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U.S. Companies Required to Report Foreign Investments: BEA's Little-Known Reporting Requirements

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Many U.S. companies are unaware that a relatively unknown agency, the Bureau of Economic Analysis (BEA) at the Department of Commerce, administers mandatory reporting requirements that **oblige ALL U.S. businesses** to file reports identifying foreign direct investment (FDI). Reports are filed at the inception of the investment and then every five years in a follow-up "benchmark survey." Additionally, the BEA will contact certain companies to make additional filings.

Mandatory FDI Reporting Is Triggered When:

1. A foreign investor/entity aquires ownership or control of 10 percent or more of a U.S. business
2. A foreign investor/entity or its existing U.S. affiliate[1] establishes a new U.S. business resulting in the foreign investor/entity having at least 10 percent ownership or control (direct or indirect)
3. An existing U.S. affiliate of a foreign investor/entity expands its U.S. operations
4. An existing U.S. affiliate of a foreign investor/entity acquires a U.S. business, giving the foreign entity at least 10 percent ownership or control

Penalties. Failure to file the report(s) risks civil penalties of up to $48,000 and criminal penalties of up to $10,000 for each individual and/or up to one year of imprisonment.

Reporting Requirements. The BEA administers these requirements pursuant to the International Investment and Trade in Services Survey Act based on business structure and certain financial criteria. The BEA publishes the anonymized results to track the scale of foreign investment activities in the United States and their effects on the U.S. economy.

Required Filings. Entities **must file** at least two reports: the new FDI and the five-year benchmark survey.

- **New FDI.** All U.S. entities **must file** this report within 45 days of completing any transaction described above.

  * Exemptions are available if the total, actual or expected cost of the transaction is $3 million or less, but to receive an exemption, the entity still must file a report.

- **Five-year benchmark survey.** All U.S. entities with qualifying foreign investment **must file** this comprehensive survey every five years (the most recent benchmark survey was issued in 2017).

  * Exemptions are available if foreign ownership is less than 10 percent, the business is consolidated with another U.S. affiliate, or the business was liquidated or dissolved. Exemptions still require filing a report.

- **The BEA may contact entities to require additional quarterly or annual reporting.** Directed reporting may involve transactions between foreign parents or organizational changes, such as the establishment, acquisition, liquidation or sale of the business.

Similar filings are required when U.S. entities make foreign investments. For more information on determining whether a BEA filing is required, review the BEA website here, or contact the Lowenstein Sandler Global Trade and Policy Group. Watch for our upcoming alert on BEA filing requirements for U.S. outbound investments.

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[1] Affiliate means a business enterprise located in one country that is directly or indirectly owned or controlled by an entity of another country to the extent of 10 percent or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business enterprise.