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If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).



Instructions for Form 8991

(Rev. December 2020)

Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8991, its schedules, and its instructions, such as legislation enacted or guidance published after the form and instructions were issued, go to [IRS.gov/Form8991](https://www.irs.gov/Form8991).

Background

The Tax Cuts and Jobs Act of 2017 (P.L. 115-97) added new section 59A (Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts), which applies to large corporations that have the ability to reduce U.S. tax liabilities by making deductible payments to foreign related parties. The Base Erosion and Anti-Abuse Tax (BEAT) of section 59A is generally levied on certain large corporations that have deductions with respect to amounts paid or accrued to foreign related parties that are greater than 3% of their total deductions (2% in the case of certain banks or registered securities dealers), a determination referred to as the base erosion percentage test. Large corporations are those with gross receipts of \$500 million or more, as calculated under the regulations of section 59A, a determination referred to as the gross receipts test. The BEAT operates as a minimum tax, so a taxpayer is only subject to additional tax under the BEAT if the BEAT tax rate multiplied by the taxpayer's modified taxable income exceeds the taxpayer's regular tax liability adjusted for certain credits.

On December 21, 2018, the Department of the Treasury ("Treasury Department") and the IRS published proposed regulations under sections 59A, 383, 1502, 6038A, and 6655 in the Federal Register (83 FR 65956) (the "2018 proposed regulations"). Taxpayers may apply the 2018 proposed regulations in their entirety for all tax years ending on or before December 6, 2019.

On December 6, 2019, the Treasury Department and the IRS published final regulations (the "final regulations") under sections 59A, 383, 1502, and 6038A, and proposed regulations which propose other regulations under sections 59A and 6031 (the "2019 proposed regulations").

On October 9, 2020, the Treasury Department and the IRS published final regulations (the "2020 final regulations")

providing additional guidance under sections 59A, 1502, and 6031.

Reminders

Corrected Form 8991. If you file a Form 8991 that you later determine is incomplete or incorrect, file a corrected Form 8991 with an amended tax return, using the amended return instructions for the return with which you originally filed Form 8991. Write "Corrected" at the top of the form and attach a statement identifying the changes.

Reporting requirements and penalties. P.L. 115-97 also expanded the information reporting requirements under section 6038A and increased the amount of the penalty for failure to furnish information or maintain records under section 6038A(d) (1) and (2) from \$10,000 to \$25,000. See Form 5472 and its instructions for further details.

General Instructions

Purpose of Form

Use Form 8991 to determine a taxpayer's base erosion minimum tax amount for the year.

Use Schedule A to determine the amount of base erosion payments and base erosion tax benefits for purposes of:

- Determining the taxpayer's base erosion percentage, and
- Determining the applicable taxpayer's modified taxable income.

Use Schedule B to report the amount of deductions being waived for the tax year.

Use Schedule C to determine the credits that reduce regular tax liability in computing the base erosion minimum tax amount.

Definitions

Applicable taxpayer. An applicable taxpayer is, with respect to any tax year, a taxpayer which meets all of the following criteria.

- The taxpayer is a corporation other than a regulated investment company (RIC), a real estate investment trust (REIT), or an S corporation.
- The taxpayer has average annual gross receipts for the 3-tax-year period ending with the preceding tax year that are at least \$500 million (the "gross receipts test").

- The taxpayer has a base erosion percentage for the tax year of 3% or higher; 2% or higher for a taxpayer who is a member of an affiliated group which includes a bank or a registered securities dealer as defined in Regulations section 1.59A-1(b)(15) (the "base erosion percentage test").

See Regulations section 1.59A-2 for more information on how to determine whether a taxpayer is an applicable taxpayer.

Base erosion minimum tax amount.

The base erosion minimum tax amount for the tax year is the excess of 10% (5% in the case of a tax year beginning in 2018) of the modified taxable income of the applicable taxpayer for the tax year over the applicable taxpayer's regular tax liability under section 26(b), reduced (but not below zero) by the excess, if any, of:

1. The credits allowed under chapter 1 of subtitle A of the Code ("chapter 1") against the applicable taxpayer's regular tax liability over
2. The sum of:
 - a. The credit allowed under section 38 which is properly allocable to the research credit determined under section 41(a), plus
 - b. The portion of the applicable section 38 credits not in excess of 80% of the lesser of the amount of the applicable section 38 credits or the base erosion minimum tax amount determined without taking the applicable section 38 credits into account, plus
 - c. Any credits allowed under sections 33, 37, and 53.

