

## BE-10 Benchmark Survey of U.S. Direct Investment Abroad Will Be Due Soon

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May 21, 2020

The BE-10 Benchmark Survey of U.S. Direct Investment Abroad (BE-10 Benchmark Survey) is a mandatory survey conducted once every five years by the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce to obtain current economic data on direct foreign investments by U.S. persons or businesses (U.S. Reporters). The filing deadline for the 2019 BE-10 Benchmark Survey is rapidly approaching. We are providing the following Q&As to assist in determining whether a 2019 BE-10 Benchmark Survey is required and when.

### 1. Who is required to file as a U.S. Reporter?

Any U.S. person who, at the end of its 2019 fiscal year, owned or controlled, directly or indirectly, 10% or more of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including branches (foreign affiliate), is required to file 2019 Benchmark Survey forms. A U.S. person includes an individual, partnership, corporation, estate, trust, or non-profit organizations that is resident in the U.S. or otherwise subject to the jurisdiction of the U.S. Certain private funds may be exempt from filing; see [www.bea.gov/privatefunds](http://www.bea.gov/privatefunds) for further information.

### 2. Is the 2019 Benchmark Survey mandatory?

Yes, a U.S. Reporter required to submit required 2019 BE-10 Benchmark Survey forms must do so by the applicable deadline, whether or not contacted by the BEA. However, if notified by the BEA that the U.S. Reporter is required to make a filing but the U.S. Reporter believes it is not subject to the 2019 BE-10 Benchmark Survey requirements, the U.S. Reporter must file "BE-10 Claim for Not Filing." If the U.S. Reporter is not notified by the BEA and the U.S. Reporter does not meet the 2019 BE-10 Benchmark Survey filing requirements, the U.S. Reporter need not take any action. Failure to submit a BE-10 survey may subject a U.S. Reporter to civil and injunctive relief and a willful failure to report may result in fines or imprisonment, or both. Officers, directors, employees, or agents of a U.S. Reporter who knowingly participate in a violation may also be subject to fines or imprisonment or both.

Please note that the 2019 BE-10 Benchmark Survey takes the place of the 2019 BE-11 annual survey. Some U.S. Reporters are exempt from filing BE-11 annual survey forms due to applicable size limitations. However, BE-10 forms must be completed and filed by all U.S. Reporters meeting the 2019 BE-10 Benchmark Survey requirements without regard to the BE-11 annual survey size limitations.

### 3. When is the deadline for filing BE-10 forms?

The deadline for filing the 2019 BE-10 Benchmark Survey is May 29, 2020, and is extended to June 30, 2020, for U.S. Reporters with 50 or more affiliate reports. Reasonable requests for extension of the filing deadline will be considered by BEA but must be submitted before the applicable filing deadline. Extension requests should be filed electronically using eFile.

### 4. Which BE-10 forms are to be filed?

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The 2019 BE-10 Benchmark Survey includes a BE-10A form for the U.S. Reporter and one of the following forms for each of the U.S. Reporter's foreign affiliates: Form BE-10B, Form BE-10C or Form BE-10D. BEA has provided the following summary chart for U.S. Reporters to use in determining which BE-10 forms are to be submitted for foreign affiliates:

\*Foreign affiliate's total assets, sales or gross operating revenues excluding sales taxes, net income (loss) after provision for foreign income taxes.

\*\*If a foreign affiliate meeting the reporting requirements for Form BE-10D owns another foreign affiliate being filed on Form BE-10B or BE-10C, the foreign affiliate parent must be filed on Form BE-10C.

BE-10 forms and guidance can be found at <https://www.bea.gov/be-10-benchmark-survey-us-direct-investment-abroad>. Detailed instructions for completing the forms can be found at <https://www.bea.gov/system/files/2020-05/BE-10-instructions-2019.pdf>.

Please note that foreign representative offices, agents and employees of a U.S. person are not considered to be foreign affiliates, and therefore, they should not be reported on Form BE-10B, BE-10C or BE-10D. However, a U.S. Reporter's disbursements to maintain foreign sales and representative offices must be reported on Form BE-125, Quarterly Survey of Transactions in Selected Services and Intangibles Assets with Foreign Persons.

### **5. Can BE-10 Forms be filed electronically?**

Yes, BE-10 forms may be filed online at [www.bea.gov/efile](http://www.bea.gov/efile). They may also be filed by fax (301-278-9502), or by mail or courier. The BEA encourages filing by eFile or fax particularly now due to its temporary limited ability to receive physical copies of completed survey forms, extension requests or other documents that are mailed or couriered to the BEA.

### **6. How long should the U.S. Reporter keep copies of the filed BE-10 forms?**

BE-10 Forms must be retained by the U.S. Reporter for at least three years after the report's original due date.

If you have any questions on completing the BE-10 forms, please contact the authors or your Miller Canfield attorney.

*This information is based on the facts and guidance available at the time of publication, and may be subject to change.*