

CORONAVIRUS INFORMATION & UPDATES

April 20, 2020

COVID-19: Available Extension for BEA Form BE-10

Background

The U.S. Department of Commerce, through the Bureau of Economic Analysis (the “BEA”), requires reporting on Form BE-10 (a “BE-10 Filing”) from any U.S. person (including entities or individuals) that had a “Foreign Affiliate” (as defined below) at any point during the U.S. person’s 2019 fiscal year (each person, a “U.S. Reporter”). Form BE-10 is a five-year benchmark survey, and is required of U.S. Reporters with Foreign Affiliates, regardless of whether they have been contacted by the BEA. The BE-10 forms and instructions can be found [here](#).

BE-10 Deadline and Extension

The original filing deadline for Form BE-10 was May 29, 2020 if a U.S. Reporter is filing to report fewer than 50 Foreign Affiliates, or June 30, 2020 if a U.S. Reporter is filing to report 50 or more Foreign Affiliates. However, in a conversation with the BEA staff, the BEA stated that this deadline has been extended until at least August 31, 2020 as a result of the recent novel coronavirus (COVID-19) outbreak (and that the BEA was not planning to announce the extension publicly in writing). U.S. Reporters that have been contacted by the BEA must notify the BEA prior to the original filing deadline if they intend to rely on the extension. U.S. Reporters that have not been contacted by the BEA are not required to notify the BEA and may complete the filing by August 31.

BE-10 Reporting Requirements

A U.S. Reporter is required to make a BE-10 Filing if the U.S. Reporter holds direct or indirect ownership or control of 10% or more of the “voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, including a branch” (each, a “Foreign Affiliate”). A BE-10 filing requirement may be triggered by several common sponsor, fund and portfolio company structures. For instance, a BE-10 filing may be triggered by:

- a U.S. fund (or U.S. holding company wholly owned by a U.S. fund) holding 10% or more of the voting securities of a foreign portfolio company, holding company, or other structuring vehicle;
- a U.S. portfolio company that holds 10% or more of the voting securities of a foreign subsidiary; or
- a U.S. general partner, managing member, or similar entity of a foreign fund (including a U.S. person holding voting shares of a fund organized as a Cayman corporation).¹

¹ As a general matter, the general partner of a limited partnership or managing member of a limited liability company will be deemed to own 100% of the voting interest of the limited partnership or limited liability company (as applicable), because it controls that entity. Conversely, limited partnership and limited liability company interests are presumptively not “voting interests” due to the passive nature of their investments.

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Form BE-10 does not provide for any *de minimis* exceptions to the filing requirements for Foreign Affiliates with limited or no assets or revenues. In addition, even if a U.S. person had no Foreign Affiliates during its 2019 fiscal year, it may still need to file a “BE-10 Claim for Not Filing” if it is directly contacted by the BEA.

If you have questions regarding the application of these filing requirements, please contact your usual Ropes & Gray attorney.