If the applicable taxpayer is a member of an affiliated group under section 1504(a)(1) which includes a bank (as defined in section 581) or a registered securities dealer under section 15(a) of the Securities Exchange Act of 1934, the tax rate in effect for the tax year for the base erosion minimum tax amount is increased by an additional 1%.

See Regulations section 1.59A-5 for more information on how to compute the base erosion minimum tax amount.

Base erosion payment. A base erosion payment is any amount paid or accrued by a taxpayer to a foreign person (as defined in Regulations section 1.59A-1(b)(10)) that is a related party (as defined in Regulations section 1.59A-1(b)(12)) with

respect to which a deduction is allowable under chapter 1.

The amount paid or accrued, and the identity of the payor and recipient of the amount paid or accrued, is determined under general tax principles.

An amount paid or accrued includes an amount paid or accrued using any form of consideration, such as cash, property, stock, a partnership interest, or the assumption of a liability.

Base erosion payments are generally determined on a gross basis, unless the Code or regulations expressly permit netting of amounts in determining payments.

For purposes of determining whether a taxpayer has made a base erosion payment, the taxpayer must treat a payment to or from a partnership as made to or from each partner. See Regulations section 1.59A-7 for more information on how the BEAT applies to partners.

Base erosion payments also include the following.

- Amounts paid or accrued by a taxpayer to a foreign related party in connection with the acquisition of depreciable or amortizable property.
- Premiums or other consideration paid or accrued by a taxpayer to a foreign related party for reinsurance payments which are taken into account under section 803(a)(1)(B) or section 832(b)(4)(A).
- Any amount paid or accrued by a taxpayer to a related party that is a surrogate foreign corporation (if that corporation first became a surrogate foreign corporation after November 9, 2017), or a foreign person which is a member of the same expanded affiliated group as the surrogate foreign corporation (collectively, “expatriated entities”), which results in a reduction to gross receipts. See section 59A(d)(4) for more information.

See Regulations section 1.59A-3 for more information on the definition of a base erosion payment.

Base erosion payments do not include the following types of payments made to a foreign person that is a related party.

- Amounts resulting in a reduction to determine gross income, such as cost of goods sold.
- Amounts paid or accrued for services if such services are services that meet the requirements for eligibility for use of the services cost method under section 482 (determined without regard to the requirement that the services not contribute significantly to the fundamental risks of business success or failure), but only to the extent of the total services cost of those services. The mark-up component paid or accrued to a foreign related party is a base erosion payment.

- **Qualified derivative payments.** A qualified derivative payment is a payment made by a taxpayer pursuant to a derivative with respect to which the taxpayer (a) recognizes gain or loss as if the derivative were sold for its fair market value on the last business day of the tax year and any additional times required by the taxpayer’s method of accounting, (b) treats the recognized gain or loss as ordinary, and (c) treats the character of all payments made with respect to the derivative as ordinary. A qualified derivative payment will not be excluded from being characterized as a base erosion payment if the payment is properly allocable to a non-derivative component of a contract or if the payment would be treated as a base erosion payment if it were not made pursuant to a derivative, such as an interest, royalty, or services payment.

- **Effectively connected income and income taken into account in U.S. taxable income under an income tax treaty.**

1. Amounts paid or accrued that are subject to U.S. federal income taxation as income that is effectively connected to a U.S. trade or business if the taxpayer receives a withholding certificate with respect to the income.

2. If the foreign related party determines its taxable income applying the business profits provisions of an income tax treaty, amounts paid or accrued to the foreign related party that are taken into account in determining its taxable income.

- Exchange loss from section 988 transactions.
- Certain deductions for amounts paid or accrued with respect to certain total loss absorbing capacity securities (TLAC) securities and certain foreign TLAC securities.
- Amounts transferred in connection with certain specified nonrecognition transactions. See Regulations section 1.59A-3(b)(3)(viii) for more information.
- Amounts paid by the taxpayer to a regulated foreign insurance company under a reinsurance contract for reinsurance losses incurred or claims payments that are ultimately paid by the foreign insurance company to an unrelated party.

