

January 8, 2015

## Rule Change Mandates Retroactive Reporting of 2014 Foreign Direct Investments in U.S. by January 12, 2015

The Department of Commerce's Bureau of Economic Analysis has reinstated its Survey of New Foreign Direct Investment in the United States, which requires the reporting of certain transactions involving foreign entities within 45 days of their closing. This requirement is retroactive to the beginning of 2014, with the result that reporting for covered transactions that closed January 1 – November 26, 2014 are due **by January 12, 2015**. Under this "BE-13 Survey", U.S. entities must generally report to the BEA if:

- A foreign entity (directly or indirectly through an existing U.S. affiliate) (i) acquired (including through merger) 10% or more of the voting interest in an U.S. business enterprise valued at more than \$3 million or (ii) established, and holds 10% or more of the voting interests of, a new business enterprise in the United States where the total cost to establish the business is more than \$3 million (other than acquisition vehicles of less than \$60 million and that will be dissolved within 180 days) or
- 10% or more of the voting interests in the U.S. entity are owned by a foreign affiliate and the U.S. entity expanded its U.S. operations to a new facility at a cost of more than \$3 million.

The data that are required to be reported on one of a series of Form BE-13s (depending on the type of transaction) include information on the reportable transaction and certain ownership information of the U.S. entity, the foreign entity and the ultimate beneficial owner of the foreign entity. The requirements cover a broad swath of transactions and should be studied carefully. Even if the transaction is valued at \$3 million or less or another reporting exemption is available, a claim of exemption may nevertheless be required to be filed.

Going forward, covered foreign investments must be made no later than 45 days after closing. The BEA will generally grant filing extensions if requested before the filing deadline. Requests may be submitted by email to [be13@bea.gov](mailto:be13@bea.gov), and should include the name of the filing entity, the date of the reportable transaction, the residence of the foreign entity and the date by which the filing is expected to be made. For a link to the BEA's materials on the BE-13 survey, see [http://www.bea.gov/surveys/respondent\\_be13.htm](http://www.bea.gov/surveys/respondent_be13.htm)

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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