

CLIENT ALERT

Reminder: Electronic Submissions of Form BE-180 Filing Due October 30, 2020

OCTOBER 14, 2020

Every five years, the U.S. Department of Commerce Bureau of Economic Analysis (BEA) conducts a benchmark survey of financial services transactions between U.S. financial services providers and foreign persons. For the calendar year 2019, this survey is required of all financial services providers, whether or not BEA has contacted them.

While paper submissions of the survey were due on September 30, 2020, for those persons filing electronically, the due date for filing the BE-180 survey is October 30, 2020. We note that due in part to the COVID-19 outbreak, BEA has indicated that its capacity to send and receive paper mail is limited. Therefore, BEA encourages filers to use [BEA's eFile system](#) to submit completed BE-180 surveys.

Who Must File

U.S. persons that are financial services providers,^[1] intermediaries, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that engaged in any covered transaction with a non-U.S. person during 2019 may have a BE-180 filing obligation. Investment managers may have an obligation to submit a BE-180 survey if they or their affiliates, among other things, (i) received management fees or incentive allocations or carried interest from offshore pooled investment vehicles in 2019, including affiliated entities; (ii) paid or received fees to or from a non-U.S. subadviser in 2019, including affiliated entities; or (iii) paid fees to a non-U.S. placement agent in 2019.

Non-U.S.-based investment managers generally will not have a reporting obligation, as the BE-180 applies only to U.S. persons; however, if such an entity is providing services to a U.S.-based fund and receives fees, the fund itself may have a filing obligation, which, practically, may have to be undertaken by the foreign manager in its capacity as general partner to or manager of the fund.

What to Report

U.S. persons whose combined sales to foreign persons of financial services,^[2] or whose combined purchases from foreign persons of financial services, exceeded \$3 million during 2019, on an accrual basis must provide data on total sales and/or total purchases of financial services and must disaggregate the totals by country and by relationship to the foreign counterparty (i.e., foreign affiliate, foreign parent group, or unaffiliated). U.S. persons whose combined sales to foreign persons of financial services, or whose combined purchases from foreign persons of financial services, were \$3 million or less during 2019, must provide the total sales and/or total purchases for each type of transaction in which they engaged. The \$3 million threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise that are financial services providers or intermediaries. Because the \$3 million threshold applies to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

Investment managers must report fee income from or to foreign persons to manage or administer financial portfolios, such as cash, securities, futures, and other financial instruments or assets if the investment manager or foreign person has the authority to direct the use or investment of funds or other assets. These fees must be reported (i) whether the assets are held by the manager or a custodian, (ii) from actively managed accounts, and (iii) from passively managed, or indexed, accounts.

Helpful Resources

BEA’s website contains certain helpful information and tools to assist BE-180 filers. BEA’s informational page on BE-180 is available [here](#). BEA also maintains an online decision tool to help users determine whether they may have a BE-180 filing obligation. That tool is available [here](#).

As mentioned above, BEA’s eFile system is available [here](#).

For additional information regarding any of the above or if you would like assistance in preparing your filing, please contact the authors or your Winston & Strawn relationship attorney.

[1] The definition of “financial services provider” includes entities such as (i) security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services; and (ii) investment advisers, investment managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

[2] The definition of “financial services” is also very broad and includes trading, issuing, dealing, underwriting, lending, custody, etc., of financial instruments; financial advisory or management services; credit card services; credit-related services (including establishing, maintaining, or arranging credit, letters or credit, lines of credit, mortgages, etc.); financial rating services; electronic funds transfer services; insurance services; etc.

3 Min Read

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