



News & Types: Client Advisories

BE-120 Mandatory Reporting Due July 31, 2023 for Certain Transactions Between U.S. and Foreign Persons/Businesses

7/7/2023

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Practices: Corporate, Finance & Acquisitions

2022 Benchmark Survey. The Bureau of Economic Analysis (“BEA”) is a federal agency under the U.S. Department of Commerce that produces accurate and objective statistics on the U.S. Economy. The BEA 2022 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (“BE-120”) must be filed for all covered persons or businesses by July 31, 2023.

Who has to file? All U.S. persons or businesses are required, by law, to file a BE-120 if the person or business had foreign sales or purchase transactions for covered services or intellectual property during its 2022 fiscal year, regardless of the total amount of the transactions.

What foreign transactions are covered? A wide breadth of service transactions are covered, including legal services, health services, agricultural services and construction services. Intellectual property transactions covered include rights to use, rights to distribute, and sale or purchase of intellectual property, but intellectual property transactions involving the sale or purchase of physical products are excluded. Further details of the covered transactions are provided in the BE-120.

What needs to be reported? Mandatory reporting obligations cover transactions with both affiliated and unaffiliated foreign persons for the 2022 fiscal year. Some of the possible variations include:

- A person or business contacted about BE-120 that does not have covered transactions to report must still file and answer the questions in the first six pages of the survey.
- A person or business with combined total purchases of \$1 million or less and combined total sales of \$2 million or less must file and answer the questions in the first six pages of the survey.
- A person or business with combined total purchases and sales more than the above thresholds of \$1 million purchases and \$2 million sales will be required to file and answer the entire survey and report additional details for each transaction type over \$500.

Failure to report. Failure to report may result in civil fines of not less than \$2,500 and not more than \$25,000. Additionally, a willful failure to report will result in further fines of not more than \$10,000 and up to one year

imprisonment. Directors, officers, employees, and agents who knowingly participate in a willful failure to file are also subject to these penalties. Note that a request to extend the July 31, 2023, deadline can be made with the BEA online or in writing.

The BE-120 is available on the BEA website, which includes other helpful resources (<https://apps.bea.gov/surveys/be120/>).

Please contact Dayne Kono at dkono@masudafunai.com or any member of Masuda Funai's Corporate, Finance, and Acquisition group with any questions.