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## **Client Alert:** Bureau of Economic Analysis' Mandatory BE-10 Filing Deadline Approaches for U.S. Companies with Foreign Subsidiaries or Affiliates

On November 20, 2014, the U.S. Department of Commerce, Bureau of Economic Analysis ("BEA") published a final rule amending the Code of Federal Regulations, 15 C.F.R. Part 801, to reinstate requirements related to the BEA's Benchmark Survey of U.S. Direct Investment Abroad (the "BE-10 Survey"). The BEA conducts the BE-10 Survey every five years to obtain data to measure the size of, and change in, U.S. direct investment abroad and assess its impacts on the U.S. and foreign economies. In the past, companies required to participate in the BE-10 Survey were contacted directly by the BEA. For purposes of this year's BE-10 Survey, however, U.S. companies are generally required by law to disclose to the BEA various financial, business and operational data on foreign investments, if certain reporting thresholds have been met.

In connection with the 2014 BE-10 Survey, a U.S. company is required to report to the BEA if at any time during its 2014 fiscal year the U.S. company had a foreign affiliate (i.e., the U.S. entity had direct or indirect ownership or control of at least 10% of the voting stock of a non-U.S. business enterprise). The form that must be filed by a U.S. company subject to this reporting requirement is the Form BE-10A. Any such U.S. company must also submit separate forms for each of its foreign affiliates (either Form BE-10B, Form BE-10C or Form BE-10D).

U.S. companies subject to reporting requirements related to the 2014 BE-10 Survey must provide information covering the "fully consolidated U.S. domestic business enterprise." The BEA defines the "fully consolidated U.S. domestic enterprise" as: (i) any U.S. business enterprise whose shares are not more than 50% owned by another U.S. business enterprise; and (ii) continuing down the ownership chain from that U.S. business enterprise, any U.S. business enterprise whose shares are more than 50% owned by the U.S. business enterprise above it. Therefore, U.S. companies that are

more than 50% owned by a parent U.S. company are not required to file Form BE-10A because such company's financial, business and operational data on foreign investments will be incorporated in the filing of the parent company.

U.S. companies with fewer than 50 foreign affiliates must file the relevant required forms no later than May 29, 2015, while U.S. companies with 50 or more foreign affiliates have until June 30, 2015 to file the applicable forms. Information reported to the BEA may only be used for analytical and statistical purposes and will not be published in a manner that identifies the reporting company.

Both civil and criminal penalties may be imposed for failure to file the applicable BE-10 forms with the BEA. The monetary penalties for failure to file range from \$2,500 to \$25,000 for civil fines, and up to \$10,000 for criminal fines. In addition, the criminal penalty for a willful failure to file could also involve imprisonment for up to one year, and could be imposed against any "officer, director, employee, or agent of any corporation who knowingly participates" in the violation.

Please let us know if you have any questions regarding the 2014 BE-10 Survey.

Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts.

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