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## Export Controls & Economic Sanctions Alert

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### **Prepare now for BE-10 Benchmark Survey of US Direct Investment Abroad**

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The 2025 deadlines are approaching for US entities and individuals to report their foreign businesses and real estate interests to the US Department of Commerce.



#### **What's the impact?**

- Filing requirements apply to US persons who own or control 10% or more of a foreign business enterprise, including ownership of foreign commercial and, subject to limited exclusions, residential real estate.
- The deadline to file a completed BE-10 report will fall on either May 30, 2025, or June 30, 2025, depending on how many BE-10 Forms one must file.
- Failure to file can carry enforcement consequences, including potential civil and criminal penalties.

The U.S. Department of Commerce's Bureau of Economic Analysis (BEA) conducts a [BE-10 Benchmark Survey of US Direct Investment Abroad](#) every five years. As part of the survey, each US person (including corporations, private funds, trusts, estates, and individuals) that directly or indirectly owned or controlled at the end of their 2024 fiscal year at least 10% of the voting stock

of an incorporated foreign business enterprise—or an equivalent interest in an unincorporated foreign business enterprise—must file a BE-10 report with BEA. The term “foreign business enterprise” includes ownership of commercial and, subject to limited exclusions, residential real estate outside the United States.

A BE-10 report consists of various forms, including one or more for the US person and a form for each of the US person’s foreign affiliates (some exceptions apply to foreign affiliates in the same country). For US persons required to file fewer than 50 forms, the filing deadline is May 30, 2025. US persons required to file more than 50 forms must do so by June 30, 2025.

## **The BE-10 benchmark survey’s purpose**

The BEA provides closely watched data about the US economy, including US investment abroad and foreign direct investment in the US. The BEA compiles BE-10 reports and other information to generate a number of different economic and statistical reports that help gauge the performance of the US economy and the United States’ role in the global economy. Information submitted to BEA is confidential and used for such economic and statistical reporting purposes only.

The BE-10 Benchmark Survey recurs every five years. The last filing for the 2019 fiscal year was due in 2020. The BEA gathers BE-10 reports and other reports, including an annual (Form BE-11) and a quarterly report (Form BE-577), to collect data on US direct investment abroad. However, unlike the annual and quarterly reports, for US persons meeting the reporting thresholds, filing BE-10 reports is mandatory regardless of whether BEA has contacted the US person about the benchmark survey. The BEA has clarified that it considers the publication in the *Federal Register* of the final rule implementing the BE-10 as legal notice of the reporting obligation.

## **Who must file**

A US person must file a BE-10 report if it, directly or indirectly, owned or controlled 10% or more of (a) the voting securities of an incorporated foreign “business enterprise” or (b) an equivalent interest in an unincorporated foreign “business enterprise” at the end of the US person’s 2024 fiscal year. The term “business enterprise” is broadly defined and includes any organization, association, branch, or venture that exists for profit-making purposes or to otherwise secure economic advantage and any ownership of any real estate (see below). Reports are no longer required if the foreign business enterprise was sold or liquidated (and is no longer in existence) during the US person’s 2024 fiscal year. For example, if a US company sold its French subsidiary in the course of 2024 and no longer owned it by the end of its 2024 fiscal year, it would not need to file a BE-10 report for that entity.

Failure to file can carry enforcement consequences, including potential civil and criminal penalties (see [15 C.F.R. § 801.6](#)).

## **Is the filing requirement triggered by a specific dollar threshold?**

No. There is no dollar threshold that would trigger or exclude a filing. However, a foreign affiliate's total assets, sales, and net income determine the type of form that must be filed for that specific foreign affiliate (specifically, a Form BE-10B, BE-10C, or BE-10D, as discussed further below). For example, a US filer must complete a Form BE-10B for majority-owned foreign affiliates of US parents with assets, sales, or net income greater than \$80 million (positive or negative). By comparison, US filers generally only need to complete a Form BE-10D for a foreign affiliate whose (a) total assets, (b) sales or gross operating revenues, excluding sales taxes, and (c) net income, after provision for foreign income taxes, were each \$25 million or less (positive or negative) at the end of the 2024 fiscal year (and who are not a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C).