See Regulations section 1.59A-3(b)(3)(i)–(ix) for further information on whether a payment or accrual is not a base erosion payment.

Related party. A related party is:

- Any 25% owner of the taxpayer (as defined in Regulations section 1.59A-1(b)(17)(ii)(A)),
- Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25% owner of the taxpayer, or

- Any other person who is related to the taxpayer within the meaning of Regulations section 1.59A-1(b)(17)(iii).

Section 318, with certain modifications, applies in determining whether a person is a related party. See Regulations section 1.59A-1(b)(17)(iii) for additional rules relating to the modification of section 318 for use in determining a person’s relatedness.

Base erosion tax benefit. Generally, a base erosion tax benefit is any deduction that is allowed under chapter 1 for the tax year for any base erosion payment. Base erosion tax benefits also include any deductions allowed for the tax year for depreciation or amortization with respect to the property acquired with a base erosion payment (that are paid or accrued in tax years beginning after 2017). Base erosion tax benefits also include certain reductions in the gross amount of premiums and other consideration on insurance and annuity contracts, or any deduction from the amount of gross premiums written on insurance contracts during the tax year for premiums paid for reinsurance, and payments to certain expatriated entities (as defined under *Base erosion payment*, earlier) that cause a reduction in gross receipts in computing gross income of the taxpayer for the tax year.

See the instructions for Schedule A for special rules applicable in determining the amount of the base erosion tax benefit when taxes have been imposed by section 871 or 881 and withheld under section 1441 or 1442 on a base erosion payment; or when the taxpayer has made an interest payment that gives rise to a base erosion tax benefit and section 163(j) applies for the tax year.

Base erosion percentage. The base erosion percentage is the percentage determined by dividing:

1. The aggregate amount of base erosion tax benefits of the taxpayer for the tax year (numerator) by

2. The aggregate amount of the taxpayer’s allowed deductions and base erosion tax benefits (denominator). The denominator excludes the following deductions.

- a. Any deduction allowed under sections 172, 245A, or 250.

- b. Any deduction for amounts paid or accrued for services to which the exception under Regulations section 1.59A-3(b)(3)(i) for the section 482 services cost method applies.

- c. Any deduction for qualified derivative payments which are not treated as base erosion payments as a result of Regulations section 1.59A-3(b)(3)(ii).

d. Exchange loss from section 988 transactions that is not a base erosion payment as a result of the exception under Regulations section 1.59A-3(b)(3)(iv).

e. Any deduction for amounts paid or accrued to foreign related parties with respect to TLAC securities and foreign TLAC securities that are not treated as base erosion payments as a result of Regulations section 1.59A-3(b)(3)(v).

f. Any reinsurance losses incurred or claims payments that are not treated as base erosion payments as a result of the exception under Regulations section 1.59A-3(b)(3)(ix).

g. Any deduction not allowed in determining taxable income.

See Regulations section 1.59A-2(e)(3) for further information on how to compute the base erosion percentage.

Modified taxable income. Modified taxable income is the applicable taxpayer's taxable income plus any base erosion tax benefit with respect to any base erosion payment and the base erosion percentage of any net operating loss deduction allowed under section 172 for the tax year.

See Regulations section 1.59A-4(b) for further information on the computation of modified taxable income.

Applicable section 38 credits.

Applicable section 38 credits are the credits allowed under section 38 for the tax year that are properly allocable to:

- The low-income housing credit determined under section 42(a);
- The renewable electricity production credit determined under section 45(a); and
- The investment credit determined under section 46, but only to the extent properly allocable to the energy credit determined under section 48.

See also the instructions for Schedule C, later.

Aggregation rules. When applying the gross receipts test and base erosion percentage test, a taxpayer that is a member of an aggregate group determines its gross receipts and base erosion percentage as if it were 1 person, on the basis of its aggregate group. A taxpayer is a member of an aggregate group if it belongs to a controlled group of corporations. The term "controlled group of corporations" has the meaning given by section 1563(a) except that:

1. "More than 50%" is substituted for "at least 80%" each place it appears in section 1563(a), and

2. The determination of the controlled group of corporations is made without regard to sections 1563(a)(4) and (e)(3) (C).

