Dechert LLP

Macroeconomic Surveys from the BEA: A Primer for Asset Managers and the Financial Services Industry

A legal update from Dechert

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For many U.S. asset managers and other financial services providers, the recent BE-10 Benchmark Survey of U.S. Direct Investment Abroad (BE-10) and the upcoming BE-180 Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons (BE-180) may represent a first encounter with the international surveys issued by the U.S. Commerce Department's Bureau of Economic Analysis (BEA)1. The BE-10 and BE-180 are two examples from a lengthy list of surveys administered by the BEA (BEA Surveys) that collect data on the cross-border activities and holdings of participants in the asset management and related industries and their clients.

Many asset managers are already familiar with the U.S. Treasury Department's Treasury International Capital (TIC) reporting system, administered by the Federal Reserve Bank of New York, that collects data on (among other things) cross-border holdings of investment securities.2 The TIC and BEA reporting regimes, in many respects, collect parallel and complementary data. Financial services firms should note that, because of these similarities, it is often helpful to take a holistic approach in assessing whether such firms have TIC and/or BEA reporting obligations and in designing systems and procedures for ongoing monitoring and reporting, as necessary.

The administration of two mandatory benchmark surveys in 2015, combined with increased focus on the financial services industry, likely will widen the net of entities that must report and increase the reporting burden on all who report, including with respect to the BEA's more frequent annual and quarterly surveys. This Dechert OnPoint provides an overview of the BEA Surveys that are relevant to asset managers and other financial services providers.

General Overview of the BEA Surveys

The BEA Surveys measure cross-border economic relationships between U.S. and non-U.S. persons. The BEA Surveys are varied in target and scope, and collect data on a wide variety of industries. The BEA Surveys most relevant to – and most likely to give rise to reporting obligations by – the financial services industry are the surveys collecting data on cross-border direct investment, insurance positions, and international trade in financial services. The U.S. government uses the economic data collected in these surveys in the preparation of its published macroeconomic surveys and to inform its economic and trade policies. The surveys are not an instrument of market oversight, but instead are used only for informational purposes, and the data collected is published only on an aggregated, anonymous basis.[3]

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1 For further information on the BE-10 and BE-180 Surveys, please refer to *Dechert OnPoints*, New Reporting Requirements Regarding Foreign Investment and Ownership; Commerce Department Extends Deadline for BE-10 Reports and Important Clarifications for Asset Managers and Insurance Companies; and BEA's BE-180 Benchmark Survey of Financial Services Providers: Implications for U.S. Asset Managers.

2 For further information on the TIC reporting system, please refer to *Dechert OnPoint*, Foreign Holdings and Transactions with Foreign Persons: Reporting Responsibilities for US Investment Managers and Other Financial Institutions.

3 The BEA Surveys are authorized and required by an Act of Congress. There is civil and criminal liability for failure to file any required BEA Survey:

- Any person that fails to file a required BEA Survey may be subject to a civil penalty of between $2,500 and $32,500.

Who Must Report

Each BEA Survey identifies those U.S. persons who must reply. Responding to a BEA Survey is typically required at the level of "consolidated U.S. enterprise," which includes the organization's top-level U.S. parent entity, as well as each of its direct and indirect subsidiaries whose voting securities are owned more than 50 percent by another entity within the consolidated U.S. enterprise. While entities located outside the United States are not themselves subject to BEA Survey reporting, their U.S. parents or subsidiaries may be required to submit information describing the holdings and operations of non-U.S. affiliates.

While the "benchmark" BEA Surveys that are administered once every five years are mandatory for all U.S. persons meeting the survey's reporting thresholds, other, more frequent, BEA Surveys are only required when a reporter has been contacted by the BEA and asked to file.[4] The BEA has indicated that one purpose of each benchmark BEA Survey is to identify reporters with substantial reportable data as candidates for filing the quarterly and annual interim surveys. For this reason, it is important to fully understand both the consolidation rules for each form and the scope of what data is reportable (both of which can be complicated), so as to avoid over-reporting. Over reporting could take two forms: (i) unnecessarily consolidating entities in filings, and (ii) reporting data beyond the scope of the survey. Either type of over-reporting might prompt the BEA to request more frequent reports, increasing the reporting burden.

In addition to reporting on their own cross-border relationships and proprietary holdings, asset managers may be required to prepare BEA Surveys on behalf of their asset management clients (such as U.S. funds that they advise), to the extent that those clients meet the survey's reporting requirements. Moreover, due to the consolidation rules of certain BEA Surveys, asset managers that serve as a general partner or managing member of a U.S. investment fund may be required to consolidate the fund's reportable data with the adviser's own filings – even where ordinary accounting principles would not entail consolidation.

Overview of BEA Surveys Applicable to Financial Services Providers

The following charts summarize the BEA Surveys that may apply to asset management and other participants in the financial services industry. The surveys are divided into three broad categories, covering: cross-border transactions; investments abroad by U.S. persons; and foreign investment into the United States.

Transactional Surveys

The following forms measure cross-border transactions between U.S. reporters and foreign persons. These transactions include the cross-border purchase or sale of certain services, and may include transactions made by a reporter's investment fund clients.

- Any person that willfully fails to file a required BEA Survey may be subject to a $10,000 fine and imprisonment for up to one year.
- The filing requirements also subject officers, directors, employees and agents of any entity with filing obligations to the same penalties. *See* 22 U.S.C. § 3105.

