



Federal Reporting Obligations: US Factoring Companies with Foreign Subsidiaries, Foreign Owners or Foreign Clientele, Beware!

Many US factoring companies may be unaware that they are subject to mandatory reporting obligations issued by the US Department of Commerce's Bureau of Economic Analysis (the "BEA") if certain criteria are met.

BY ROBERT M. SCHECHTER AND PAMELA R. KAPLAN

Many US factoring companies may be unaware that they are subject to mandatory reporting obligations issued by the US Department of Commerce's Bureau of Economic Analysis (the "BEA") if certain criteria are met. Specifically, US factoring companies that are 10% or more foreign (non-US) owned, own 10% or more of a foreign business, or transact business with foreigners, must pay particularly close attention to BEA reporting obligations and deadlines. When BEA reports are due,

assessment of the reporting obligation and data gathering can be complex and burdensome; however, a systematized approach to BEA compliance can go far in alleviating the business burden and risk of harsh penalties for noncompliance.

The BEA, through its data collection powers, compiles, analyzes, and publishes key economic data including the gross domestic product (commonly referred to as

GDP) of the United States. As a principal agency of the US Federal Statistical System, the BEA's data gathering and publications have a direct influence on decision-making by government officials, the business community, and individuals. To fulfill its mission of gathering and reporting important financial statistics, the BEA imposes mandatory reporting obligations on certain

parties, including US factoring companies (among many others) that fall within the criteria of being 10% or more foreign owned, owning 10% or more of a foreign business, or transacting in certain business sectors with foreigners. Despite a lack of awareness of mandatory BEA reporting obligations and penalties across some industries, several BEA surveys must be completed and filed

whether or not the BEA contacts the parties obligated to report. Below are overviews of several BEA reporting obligations that US factoring companies must keep on their radar.

The BE-180 is a mandatory five-year benchmark survey which tracks financial services transactions between US financial services providers and foreign persons. The original reporting deadline for the BE-180 was late 2015, but the BEA is still collecting this report if not yet filed. A financial services provider has a mandatory reporting obligation if it had either aggregate sales to or aggregate purchases from foreign persons in excess of \$3 million in the 2014 fiscal year. A party may also be required to file if it is contacted directly by the BEA.

The BE-12 is a mandatory five-year benchmark survey for US businesses that are 10% or more foreign owned. Included in the data required for the BE-12 is information on US businesses and their foreign ownership. The BEA will be collecting 2017 data in its next BE-12 Benchmark Survey.

The BE-10 is a mandatory five-year benchmark survey for US parties with a 10% or more ownership interest in a foreign business. Although the deadline for submission of the BE-10 with 2014 data has passed, the BEA is still collecting late submissions. The BE-10 requires submission of various categories of financial and transactional data on US parties with an interest in foreign businesses, as well as information on those foreign businesses themselves.

The BE-13 is a mandatory report that is triggered upon the occurrence of specific transactions or events involving US businesses that are or become 10% or more foreign owned. Specifically, establishments, acquisitions, mergers or expansions

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of US businesses that are or become foreign owned in whole or in part trigger reporting obligations to the BEA within 45 days of the triggering event.

Parties obligated to file reports with the BEA often discover that data required to be submitted to the BEA may not be data that is otherwise regularly collected for other business purposes. Moreover, parties who fail to submit BEA reports may be subject to civil penalties of as much as \$32,500 and criminal monetary penalties and/or imprisonment for willful failure to comply. Notwithstanding these potential burdens and harsh penalties, BEA compliance can be significantly simplified through a systematic approach to assessment and monitoring of BEA reporting obligations. •

For more information or assistance, please contact Porzio Compliance Services at 646-348-6770, info@porziocs.com, or visit www.PorzioComplianceServices.com.



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As Vice President of Porzio Compliance Services, a wholly owned subsidiary of the law firm Porzio, Bromberg & Newman, P.C., **Robert M. Schechter, J.D.**, guides individual and business clients on the implementation of systematic data collection, analyses and retention policies in order to ensure US Bureau of Economic Analysis (BEA) compliance. He writes and lectures regularly regarding crossborder investments in particular. Additionally, as a Principal of Porzio, Bromberg & Newman, P.C. and member of the law firm's Financial Restructuring and Bankruptcy Department, Robert advises stakeholders in business finance, corporate compliance and restructuring matters. He can be reached by phone at 609-5241838 or by email at rschechter@PorzioCS.com.

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