

January 2010

## CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

All U.S. business enterprises in which a foreign person (in the broad legal sense, including a company) owns directly and/or indirectly a ten-percent-or-more voting interest (or the equivalent) 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 U.S. business enterprise or real estate subject to these reporting requirements is hereinafter referred to as a **U.S. affiliate**. A foreign person owning a ten-percent-or-more voting interest (or the equivalent) in a U.S. affiliate is hereinafter referred to as a **foreign parent**.

Reporting to the Bureau of Economic Analysis (BEA) is required pursuant to the International Investment and Trade in Services Survey Act, as amended (citations and penalties are described on pages 4 and 5 of this document).

Required reporting includes:

- I. Quarterly report: For reporting positions and transactions of a U.S. affiliate with its foreign parent(s) and foreign affiliates of its foreign parent(s) on the Quarterly Survey of Foreign Direct Investment in the United States (Form BE-605);
- II. Annual report: For reporting financial and operating data of a U.S. affiliate on the Annual Survey of Foreign Direct Investment in the United States (Forms BE-15A, BE-15B, BE-15(EZ), and BE-15 Claim for Exemption); and
- III. Benchmark report: For reporting financial and operating data of a U.S. affiliate, as well as positions and transactions of the U.S. affiliate with its foreign parent(s) and foreign affiliates of its foreign parent(s) on the Benchmark Survey of Foreign Direct Investment in the United States (Forms BE-12(LF), BE-12(SF), BE-12 Bank, BE-12 Mini, and BE-12 Claim for Not Filing).

A U.S. affiliate must file on a fully consolidated domestic U.S. basis, including in the full consolidation all U.S. business enterprises in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. The fully consolidated entity is considered one U.S. affiliate.

Copies of the report forms and instructions are available on BEA's Web site at [www.bea.gov/fdi](http://www.bea.gov/fdi). If you have questions please contact us by telephone (202) 606-5577. If email is more convenient, address your questions pertaining to the quarterly report (BE-605) to [be605@bea.gov](mailto:be605@bea.gov); address your questions pertaining to the annual and benchmark reports (BE-15 and BE-12) to [be12/15@bea.gov](mailto:be12/15@bea.gov).

**I. Quarterly survey (Form BE-605).** The purpose of the quarterly survey is to report positions and transactions between a U.S. affiliate and its foreign parent(s) and foreign affiliates of the foreign parent(s). Quarterly reports must be filed within 30 days after the close of each calendar or fiscal quarter, except the report for the fourth quarter may be filed 45 days after the close of the quarter.

Starting with the report for the first quarter of 2010, information reported on the BE-605 Bank form has been included on the BE-605 form, and the BE-605 Bank form has been discontinued. Therefore, U.S. affiliates that are banks, bank holding companies, and financial holding companies must file on Form BE-605.

In addition, a BE-605 report is required for any U.S. affiliate that was established, acquired, liquidated, sold, or inactivated during the reporting period.

**Exemption From Filing Form BE-605.** A U.S. business enterprise is exempt from filing a Form BE-605 if:

1. A foreign person did NOT have a direct and/or indirect voting ownership interest (or the equivalent) of ten-percent-or-more in a U.S. business enterprise at any time during the quarter; or
2. The values of total assets, sales, or gross operating revenues AND net income (loss) for the U.S. affiliate were EACH equal to or less than \$60 million (positive or negative) for the most recent financial reporting year; or
3. The foreign ownership in U.S. affiliate is a) held indirectly through another U.S. affiliate owned by the foreign parent and b) the indirectly held U.S. affiliate has no direct transactions with the foreign parent(s) or foreign affiliates of the foreign parent(s).

A U.S. business enterprise that meets one of the exemption criteria listed above should complete the Claim for Exemption from filing a BE-605 (see page 13 of the form) and also complete page 15 of the form.

**II. Annual survey (Form BE-15).** The purpose of the annual survey is to report annual financial and operating data of U.S. affiliates. Currently, a 2008 BE-15 report is required for each U.S. affiliate whose fiscal year ended in calendar year 2008 and a 2009 BE-15 report is required for each U.S. affiliate whose fiscal year ended in calendar year 2009.

#### **Which BE-15 Form to File?**

- A. **Form BE-15A** – This report is required for each majority-owned U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$275 million (positive or negative). A U.S. affiliate is "majority-owned" if the

combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent.

