

May 29, 2015

BEA Filing Deadline Looms For US Persons With Foreign Affiliates

Every five years, the US Department of Commerce's Bureau of Economic Analysis (BEA) conducts a survey concerning the extent of investment abroad by US individuals and entities (US persons). In the past, only US persons specifically requested to do so by the BEA were required to respond to the survey by filing a [BE-10 report](#) (the report). This year, however, each US person who had a foreign affiliate (as described below) at any time during its 2014 fiscal year is required to file the report.

For purposes of the report, a "foreign affiliate" is any foreign entity in which the US person owned or controlled, directly or indirectly, at least 10 percent of the voting stock or an equivalent interest if the foreign entity is unincorporated. A US feeder fund that owns 10 percent or more of the voting shares or interests of an offshore master fund would, therefore, need to file the report with respect to the master fund.

If the US person owning the foreign affiliate is a company, the report must cover the entire "consolidated US domestic business enterprise" of which that US person is a part, and is filed by the ultimate parent of that group. Similarly, when a foreign affiliate of a US person owns one or more other foreign entities, those lower-tier entities would become foreign affiliates of the US person if the US person's indirect interest in those foreign entities meets the 10 percent voting threshold.

The separate instructions to form BE-10 state that "If a US Person had no foreign affiliates during its 2014 fiscal year, it must file a BE-10 Claim for Not Filing." That instruction, standing alone, would require every US person to file either a BE-10 or a BE-10 Claim for Not Filing. However, the instructions printed on the BE-10 Claim for Not Filing, as well as instructional material on the BEA website, clarify that the BE-10 Claim for Not Filing only applies to US persons without foreign affiliates who have received requests from the BEA to file the report.

For new filers, the report is due by June 30, 2015. For filers who have previously filed a Form BE-10, the report is due by May 29, 2015 if those filers are required to file fewer than 50 forms, and June 30, 2015 if those filers are required to file 50 or more forms.

The BEA is open to granting month-long extensions if the request is reasonable and is made by the original filing date.

The report includes a Form BE-10A and one or more of Forms BE-10B, BE-10C and BE-10D. The determination of whether to file Form BE-10B, BE-10C and/or BE-10D depends on the amount of assets, sales, gross operating revenues and/or the net income of the filer's foreign affiliates for the 2014 fiscal year. A US person must file a full Form BE-10A if at any point during its 2014 fiscal year its total assets, sales, gross operating revenue or net income exceeded \$300 million. If none of the aforementioned thresholds are met, the US person only needs to file a partial Form BE-10A.

For more information, please contact your attorney or any of the following members of Katten's **Financial Services practice**.

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