

**June 23, 2015**

### **Form BE-10: Must be filed no later than June 30, 2015 for First Time Filers of US Persons with 10% or More Equity Interest in Foreign Enterprises**

In the interest of keeping you informed of developments in the international tax area, please note that the US Department of Commerce Bureau of Economic Analysis (“BEA”) is conducting a survey which is requiring every US Person (that has previously not filed) to file Form BE-10 to report certain offshore investments during the 2014 fiscal year. Specifically, the BEA is attempting to obtain data on the operations of certain US persons (defined broadly to include individuals and entities) and their foreign affiliate(s). Information required to be provided may include, but not necessarily limited to, business activities, financial data, employment data, supply chain information and details regarding related party cross-border transactions.

The Form BE-10 is required to be filed no later than June 30, 2015 (in some instances, the due date was May 29, 2015 but was extended to June 30, 2015). Previously, Form BE-10 was only required to be filed by a US person upon request of the BEA. However, it is required to be filed by all applicable US Persons starting in the 2014 fiscal year. An extension can be obtained until no later than August 31, 2015 by calling the BEA.

See below for general information from the Form BE-10 Instructions as to the applicability of this Form BE-10. Further, please refer to the two links below which provide the Form BE-10 Instructions and a link to the BEA’s homepage with respect to this form (e.g., there are links to webinars and video tutorials (such as this [YouTube Video](#)) explaining the BEA’s purpose of requesting such information).

Immediate action should be taken should you have an interest in offshore investments to determine the applicability of this survey by the BEA. **Failure to file such Form BE-10 may result in a civil penalty (monetary and/or imprisonment).**

#### **1. Who is subject to the Form BE-10 filing requirement?**

Form BE-10 report is required of any US person that had a foreign affiliate – that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise – at any time during the US person’s 2014 fiscal year.

If the US person had no foreign affiliates during its 2014 fiscal year, it must file a “BE-10 Claim for Not Filing”; no other forms in the survey are required. If the US person had any foreign affiliates during its 2014 fiscal year, a Form BE-10 is required and the US person is a US Reporter.

#### **2. What are the penalties for failure to timely file Form BE-10?**

Whoever fails to report shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both.

### 3. Who is a US Person?

US person means any person resident in the United States or subject to the jurisdiction of the United States. The term person (as the term is used in the broad legal sense) 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 (including 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).

### 4. What is an affiliate?

An affiliate means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 percent or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch.

### 5. What is a foreign business enterprise?

A foreign business enterprise means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

### 6. Under what authority is the BEA operating under to request such information?

The survey (i.e., Form BE-10) is being conducted pursuant to the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended –hereinafter “the Act”), and the filing of reports is mandatory pursuant to Section 5(b)(2) of the Act (22 U.S.C. 3104).

#### Further information:

[BEA Home Page](#)

[Form BE-10 Instructions](#)

**Like many tax matters, these rules are complex and we have only provided a brief overview of the issues. For more information, please contact your Green Hasson Janks advisor for further details at 310.873.1600. &**

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