

BE-12 Filing Deadline is Rapidly Approaching

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The Department of Commerce's Bureau of Economic Analysis ("BEA") conducts a benchmark survey on foreign direct investment every 5 years. The BE-12 survey is the BEA's most comprehensive survey and produces statistics on the scale and effects of foreign-owned business activities in the United States. The most recent survey was for the 2017 fiscal reporting year, and the next survey will apply to the 2022 fiscal reporting year.

U.S. entities with foreign ownership must be aware of the BE-12 rules, as a filing is required by entities subject to the reporting requirements whether or not they have been directly contacted by the BEA. BE-12 reports for the 2022 fiscal year must be filed by May 31, 2023 for reporting companies not using BEA's eFile system and by June 30, 2023 for reporting companies using the BEA's eFile system.

Who is Required to File

With certain exceptions, reporting is required for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, at least 10% of the voting stock (or equivalent interest) of the U.S. business enterprise. The 10% ownership test also applies to investments in real estate, although filing is not required for residential real estate held exclusively for personal use. The percentage of foreign ownership in a U.S. business enterprise is measured as of the end of the U.S. business enterprise's fiscal year ending in calendar year 2022. U.S. business enterprises that are required to report under the 10% foreign ownership test are defined as "U.S. affiliates."

A U.S. affiliate is exempt from reporting if it meets the following three requirements: (1) it is a private fund, (2) the private fund does not own, directly or indirectly through another business entity, an operating company (a business enterprise that is not a private fund or holding company) in which the foreign parent owns at least 10% of the voting interest, *and* (3) if the private fund is owned indirectly (through one or more other U.S. business enterprises), there are no operating companies between the foreign parent and the indirectly owned private fund.

Form to be Filed Depending on a U.S. Affiliate's Circumstances

Form BE-12A: filed for a majority-owned U.S. affiliate that has total assets, sales or gross operating revenues, or net income of *more than \$300 million* (positive or negative).

Form BE-12B: filed for a U.S. affiliate that, if majority owned, has total assets, sales or gross operating revenues, or net income of *more than \$60 million* (positive or negative), but for which *none of these exceed \$300 million* (positive or negative). If minority owned, a U.S. affiliate must have total assets, sales or gross operating revenues, or net income of *more than \$60 million* (positive or negative).

Form BE-12C: filed for a U.S. affiliate that has total assets, sales or gross operating revenues, or net income of *\$60 million or less* (positive or negative).

Form BE-12 Claim for Not Filing: filed if a U.S. affiliate does not meet the requirements of BE-12A, BE-12B, or BE-12C and was notified by the BEA to file. This may apply if the foreign ownership in the U.S. affiliate is less than 10%, the U.S. affiliate was merged with the report of another, or it was liquidated or dissolved.

Partridge Snow & Hahn's [Corporate & Business Group](#) is ready to answer questions regarding this article. For more information, contact [Madeline Ursini](#) or [Brian J. Reilly](#).

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