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Foreign Investments Must Be Reported



For many years the U.S. Department of Commerce’s Bureau of Economic Analysis (“BEA”) conducted *voluntary* surveys of foreign investments in the U.S. In 2003 compliance with these surveys became *mandatory*. In 2009,

the standard reporting form for the initial transaction changed from the Form BE-13 to the new Form BE-605. With all of these changes, and despite significant penalties for not filing, the BEA’s reporting requirements are not well understood and are often overlooked.

• **When is a filing required?** If a U.S. enterprise has a foreign person or entity directly or indirectly owning 10% or more of its voting stock (or an equivalent interest) at any time during a quarter, the Form BE-605 must be filed even if the U.S. enterprise is liquidated or inactive during that period. This is true for both public and private companies.

• **What reports are required?** Nonexempt companies must file the initial report, plus a quarterly report within 30 days after the end of each quarter, on Form BE-605. They must

also file an annual report by March 31 of each year. Exempt companies (less than \$30 million in each of assets, sales, gross revenue and net income) must only file once per year. Both exempt and nonexempt companies must also file a Form BE-12 every 5 years as required by the BEA on their schedule.

• **What are the penalties for not filing?** Civil penalties of not less than \$2,500 and not more than \$25,000, as well as injunctive relief requiring compliance, may be imposed. Willful failure to report can result in a \$10,000 fine and imprisonment for up to one year. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may incur such a fine, imprisonment or both.

• **Can you refuse to file for confidentiality reasons?** No. Filing of all reports is mandatory, even if you have not been contacted by the BEA. However, the reports are confidential and may only be used for analytical or statistical purposes, and not for taxation, investigation or regulation.

If you have foreign investors and have not filed or have questions regarding the mandatory BEA filings, don’t wait. Postponing may result in a higher likelihood of penalties and/or harsher penalties.

Success Story



One of SLG’s clients was assessed several million dollars of penalties and interest by the Internal Revenue Service. The client was one of several companies in a complicated entity structure. Prior to hiring SLG, the client had prepared some paperwork that unwittingly triggered the IRS’s assessment. Following a comprehensive review of the client’s documents, SLG was able to diagnose, correct, and clean up the paperwork issues such that no payment to the IRS was required.

National Estate Planning Awareness Week



Liza Hanks, Esq.

The week of October 20-26 was declared the first annual National Estate Planning Awareness Week. Nearly three-fifths of Americans don't even have a basic will. Even more don't have advance health care directives or powers of attorney, which designate agents to act on their behalf in case they become incapacitated. And fewer still have a living trust that will allow their heirs to avoid an expensive and drawn out probate proceeding upon their deaths.

Why is it that most people don't plan for the inevitable? Here are the five main "reasons" why I think people don't plan:

1. They are going to live forever.
2. They don't have enough money to need an estate plan.
3. If they make an estate plan, they will die sooner.
4. They don't know whom to name as a guardian of their children.
5. Estate planning is too hard.

If any of these apply to you, here are five things to think about:

1. Estate planning helps make it easier for those you love when you do die.
2. If you own a home and have adequate life insurance, you will be leaving your kids more than a million dollars. Make sure they don't inherit it all when they turn 18.
3. There is absolutely no evidence that completing an estate plan means you die sooner.
4. You are the best person to choose a guardian, even if there's no perfect choice.
5. You can always revise your plan over time.

Estate planning does not have to be difficult or complicated. There are simple things that you can do to make it easier for your loved ones. Creating a will, nominating guardians, and planning for incapacity are all straightforward and easy things to accomplish. Make them your New Year's Resolution and get a jump on 2010.



Tax Corner

- **Independent Contractor or Employee?**

Despite limited resources the IRS is looking to expand its worker misclassification program to include more potential audit targets and to allow IRS agents to make deals and offer reduced penalties to a greater number of firms. In exchange, the firms must agree to proper treatment of workers as employees going forward. [Source: Kiplinger Tax Letter, 10-16-09 Vol. 84, No. 21]

- **LLC Losses Passive or Active?**

A couple with an LLC charter boat business spent over 100 hours running the operation, and no one else spent more time than they did. The IRS denied them the loss deduction because they did not meet the 500 hour passive loss test. The Tax Court said the losses were not passive, the IRS regulations are too restrictive, and taxpayers with losses from LLCs can use the 100 hour test instead. [Source: Kiplinger Tax Letter, 10-16-09 Vol. 84, No. 21 citing *Hegarty, TC Summ. Op. 2009-153*]

