

# BEA Benchmark Survey of FDI in the U.S. Is Due on May 31, 2023

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By May 31, 2023, foreign-owned companies must file Form BE-12 to the Bureau of Economic Analysis (“BEA”). Form BE-12 is the comprehensive benchmark survey of foreign direct investment in the U.S., which BEA conducts every 5 years. For companies that e-file the form, the deadline is extended to June 30, 2023.

Form BE-12 must be filed by all U.S. business enterprises in which a foreign person owns or controls—directly or indirectly—10 percent or more of the voting securities (or an equivalent interest). Unlike the annual BE-15 survey, **all** business enterprises subject to the reporting requirement must file the BE-12, **whether or not contacted by BEA**.

## What is Form BE-12?

The BE-12 is BEA’s most comprehensive survey of the financial and operating data of U.S. affiliates of foreign businesses. BEA uses the survey to prepare statistical reports on the scale and effects of foreign-owned business activities. BEA’s reports inform decisions by business leaders, policymakers, and researchers.

There are multiple versions of Form BE-12. The specific version to file depends both: (1) on whether the foreign ownership is majority or minority; and (2) on the business’s total assets, sales or gross operating revenues, or net income.

- **BE-12A** is for **majority** foreign-owned U.S. business enterprises that have total assets, sales or gross operating revenues, or net income of **more than \$300 million** (positive or negative).
- **BE-12B** is for **majority** foreign-owned U.S. business enterprises that have total assets, sales or gross operating revenues, or net income of **between \$60 million and \$300 million**.
- **BE-12B** is **also** for **minority** foreign-owned U.S. business enterprises that have total assets, sales or gross operating revenues, or net income of **more than \$60 million**.

- **BE-12C** is for other foreign-owned U.S. business enterprises that have total assets, sales or gross operating revenues, or net income of **\$60 million or less**.
- **BE-12 Claim for Not Filing** is for U.S. business enterprises that are contacted by BEA but that are not subject to the reporting requirements.

## Who must file?

A BE-12 report is required for each U.S. affiliate—*i.e.*, for each U.S. business enterprise (including real estate held for non-personal use) in which a foreign person or entity owned or controlled (directly or indirectly) 10 percent or more of the voting securities if an incorporated U.S. business enterprise (or an equivalent interest if an unincorporated U.S. business enterprise)—at the end of the business enterprise's fiscal year that ended in calendar year 2022. There are a limited number of exemptions that may apply to certain U.S. business enterprises.

All entities that meet reporting requirements must respond, whether or not contacted by BEA. But, if you were notified to file but do not meet the filing requirement shown above, you only need to complete and submit a BE-12 Claim for Not Filing.

## Are filings confidential?

A federal statute protects the confidentiality of the data that companies report. It specifies that the survey data may only be used for statistical and analytical purposes. BEA is prohibited from granting another agency access to the data for tax, investigative, or regulatory purposes. Data reported on BEA's surveys are **not** subject to FOIA requests.

## Recommendation

If your business has foreign ownership, then you should evaluate whether to file Form BE-12. If so, then you should discuss the filing requirements with the foreign owner. You should also begin working with counsel and accountants to collect the information for responding to the BE-12 survey, to meet the filing deadline.

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