

## Reinstated Form BE-13 May Be Required By January 12, 2015 to Report 2014 U.S. Investments and Expansions

### Executive Summary

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- The U.S. Department of Commerce Bureau of Economic Analysis (BEA) recently reinstated its BE-13 reporting requirements.
- U.S. entities must report certain acquisitions and investments in a U.S. business, U.S. entity formations, acquisitions and construction of U.S. real estate and expansions of U.S. operations to new facilities where 10% or more of their voting securities are controlled by non-U.S. investors.
- Exemptions are available for certain transactions with a value equal to or less than \$3 million, but are not self-executing, so subject U.S. entities must report even if an exemption applies.
- For triggering events occurring between January 1, 2014 and November 26, 2014, the filing deadline is January 12, 2015.

### Summary

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After a hiatus of several years, the U.S. Department of Commerce Bureau of Economic Analysis (BEA) recently reinstated its BE-13 reporting requirements in addition to its existing annual, quarterly and benchmark reporting requirements. According to the BEA, the purpose of this new investment survey is to capture new investment transactions made when (1) a foreign direct investment in the United States relationship is created or (2) an existing U.S. affiliate of a foreign parent establishes a new U.S. legal entity, expands its U.S. operations, or acquires or invests in a U.S. business enterprise. Under applicable regulation, reports submitted to the BEA are confidential and may be used only for analytical or statistical purposes.

U.S. companies may find they are obliged to file a Form BE-13 because reporting is required of U.S. entities that engage in triggering events where 10% or more of an entity's voting securities are controlled directly or indirectly by a non-U.S. investor. In addition, reporting is triggered by transactions that result in indirect ownership of 10% or more of the voting securities of a U.S. entity by a foreign person or entity. Accordingly, a reporting obligation would be triggered if a U.S. entity that is 50% owned (by voting securities) by a foreign entity invests in 25% of the voting securities of another U.S. entity as the foreign entity is deemed to have acquired a 12.5% interest in the second U.S. entity. For unincorporated entities such as limited liability companies and limited partnerships, informal (and non-binding) guidance recently provided to our firm by the BEA indicates that "voting securities" only include interests that grant the holder the ability to participate in or influence the day-to-day management and decision-making of the entity.



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If a triggering event has occurred since January 1, 2014, a BE-13 form would be required or, if the transaction value was equal to or less than \$3 million, a claim for exemption would be required. Subject U.S. entities would need to submit one of six types of BE-13 forms (BE-13A, BE-13B, BE-13C, BE-13D, BE-13E or BE-13 Claim for Exemption) depending on the triggering event. Triggering events and the applicable BE-13 form are as follows:

- acquisitions of U.S. businesses (Form BE-13A or BE-13C);
- transactions in U.S. real estate (Form BE-13A or BE-13B);
- new U.S. entity formations (Form BE-13B and, if applicable, BE-13E); and
- expansions to new U.S. facilities (Form BE-13D and, if applicable, BE-13E).

For example, if a U.S. company in which a foreign entity owns or controls, directly or indirectly, a 10% or greater voting interest commenced construction of a new U.S. facility with a projected total cost of greater than \$3 million during 2014, the U.S. company would be required to file a Form BE-13D. Additionally, a Form BE-13E would be required annually until construction is completed to provide updated construction cost information. Form BE-13E is anticipated to be released in 2015 by the BEA.

Following a series of regulatory delays, the BEA is requiring that triggering events be reported by January 12, 2015 if they occurred during 2014 prior to November 26, 2014. Triggering transactions on or after November 26, 2014 are required to be reported 45 days after the triggering transaction. Failure to report is a violation of law and is currently subject to civil penalties of \$2,500 to \$32,500 and criminal penalties of up to \$10,000 and a year in jail.

Copies of the BE-13 forms and certain other materials may be obtained via the BEA's website at: [http://www.bea.gov/surveys/respondent\\_be13.htm](http://www.bea.gov/surveys/respondent_be13.htm). Additionally, the BEA's website offers the option of e-filing the BE-13 forms and provides some interpretative materials. BEA representatives have indicated to our firm that the BEA is in the process of developing additional reporting guidance, but this guidance is not expected to be published prior to January 12, 2015. The members of our firm listed below can assist with the analysis of reporting obligations where ambiguities may exist.

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