



April 2004

CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

All foreign investments in U.S. business enterprises in which a foreign person owns a ten-percent-or-more voting interest (or the equivalent) are subject to reporting, including all ownership of real estate, improved and unimproved, other than for personal use. Reporting to the Bureau of Economic Analysis (BEA) is required pursuant to the International Investment and Trade In Services Survey Act, as amended (citations and penalties are described later).

Required reporting may be categorized as:

- I. Initial investment reports, for reporting the establishment or acquisition of a U.S. affiliate (Forms BE-13 and BE-13C–Exemption Claim);
- II. Quarterly balance of payments reports, for qualifying reporters (Forms BE-605 and BE-605 Bank);
- III Annual reports, for qualifying reporters (Forms BE-15(LF), BE-15(SF), BE-15(EZ), and BE-15 Supplement C–Exemption Claim); and
- IV. Quinquennial reports in benchmark surveys (Forms BE-12(LF), BE-12(SF), BE-12 Bank, and BE-12X–Exemption Claim).

I. Initial investment report.—The purpose of the initial investment report is to capture new investment transactions in which a foreign person, or a U.S. affiliate of a foreign person, acquires directly and/or indirectly a ten-percent-or-more voting interest (or the equivalent) in a U.S. business enterprise. A report is also required if a U.S. business enterprise is acquired by an existing U.S. affiliate of a foreign person, and then merged into the operations of that existing affiliate. The report is due to be filed no later than 45 days after the investment transaction occurs. The information provided in the report is used to define what other reports may be required to be filed by the U.S. affiliate.

- a. **Form BE-13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate**, must be completed for a new investment transaction if the total assets of the newly acquired or established entity is more than \$3 million, or the transaction involves the acquisition of 200 or more acres of U.S. land. A BE-13 report is also required if a U.S. business enterprise is acquired by an existing U.S. affiliate of a foreign person and then merged into the operations of that existing

affiliate, if the total cost of the acquisition was \$3 million or more, or the acquisition involved 200 or more acres of U.S. land.

- b. **Form BE-13 Supplement C—Claim for Exemption from Filing BE-13**, must be completed for each new investment transaction if total assets for the newly acquired or established U.S. affiliate (not the foreign parent's share), or the cost of the transaction, is \$3 million or less, or the transaction involved the acquisition of less than 200 acres of U.S. land.

Note that real estate acquired for other than personal use is considered a business enterprise and, thus, a reportable investment.

II. Quarterly balance of payments reports.--The purpose of the quarterly reports, **Forms BE-605 and BE-605 Bank** is to report direct financial transactions and positions between the U.S. affiliate and its foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These forms are:

- a. **Form BE-605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent**. Except as exempted below, this report is required each quarter for every nonbank U.S. business enterprise in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at any time during the quarter. (If the ownership is indirect and the U.S. affiliate has no direct transactions or positions with its foreign parent group(s), then the affiliate would complete only item 3 on the Certificate of Exemption, on page 3 of the report form.)
- b. **Form BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent**. Except as exempted below, this report is required from every U.S. affiliate that is a bank, or U.S. bank holding company, including all of the banking and nonbanking subsidiaries and units of the bank holding company, both incorporated and unincorporated, in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at anytime during the quarter.

For both of these reports, the U.S. affiliate is not required to report if each of the following items for the affiliate (not the foreign parent's share) is \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

These reports are required to be filed within 30 days after the close of each calendar or fiscal quarter, except that the report for the fourth quarter may be filed 45 days after the

end of that quarter.

A U.S. affiliate that meets the exemption criteria stated above must, nevertheless, file the Certification of Exemption from Filing a BE-605 or BE-605 Bank. Please note, however, that the Certification of Exemption is **not** a quarterly filing requirement for those U.S. affiliates that meet the exemption criteria from quarter to quarter. However, the Certification of Exemption **is** required to be filed if BEA mails you a pre-labeled packet of BE-605 forms **and** the U.S. affiliate does not meet the criteria for filing either the BE-605 or BE-605 Bank report.