- B. **Form BE-15B** – This report is required for 1) each majority-owned U.S. affiliate if any one of the following three items -- total assets, sales or gross operating revenues, or net income -- is greater than \$120 million (positive or negative), and none of these items is greater than \$275 million (positive or negative) and, 2) each minority-owned U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$120 million (positive or negative). A U.S. affiliate is "minority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.
- C. **Form BE-15(EZ)** – This report is required for each U.S. affiliate if any one of the following three items -- total assets, sales or gross operating revenues, or net income -- exceeded \$40 million (positive or negative) but none of those items exceeded \$120 million (positive or negative), and if 1) the U.S. affiliate has been instructed in writing by BEA to file a BE-15, OR 2) the U.S. affiliate has not filed a BE-12 or a BE-15 in the past.
- D. **Form BE-15 Claim for Exemption** – This report is required if foreign ownership in the U.S affiliate falls below 10 percent, the U.S. affiliate is fully consolidated or merged into another U.S. affiliate, or if all of the following three items for the affiliate are \$40 million or less (positive or negative):
1. Total assets;
  2. Annual sales or gross operating revenues; and
  3. Annual net income after provision for U.S. income taxes.

Following an initial filing, the BE-15 Claim for Exemption is not required annually from U.S. affiliates that meet the stated exemption criteria from year to year. However, the BE-15 Claim for Exemption must be filed if BEA mails you a BE-15 form and the U.S. business enterprise is exempt from filing the BE-15A, BE-15B, or BE-15(EZ).

**IV. Benchmark survey (Form BE-12).** The BE-12 Benchmark Survey is BEAs most comprehensive survey of foreign direct investment in the United States, and is intended to cover the universe of foreign direct investment in the United States in terms of value. The benchmark survey is conducted once every 5 years (in lieu of the BE-15, annual survey). The current benchmark survey covers the year 2007. A 2007 BE-12 report is required for each U.S. affiliate whose fiscal year ended in calendar year 2007.

The survey consists of a number of report forms and a claim for not filing. The amount and type of data required to be reported will vary according to the size of the U.S. affiliate, whether it is a bank or a nonbank, and whether it is majority-owned or minority-owned by foreign direct investors.

## Which BE-12 Form to File?

- A. **Form BE-12(LF) (Long Form)** – Report for a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$175 million (positive or negative). A U.S. affiliate is "majority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent.
- B. **Form BE-12(SF) (Short Form)** – Report for 1) a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative), but not greater than \$175 million (positive or negative), and 2) a minority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative). A U.S. affiliate is "minority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.
- C. **Form BE-12 Bank** – Report for a U.S. affiliate that is a bank, bank holding company, or financial holding company, and any one of the following three items -- total assets, sales or gross operating revenues, or net income -- exceeded \$15 million (positive or negative).
- D. **Form BE-12 Mini** – Report for a nonbank U.S. affiliate with total assets, sales or gross operating revenues, and net income less than or equal to \$40 million (positive or negative). A U.S. affiliate with total assets, sales or gross operating revenues, and net income of \$15 million or less (positive or negative) is required to report only selected data items on the Mini form.
- E. **Form BE-12 Claim for Not Filing** – May be used for response by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status.

## Legal Authority, Penalties, and Confidentiality

**Authority** – All surveys requiring the reports described on the previous pages are conducted pursuant to the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended, hereinafter "the Act"), and the filing of reports is MANDATORY pursuant to Section 5(b)(2) of the Act (22 U.S.C. 3104). The rules and regulations implementing the Act can be found in the Code of Federal Regulations (15 CFR Part 806). Amendments to the regulations are published in the Federal Register.

A response is required from persons (in the broad legal sense, including companies) subject to the reporting requirements of the surveys, whether or not they are contacted by BEA.

**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.

These civil penalties are subject to inflationary adjustments. Those adjustments are found in 15 CFR 6.4. 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 (22 U.S.C. 3105).

**Confidentiality** – The Act provides that your reports to this Bureau are CONFIDENTIAL and may be used only for analytical or statistical purposes. Without your prior written permission, the information filed in your reports CANNOT be presented in a manner that allows it to be individually identified. Your report CANNOT be used for purposes of taxation, investigation, or regulation. Copies retained in your files are immune from legal process.

**Response Required** – Although BEA attempts to notify respondents that are believed to qualify for the periodic surveys, it is incumbent upon U.S. affiliates to meet the reporting requirements contained in the Code of Federal Regulations. This office should be notified if report forms are needed, if there is a change in the status of a U.S. affiliate that would affect reporting (such as consolidation into another company or elimination of a foreign ownership interest), or if there has been a change in the addresses of the U.S. affiliate or the person to contact regarding questions BEA may have about the report.