## **Does this filing requirement also apply to entities that are disregarded for US tax purposes?**

Yes. Form BE-10 is not a tax form. It applies regardless of the US tax status of the affected entities.

## **Do private funds with foreign investments have to file?**

Generally, yes, if they, directly or indirectly, owned or controlled 10% or more of the voting securities of an incorporated foreign business enterprise (or an equivalent interest in an unincorporated foreign business enterprise) at the end of their 2024 fiscal year. However, US persons that own a 10% or more voting interest in a foreign private fund are no longer required to file a Form BE-10 for that private fund if (a) that private fund foreign affiliate does not own, directly or indirectly through another business enterprise, an "operating company"—i.e., a business enterprise that is not a private fund or a holding company—in which the US person owns at least 10% of the voting interest, and (b) the US person owns the private fund indirectly (through one or more other business enterprises) and there are no "operating companies" between the consolidated US reporter and the indirectly owned foreign private fund.

## **What or who is a US person?**

BEA survey regulations define a US person as any person resident in the United States or subject to the jurisdiction of the United States. "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any state) and any government. For BE-10 purposes, the term government includes a foreign government, the United States government, a state or local

government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency.

## **Does this apply to individuals?**

Yes, individuals who qualify as US persons must file if they have reportable interests in foreign businesses or real estate. US individuals also must directly report interests held in foreign trusts.

The BEA has clarified how to determine an individual's country of residence or jurisdiction. An individual is considered a resident of, and subject to the jurisdiction of, the country in which the individual is physically located, subject to the following qualifications: Individuals who reside or expect to reside outside their country of citizenship for *less* than one year are considered to be residents of their country of citizenship. Individuals who reside or expect to reside outside their country of citizenship for one year or *more* are considered to be residents of the country in which they reside. For example, a German citizen who resides in the US for more than a year is a US person for BE-10 purposes. Likewise, a US citizen living abroad for more than a year is generally not a US person for purposes of a BE-10 filing. Some exceptions apply, most notably for individuals living abroad and working for a US company, such as a US consular officer or member of the armed forces, or in other governmental capacities.

## **Do foreign-owned entities in the US need to file?**

Yes, if they own foreign affiliates, e.g., if a German-owned subsidiary in the US owns 10% or more of a Canadian or Mexican affiliate. In such cases, the US business enterprise should complete and submit a BE-10 filing regarding that foreign affiliate; however, it should not report other property of its foreign owner. The BEA has clarified that, in this situation, foreign-owned subsidiaries in the US would have to comply with the BEA's *inbound* reporting obligations (because they are foreign-owned), as well as the BEA's *outbound* reporting obligations for their ownership of a foreign (e.g., Canadian) affiliate.

## **Do estates and trusts have to file a BE-10 report?**

The BEA distinguishes between estates and trusts. US estates are considered persons and, therefore, must file a BE-10 report through their administrator or executor. The beneficiary does not have a filing requirement. By contrast, trusts are considered intermediaries. Intermediaries that hold, exercise, administer, or manage US direct investment abroad must either (a) report the required information for, and in the name of, their principal or (b) instruct the principal to submit the required information. Once the intermediary instructs the principal, the intermediary is released from further liability to report, provided it has informed the BEA of the date such instructions were given and the name and address of the principal, and it has supplied the principal with any information in the possession of, or which can be secured by, the intermediary

that is necessary to permit the principal to complete the required reports. When acting in an intermediary capacity, the US intermediary's accounts or transactions with the foreign affiliate are considered to be accounts or transactions of the US principal with the foreign affiliate. To the extent such transactions or accounts are unavailable to the principal, they may be required to be reported by the intermediary.

## **What do ship operators and airlines need to consider?**

The BEA has clarified that US airlines' and ship operators' foreign stations, ticket offices, and terminal and port facilities that provide services *only* to their own operations are not foreign affiliates and are not subject to the reporting requirements. A BE-10 report is required when such facilities produce significant revenues from services provided to unaffiliated persons.

