

February 2009

CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

All investments in U.S. business enterprises in which a foreign person (in the broad legal sense, including a company) owns a ten-percent-or-more voting interest (or the equivalent) are subject to reporting. This includes foreign ownership of real estate, improved and unimproved, except residential real estate held exclusively for personal use and not for profit making purposes. Reporting to the Bureau of Economic Analysis (BEA) is required pursuant to the International Investment and Trade in Services Survey Act, as amended (citations and penalties are described on page 6 of this document).

Required reporting includes:

- I. Initial investment reports, for reporting on a foreign person's direct or indirect acquisition, establishment, or purchase of the operating assets, of a U.S. business enterprise, including real estate (Forms BE-13 and BE-13 Supplement C);
- II. Quarterly reports, for reporting the transactions of a U.S. business enterprise with its foreign parent (Forms BE-605 and BE-605 Bank);
- III. Annual reports, for reporting the overall operations of a foreign-owned U.S. business enterprise on the Annual Survey of Foreign Direct Investment in the United States (Forms BE-15A, BE-15B, BE-15(EZ), and BE-15 Claim for Exemption); and
- IV. Quinquennial reports, for reporting on the Benchmark Survey of Foreign Direct Investment in the United States (Forms BE-12(LF), BE-12(SF), BE-12 Bank, BE-12 Mini, and BE-12 Claim For Not Filing).

I. **Initial investment reports.** The purpose of the initial investment survey is to capture new investment transactions made by a foreign person to establish or acquire, directly, or indirectly through existing U.S. holdings, a ten-percent-or-more voting interest (or the equivalent) in a U.S. business enterprise (including real estate). The initial report must be filed no later than 45 days after the date that the investment transaction occurs. The information provided in this report is used to determine if any of the other reports listed above must also be filed. Transactions covered by this report include the following:

- A. A foreign person directly, or indirectly through its existing U.S. holdings, creates a new legal entity, incorporated or unincorporated (including a branch), which is organized or operates as a new U.S. business enterprise;

- B. A foreign person directly, or indirectly through its existing U.S. holdings, secures a voting interest of 10 percent or more in a previously existing, separate legal entity that was already organized and operating as a U.S. business enterprise and it continues to operate as a separate legal entity, either incorporated or unincorporated, including a branch;
- C. A foreign person directly, or indirectly through its existing U.S. holdings, buys a business segment or operating unit of an existing U.S. business enterprise, which is organized as a new separate legal entity, either incorporated or unincorporated, including a branch;
- D. A foreign person, indirectly through its existing U.S. holdings, buys a U.S. business enterprise, business segment, or operating unit of a U.S. business enterprise, which is merged into the operations of the existing U.S. holdings instead of continuing, or being organized, as a separate legal entity; and
- E. A foreign person directly, or indirectly through its existing U.S. holdings, purchases U.S. real estate.

Which BE-13 form to file?

Note: Submit Initial Investment Surveys for ONLY those transactions that took place prior to 2009. Beginning in 2009, information on new investments is to be filed on the BE-605 Quarterly Survey (below).

1. **Form BE-13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate** – This report must be completed for a new investment transaction if, (1) immediately after being established or at the time of acquisition, the total assets of the newly created or acquired entity, business segment, or operating unit (not the foreign parent's direct or indirect share) are more than \$3 million, (2) the cost of the transaction is more than \$3 million, or (3) the transaction involves the acquisition of 200 or more acres of U.S. land.
2. **Form BE-13 Supplement C, Exemption Claim, Form BE-13** – This report should be completed for a new investment transaction if, (1) immediately after being established or at the time of acquisition, the total assets of the newly created or acquired entity, business segment, or operating unit (not the foreign parent's direct or indirect share) are \$3 million or less, (2) the cost of the transaction is \$3 million or less, and (3) the transaction does not involve the purchase of 200 or more acres of U.S. land. This report should also be completed if a U.S. business enterprise, segment, or operating unit is acquired indirectly through a foreign person's existing U.S. holdings with such acquisition being merged into the operations of the existing U.S. holdings **and** the total cost of the

acquisition is \$3 million or less **and** the acquisition does not involve the purchase of 200 or more acres of U.S. land.

