

November 2016

BEA Amends Foreign Investment Reporting Requirements

*By Ted Posner and
Timothy C. Welch*

The Bureau of Economic Analysis (BEA), an agency of the U.S. Department of Commerce, has amended its rules pertaining to reports of foreign investment in the United States. In general, the amendments, which will take effect on November 21, 2016, are designed to simplify the process for certain filers of BEA reports. U.S. companies that have received foreign direct investment (or may do so in the future) should familiarize themselves with the rule amendments.

For this purpose, foreign direct investment means the ownership or control, directly or indirectly, by one foreign person (foreign parent) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise,¹ or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.²

In 2014, the BEA amended its regulations to require a U.S. company to file a “BE-13” report if

- (1) it is acquired or established by a foreign person or entity resulting in the creation of a foreign direct investment relationship or
- (2) it is an existing U.S. affiliate of a foreign parent and establishes a new U.S. legal entity, expands its U.S. operations, or acquires a U.S. business enterprise.

The BE-13 report includes information about the investment, including, among other things, the date and amount of the investment; the names, employer identification numbers, and ownership information for U.S. entities involved in the transaction; the name, country, industry code, and ultimate beneficial owner of the foreign parent; the debt and equity characteristics of the transaction; the actual or projected assets, liabilities, revenues, and income of any new or acquired entity; and various costs associated with any new facilities. Prior to 2014, a company filed such a report only if BEA requested it to do so. Since 2014, a company meeting the above criteria must file a report within 45 days of closing of the relevant transaction. Failure to do so may result in monetary penalties. Until now, there have been five different versions of the report form, with the version required dependent on the structure of the transaction, as well as a separate “claim for exemption” for investments of less than \$3 million.

In the two years since the BE-13 reporting requirement took effect, it has proved to be more burdensome than anticipated for certain filers. Accordingly, BEA made the amendments that soon will enter into force. The amendments also will affect other BEA reporting requirements, including those related

to the BEA's Quarterly Survey of Foreign Direct Investment in the United States (BE-605) and Annual Survey of Foreign Direct Investment in the United States (BE-15).

The most significant amendments fall into two categories:

1. BEA reporting is no longer required with respect to foreign ownership of U.S. private funds or holding companies unless the foreign investor also holds, directly or indirectly, 10 percent or more of the voting interests in a U.S. operating company.³
2. BEA has changed the requirements and formatting of the BE-13 report forms. The most notable of these changes are:
 - BEA has eliminated Form BE-13C. This version of the BE-13 report applied to the acquisition of a U.S. business enterprise that is merged with an existing U.S. affiliate of the foreign acquirer. Instead of requiring a BE-13C, BEA has revised Form BE-13A, which until now had been used only when the acquired U.S. business enterprise remained a separate entity. Pursuant to the amendment, Form BE-13A will be used whenever a foreign entity acquires a 10 percent or greater voting interest in a U.S. business enterprise, directly or indirectly (and the total cost of the acquisition is greater than \$3 million), regardless of whether the acquired entity remains intact.

- BEA has eliminated the requirement to file both Form BE-13B (pertaining to the establishment of a new U.S. business enterprise) and Form BE-13A when a U.S. business enterprise is established to facilitate a single U.S. acquisition that will take place within 30 days. Instead, the U.S. business will consolidate the new enterprise with the acquired enterprise and submit a single Form BE-13A.

BEA's survey forms and further instructions and guidance are available online at <http://www.bea.gov/surveys/fdiusurv.htm>.

1. U.S. affiliates must file on a consolidated basis and include in the consolidated filing foreign investment involving all U.S. businesses down each ownership chain whose voting securities are more than 50 percent owned by the U.S. entity above it, provided the 10 percent foreign voting threshold is satisfied. For purposes of BEA surveys, a foreign parent's voting interest in a subsidiary of a U.S. affiliate can be determined by multiplying the foreign parent's voting interest in the U.S. affiliate by the U.S. affiliate's voting interest in the subsidiary, and so on down the ownership chain.
2. Absent provisions to the contrary in a partnership agreement, the BEA considers that the general partner holds all of the voting interests in a limited partnership, and the limited partners do not have any voting interests.
3. It bears noting that although these amendments may ease the BEA reporting requirements for foreign-owned U.S. private funds and holding companies, portfolio investments must be reported through the Treasury International Capital reporting system.

Contributing Authors

Ted Posner (Washington DC)

[View Bio](#)

ted.posner@weil.com

+1 202 682 7064

Timothy Welch (Washington DC)

[View Bio](#)

timothy.welch@weil.com

+1 202 682 7132

© 2016 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to weil.alerts@weil.com.