## **Are all real estate investments outside the US reportable?**

Generally, yes. Ownership of foreign real estate is viewed as a business enterprise for BE-10 purposes. There are three exceptions:

- / Real estate that is normally included in the property, plant, and equipment account of a foreign affiliate is not reported as a *separate* affiliate. In other words, the US person would file a BE-10 form (generally, a Form BE-10B, BE-10C, or BE-10D—see below) for the foreign affiliate that owns the real estate (e.g., a UK subsidiary).
- / Residential real estate held exclusively by a US person for personal use and not for profit-making purposes is not subject to the reporting requirements. Moreover, a *primary* residence abroad leased to others while the owner resides in the US but which the owner intends to reoccupy is considered real estate held for personal use.
- / Ownership of foreign residential real estate by a business enterprise, the sole purpose of which is to hold the real estate for the personal use of the owner(s) of the business enterprise, is considered real estate held for personal use. It is, therefore, not subject to the reporting requirements.

If a US person has a direct or indirect voting ownership interest of 10% or more in a joint venture, partnership, etc., formed to own and hold, develop, or operate real estate, the joint venture, partnership, etc., in its entirety, not just the US person's share, is a foreign affiliate and must be reported.

## **How is a BE-10 report filed?**

As noted, a BE-10 report consists of various forms: Form BE-10A for the US person and a separate form for each foreign affiliate. For example, a US person that owned a 10% interest in only one

foreign affiliate would file two BE-10 forms—a Form BE-10A for itself as the US reporter and a Form BE-10B, BE-10C, or BE-10D for the foreign affiliate as discussed further below. While Form BE-10A is filed on a fully consolidated basis for the consolidated US domestic business enterprise, foreign affiliates are generally not reported in *one* comprehensive form on a consolidated basis. The BEA does not make this easy—it has not simplified the filing requirements. Some exceptions apply, including for US filers that have participated in the BEA’s BE-577 Quarterly Survey of US Direct Investment Abroad, for foreign affiliates located in the same country, and for foreign affiliates that meet the Form BE-10D thresholds and are thus reported on Form BE-10D (see below).

Which BE-10 form must be filed for each foreign affiliate depends on various factors, including whether the foreign affiliate is majority- or minority-owned and the foreign affiliate’s total assets, sales, or net income. Specifically, US filers must report each foreign affiliate through one of the following three forms (as applicable):

- / **Form BE-10B** for majority-owned foreign affiliates of US parents with (a) assets, (b) sales (or gross operating revenues excluding sales taxes), or (c) net income after provision for foreign income taxes greater than \$80 million (positive or negative).
- / **Form BE-10C** for majority-owned foreign affiliates of US parents with assets, sales, or net income greater than \$25 million (positive or negative), but no one of these items was greater than \$80 million (positive or negative); for minority-owned foreign affiliates of US parents with assets, sales, or net income greater than \$25 million (positive or negative); and for foreign affiliates for which no one of the items: assets, sales, and net income was greater than \$25 million (positive or negative) and is a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C.
- / **Form BE-10D** for foreign affiliates for which no one of the assets, sales, or net income was greater than \$25 million (positive or negative) and which is not a foreign affiliate parent of another foreign affiliate being filed on Form BE-10B or BE-10C.

If the foreign affiliate is owned, directly and/or indirectly, by more than one US filer, the US filer with the highest percentage of ownership in the foreign affiliate (direct and indirect combined) must file a complete Form BE-10B, BE-10C, or BE-10D, on which all parts have been completed. The other US filer(s) with total direct and indirect ownership of 10% or more must file a partial report.

[The individual forms are on the BEA’s BE-10 website.](#)

Filers must obtain a Reporter ID from the BEA in advance of the deadline.

## When is the BE-10 report due?

As noted, the deadline to file the BE-10 report depends on how many BE-10 Forms one must file. A fully completed and certified BE-10 report comprising Form BE-10A and Form(s) BE-10B, BE-10C, or BE-10D is due to BEA no later than May 30, 2025, for US Reporters required to *file fewer than 50 forms*, and June 30, 2025, for US Reporters required to *file 50 or more forms*.

## What happens if you do not file?

Failure to file a BE-10 Report with BEA can lead to 2025-inflation-adjusted civil penalties ranging from \$5,911 to \$59,114. Willful violations may result in criminal punishment including a fine of up to \$10,000, up to one year imprisonment for individuals, or both. By statute, "any officer, director, employee, or agent of any corporation who knowingly participates in such [criminal] violation, upon conviction, may be punished by a like fine, imprisonment, or both."

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