

Client Alert

Upcoming Deadline for Bureau of Economic Analysis Reporting Approaching

May 20, 2015. In a departure from prior practice, the Bureau of Economic Analysis (the “BEA”) now requires certain U.S. Persons with “foreign affiliates” in 2014 affirmatively to file Forms BE-10 and BE-13. Previously, only U.S. Persons contacted by the BEA were required to file. As before, all data reported in both Form BE-13 and Form BE-10 will be kept confidential and any findings will not specifically identify filers.

Form BE-10

The BEA requires U.S. entities to file Form BE-10 to affirmatively report any “foreign affiliates” such U.S. entity had at any time during the 2014 fiscal year. A U.S. Person has a “foreign affiliate” under the BEA if such U.S. Person has direct or indirect ownership of at least 10% of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise or if a non-U.S. Person acquires direct or indirect ownership or control of 10% or more of the voting stock of such U.S. Person. Form BE-10 is a survey conducted every five years, with the last survey covering through the year 2009. The BE-10 reports are due on May 29, 2015 for U.S. entities with fewer than 50 foreign affiliates, and June 30, 2015 for U.S. entities with 50 or more foreign affiliates. If a U.S. Person had no foreign affiliates during its 2014 fiscal year, it must file a “BE-10 Claim for Not Filing” by May 29, 2015.

Form BE-13

In addition to Form BE-10, Form BE-13 requires the disclosure of foreign direct investments in U.S. entities if certain conditions and thresholds are met. Previously, a BE-13 filing had only been required if an entity was specifically requested to make such filing, but now all applicable U.S. entities are required to make the filing within the timeframe described below. A U.S. entity is required to make a Form BE-13 filing if a non-U.S. person acquired direct or indirect voting securities of such U.S. entity if: (i) the cost of acquiring (or establishing) such voting securities exceeds \$3 million, (ii) the U.S. business enterprise will operate as a separate legal entity and (iii) by this acquisition, at least 10% of the voting securities in the acquired entity is now held by

the non-U.S. person. Reports are required within 45 days of a reportable transaction. After the initial filing, quarterly, annual and five year filings are required.

Implications for Domestic Asset Managers

Limited partnership interests in private equity funds are typically not considered to be voting securities; therefore, private equity funds do not need to file a Form BE-13 or Form BE-10 solely on the basis of their foreign investors. However, reporting requirements may be triggered if a non-U.S. entity (or an entity owned 10% or more by a non-U.S. entity) became the general partner or managing member of the U.S. fund on or after 2014. Asset managers should carefully review both their investments in any foreign portfolio companies as well as the existence of any foreign investments in their U.S.-based portfolio companies to ensure that such investments do not necessitate a filing.

Consequences of failing to file

Although it has indicated informally that it is unlikely to do so, the BEA has the authority to levy civil fines up to \$25,000 and seek injunctive relief. Persistent and willful violation may result in criminal penalties of up to \$10,000 and imprisonment for up to one year.

If you have any questions concerning these filings, please contact your Morrison Cohen attorneys.