

BE-11 Survey: Reporting Deadline Approaching

Regulatory & Compliance on February 26, 2024

In April 2023, we [published an overview of the BE-12](#), a benchmark survey conducted every five years by the Department of Commerce's Bureau of Economic Analysis ("BEA") to gather information about foreign direct investment in the United States. BEA also conducts surveys to gather information about United States direct investment abroad. The purpose of this post is to discuss one of those surveys, the BE-11, which has just gone live on BEA's website and whose due date is approaching on May 31, 2024.

Who Must Participate

Participation is required if two conditions are met. First, the U.S. entity must directly or indirectly hold at least 10% voting (or equivalent) interest in a foreign business enterprise, whether incorporated or unincorporated. Second, BEA must individually contact the U.S. entity about the survey. *If BEA does not contact a U.S. entity that holds at least 10% voting (or equivalent) interest in a foreign business enterprise, the U.S. entity need not report.*

Specific Requirements and Exemptions

Those contacted by BEA must potentially file one or more reports, unless exempt. All qualifying U.S. entities must complete the [BE-11A form](#) on their own behalf. They must then determine whether to file one or more of the following additional reports on behalf of their qualifying foreign affiliates:

- [BE-11B](#): for majority-owned foreign affiliates whose assets, sales, or net income exceed \$60 million
- [BE-11C](#): for minority-owned foreign affiliates whose assets, sales, or net income exceed \$60 million
- [BE-11D](#): for **"newly established or acquired"** foreign affiliates that have assets, sales, or net income above \$25 million but below \$60 million. The [BE-11 instruction booklet](#) indicates that "newly established or acquired" means "established or acquired during fiscal year 2023."

Crucially, BEA will seek only information about entities' fiscal year ending in the preceding year. In other words, the upcoming survey (due May 2024) will concern entities' fiscal year ending in calendar year 2023. If an entity's fiscal year ended on March 31, 2023, that entity would report for the 12-month period preceding March 31, 2023.

However, the first step when contacted by BEA is to determine whether an exemption is available. The [BE-11 Claim for Not Filing](#) exemption form allows entities to claim either (i) full exemption from any BE-11 filing or (ii) specific exemptions for certain foreign entities. A U.S. entity may claim the full exemption described above if all of its foreign affiliates are, themselves, exempt.

A common exemption is that the contacted entity did not own or control 10% voting (or equivalent) interest at the end of its 2023 fiscal year. Another common basis for not filing is the "private fund exemption." In 2016, BEA [determined](#) that when investments by or into private funds do not involve "operating companies," such investments typically "display the characteristics of portfolio investment rather than direct investment" and therefore should not be reported on BEA surveys. BEA has published a [detailed flow chart](#) to aid potential reporters in determining whether they may claim the private fund exemption. Importantly, BEA defines "private fund" as "the same class of financial entities defined by the Securities and Exchange Commission as private funds on Form PF."

In the past, BEA has attempted to contact prospective reporters through mailed letters and by email. U.S. businesses with holdings abroad should flag any such outreach and determine whether they are required to participate in the survey. Proskauer is available to assist with the exemption evaluations, and submission of the required exemption claim(s) or report(s).

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