

### If You Conduct Any Business with Entities (Including Affiliates) Outside of the U.S., Then Please Read

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The International Services Survey is here again and is due by **June 29, 2018**. If you conducted any transaction relating to *intellectual property* with a foreign entity (defined as any company outside of the United States, even if they are an affiliate) or purchased or sold *services* with a foreign entity, then your company is required by law to participate in the survey. Unlike conventional governmental surveys, the present rules require reporting by persons subject to the reporting requirements **whether or not** they are actually contacted by the government to submit a survey.

The Bureau of Economic Analysis (BEA), under the Department of Commerce, is tasked with obtaining an economic accounting of the U.S. economy. To do this, the BEA collects information from participants within the economy. One of these data collection events includes the International Services Survey. The International Services Survey collects data on international trade in services and direct investment with foreign entities. The survey is essentially a benchmark survey of transactions involving intellectual property or selected services with foreign entities. Its purpose is to obtain comprehensive and reliable information pertaining to international investment, including international trade in selected services and intellectual property. The last extensive survey was conducted in 2011, and a smaller subset of services was surveyed in 2014. The present survey covering transactions of the 2017 fiscal year is the most far reaching of the surveys conducted to date.

The final rules regarding the survey went into effect March 5<sup>th</sup> of this year implementing a response deadline of **June 29, 2018**. Whoever fails to submit the required information is subject to a civil penalty of between \$2,500 and \$25,000. If the failure to respond is determined to be willful, then the individual or any officer, director, employee, or agent of any company knowingly participating in such refusal to respond may be subjected to criminal penalties, including a fine up to \$10,000 and up to a year imprisonment.

Under the new rules, if a U.S. entity receives a survey

from the Bureau of Economic Analysis, they must respond to it, even if such U.S. entity does not have any international trade in selected services or intellectual property with foreign entities.

Even if a U.S. entity does not receive a survey, they may still be obligated to provide information to the Bureau. If the U.S. entity performs or retains selected services or conducted intellectual property transactions with foreign entities any time in the company's fiscal year 2017, then the entity will be required to complete the survey. Transactions covered by the survey include sales and purchases related to intellectual property rights and sales and purchases of selected services between U.S. entities and foreign entities, regardless of entity type.

The covered transactions extend to: (i) intellectual property transactions including; trademarks, patents, processes, trade secrets, and copyrighted works, rights to use any intellectual property right; (ii) the sale of goods not having a physical form (for example computer software or similar products such as data storage and cloud computing data banks) with any foreign entity; and (iii) services such as producing or distributing a product or service related to a patent, process, or trade secret; accounting, auditing, and bookkeeping services; advertising services; computer software; computer services (including cloud computing and data storage services); engineering services; financial services; market research services; public opinion polling services; legal services; and contract manufacturing services. For a full list of qualifying services or intellectual property transactions, please click [here](#).

Transactions between foreign affiliates of the U.S. entity, including a foreign parent or subsidiary entity, are within the scope of the present reporting requirements. Transactions excluded from the reporting requirement include the sale and purchase of goods having a physical form, financial instruments, including stocks, bonds, financial derivatives, loans, mutual fund shares, and negotiable CDs, along with any

income derived from financial instruments, employee compensation, penalties and fines, and gifts or grants in the form of goods and cash. However, if you use a foreign securities brokerage service to assist with such sale or purchase, then those services would be brought under the survey reporting requirements.

The final rules require mandatory reporting on 59 classifications of services, including “other selected services.” Therefore, pretty much everything not excluded by the rule is brought under the umbrella of the reporting requirements if it relates to services or intellectual property with a foreign entity.

If you or your company is subject to the survey requirements, then you must provide information on the qualifying services or intellectual property transactions. The amount of information you must provide depends on the amount received or paid for such transactions.

The reporting requirement is only applicable for the 2017 fiscal year and determined on an accrual basis. The higher informational requirement is for U.S. entities whose combined sales to foreign entities of covered services and intellectual property exceeded \$2 million, or whose combined purchases from foreign entities of covered services and intellectual property exceeded \$1 million. If the higher threshold is met, then the U.S. entity must report data on the total sales or total purchases of each of the covered types of services and intellectual property transactions and must disaggregate the totals by country and by relationship to the foreign entity. If the U.S. entity has sales or purchases at or under the \$2 million and \$1 million thresholds, for covered services and intellectual property out of and into the United States, respectively, then the U.S. entity can submit the total sales and/or total purchases for each type of transaction in which they engaged.

The BE-120 form may be found [here](#).

Please do not hesitate to contact us with any questions regarding this survey.



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