

# KIRKLAND ALERT

May 2015

## New Investment Survey Report Required for U.S. Entities with Foreign Investments and Subsidiaries

The U.S. Department of Commerce, Bureau of Economic Analysis (“BEA”) recently announced reporting requirements for its “benchmark” survey of U.S. overseas investment.<sup>1</sup> These requirements cover all U.S. entities as well as individuals that at any time during such person’s 2014 fiscal year owned, directly or indirectly, 10 percent or more of the “voting stock” of a non-U.S. entity. Unlike in the past, a U.S. entity must participate in the 2014 Benchmark regardless of whether it was specifically requested or notified by BEA.

The filing deadline is **May 29, 2015**, or **June 30, 2015**, if 50 or more forms must be filed. If an extension is needed, a request should be sent to the BEA.

A U.S. entity or person must file a BE-10 Benchmark Survey Report if it directly or indirectly owned 10 percent or more of the “voting stock” of a non-U.S. entity during 2014 (and “voting stock” includes voting securities of a non-corporate entity).<sup>2</sup> If BE-10 reporting is required, the U.S. entity or person must file a report about its consolidated domestic business,<sup>3</sup> and separate reports about the applicable company and all non-U.S. entities in that ownership chain. So, for example, if a U.S. person purchased a Belgian company using a Luxembourg SARL, the person will need to file a report about itself, the Luxembourg entity, the Belgian entity and all of its other direct and indirect non-U.S. subsidiaries, although it can consolidate into one form subsidiaries in the same country and industry classification.<sup>4</sup>

Failure to comply with these filing requirements may result in civil penalties or even criminal penalties for a willful failure to file.

If you have any questions about the matters addressed in this Kirkland Alert, please contact the following Kirkland author or your regular Kirkland contact.

More information on the BE-10 reporting requirements is available at the [BEA’s website](#).

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- 1 Benchmark surveys are conducted every five years and seek more detailed information than the BEA's annual surveys.
  - 2 A nonvoting security, such as a typical limited partnership interest, is not "voting stock" and thus does not trigger a reporting requirement.
  - 3 Information on the reports is confidential and cannot be subpoenaed or otherwise used in any legal proceeding.
  - 4 There are multiple BE-10 report forms. Which one should be filed generally depends on the U.S. entity's ownership level and the size of the non-U.S. entity's operations.

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