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U.S. entities and individuals with investments in foreign businesses or real estate may be obligated to report financial and operating data to U.S. Department of Commerce by May 31

By Anjali Vohra, Alexandra López-Casero and Nicholas Rosenberg

The deadline is quickly approaching for U.S. persons, including corporations, private funds, trusts, estates and individuals (“U.S. Persons”), with interests in foreign businesses or real estate in 2015 to submit their annual report to the Bureau of Economic Analysis (“BEA”). The BEA is an agency of the U.S. Department of Commerce that provides closely watched data about the U.S. economy, including U.S. investment abroad. U.S. Persons with a 10% or more interest in a foreign business or real estate should submit their annual report to BEA prior to May 31, 2016 (or prior to June 30 for reporting companies that use BEA’s eFile system).

The annual BEA form for U.S. direct investment abroad is called Form BE-11. There are different Form BE-11s and which Form BE-11 is required depends on the size of the U.S. entity’s or individual’s ownership and on the size and ownership of their foreign affiliates, if any. All of the BE-11 forms, along with information on how to determine which form you must file, can be found at <http://www.bea.gov/surveys/diasurv.htm>.

Participation in the annual survey is technically only mandatory for U.S. entities that BEA has notified. However companies should be careful not to view this as an “out” for the filing obligations. BEA mails notifications to large numbers of companies as it learns of investments by non-U.S. companies and individuals in U.S. businesses through other government agencies, the business press and other sources. BEA views the mere mailing of a letter to an address that BEA deems to be a company’s business address as a “notification,” regardless of whether the address is still current and whether the addressee actually receives the letter. BEA has been notifying companies all along of the BEA filing requirements. But many companies do not realize that they have been notified, either because the letter is lost, misplaced or not properly understood. The best approach, particularly for U.S. companies with a sizeable direct investment, is to proactively file—rather than to risk an enforcement action if BEA later claims that it had in fact notified the company.

You may be exempt from filing a BE-11 if (1) the U.S. entity's or individual's ownership voting interest in your business is less than 10%; (2) your business is fully consolidated or has merged into another U.S. business; or (3) all of your foreign affiliates are exempt from filing. Additionally, there are certain exceptions for real estate investment.

BEA has indicated that it is willing to grant extensions for filing of Form BE-11, but the extension must be requested prior to the May 31 deadline.

Even if you are exempt, you must file a BE-11 claim for exemption with BEA. The exemption is not automatic. However, following the initial filing of a BE-11 claim for exemption, you will not need to claim the exemption every year as long as your business continues to meet the exemption criteria.

If you think that you may have BEA filing requirements and have not yet filed BEA reports, you should get familiar with all BEA forms and filing requirements. For a complete look at all BEA filings that you may be required to file, please see our alert:

http://www.nixonpeabody.com/do_you_know_your_BE_A_filing_requirements.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Anjali Vohra at avohra@nixonpeabody.com or 202-585-8702
 - Alexandra López-Casero at alopezcasero@nixonpeabody.com or 202-585-8372
 - Nicholas Rosenberg at nrosenberg@nixonpeabody.com or 202-585-8129
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