II. **Quarterly reports.** The purpose of the quarterly survey is to report direct financial transactions and positions between a U.S. affiliate and its foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). Quarterly reports must be filed within 30 days after the close of each calendar or fiscal quarter, except the report for the fourth quarter may be filed 45 days after the end of that quarter.

Which BE-605 form to file?

- A. **Form BE-605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, With Foreign Parent** – Except as exempted below, this report is required each quarter for every nonbank U.S. business enterprise in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at any time during the quarter. (If the ownership is indirect and the U.S. affiliate has no direct transactions or positions with its foreign parent group(s), then the affiliate would complete only item C on the Certificate of Exemption, on page 13 of the form.)
- B. **Form BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent** – Except as exempted below, this report is required for every U.S. affiliate that is a bank, bank holding company, or financial holding company, both incorporated and unincorporated, in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at anytime during the quarter.

Exemption From Filing. For Forms BE-605 and BE-605 Bank, the U.S. affiliate is not required to report if all of the following three items for the affiliate (not just the foreign parent's share) are \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

A U.S. affiliate that meets the exemption criteria stated above must file a Certification of Exemption found on page 13 of Form BE-605 and page 4 of Form BE-605 Bank. Following an initial filing, the Certification of Exemption is not a quarterly filing requirement for U.S. affiliates that meet the exemption criteria from quarter to quarter. However, the Certification of Exemption should be filed if BEA mails you a BE-605 form and the U.S. affiliate is exempt from filing either the BE-605 or BE-605 Bank report.

III. **Annual reports.** The purpose of the annual survey is to report annual financial and operating data of foreign-owned U.S. affiliates. Reports on these forms are required for U.S.

affiliates; that is, for U.S. business enterprises in which a foreign person owns or controls, directly and/or indirectly, a ten-percent-or-more voting interest in an incorporated U.S. business enterprise, or the equivalent interest in an unincorporated U.S. business enterprise, as of the end of the business enterprise's fiscal year. Currently, a 2008 BE-15 report is required for each U.S. affiliate whose fiscal year ended in calendar year 2008.

A U.S. affiliate must file on a fully consolidated domestic U.S. basis, including in the full consolidation all U.S. business enterprises in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. The fully consolidated entity is considered one U.S. affiliate.

Which BE-15 Form to File?

- A. **Form BE-15A** – This report is required for each majority-owned U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$275 million (positive or negative). A U.S. affiliate is "majority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent.
- B. **Form BE-15B** – This report is required for (1) each majority-owned U.S. affiliate if any one of the following three items - total assets, sales or gross operating revenues, or net income – is greater than \$120 million, and none of these items is greater than \$275 million (positive or negative) and, (2) each minority-owned U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$120 million (positive or negative). A U.S. affiliate is "minority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.
- C. **Form BE-15(EZ)** – This form must be completed by each U.S. affiliate if **any one** of the following three items—total assets, sales or gross operating revenues, **or** net income (loss)—exceeded \$40 million but **none** of those items exceeded \$120 million, **and** if 1) the U.S. affiliate has been instructed to do so in writing by BEA, OR 2) has not filed either a BE-12 or a BE-15 for a fiscal year that ended before January 1, 2008.
- D. **Form BE-15 Claim for Exemption from Filing Form BE-15A, BE-15B, or BE-15(EZ)** – This form must be completed by each U.S. affiliate if foreign ownership in the affiliate falls below 10 percent, the U.S. affiliate is fully consolidated or merged into another U.S. affiliate, or if all of the following three items for the affiliate (not just the foreign parent's share) are \$40 million or less:
 - 1. Total assets,
 - 2. Annual sales or gross operating revenues, and
 - 3. Annual net income (loss) after provision for U.S. income taxes.