4 In advance of each benchmark BEA Survey, the BEA publishes a rule in the Federal Register, which serves as notice to all potential reporters.

Survey	Who Must Report	What Must Be Reported	Frequency
BE-180	U.S. persons who: (i) had more than $3 million in cross-border financial services transactions in the last fiscal year; or (ii) are contacted by the BEA	Payments and receipts for transactions in financial services[5] with non-U.S. persons	Every five years (next filing due November/December, 2015)[6]
BE-185	U.S. persons who are contacted by the BEA	Payments and receipts for transactions in financial services with non-U.S. persons	Annually
BE-125	U.S. persons who are contacted by the BEA	Sales and purchases of services or intangibles[7] with non-U.S. persons.	Quarterly
BE-120	U.S. persons who: (i) had more than $2 million in sales of reportable services or intangibles to non-U.S. persons in the last fiscal year; or (ii) had more than $1 million in purchases of services or intangibles to non-U.S. persons in the last fiscal year; or (iii) are contacted by the BEA	Sales and purchases of services or intangibles with non-U.S. persons	Every five years (next filing expected in 2017)
BE-45	U.S. persons who are contacted by the BEA	Transactions in premiums, claims and reinsurance payments with non-U.S. persons	Quarterly and annually
BE-140	U.S. persons who: (i) have more than $2 million in earned premiums or losses with non-U.S. persons; or (ii) are contacted by the BEA	Transactions in premiums, claims and reinsurance payments with non-U.S. persons	Every five years (next filing expected in 2019)

Surveys of Foreign Direct Investment by U.S. Persons[8]

In addition to the transactional surveys represented by the BEA Surveys discussed above, financial services providers should be aware of the following forms that measure cross-border direct investment by U.S. persons.

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5 Covered financial services transactions may include fees, commissions, and other charges for services such as brokerage, underwriting, private placement, financial management, asset management, financial advisory, custody, securities lending, electronic funds transfer, asset pricing, exchange listing, check processing, securities rating, securities and futures clearing, and credit-related and credit card services, as well as other similar engagements.

6 The BE 180 has a filing deadline of November 1, 2015 for new BE-180 reporters that were not contacted by the BEA, as well as for BE-180 reporters that were contacted by the BEA and assigned an identification number below 140012490. For reporters that were contacted by the BEA and assigned an identification number above 140012490, the BE 180 has a filing deadline of December 1, 2015. Reporters may also request an additional extension beyond their assigned deadline. For additional information, see *BEA's BE-180 Benchmark Survey*, note 1, *supra.*

7 For those involved in the financial services industry, relevant services and intangibles may include advertising, accounting, insurance, data processing, educational or legal expenditures, operational leasing, consulting, public relations, and auxiliary insurance.

8 Reporters familiar with the TIC reporting system may recognize that certain TIC forms also measure cross-border investments (*e.g.*, TIC B, TIC S, TIC SLT, TIC SHC and TIC SHL). These TIC forms collect data on certain long-term cross-border securities holdings (*i.e.*, "portfolio investments"). In contrast, the BEA Surveys in this category are concerned with "direct investments," which the BEA defines as investments which establish ownership or control of 10% or more of the voting securities of a foreign business.

Form	Who Must Report	What Must Be Reported	Frequency
BE-577	U.S. persons who are contacted by the BEA	Direct investment abroad by U.S. persons	Quarterly
BE-11	U.S. persons who are contacted by the BEA	Direct investment abroad by U.S. persons	Annually
BE-10	U.S. persons who: (i) control more than 10% of the outstanding voting securities of a non-U.S. person; or (ii) are contacted by the BEA	Direct investment abroad by U.S. persons	Every five years (last filing was due June 30, 2015)

Surveys of Foreign Investment in U.S. Persons

Finally, financial services providers that are subsidiaries of a non-U.S. parent, or that have received substantial direct investment from abroad, should consider the following forms, which measure cross-border direct investment into the United States.

Form	Who Must Report	What Must Be Reported	Frequency
BE-13	U.S. persons who received direct investment from a non-U.S. person in excess of $3 million[9]	Direct investment in U.S. persons from non-U.S. persons	Within 45 days of initial investment by non-U.S. persons
BE-605	U.S. persons who are contacted by the BEA	Direct investment in U.S. persons from non-U.S. persons	Quarterly
BE-15	U.S. persons who are contacted by the BEA	Direct investment in U.S. persons from non-U.S. persons	Annually
BE-12	U.S. persons who: (i) received any direct investment from non-U.S. persons in the last year; or (ii) are contacted by the BEA	Direct investment in U.S. persons from non-U.S. persons	Every five years (next filing expected in 2018)

Conclusion

U.S. asset managers and others involved in the financial services industry should consider whether they, their U.S. parents, their affiliates, or their clients, have filing obligations under the BEA Surveys discussed above, beginning with the upcoming BE-180. Careful attention should be paid to meeting, but not exceeding, applicable reporting obligations. Potential reporters also should consider establishing a compliance framework or evaluating their existing framework to assess whether previously unidentified reporting obligations exist and to monitor on an ongoing basis for changes to any reporting requirements.

[9] Four different types of direct investment may give rise to a reporting obligation: (i) a direct investment in an existing U.S. enterprise; (ii) a direct investment to establish a new U.S. enterprise; (iii) an acquisition and merger of a U.S. person by a U.S. affiliate of a non-U.S. parent; and (iv) an expansion of an existing U.S. affiliate of a non-U.S. parent.

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