III. Annual reports beginning with the report covering the U.S. affiliate's fiscal year that had an ending date in calendar year 2003 --The Annual Survey of Foreign Direct Investment in the United States requires reporting of financial and operating data of U.S. affiliates on **Form BE-15(LF), the long form, Form BE-15(SF) the short form, Form BE-15(EZ)**, a simplified form BEA is introducing to help reduce respondent burden, **or Form BE-15 Supplement C--Claim for Exemption from filing a BE-15(LF), BE-15(SF), or BE-15(EZ)**. Reports on these forms are required for nonbank U.S. affiliates; that is, for nonbank U.S. business enterprises in which a foreign person owns or controls, directly and/or indirectly, a ten-percent-or-more voting interest in an incorporated U.S. business enterprise, or the equivalent interest in an unincorporated U.S. business enterprise, as of the end of the U.S. business enterprise's fiscal year.

Reporting should be on a fully consolidated domestic (U.S.) basis, including in the full consolidation all U.S. affiliates owned more than 50 percent by the U.S. affiliate above it in the ownership chain. Depending upon the size of the consolidated entity, either the BE-15(LF) long form, or the BE-15(SF) short form will be required. **However, if BEA instructs the respondent to file a Form BE-15(EZ), the fully consolidated domestic (U.S.) entity should file on that form regardless of the size of its total assets, annual sales or gross operating revenues, or net income (loss).**

- a. **Form BE-15(LF)**, the long form, must be completed by each nonbank majority-owned U.S. affiliate (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with total assets, sales or gross operating revenues, or net income greater than \$125 million (positive or negative).
- b. **Form BE-15(SF)**, the short form, must be completed by
 - (1) Each nonbank majority-owned U.S. affiliate with any one of the following three items--total assets, sales or gross operating revenues, or net income--greater than \$30 million, and no one of these (three) items greater than \$125 million (positive or negative)

and,

- (2) Each nonbank minority-owned U.S. affiliate (a “minority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than \$30 million (positive or negative).
- c. **Form BE-15(EZ)** – File this form **only** if you are instructed to do so in writing by BEA.
 - d. **Form BE-15 Supplement C – Claim for Exemption from Filing BE-15(LF), BE-15(SF), or BE-15(EZ)** must be completed by each U.S. affiliate (as consolidated) if foreign ownership in the U.S. affiliate fell below 10 percent during the year, or if **each** of the three items for the affiliate (not the foreign parent’s share) is \$30 million or less:
 1. Total assets,
 2. Annual sales or gross operating revenues, and
 3. Annual net income (loss) after provision for U.S. income taxes.

A BE-15 Supplement C must also be completed to report changes in the ownership structure of the U.S. affiliate that would preclude it from filing on Form BE-15(LF), BE-15(SF), or BE-15(EZ). Examples of such changes include, but are not limited to, direct and/or indirect foreign ownership falling below 10 percent, or the U.S. affiliate being consolidated into the report of another U.S. affiliate.

Please note that the BE-15 Supplement C is **not** an annual filing requirement for those U.S. affiliates that meet the exemption criteria from year to year. However, Supplement C **is** required to be filed if BEA mails you a pre-labeled packet of BE-15 forms **and** the U.S. affiliate does not meet the criteria for filing either the BE-15(LF), BE-15(SF) or BE-15(EZ) report.

Beginning with the 2003 annual survey, BEA will offer its electronic filing option based on our Automated Survey Transmission and Retrieval (ASTAR) system. ASTAR has been used successfully, for some time now, by respondents filing the BE-605, quarterly survey of foreign direct investment in the United States, and was recently implemented for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States–2002. The ASTAR system employs state-of-the-art encryption security features to protect confidential information transmitted in the electronic form. For more information about ASTAR go to BEA’s Web site at www.bea.gov/astar.

