

CLIENT ALERT

## BE-12 Form: BEA 5-Year Benchmark Survey on Foreign Direct Investment in the U.S. Due May 31, 2018

APRIL 3, 2018

### Background

The U.S. Department of Commerce Bureau of Economic Analysis (“BEA”) conducts surveys to gather economic statistics related to U.S. direct investment abroad and foreign direct investment in the United States. Clients can find a series of tables describing key BEA filings at the end of this briefing.

The BE-12 form is filed every five years (and replaces the BE-15: Annual Survey of FDI in the U.S.)

The 2017 BE-12 survey is due on May 31, 2018. The BE-12 is mandatory for any U.S. entity where 10% or more of the U.S. entity’s voting interests are owned, directly and/or indirectly, by one or more foreign persons (the “ten-percent threshold”).<sup>1</sup> Smaller businesses should be aware that there is no minimum assets or revenue threshold for the BE-12 filing.

### Which BE-12 Form to File

U.S. entities that meet the ten-percent threshold must complete one of three BE-12 forms: the BE-12A, the BE-12B or the BE-12C. Which form an entity must complete depends on a) the composition of the entity’s ownership, and/or b) its assets, sales or gross operating revenues or net income. Both factors only concern the fiscal year that ended in 2017.

An entity should file a **BE-12A** form if a) the entity was majority-owned directly and/or indirectly by a foreign person, and b) its total assets, sales or gross operating revenues or net income was *more than \$300 million* (+/-).

If an entity is majority-owned but its total assets, sales or gross operating revenues or net income was *not greater than \$300 million*, it should file a **BE-12B form**. An entity should also file a **BE-12B** form if 1) it was not majority-owned by a foreign parent, and b) its total assets, sales or gross operating revenues or net income was *more than \$60 million* (+/-) but *no greater than \$300 million* (+/-).

Finally, an entity should file a **BE-12C** form if its assets, sales or gross operating revenues or net income was *no more than \$60 million (+/-)*, regardless of whether the entity was majority owned by a foreign parent. If an entity's assets, sales or gross operating revenues or net income did not exceed \$20 million, then it need only complete **Part I** of the **BE-12C**.

A U.S. entity should file the **BE-12 Claim for Not Filing** if it was contacted about filing a BE-12 form by the BEA but its enterprise was liquidated or dissolved before the end of the fiscal year ending in 2017 (if the BEA did not contact the entity, then the entity need not file any form).

## Consolidation

If, at the end of the fiscal year ending in 2017, another U.S. entity owned more than 50% of the voting rights of a subsidiary U.S. entity, the U.S. entity should be consolidated on the BE-12 form of the U.S. entity that had majority control, and the U.S. subsidiary entity should file the **BE-12 Claim for Not Filing**. If, however, different foreign persons hold a direct and indirect ownership interest in the subsidiary U.S. entity that exceeds 10%, the subsidiary U.S. entity must file one of the three BE-12 forms previously listed.

U.S. entities can file their forms electronically at <https://www.bea.gov/efile/>. BE-12 forms and guidance can be found at [https://www.bea.gov/surveys/respondent\\_be12\\_be15.htm](https://www.bea.gov/surveys/respondent_be12_be15.htm).

Clients can find a series of tables describing key BEA filings at the end of the attached PDF.

<sup>1</sup> The BEA uses the defined term of “U.S. affiliate” that means “an affiliate located in the United States in which a foreign person or entity has a direct investment.” We use the term “U.S. entity” in this briefing. The BEA also may contact a U.S. entity about filing a BE-12 form even if the U.S. entity does not meet the ten-percent threshold, in which case the U.S. entity would be required to file a BE-12 Claim for Not Filing. BE-12 Claim for Not Filing at 4, available at <https://www.bea.gov/international/pdf/fdius-2017/BE-forms/be-12Claim.pdf>.

3 Min Read

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