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Foreign-Owned U.S. Subsidiaries Face Imminent Reporting Deadline For Federal Survey

Under the International Investment and Trade in Services Survey Act ("IITSSA"), 22 U.S.C. Section 3101, the Bureau of Economic Analysis (“BEA”) within the U.S. Department of Commerce mandates that, every five years, certain U.S. subsidiary companies must file an official Benchmark Survey of Direct Foreign Investment in the United States report (“Benchmark Report”). The affected U.S. subsidiary companies are those in which a foreign person owns or controls, directly or indirectly, 10 percent or more of the company’s voting securities if the U.S. subsidiary company is incorporated or in which a foreign person holds that same degree of ownership or control through other means if the U.S. subsidiary company is unincorporated.

The IITSSA filing deadlines are imminent. A reporting U.S. subsidiary company’s Benchmark Report must be filed under penalty of perjury using one of several versions of the BEA Form BE-12 and must be filed by May 31, 2018 if made by a hard copy (paper) filing or by June 30, 2018 if made electronically by means of BEA’s eFile online system.

Unlike previous BEA survey years, BEA has announced this year that all U.S. subsidiary companies with foreign owners at or above the 10 percent threshold must complete the 2017 Benchmark Report, even if they have not been specifically contacted by BEA to ask for such a filing to be made. As compared to previous survey years, the latest Benchmark Report rules have also augmented some of the data sought by the BE-12 form regarding sales and finances but have also deleted some data sought in earlier survey forms that cover manufacturing and trading activity.

If a U.S. subsidiary company with a foreign owner has been affirmatively contacted by BEA to ask that the company file such a BE-12 report and believes it is not actually subject to the requirement, then the U.S. subsidiary company should file a BE-12 Claim for Not Filing in lieu of a full BE-12 survey form.

For foreign-owned or controlled U.S. subsidiary companies subject to the BE-12 reporting requirement, BEA provides three different versions of the Form BE-12

Related Capabilities

- Corporate Governance & Compliance
- Government Enforcement & Corporate Investigations
- National Security Law

(designated as "A," "B" and "C" versions) based on various U.S. subsidiary company financial metrics for its 2017 fiscal year. This official BEA website explains those metrics and provides links to the various BEA forms.

According to the BEA, federal law protects the confidentiality of the information reported in a BE-12 report and prevents that information from being used by the U.S. Government for any regulatory, tax or investigative purposes. A U.S. subsidiary company that believes it cannot make its required BE-12 report filing by the applicable deadlines may also seek an extension of time to file from BEA if it asks for such an extension before May 31, 2018.

Under the IITSSA, BEA has the legal authority to impose civil penalties for failure to file a timely report and can even refer such a failure to the U.S. Department of Justice for criminal prosecution that could lead to a criminal fine and/or imprisonment for the company officials who fail to make a timely filing of such a Benchmark Report.

Dorsey & Whitney attorneys are available across the United States to assist U.S. subsidiary companies or their foreign owners in reviewing these BEA reporting requirements under the IITSSA and in completing the relevant BE-12 report form or Claim for Not Filing, as may be applicable.