

Practice Alert Update: BE-10s for Owners of Foreign Entities

by Gary M. Harden

Benchmark Survey of U.S. Direct Investment Abroad (BE-10) is required of every US Person that directly or indirectly owns 10% or more of a foreign entity, including flow-throughs. "US Persons" includes **individuals**, entities, partnerships, **trusts and estates**. The filing requirement applies even though all the information is already on file with IRS in various tax reports. The Department of Commerce wants it on its own form. **Initially the due date was June 30, 2015**, for the first mandatory filing that is required of every US Person who **owned a 10% or more interest in a foreign entity at any time** during 2014. Failure to file carries penalties of **\$2,500 - \$25,000 plus imprisonment**.

Because many practitioners have just become aware of this requirement and are swamping the U.S. Bureau of Economic Analysis (BEA) with questions, the BEA is finding it difficult to address these questions on a timely basis. Therefore the BEA has posted an extension form on its [website](#). The manner in which indirect ownership will be applied is one of the many open questions to address.

Those who have not filed should consider downloading the extension request and filing by e-mail attachment to "be10/11@bea.gov" or fax filing as provided on the form. **Extensions may be granted until July 31 or August 31, 2015**, and are to be considered granted unless the BEA contacts you.

Non-mandatory benchmarking surveys, including BE-11 tracking foreign investment in the US, have been part of the landscape for years. Similar filings were required of a much smaller class in the past, but the underlying Department of Commerce Regulation was quietly amended in November 2014 to cover this broad class. Until now there has not been much publicity. Accounting firm return preparers should have most of the financial information available.

If BE-10 may apply to you, first check with your return preparer. You also may contact Gary M. Harden with questions or for support. Time still is short.

Gary M. Harden is the chair of Eastman & Smith's tax practice, a transactional tax lawyer, responsible for structuring M&A, finance, joint ventures, executive benefits and intellectual property transactions. He also represents businesses, exempt organizations and entrepreneurs in federal and state tax controversies including audit, appellate, collections, criminal investigations and tax litigation. 2021 Update: Mr. Harden is now employed by Harden Law, a firm with whom Eastman & Smith has a strategic alliance.

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