IV. Quinquennial benchmark reports.--The quinquennial survey, the **BE-12, Benchmark**

Survey of Foreign Direct Investment in the United States, is a comprehensive survey of such investment, and the International Investment and Trade In Services Survey Act requires that it be conducted at least once every five years. Because benchmark surveys are censuses, either a **Form BE-12(LF)**, the long form, **Form BE-12(SF)**, the short form, **Form BE-12 Bank**, or **Form BE-12X–Claim for not filing a BE-12(LF), (SF), or Bank**, is required for each U.S. business enterprise in which a foreign person owned or controlled, directly and/or indirectly, a 10-percent-or-more voting ownership interest (or the equivalent) at any time during the enterprise's fiscal year that represents a benchmark year. The BE-12, benchmark survey, will cover the years 2002, 2007, 2012, etc. BEA is offering an electronic filing option for the benchmark survey. See page 4 of this document for details.

The benchmark survey covering 2002 is required to be filed by May 31, 2003. In a manner similar to the annual survey, reporting is on a fully consolidated domestic (U.S.) basis, and separate forms are provided for firms of different sizes:

- a. **Form BE-12(LF)**, the long form, must be completed by each nonbank majority-owned U.S. affiliate (a “majority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with total assets, sales or gross operating revenues, or net income greater than \$125 million (positive or negative).
- b. **Form BE-12(SF)**, the short form, must be completed by
 - (1) Each nonbank majority-owned U.S. affiliate with any one of the following three items--total assets, sales or gross operating revenues, or net income--greater than \$10 million, and no one of these (three) items greater than \$125 million (positive or negative) and,
 - (2) Each nonbank minority-owned U.S. affiliate (a “minority-owned” U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than \$10 million (positive or negative). U.S. affiliates with total assets, sales or gross operating revenues, and net income between \$10 million and \$30 million (positive or negative) will be required to report only selected data items on the short form.
- c. **Form BE-12 Bank**, must be completed by each U.S. affiliate that is a bank, or a bank holding company, including all of the banking and nonbanking subsidiaries and units of the bank holding company, if any one of the following three items--total assets, sales or gross operating revenues, or net

income--was more than \$10 million (positive or negative).

- d. **Form BE-12(X)–Claim for Exemption from Filing BE-12(LF), BE-12(SF), or BE-12 Bank** must be completed by each U.S. affiliate (as consolidated) if **each** of the three items for the affiliate (not the foreign parent’s share) is \$10 million or less:
1. Total assets,
 2. Annual sales or gross operating revenues, and
 3. Annual net income (loss) after provision for U.S. income taxes.

A BE-12(X) must also be completed to report changes in the ownership structure of the U.S. affiliate that would preclude it from filing on Form BE-12(LF) or BE-12(SF). Examples of such changes include, but are not limited to, direct and/or indirect foreign ownership falling below 10 percent, or the U.S. affiliate being consolidated into the report of another U.S. affiliate.

Legal Authority and Confidentiality

All reports are mandatory pursuant to the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by P.L. 98-573 and P.L. 101-533). The Act states that whoever fails to report shall be subject to a civil penalty of not less than \$2,500 and not more than \$25,000, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both.

The Act provides that all reports submitted are confidential and may be used only for analytical or statistical purposes. Without the prior written permission of the respondent, the information filed cannot be presented in a manner that allows it to be individually identified. The information provided cannot be used for purposes of taxation, investigation, or regulation. Copies of reports retained by the respondent are immune from legal process.

The rules and regulations implementing the Act can be found in 15 CFR Part 806. Amendments to the regulations are published in the Federal Register. Although BEA attempts to notify respondents that are believed to qualify for the periodic surveys, it is incumbent on U.S. affiliates to meet the reporting requirements contained in the Federal Register. When an initial report is filed with BEA, the affiliate will receive blank forms for the surveys that are thought to apply. This office should be notified (see contact information below) if report forms are needed, if there is a change in a status that would affect reporting (such as consolidation into another company or elimination of a foreign

ownership interest), or if there is an address change.

Copies of the report forms and instructions are available on BEA's Web site at www.bea.doc.gov/bea/surveys/fdiusurv.htm. If you have questions, or need additional information, you may email us at be12/15@bea.gov, or call (202) 606-5577.