Following an initial filing, the BE-15 Claim for Exemption is not required annually from U.S. affiliates that meet the stated exemption criteria from year to year. However, Form BE-15 Claim for Exemption is required to be filed if BEA mails you a BE-15 form and the U.S. affiliate is exempt from filing the BE-15A, BE-15B, and BE-15(EZ).

IV. **Quinquennial reports.** The quinquennial BE-12 Benchmark Survey is a comprehensive survey of foreign direct investment in the United States conducted once every 5 years. Benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in terms of value. The current benchmark survey covers the year 2007. A 2007 BE-12 report is required for each U.S. affiliate whose fiscal year ended in calendar year 2007.

The survey consists of a number of report forms and a claim for not filing. The amount and type of data required to be reported will vary according to the size of the U.S. affiliate, whether it is a bank or a nonbank, and whether it is majority-owned or minority-owned by foreign direct investors. A U.S. affiliate must file on a fully consolidated domestic U.S. basis, including in the full consolidation all U.S. business enterprises in which it directly or indirectly owns more than 50 percent of the outstanding voting interest. The fully consolidated entity is considered one U.S. affiliate.

Which BE-12 Form to File?

- A. **Form BE-12(LF) (Long Form)** – Report for a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$175 million (positive or negative). A majority-owned U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent.
- B. **Form BE-12(SF) (Short Form)** – Report for 1) a majority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative), but not greater than \$175 million (positive or negative), and 2) a minority-owned nonbank U.S. affiliate with total assets, sales or gross operating revenues, or net income greater than \$40 million (positive or negative). A U.S. affiliate is "minority-owned" if the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less.
- C. **Form BE-12 Bank** – Report for a U.S. affiliate that is a bank, bank holding company, or financial holding company.
- D. **Form BE-12 Mini** – Report for a nonbank U.S. affiliate with total assets, sales or gross operating revenues, and net income less than or equal to \$40 million (positive or negative). A U.S. affiliate with total assets, sales or gross operating revenues, and net income of \$15 million or less (positive or negative) are required to report only selected data items on the Mini form.

- E. **Form BE-12 Claim for Not Filing** – May be used for response by persons that are not subject to the reporting requirements of the BE-12 survey but have been contacted by BEA concerning their reporting status.

Legal Authority, Penalties, and Confidentiality

Authority – All surveys requiring the reports described on the previous pages are 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). The rules and regulations implementing the Act can be found in 15 CFR Part 806. Amendments to the regulations are published in the Federal Register.

A response is required from persons (in the broad legal sense, including companies) subject to the reporting requirements of the surveys, whether or not they are contacted by BEA.

Penalties – 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. These civil penalties are subject to inflationary adjustments. Those adjustments are found in 15 CFR 6.4. 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 (22 U.S.C. 3105).

Confidentiality – The Act provides that your reports to this Bureau are CONFIDENTIAL and may be used only for analytical or statistical purposes. Without your prior written permission, the information filed in your reports CANNOT be presented in a manner that allows it to be individually identified. Your report CANNOT be used for purposes of taxation, investigation, or regulation. Copies retained in your files are immune from legal process.

Response Required – Although BEA attempts to notify respondents that are believed to qualify for the periodic surveys, it is incumbent on U.S. affiliates to meet the reporting requirements contained in the Federal Register. When an initial report is filed with BEA, the report forms will be sent to the affiliate for the surveys that are thought to apply. This office should be notified (see contact information below) if report forms are needed, if there is a change in a status that would affect reporting (such as consolidation into another company or elimination of a foreign ownership interest), or if there is an address change.

Assistance – Copies of the report forms and instructions are available on BEA's Web site at www.bea.gov/fdi. Questions concerning these surveys and reports may be addressed to BEA's Direct Investment Division; telephone (202) 606-5577 between 8:00 a.m. and 4:30 p.m., eastern time. If email is more convenient, address your questions pertaining to the initial investment report (BE-13) to be13@bea.gov; email questions pertaining to the quarterly report (BE-605) to

be605@bea.gov; email questions pertaining to the annual and quinquennial (benchmark) reports (BE-15 and BE-12) to be12/15@bea.gov.