

SIDLEY UPDATE

BEA Implements Changes to Direct Investment Survey Reporting Requirements for Certain Private Funds

Following up on its [announcement](#) in 2016, the Bureau of Economic Analysis, Department of Commerce (BEA) has made important changes to its surveys of direct investment (voting interests of 10 percent or more) that will affect many private funds and will be implemented beginning with direct investment surveys conducted in 2017.¹ Further information on these changes, including frequently asked questions and tools to help determine reporting obligations, is available on the BEA's [website](#). These changes are intended to simplify reporting for private funds by recharacterizing certain direct investments in private funds as portfolio investments based on the nature of the private fund's investments. Under these changes, the BEA expects that many hedge funds that have been subject to BEA direct investment reporting as a result of cross-border voting interests will instead be subject to reporting to the U.S. Treasury Department's Treasury International Capital (TIC) system, which applies to hedge fund groups with total cross-border investments exceeding the much higher TIC reporting thresholds. However, many private equity funds will remain subject to BEA direct investment reporting. Under these changes, any cross-border voting investments of 10 percent or more in, or by, private funds will only be subject to BEA reporting if such investments involve, directly or indirectly, a direct investment in an "operating company," which the BEA defines as "companies that are not other private funds or holding companies."²

The BEA has indicated that it will notify entities that are potentially affected by these changes in 2017 and have previously filed annual and/or quarterly surveys of direct investment abroad (BE-11 and BE-577) or foreign direct investment in the United States (BE-15 and BE-605). A U.S. private fund that is acquired or established by a foreign entity after January 1, 2017 and meets the exemption criteria will not be required to file a Form BE-13 Claim for Exemption if the BEA does not contact it. Further information is available on the BEA's [website](#).

¹ These include both surveys of foreign direct investment in the United States such as BE-13, BE-605, BE-12 and BE-15, and surveys of U.S. direct investment abroad such as BE-577, BE-10 and BE-11.

² The BEA defines a "holding company" as a business enterprise that is classified under ISI Code 5512 "non-bank holding companies" which is a business primarily engaged (50 percent or more of its total income) in holding the securities or financial assets of companies and enterprises (except for banking) for the purpose of owning a controlling interest in them or influencing their management decisions, but that does not manage the day-to-day operations of the companies or enterprises it holds. The BEA states on its [website](#) that it defines "private funds" in the same manner as the Securities and Exchange Commission - "any issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of . . . [that] Act."

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

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