

U.S. person to ascertain the foreign status of a person involved in an acquisition unless the U.S. person has reason to believe the acquiring party may be a foreign person. If a U.S. person required to file a Form BE-14 files Form BE-13 relating to the acquisition of the U.S. business enterprise by a foreign person, then Form BE-14 is not required.

Total Exemptions—(a) Residential real estate held exclusively for personal use and not for profitmaking purposes is not subject to the reporting requirements. A residence which is an owner's primary residence that is then leased by the owner while outside the United States but which the owner intends to reoccupy, is considered real estate held for personal use. Ownership of residential real estate by a corporation whose sole purpose is to hold the real estate and where the real estate is for the personal use of the individual owner(s) of the corporation, is considered real estate for personal use.

(b) If the U.S. business enterprise acquired has total assets of, or if the capitalization (including loans from the joint venturers) of the joint venture to be established is, \$3,000,000 or less, than no report is required, provided the enterprise does not own 200 acres or more of U.S. land. (If it owns 200 acres or more of U.S. land, a report is required regardless of the value of total assets.)

(5) BE-21—Survey of Foreign Direct Investment in U.S. Business Enterprises Engaged in the Processing, Packaging, or Wholesale Distribution of Fish or Seafoods. Reporting consists of:

(i) Form BE-21P—Identification Questionnaire. A completed questionnaire is required from (a) each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods, and (b) any person to whom a questionnaire is sent by BEA.

(ii) Form BE-21A—Report for a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is required from each U.S. business enterprise that is a U.S. affiliate of a foreign person and that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

(iii) Form BE-21B—Report for each Establishment of a U.S. Business Enterprise that is a U.S. Affiliate of a Foreign Person. A completed report is

required for each establishment, of the U.S. affiliate, that engaged in the processing, packaging, or wholesale distribution of fish or seafoods.

[42 FR 64315, Dec. 22, 1977; 43 FR 2169, Jan. 16, 1978, as amended at 44 FR 32586, June 6, 1979; 46 FR 23226, Apr. 24, 1981; 46 FR 60191, Dec. 9, 1981; 47 FR 13139, Mar. 29, 1982; 47 FR 14138, Apr. 2, 1982; 49 FR 3174, Jan. 26, 1984; 52 FR 8446, Mar. 18, 1987; 53 FR 1016, Jan. 15, 1988; 53 FR 15198, Apr. 28, 1988; 54 FR 1352, Jan. 13, 1989; 58 FR 38290, July 16, 1993; 58 FR 53125, Oct. 14, 1993; 63 FR 16892, Apr. 7, 1998; 64 FR 10389, Mar. 4, 1999]

§ 806.16 Rules and regulations for BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1999.

A BE-10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1999. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE-10 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-10, Benchmark Survey of U.S. Direct Investment Abroad—1999, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE-10 survey;

(2) Completing and returning the "BE-10 Claim for Not Filing" within 30 days of receipt of the BE-10 survey report forms; or

(3) Filing the properly completed BE-10 report (comprising Form BE-10A or BE-10A BANK and Forms BE-10B(LF), BE-10B(SF), and/or BE-10B BANK) by May 31, 2000, or June 30, 2000, as required.

(b) *Who must report.* (1) A BE-10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 1999 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 1999 fiscal year, a "BE-10 Claim for Not Filing" must be filed within 30 days of receipt of the BE-10 survey package; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 1999 fiscal year, a BE-10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 1999 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.*—(1) *Form BE-10A (Report for the U.S. Reporter).* A BE-10A report must be completed by a U.S. Reporter that is not a bank. If the U.S. Reporter is a corporation, Form BE-10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than \$100 million (positive or negative) at any time during the Reporter's 1999 fiscal year, the U.S. Reporter must file a complete Form BE-10A and, as applicable, a BE-10A SUPPLEMENT listing each, if any, foreign affiliate that is exempt from being reported on Form BE-10B(LF), BE-10B(SF), or BE-10B BANK. It must also file a Form BE-10B(LF), BE-10B(SF), or BE-10B BANK, as appropriate, for each nonexempt foreign affiliate.

