are due on or before May 29, 2015, for those United States reporters with fewer than fifty foreign affiliates, and June 30, 2015, for those with fifty or more foreign affiliates.

A domestic entity is also required to file Form BE-13, Survey of New Foreign Direct Investments in the United States ("BE-13") to report certain inbound investment transactions of its foreign affiliates. Form BE-13 must be filed within 45 days after the investment transaction takes place.

Filing of both forms is mandatory whether or not the domestic business was contacted by the BEA. These are surveys and not tax reports.

The BEA has indicated that reasonable requests for extension of the filing deadline will normally be granted if requested before the due date. With respect to Form BE-10, an extension may be obtained by filing Form BE-11, Request for Extension for Filing and submitting through the BEA's eFile system or faxing it to the BEA. There are three extension dates available: (1) June 30, 2015 for U.S. reporters with fewer than 50 forms; (2) July 31, 2015 for U.S. reporters with between 50-100 forms; and (3) August 31, 2015 for U.S. reporters with more than 100 forms.

With respect to Form BE-13, the U.S. reporter must contact the BEA directly at 202-606-5613, regarding such request.

AFFECTING

United States Businesses with Outbound Investments

United States Businesses with Foreign Owners



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BACKGROUND

The BEA prepares official United States economic statistics including direct investment abroad (USDIA, “outward” direct investment) and foreign direct investment in the United States (FDIUS, “inward” direct investment). BEA conducts various mandatory surveys to collect the relevant information, including annual, quarterly, and benchmark surveys. Form BE-10 is a survey conducted every five years.

DETAILS

Outbound Investments

Domestic entities are “U.S. Reporters” and required to file form BE-10 for the fiscal year 2014, if the reporting criteria, such as 10% ownership interest in the voting stock (or an equivalent interest in an unincorporated business) are met. The mandatory reporting applies whether or not they have been contacted by the BEA. Reports are required even though a foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. Reporter’s 2014 fiscal year.

If the domestic person had no direct or indirect 10% or more interest in the voting stock of a foreign affiliate, or an equivalent interest in an unincorporated foreign business enterprise (including a branch or real estate held for other than personal use) during its 2014 fiscal year, it must file a “BE-10 Claim for Not Filing.”

Notably, if two or more “U.S. Reporters” jointly own, directly or indirectly, a foreign affiliate, each “U.S. Reporter” must file a Form BE-10.

Form BE-10 must also be filed by a “U.S. Reporter” that is an individual, estate, trust, or religious, charitable, or other nonprofit organization that owns a foreign affiliate directly, rather than through a domestic business enterprise. If a United States individual, estate, trust, or nonprofit organization owns more than 50 percent of a domestic business enterprise that, in turn, owns a foreign affiliate, then the U.S. Reporter is deemed to be the domestic business enterprise.

Inbound Investments

In the context of United States inbound investments, all domestic business enterprises in which a foreign person (in the broad legal sense, including a company) owns, directly and/or indirectly, 10 percent or more of the voting securities of an incorporated domestic business enterprise, or an equivalent interest of an unincorporated domestic business enterprise, are subject to these reporting requirements. This includes foreign ownership of real estate, improved and unimproved, except residential real estate held exclusively for personal use and not for profit-making purposes. A domestic business enterprise or real estate holding subject to these reporting requirements is referred to as a domestic affiliate. A foreign person owning a 10 percent or more voting interest (or the equivalent) in a domestic affiliate is referred to as a foreign parent. The foreign parent is the first person outside the United States in a foreign chain of ownership. In addition, the transaction, investment or expansion costs must be greater than \$3 million, subject to inflation adjustments.

Penalties

Whoever fails to report shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both. These civil penalties are subject to inflationary adjustments.

HOW BDO CAN HELP OUR CLIENTS

Although these are surveys and not tax reporting, the disclosures are nonetheless required by multinational corporations. We can assist with any questions in relation to these annual, quarterly and benchmark forms or surveys issued by the BEA.

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Material discussed in this tax alert is meant to provide general information and should not be acted on without professional advice tailored to your firm's individual needs.