

NIESAR & VESTAL LLP

Law Alert

March 4, 2020

Complying With The Often Overlooked International Reporting Requirement

In several conversations with our clients, we have realized that many did not know about the BE-10 reporting requirement.

The BE-10 reporting tool is used for the benchmark survey conducted by the Bureau of Economic Analysis (BEA) every five years to gather economic data about U.S. companies' and individuals' investments outside of the U.S. The BE-10 is a mandatory survey and is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108).

Any U.S. person that had a foreign affiliate at the end of the 2019 fiscal year has a BE-10 filing requirement. The definition of a "foreign affiliate" for BEA reporting purposes is broader than the usual definition of an affiliate, when used in, for example, securities laws. No control or shared control is required to meet BEA's definition. A "foreign affiliate" is defined as a U.S. person who had a direct or indirect ownership or control of at least ten percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise. The ownership of foreign real estate is defined to be a business enterprise. Therefore, if a U.S. person owns ten percent of any real estate asset outside the United States, that asset is a "foreign affiliate" of a U.S. reporter.

Certain private funds may be exempt from filing.

There is no minimum asset or income size in order to trigger the reporting requirement. However, residential real estate held exclusively by a U.S. person for personal use and not for profit-making purposes is not subject to the reporting requirements. Also, BEA clarifies that a primary residence abroad that is leased to others while the owner is a U.S. resident, but which the owner intends to reoccupy, is considered real estate held for personal use. In addition, ownership of foreign residential real estate by a business enterprise, the sole purpose of which is to hold the real estate for the personal use of the owner(s) of the business enterprise, is real estate held for personal use and therefore not subject to the reporting requirements.

It appears that if a U.S. person owns an apartment abroad that he or she would only rent to others once or twice a year for a few days, that very limited rental technically would trigger the BE-10 reporting requirement.

All U.S. persons subject to the reporting requirements of the BE-10 must file, even if they are not contacted by BEA. Responses are due by May 31, 2020 (or June 30, 2020, if the U.S. person has to submit more than 50 forms to satisfy its reporting obligation). A complete response

includes a BE-10A form for the U.S. parent's domestic operation and, depending on the size of its ownership interest in the foreign business enterprise and a number of other factors, the U.S. person has to submit additional forms. Additional details regarding the forms are available on the BEA website: <https://www.bea.gov/be-10-benchmark-survey-us-direct-investment-abroad>.

Although this international reporting requirement is often overlooked, failure to file can result in both civil and criminal penalties. Civil penalties can range from fines of \$2,500 to \$25,000, in addition to injunctive relief requiring compliance.

If you have questions concerning the BE-10 reporting requirement, please feel free to contact Alan Seher (aseher@nvlawllp.com) or Carolina Aricu (caricu@nvlawllp.com).

These publications are designed to provide Niesar & Vestal clients and contacts with information they can use to more effectively manage their businesses and access Niesar & Vestal's resources. The contents of these publications are for informational purposes only. Neither these publications nor the lawyers who authored them are rendering legal or other professional advice or opinions on specific facts or matters. Niesar & Vestal assumes no liability in connection with the use of these publications.