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International Trade Update

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BEA's Foreign Direct Investment Reporting Requirements: A Primer

Key Notes:

- The Department of Commerce's Bureau of Economic Analysis requires the reporting of certain statistical data on foreign direct investment in the United States. This includes reporting data when a foreign entity acquires a U.S. business, when a foreign entity or its existing U.S. affiliate establishes a new legal entity, or when an existing U.S. affiliate of a foreign entity expands its U.S. operations.
- Filing a response is mandatory under the International Investment and Trade in Services Survey Act unless the business does not meet the filing requirements. The act protects the confidentiality of the data that companies submit.
- A qualifying U.S. business must file a response no later than 45 days after the date of the investment transaction.

The Department of Commerce's Bureau of Economic Analysis (BEA) is a federal statistical agency that collects information and reports on aspects of the U.S. economy. Federal and state governments, public and private sectors, and other interested parties use the statistics for budget planning, monetary and investment policy, and a better understanding of the U.S. economy's performance. To gather the data necessary to compile and report certain business statistics on a macro-industry/economic level, BEA uses mandatory surveys that are submitted by U.S. businesses when a foreign person/company owns, directly or indirectly, 10% or more of the business.

Foreign Direct Investment Surveys

BEA is tasked with gathering and reporting statistical information about foreign direct investment transactions in the United States. The BE-13 Survey of New Foreign Direct Investment in the United States is one way BEA captures investment transactions when a foreign entity acquires a U.S. business, when an existing U.S. affiliate of a foreign entity establishes a new U.S. legal entity, or when an existing U.S. affiliate expands its U.S. operations.

Foreign direct investment is defined as the ownership or control, directly or indirectly, by one foreign person/ company of 10% or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest of an unincorporated U.S. business enterprise. For BEA survey reporting purposes, the total cost of the transaction must be greater than $3 million.

Foreign direct investment in U.S. businesses is reported using the Form BE-13 survey. The data collected is used to measure the amount of new foreign direct investment in the United States, to assess its impact on the U.S. economy, and, based on this assessment, to allow policymakers to make informed policy decisions regarding foreign direct investment in the United States.

Reporting requirements are triggered when:

- A foreign entity initially acquires a 10% or more voting interest in a U.S. company via an acquisition and the cost of the acquisition is more than $3 million (Form BE-13A). This includes the acquisition of all or part of a

U.S. business enterprise and the establishment of a new U.S. business enterprise (that will not be dissolved) solely for completing the acquisition of a U.S. business enterprise.

- A foreign entity or an existing U.S. affiliate of a foreign entity establishes a new U.S. legal entity in the United States and the projected cost to establish the new entity is more than $3 million (Form BE-13B). This includes the creation of a new legal entity (including a branch) and the creation of a new legal entity even if it does not have physical operations.
- An existing U.S. affiliate of a foreign entity expands its operations to include a new facility where business is conducted and the projected cost of the expansion is more than $3 million (Form BE-13D). This includes construction or leasing of a new facility, construction of a facility that is intended for lease or sale by an existing U.S. facility, and expansion of an existing facility if the expansion involves the construction of new buildings or structures.

Reporting requirements are also triggered for certain real estate transactions, including the purchase of U.S. real estate (including land or rights to land) that is intended for lease or sale without significant added construction, or on which construction is intended. The purchase of real estate to be held exclusively for personal use and not for profit-making purposes is not required to be reported.

A supplemental report (Form BE-13E) is also required when a U.S. affiliate has previously filed a Form BE-13B or 13D but the project previously reported is still under construction and cost updates are necessary. Even in instances when a foreign-owned U.S. affiliate uses only funds generated from domestic activity for an acquisition, a new establishment, or an expansion, the submission of the relevant BE-13 form is still required.

Quarterly, Annual, and Benchmark Surveys

The gathering of foreign direct investment data on Form BE-13 will also identify new U.S. affiliates that meet reporting criteria for BEA's related quarterly and annual surveys of foreign direct investment: Form BE-605 (quarterly) and Form BE-15 (annual). The purpose of the quarterly survey is to report positions and transactions between a U.S. affiliate and its foreign entity and foreign affiliates of the foreign entity. The purpose of the annual survey is to report annual financial and operating data of U.S. affiliates. These forms are required to be filed only if BEA contacts the U.S. affiliate of the foreign entity.

The BE-605 quarterly form is required only for U.S. business affiliates for which total assets, annual sales or gross operating revenues (excluding sales taxes), or annual net income (after provision for U.S. income taxes) was greater than $60 million (positive or negative) at any time during the fiscal reporting year. The BE-15 annual form has different filing requirements and forms based on the U.S. affiliate's total assets, sales or gross operating revenues, or net income, with thresholds of $300 million, $120 million, and $40 million. The data collected by these surveys varies but generally includes certain financial and operating data of the U.S. affiliate, as well as payable and receivable balances, and interests between the U.S. affiliate and the foreign entity.

A benchmark survey (Form BE-12) is collected every five years and is BEA's most comprehensive survey on foreign direct investment in the United States. The next benchmark survey year will be 2027. The filing requirements for the BE-12 form vary based upon total assets, sales, gross operating revenues, or net income thresholds, and its filing will be mandatory whether or not the U.S. affiliate is contacted.

Confidentiality of Information

Information gathered in these surveys is confidential and can be used only for analytical or statistical purposes. The collected information is aggregated by BEA and reported on a macro-industry/economic level so that individual U.S. company data cannot be identified. Without prior written permission of the party submitting it, the information filed in the reports cannot be presented in a manner that allows it to be individually identified. The information from the reports cannot be provided to other federal agencies for tax, investigative, or regulatory purposes.

BEA Authority and Potential Penalties for Failure to File

These foreign direct investment surveys are conducted pursuant to the International Investment and Trade in Services Survey Act (P.L. 94- 472., 22 U.S.C. §§ 3101-3108, as amended), and the filing of a response is mandatory for qualifying businesses. A company must file the appropriate Form BE-13 no later than 45 days after the date of the investment transaction, whether or not it is contacted by BEA.

Failure to file can subject a party to a civil penalty, injunctive relief commanding such person to comply, or both. Willful failure to file a response subjects a party to fines or, if an individual, to imprisonment for not more than one year, or both. Any officer, director, employee, or agent of any business who knowingly participates in such violations, may, upon conviction, be punished by a similar fine, imprisonment, or both.

FOR MORE INFORMATION

For more information, please contact:

David M. Schwartz
Practice Group Leader, International Trade
202.263.4170
David.Schwartz@ThompsonHine.com

Samir D. Varma
Partner, International Trade
202.263.4136
Samir.Varma@ThompsonHine.com

Scott E. Diamond*
Senior Legislative & Regulatory Policy Advisor
International Trade
202.263.4197
Scott.Diamond@ThompsonHine.com

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