



## It's that time again: Form BE-10 is due in May 29, 2020

### What is the filing

The BE-10 survey is one of many mandatory surveys to collect information on US investment abroad and foreign investment in the US. The BE-10, which has a series of component parts, is the BEA's benchmark survey of US direct investment abroad and is used to produce statistics on changing trends in investment activities of US-owned businesses in other countries. The BE-10 survey is conducted every five years and this year's survey covers fiscal years ending in 2019.

The BEA publishes US economic and industry statistics, including international transactions and investments, and is authorized to mandate reporting under the International Investment and Trade in Services Survey Act (the "Act"). The Act generally requires that the BEA collect information on international investment and foreign trade in services.

### Who must file

**Business owners.** The 2019 Form BE-10 must be filed by any US person (such as any US individual, entity, estate, or trust) that had direct or indirect ownership or control of at least 10 percent of the voting interests of a foreign business in 2019. Certain limited exceptions apply, but this filing obligation is imposed regardless of the size of the foreign business.

**Commercial real estate investors.** Form BE-10 must be filed to report ownership of non-US real estate investments, except for real estate held only for personal use. A US person who is subject to the BE-10 reporting requirements is referred to as "a US Reporter." US Reporters are required to file Form BE-10, whether or not they are contacted by the BEA.

In some instances, this filing requirement can apply to self-employed individuals as well. Certain US persons who conduct non-US business activities as a separate operation outside of the United States can be characterized as holding a non-US business. This is a facts and circumstances evaluation but indicators to consider include whether activities are conducted through a non-US branch or office, with non-US employees, with a non-US tradename, and/or are recorded in a non-US set of books and records.

## When and where to file

While the BEA is offering flexibility in granting extensions to August 31, the standard due date for the 2019 BE-10 is May 29, 2020 for a US Reporter required to file fewer than 50 forms (June 30, 2020 for a U.S. Reporter required to file 50 or more forms). The BEA's standard operating procedure also allows it to grant extensions if such requests are received by the original due date. Form BE-10, as well as requests for an extension of the filing deadline, may be filed by fax or electronically through an eFile system.

The confidentiality of the information collected by the BEA is protected under the Act and the BEA is prohibited from granting another agency access to the data for tax, investigative, or regulatory purposes.

You can file your forms online here <https://www.bea.gov/help/information-for-survey-respondents>

## Extensions available upon request

BEA Form BE-10 (Filed Every 5 Years for U.S. Persons with Non-U.S. Investments), is due May 29 (and June 30) but with approval from the BEA, the deadline could in most situations be extended to August 31, 2020.

Given recognized compliance challenges due to the COVID-19 precautions in the current environment, the BEA is flexible with granting extensions up to August 31st, where US Reporters contact the BEA in advance and receive approval from the BEA. Without approval, the deadline for the 2019 BE-10 Survey forms remains (a) May 29th, 2020 for respondents with fewer than 50 BE-10 forms and (b) June 30th, 2020 for respondents with 50 or more BE-10 forms to complete.

The BE-10 series of surveys is often overlooked because it is only required every 5 years, and is NOT a tax form. Your accountant or tax lawyer may not prepare it unless you ask them to help. Like many of the foreign reporting forms, the penalties are draconian – failure to file this simple survey carries penalties of up to \$48,192 (up to \$25,000 by statute but adjusted for inflation) and up to one year in prison for individuals who willfully fail to file.

US Persons who invest outside of the US should make preparations to file the appropriate BE-10 survey. Even though the deadline is May 29th (June 30 for those who have 50 or more forms to file), the BEA is typically granting extensions to accommodate changes necessitated by the COVID-19 pandemic. The BEA is actively considering extensions to August 31, 2020 on a filing-by-filing basis (based on Reporter ID number). First-time filers who may not have a Reporter ID number yet (i.e., those who are new to the 2019 benchmark) are still eligible for the August 31st extension, but may be notified of a filing due from the BEA.

## Why does BEA conduct the BE-10 Benchmark Survey?

The BE-10 is BEA's most comprehensive survey, in terms of both the number of companies covered and the amount of information gathered, on financial and operating data of U.S. multinational enterprises and their foreign affiliates. The survey is used to produce statistics on the scale and effects of US-owned business activities abroad. Business leaders use these statistics to inform decisions about hiring and investing. Policymakers and researchers use them to analyze the impacts of direct investment on jobs, wages, productivity and taxes.

## How we can help

If you believe that you may have a BE-10 reporting obligation or if you have any questions about the BEA's surveys and reporting requirements, please contact us for help.

Email Us