- **Close Your Business Entity Before Year End!**

Although the Secretary of State no longer requires that dissolution papers be filed before year end, filing now may let you take losses in 2009 on the liquidation because it helps prove the business was finished prior to year end. If you are ready to close down a business entity do not wait until the last week in December—call us now. [Source: Spidell's California Tax Letter 11-1-09 Vol 31.11]

****Reminder**** It is time to start thinking about year end tax planning. Make sure you talk to your tax advisor about possible deductions for placing new business assets in service before the end of the year, timing of year end bonuses, special 2009 estimated tax rules for small businesses, and how the Alternative Minimum Tax may affect all of your planning.



SLG Welcomes Robert Hawn



Robert Hawn, Esq.

We are excited to announce that Bob Hawn has joined Structure Law Group.

Bob's practice emphasizes technology start-up companies, with a special emphasis on technology transfer, development, and distribution transactions. He represents companies in the software, semiconductor, internet, wireless, and medical device industries. Bob has led technology transfer and licensing transactions involving company core technologies responsible for generating substantial portions of company revenue, and numerous merger and acquisition transactions and private financings. He also works with a number of multinational companies in their U.S. market entry activities, often migrating those companies into Silicon Valley as part of venture financing transactions.

Bob received a BA in Economics with Honors from the University of California at Berkeley in 1980, and was elected into Phi Beta Kappa. He received his JD from the University of California at Davis in 1984, where he served as Assistant Editor on the Law Review, and published in the area of developing country debt relief.

Bob maintains an active speaking and publication schedule. He has presented seminars ranging from the use of Cayman Island entities in corporate structuring, to internet-related legal issues. His published articles range from recent high technology legislation to a discussion of agreements in the Software as a Service, or SaaS, industry.

His professional activities included involvement with the High Technology Section of the Santa Clara County Bar Association, both as past member and Chair of the Executive Committee, and currently as Vice-Chair of the Cyberspace Law Committee of the Business Law Section of the State Bar of California. He also serves on the Advisory Committee for Innovation Center Denmark where he coaches Danish companies seeking to enter the U.S. market.

Bob's community activities illustrate his love of the outdoors and music. He served as a member of the Board of Directors of The Land Trust of Santa Clara County. He also provided pro bono assistance as counsel to the Board of Directors of the San Jose Jazz Society. He is an avid mountain biker and jazz pianist, performing at various local venues and the San Jose Jazz Festival.

Bob can be reached by phone at (408) 441-7500 or email at bhawn@structurelaw.com.



Reminders And Other Items Of Note

- Dissolution of Entities in 2009

If you want to dissolve an entity to avoid paying California franchise taxes for 2010, now is the time to consider winding up before year end.

- Formation of New Entities

If you are planning on forming a new entity before the end of the year, please note that if the entity is formed during the last two weeks of the year and does not do any business until January 1, 2010, it will not incur taxes for 2009.

Please call us at (408) 441-7500 if we can be of any assistance with the formation or dissolution of an entity.

END OF YEAR

FIXED FEE COMPLIANCE SPECIAL

Review of corporate minute book and preparation of up to 2 years of outstanding annual board and shareholders minutes for **\$499**.

This price is available for the first 10 existing clients who contact us. We want to help everyone before year end but we have limited staff available so please contact us as soon as possible to reserve our time.



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Dates To Remember

- October 25 Mother-in-Law Day
- October 31 Halloween
- November 11 Veteran's Day—some courts and government offices closed
- November 26 Thanksgiving
- December 25 Christmas Day
- December 31 New Year's Eve



Did You Know?

- The Declaration of Independence was written on hemp paper.
- It would take 11 Empire State Buildings to measure the Gulf of Mexico at its deepest point.
- A cricket's ears are on its front legs.
- The largest number of children born to one woman is recorded at 69. From 1725-1765, a Russian woman gave birth to 16 sets of twins, 7 sets of triplets, and 4 sets of quadruplets.
- A gallon of sea water has 4 1/2 tablespoons of salt.

We appreciate your referrals!



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