(ii) If for a nonbank U.S. Reporter no one of the three items listed in paragraph (c)(1)(i) of this section was greater than \$100 million (positive or negative) at any time during the Reporter's 1999 fiscal year, the U.S. Reporter is required to file on Form BE-10A only

items 1 through 27 and items 30 through 35 and, as applicable, a BE-10A SUPPLEMENT listing each, if any, foreign affiliate that is exempt from being reported on Form BE-10B(LF), BE-10B(SF), or BE-10B BANK. It must also file a Form BE-10B(LF), BE-10B(SF), or BE-10B BANK, as appropriate, for each nonexempt foreign affiliate.

(2) *Form BE-10B(LF) or (SF) (Report for nonbank foreign affiliate).* (i) A BE-10B(LF) (Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$100 million (positive or negative) at any time during the affiliate's 1999 fiscal year.

(ii) A BE-10B(SF) (Short Form) must be filed:

(A) For each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$7 million but for which no one of these items was greater than \$100 million (positive or negative), at any time during the affiliate's 1999 fiscal year, and

(B) For each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$7 million (positive or negative), at any time during the affiliate's 1999 fiscal year, and

(C) For each nonbank foreign affiliate of a U.S. bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than \$7 million (positive or negative), at any time during the affiliate's 1999 fiscal year.

(iii) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, a Form BE-10B(LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-

10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.* (1) For purposes of the BE-10 survey, “banking” covers a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks that they hold. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the consolidated entity is deemed not to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) *Form BE-10A BANK (Report for a U.S. Reporter that is a bank).* A BE-10A BANK report must be completed by a U.S. Reporter that is a bank. For purposes of filing Form BE-10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 1999 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$7 million (positive or negative) at any time during the affiliate’s 1999 fiscal year, the U.S. Reporter must file a Form BE-10A BANK and, as applicable, a BE-10A BANK SUPPLEMENT listing each, if

any, foreign affiliate, whether bank or nonbank, that is exempt from being reported on Form BE-10B (SF), or BE-10B BANK. It must also file a Form BE-10B (SF) for each nonexempt nonbank foreign affiliate and a Form BE-10B BANK for each nonexempt bank foreign affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than \$7 million (positive or negative) at any time during the affiliate’s 1999 fiscal year, the U.S. Reporter must file a Form BE-10A BANK and a BE-10A BANK SUPPLEMENT, listing all foreign affiliates exempt from being reported on Form BE-10B (SF) or BE-10 BANK.

(3) *Form BE-10B BANK (Report for a foreign affiliate that is a bank).* (i) A BE-10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than \$7 million (positive or negative) at any time during the affiliate’s 1999 fiscal year.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE-10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE-10B (LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE-10B BANK is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE-10A BANK SUPPLEMENT.

(e) *Due date.* A fully completed and certified BE-10 report comprising Form BE-10A or 10A BANK, BE-10A SUPPLEMENT (as required), and Form(s) BE-10B (LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 2000 for those U.S.

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Reporters filing fewer than 50, and June 30, 2000 for those U.S. Reporters filing 50 or more, Forms BE-10B (LF), (SF), or BANK.

[64 FR 67718, Dec. 3, 1999]

§ 806.17 Rules and regulations for BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997.

A BE-12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1997. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and § 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE-12 survey are given in this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1997, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning either Form BE-12(X) within 30 days of its receipt if Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank do not apply, or by completing and returning Form BE-12(LF), Form BE-12(SF), or Form BE-12 Bank, whichever is applicable, by May 31, 1998.

(b) *Who must report.* A BE-12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person 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 1997 fiscal year. A report is required even though the foreign person's ownership interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE-12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Long Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(2) Form BE-12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1997 (Short Form) must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year; if:

(i) It is not a bank, and

(ii) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not just the foreign parent's share) exceeded \$3 million, but no one item exceeded \$100 million (positive or negative) at the end of, or for, its 1997 fiscal year:

(A) Total assets (do not net out liabilities);

(B) Sales or gross operating revenues, excluding sales taxes; or

(C) Net income after provision for U.S. income taxes.

(3) Form BE-12 Bank—Benchmark Survey of Foreign Direct Investment in the United States—1997 BANK must be completed and filed by May 31, 1998, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1997 fiscal year, if:

(i) The U.S. affiliate is in "banking", which, for purposes of the BE-12 survey, covers business enterprises engaged in deposit banking or closely related functions, including commercial