

CLIENT ALERT

BEA Changes Certain Private Fund Reporting Requirements & Revises the BE-13 Survey of New Foreign Direct Investment

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Today, the Department of Commerce's Bureau of Economic Analysis (BEA) published a [final rule](#) amending the foreign direct investment reporting requirements for certain U.S. private funds (those displaying characteristics of "portfolio investment" rather than "direct investment") and announcing revision of the BE-13 Survey of New Foreign Direct Investment to combine Forms BE-13A and BE-13C, and to clarify certain Survey instructions, effective November 21, 2016.

Changes for U.S. Private Fund Reporting Requirements

The rule amends the reporting requirements for the BEA foreign direct investment surveys—the BE-605, Quarterly Survey of Foreign Direct Investment in the United States, the BE-15, Annual Survey of Foreign Direct Investment in the United States, and BE-13 Survey of New Foreign Direct Investment in the United States—for certain U.S. domiciled private funds.

Previously, BEA's foreign direct investment surveys required these U.S. private funds to report investments by a non-U.S. person of a 10 percent or more voting interest in the fund, regardless of whether the U.S. private fund, in turn, invested in operating companies (meaning companies that are not other private funds or holding companies). Under the newly revised surveys, U.S. private funds will only be required to report such investments if the foreign parent, through the U.S. private fund, holds a 10 percent or more voting interest in one or more operating companies. The rule does not affect investments by foreign entities directly in U.S. operating companies, which remain subject to the reporting requirements if the foreign parent holds a 10 percent or greater voting interest.

Foreign investments that no longer meet the BEA reporting requirements as a result of these changes should report through the Treasury International Capital (TIC) reporting system, administered by the Department of Treasury.

BEA issued a notice in May 2016 regarding similar changes to the U.S. direct investment surveys—the BE-577, Quarterly Survey of U.S. Direct Investment Aboard, and the BE-11, Annual Survey of U.S. Direct Investment Aboard— but has not yet issued a final rule amending these surveys.

Additional guidance, including a powerpoint presentation and flowchart document, are available [on BEA's website](#).

Changes to the BE-13 Survey of New Foreign Direct Investment

The final rule also amends the regulations and survey forms for the BE-13 Survey to revise the reporting requirements and clarify certain questionnaire instructions. The BE-13 Survey, which BEA reinstated in September 2014, collects information on the acquisition or establishment of U.S. business enterprises by foreign investors, and information on expansions by existing U.S. affiliates of foreign companies. The survey is mandatory for U.S. persons subject to the reporting requirements, regardless of whether BEA has contacted such persons.

Significantly, BEA is discontinuing Form BE-13C, Report for Acquisition of a U.S. Business Enterprise That Is Merged With an Existing U.S. Affiliate, and will revise Form BE-13A (which previously only covered acquisitions of U.S. entities that would operate as a separate legal entity after the acquisition) to capture such foreign investment. U.S. entities will be required to submit the combined revised Form BE-13A when a foreign entity acquires a voting interest (directly, or indirectly through an existing U.S. affiliate) in it (including segments, operating units, or real estate) and: (1) the total cost of the acquisition is greater than \$3 million; and (2) by this acquisition, the foreign entity will own at least 10 percent of the voting interest (directly, or indirectly through an existing U.S. affiliate) in the acquired U.S. entity.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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