

## Report on recent US international tax developments - 3 September 2020

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The United States (US) Treasury and the Internal Revenue Service (IRS) on 1 September released final regulations ([T.D. 9910](#); Final Regulations) on the Base Erosion and Anti-abuse Tax (BEAT) under Internal Revenue Code<sup>1</sup> Section 59A. The Final Regulations generally follow the proposed regulations issued in December 2019, as expected, with certain revisions.

Among the highlights, the final rules:

- ▶ Retain the rule about changes in the composition of a taxpayer's aggregate group and clarify the timing of the deemed tax year-end of a member joining or leaving the group (now treated as occurring at the end of the day of the transaction)
- ▶ Detail when members of a taxpayer's aggregate group have different tax years, including rules that apply in certain instances to annualize a member's gross receipts, base erosion tax benefits, and deductions for determining the gross receipts and base erosion percentage of the taxpayer's aggregate group
- ▶ Limit favorably the anti-abuse rule in certain circumstances for transactions that increase the basis of property acquired by a taxpayer in a non-recognition transaction

- ▶ Retain the definition of “allowed deduction,” which includes all deductions that may properly be claimed (whether deducted or not) for the tax year, while also retaining the election to waive deductions so that waived deductions are not treated as base erosion tax benefits (e.g., when determining base erosion percentage or modified taxable income)
- ▶ Include, as part of the BEAT waiver election, a provision for the waiver of any premium or other consideration paid or accrued by a life or non-life insurance company for any reinsurance payments that would be a base erosion tax benefit

The final regulations also:

- ▶ Allow a partner, but not the partnership itself, to make a BEAT waiver election for allocated deductions from the partnership
- ▶ Conform the treatment of a partner’s BEAT waiver election with Section 163(j) so that an increase in the partner’s income from waiving a deduction taken into account by the partnership to reduce the partnership’s adjusted taxable income is treated as a partner-basis item for the partner, not the partnership, for purposes of Section 163(j)
- ▶ Adopt the proposed rule treating an income allocation to the contributing partner in lieu of a deduction allocation to the non-contributing partner as a base erosion tax benefit under Section 59A

The IRS on 1 September announced in [Notice 2020-69](#) its intent to issue regulations addressing the application of Sections 951 and 951A to certain S corporations with accumulated earnings and profits. For S corporations electing this treatment, Global Intangible Low-taxed Income (GILTI) inclusions would create an accumulated adjustment account.

The notice also announces that Treasury and the IRS intend to issue regulations addressing the treatment of qualified improvement property (QIP) under the alternative depreciation system of Section 168(g) for calculating the qualified business asset investment (QBAI), for purposes of the Foreign Derived Intangible Income (FDII) and GILTI provisions. When issued, these rules would implement recent clarifications enacted as part of the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. All of these provisions were originally part of the *Tax Cuts and Jobs Act*.

In a notice published this week in the Federal Register, the IRS requested comments on Rev. Proc. 2015-40 with respect to competent authority assistance. The IRS is seeking comments on the collection of information in regard to the procedures for requesting competent authority assistance under tax treaties. The public comment period lasts 60 days from the date of publication in the Federal Register.

The Office of Management and Budget Office of Information and Regulatory Affairs (OIRA) on 31 August received from Treasury the final and proposed foreign tax credit regulations for review in regard to provisions enacted by the *Tax Cuts and Jobs Act*. The final regulations follow proposed regulations that were issued in December 2019 that would, among other things, require research and experimental expenditures to be allocated to the taxpayer’s gross intangible income, which does not include dividends, subpart F income, or GILTI inclusions, under a new gross-receipts based method. The proposed rules also provided detailed guidance for allocating and apportioning current-year foreign taxes to separate Section 904(d) categories of income.

The new proposed rules now at OIRA are described as guidance related to the foreign tax credit and clarification of FDII.

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## Endnote

1. All “Section” references are to the Internal Revenue Code of 1986, and the regulations promulgated thereunder.

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