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## CLIENT ALERT

### CHANGES TO FOREIGN DIRECT INVESTMENT REPORTING REQUIREMENTS

On November 26, 2014, the U.S. Department of Commerce's Bureau of Economic Analysis ("BEA") announced expanded Form BE-13 survey reporting requirements for U.S. companies that receive foreign direct investments above certain thresholds. Previously such survey reporting was required only by U.S. entities that were directly contacted by the BEA. However, as a result of the expanded reporting requirements, **any U.S. entity receiving a foreign investment described below on or after January 1, 2014, is required to make a Form BE-13 filing**, regardless of whether the BEA has contacted such U.S. entity. The reporting requirements apply equally to all U.S. business entities, including corporations, partnerships and limited liability companies.

**Requirement to File.** A U.S. entity is required to make a Form BE-13 filing if a non-U.S. person acquires direct or indirect ownership or control of 10% or more of the voting interests of such U.S. entity. This filing requirement applies to both the acquisition of interests in an existing U.S. entity and the establishment of a new U.S. entity. If the cost of such acquisition or establishment exceeds \$3 million, the U.S. entity is required to file one of the five BE-13 forms. If the cost of such acquisition or establishment does not exceed \$3 million, the U.S. entity is required to file Form BE-13 Claim for Exemption. All of the BE-13 forms are available at [http://www.bea.gov/surveys/respondent\\_be13.htm](http://www.bea.gov/surveys/respondent_be13.htm).

**Exceptions to Reporting Requirement.** There is no *de minimis* exemption to the reporting requirement. However, a limited exception to reporting applies to a U.S. entity holding real estate exclusively for the personal use of the owner of such entity, and not for profit-making purposes.

**Reporting Due Date.** The appropriate BE-13 form must be filed no later than **45 days** after the completion of the relevant transaction. Although the reporting requirements apply retroactively to any transaction that occurred on or after January 1, 2014, the reporting due date for transactions occurring prior to the date of the notice was extended to January 12, 2015.

**Content of Forms.** The BE-13 forms require U.S. entities to provide information regarding the relevant transaction, the name and ownership percentage of any U.S. entities owned by the filing entity, information on beneficial owners and ownership percentages, employment projections, and certain financial and operating information. The BE-13 forms are required to be kept confidential by the BEA, and are used for statistical purposes.

**Penalties.** Failure to file the appropriate BE-13 form in a timely manner is subject to civil penalties (between \$2,500 and \$32,500 for each violation) and criminal penalties (up to \$10,000 per violation and/or imprisonment of not more than one year), plus injunctive relief ordering compliance.

If you have questions or would like additional information, please contact [Martin Jones \(mjones@egsllp.com\)](mailto:mjones@egsllp.com) or the primary EG&S attorney with whom you work.

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