



News & Types: Client Advisories

Mandatory U.S. Government Survey For U.S. Persons Who Have Had Transactions With Foreign Persons Involving Certain Services or Intellectual Property

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Practices: Intellectual Property & Technology

This week the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) released its mandatory BE-120 Benchmark Survey of Transactions on Selected Services and Intellectual Property with Foreign Persons. The BE-120 Survey is a wide-reaching mandatory survey which must be completed by any U.S. person who has transactions with foreign persons involving selected services or intellectual property during the U.S. person's fiscal year 2017. The term "U.S. person" is defined to include both individuals and companies. All U.S. persons who have engaged in such qualifying transactions with foreign persons are required to complete the BE-120 Survey regardless of whether the U.S. person has been contacted by the BEA.

The list of services covered by the BE-120 survey is remarkably broad. For example, transactions between U.S. and foreign persons that occurred in fiscal year 2017 involving services such as (1) computer software, including end-user licenses and customization services, (2) cloud computing and data storage services, (3) engineering services, (4) financial services, (5) maintenance services, (6) contract manufacturing services, and/or (7) disbursements for sales promotion and representation must be reported by the U.S. person. The BE-120 Survey also covers all transactions between U.S. and foreign persons involving intellectual property rights. This includes, for example, the outright purchase or sale of any type of intellectual property rights (e.g., proprietary rights related to patents, processes, and trade secrets, as well as rights to trademarks or copyrights) as well as the licensing of any rights to intellectual property. In total, the BEA has broadly identified 59 types of transactions which are covered by the BE-120 Survey. A complete list of the types of services and intellectual property covered by the survey can be found at 15 C.F.R. 801.11. The BE-120 Survey is required not only for U.S. persons who had qualifying transactions with unrelated foreign persons buts also for transactions between U.S. persons and their foreign affiliates. For example, a U.S. subsidiary company must complete the BE-120 Survey if it had any qualifying transactions with its foreign parent company. Similarly, a

U.S. parent company must complete the BE-120 Survey if it had any qualifying transactions with a foreign subsidiary company.

The BE-120 Survey covers all inbound and outbound transactions (i.e., both purchases from and sales to foreign persons). If the U.S. person had combined sales to foreign persons of covered services and intellectual property in excess of \$2 million in fiscal year 2017 or combined purchases from foreign persons of covered services and intellectual property in excess of \$1 million in fiscal year 2017, then the U.S. person is required to provide data on all such sales and purchases with a breakdown of total sales and purchases by country by relationship to the foreign person. If the transactions do not exceed the threshold of \$2 million in sales or \$1 million in purchases in fiscal year 2017, then the U.S. person may report only the total amount of sales and/or purchases for each type of transaction in which it engaged.

The deadline for completing the BE-120 Survey is June 29, 2018 (or July 30, 2018 if the survey is submitted through BEA's eFile system).

Failure to complete the survey may result in civil penalties ranging between \$2,500 and \$25,000 and/or a court order commanding the person to complete the survey. If failure to complete the survey is found to be willful, additional criminal penalties of up to \$10,000 and/or up to one year in prison may be imposed.