

Cross Border Business Law Blog

The New BE-120: Mandatory Reporting of Foreign Transactions in Services and Intellectual Property – Upcoming June 29, 2018 Deadline

Alyssa Garcia on 6.22.18 | Posted in Intellectual Property, International Business

The Department of Commerce, Bureau of Economic Analysis ("BEA") is currently administering a BE-120 survey, which is an updated version of the BE-120 required in 2011. This time, however, if you are a U.S. person or entity, you must complete the BE-120 survey by **June 29, 2018 (for manual filing) and July 30, 2018 (using the BEA's eFile system)** if the following applies to you: During fiscal year 2017, you engaged in either (a) the foreign sale or purchase of services or (b) transactions in intellectual property rights ("IP") with foreign persons involving rights to use, rights to reproduce and/or distribute, or outright sales or purchases of IP. You may only have to complete part of the survey or all of it, depending on the volume of your activity. Further, due to rules regarding rounding off dollar volume, activity under \$500 is not reported. More details are available below. Deadline extensions are available by written request.

Mandatory Reporting

You must report your foreign transactions using the BE-120 survey if (1) you were directly notified by the BEA or (2) you engaged in the sale or purchase of services or had IP transactions with a foreign person or entity in fiscal year 2017. This year, unlike past five-year surveys, you have to file the BE-120, if the amount of your sales or purchases exceeds \$500. Mandatory questions are added for contract manufacturing, and the survey also collects new information on service transactions conducted remotely. All data collected is used only for analytical and statistical purposes. Without your consent, it may not be used in a manner that allows you to be identified. The Form-120 cannot be used for taxation, investigation or regulation. Copies retained in your files are immune from legal process.

Activity Covered

The BE-120 survey is comprehensive and covers nearly all services and IP transaction types. Essentially all services are included except port or transportation services, travel-related services, and foreign student or medical patient related services. Similarly, the survey covers all IP transactions regarding rights to use, reproduce, and distribute, and outright sales or purchases. To view the complete list of covered transactions, visit the [federal register](#) or the

BE-120 form webpages.

Reporting Requirements

- If your foreign service and IP transactions are more than \$500 but less than \$2 million in combined sales or \$1 million in combined purchases, you are only required to complete the first eight pages of the survey, and report total sales and purchases for each transaction type.
- If your foreign service and IP transactions exceed \$2 million in combined sales or \$1 million in combined purchases, you are required to complete the entire survey including applicable schedules A-E. You must also identify the total transaction amounts by country, and identify your relationship with each foreign transactor (foreign affiliate, foreign parent group, or unaffiliated).

Penalties

Failure to file can result in civil penalties between \$4,454 to \$44,539 and/or injunctive relief commanding compliance. (Penalties are subject to inflationary adjustments.) If failure to report is willful, violators may be subject to criminal recourse including imprisonment for up to one year, and an additional fee of up to \$10,000.

If you have any questions, feel free to reach out to [Sara Sandford](mailto:sara.sandford@foster.com) at sara.sandford@foster.com or at 206.816.1464.

Tags: BE-120, BEA, BEA-120 survey, Department of Commerce Bureau of Economic Analysis, foreign purchase of services, foreign sale, foreign transactions, intellectual property, intellectual property rights