

# Anchin Alert

**Anchin, Block & Anchin LLP**  
**Accountants and Advisors**



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## **Department of Commerce Form BE-12 Benchmark Survey of Foreign Direct Investments in the United States May be Required for U.S. Fund Managers**

### **BE-12: Overview**

Form BE-12 (Benchmark Survey of Foreign Direct Investments in the United States) is required to be filed every fifth year, in place of Form BE-15 (which is for annual reporting that falls outside of the five-year reporting). This Form is filed with the U.S. Department of Commerce's Bureau of Economic Analysis ("BEA"). The next Form BE-12 filing is due on May 31, 2018 (June 30, 2018 if using the BEA's e-file system).

"Direct investment" refers to direct or indirect ownership of more than 10% of the voting interests (or equivalent thereof) of a U.S.-resident business enterprise by a foreign person. BE-12 is BEA's most comprehensive survey regarding financial and operating data of U.S. affiliates of foreign multinational enterprises. Generally, reporting is required for all U.S. business enterprises of which a foreign person owns, directly or indirectly, 10% or more of the voting securities (or an equivalent interest of an unincorporated U.S. business).

Of note to Investment Funds is that the BEA has added an exception for those enterprises that operate as private funds, even if they would otherwise be required to file. This exemption applies as long as the entity does not directly or indirectly own an operating entity nor is it owned, directly or indirectly by an operating entity.

Form BE-12 survey is not an instrument of market oversight, but instead is used for informational purposes, and the data collected is published on an aggregated, anonymous basis. BEA uses BE-12 to produce statistics concerning the magnitude and impact of foreign-owned business activities in the United States.

### **BE-12 Reporting Obligations**

The report should reflect holdings as of December 29, 2017.

BE-12 covers U.S. business enterprises in which a foreign person has direct investment (i.e., where the foreign person owns or controls, directly or indirectly, 10% or more of the U.S. business enterprise's voting interests), regardless of the value of the investment. A U.S. affiliate must file on a fully consolidated domestic U.S. basis, which starts with the top-tier U.S. entity in an organization and includes all of its U.S. entities, proceeding down each ownership chain whose voting securities are more than 50% owned by the U.S. business enterprise above.

A U.S. business enterprise required to report will complete one of three BE-12 forms: BE-12A, BE-12B or BE-12C. Determining which form is appropriate for a reporting organization will depend on: (i) the total assets, sales or gross operating revenues, or net income of the organization during the fiscal year ending in 2017; and (ii) whether the organization is a majority-owned or minority-owned affiliate of a foreign person.

BE-12 captures data concerning foreign direct investment in U.S.-resident companies, including: information about the foreign parent; information about transactions between the foreign parent and the U.S. reporter; and financial and operational information about the U.S. reporter. BEA forms capture data concerning “direct investments,” including U.S.-resident ownership of 10% or more of a foreign company and vice versa, in addition to most positions and transactions with a company with which the investor is in a direct investment relationship.

### **Extension Requests**

The instructions to BE-12 provide a mechanism for submitting reasonable requests for extensions. This can be done by submitting a request through the BEA’s electronic filing system and the request must be received before the May 31, 2018, filing deadline.

### **How Will This Affect You?**

You may be responsible to file the Form BE-12. For more consideration around whether you need to file, speak with your Anchin Relationship Partner.



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