Foreign corporations are excluded from an aggregate group except to the extent the foreign corporation has income effectively connected with the conduct of a trade or business in the United States or income taken into account in determining net taxable income using an income tax treaty.

An aggregate group is determined for each taxpayer. A taxpayer that is a member of an aggregate group determines its gross receipts and base erosion percentage on the basis of its aggregate group by taking into account the gross receipts, base erosion payments, base erosion tax benefits, and deductions of the members of the aggregate group for the tax years that end with or within the taxpayer's tax year.

See Regulations section 1.59A-2(c) for further information on how to apply the aggregation rules.

Who Must File

Any corporation, other than a RIC, a REIT, or an S corporation, that has aggregate gross receipts of at least \$500 million in 1 or more of the 3 preceding tax years ending with the preceding tax year must file Form 8991.

See Form 8991, Part I, lines 1a through 1g, and *Specific Instructions*, later, to determine whether the corporation has gross receipts of at least \$500 million in 1 or more of the 3 preceding tax years.

See also questions/items and related instructions in the following forms.

- Question 22, Schedule K, Form 1120.
- Item DD, Form 1120-F.
- Question 14, Schedule M, Form 1120-L.
- Question 15, Schedule I, Form 1120-PC.
- Question 16, Schedule K, Form 1120-C.

When To File

Attach Form 8991 to your income tax return (or, if applicable, exempt organization business income tax return) and file by the due date (including extensions) for that return.

Specific Instructions

Note. Complete every applicable entry space on Form 8991. Do not enter "See Attached" or "Available Upon Request" instead of completing the entry spaces. If more space is needed on the forms or schedules, attach separate sheets using the same size and format as the printed forms.

If there are supporting statements and attachments, arrange them in the same order as the schedules or forms they support and attach them last. Show the

totals on the printed forms. Enter the filer's name and EIN on each supporting statement or attachment.

Part I—Applicable Taxpayer

Average Annual Gross Receipts for the 3-Tax-Year Period Ending With the Preceding Tax Year

A taxpayer that falls within the definition of *Who Must File*, earlier, and is filing Form 8991 should complete lines 1a through 1g to determine their average annual gross receipts for the 3-tax-year period ending with the preceding tax year.

For purposes of determining average annual gross receipts, a foreign corporation's gross receipts are included only when such gross receipts are taken into account when determining the foreign corporation's income effectively connected with a U.S. trade or business ("ECI"). If the foreign corporation is subject to tax on a net basis pursuant to a U.S. income tax treaty, only gross receipts that are attributable to transactions taken into account in determining the foreign corporation's net taxable income are included in the gross receipts determination.

Line 1a. Enter in column (a) your gross receipts for the first preceding tax year. Enter in column (b) your gross receipts for the second preceding tax year. Enter in column (c) your gross receipts for the third preceding tax year.

Only include the gross receipts of the filer on line 1a. Do not include on this line the gross receipts of all other persons treated as 1 person under the aggregation rules of Regulations section 1.59A-2(c) which should be reported on line 1c. See the instructions for line 1c below.

Line 1b. Enter in column (a) gross receipts from partnerships for the first preceding tax year. Enter in column (b) gross receipts from partnerships for the second preceding tax year. Enter in column (c) gross receipts from partnerships for the third preceding tax year.

A filer may report gross receipts from Form 1065 (Sch. K-1), Partner's Share of Income, Deductions, Credits, etc., box 20 (tax years 2018 and 2019) and box 16 (tax year 2020), received from partnerships in which the applicable taxpayer holds partnership interests.

Line 1c. Enter in column (a) gross receipts of all other persons treated as 1 person under the aggregation rules of Regulations section 1.59A-2(c) (the "aggregate gross receipts") for the first preceding tax year. Enter in column (b) the

aggregate gross receipts for the second preceding tax year. Enter in column (c) the aggregate gross receipts for the third preceding tax year. Do not include on line 1c gross receipts that have already been included on line 1a.

Line 1f. If the taxpayer was not in existence for the entire 3-year period referenced in columns (a), (b), and (c), the taxpayer must determine a gross receipts average for the period that it was in existence (which includes the current year's gross receipts). See Regulations section 1.59A-2(d)(2) for further information.

Line 1g. If you check "No" on line 1g, you are not subject to the section 59A tax on base erosion payments of taxpayers with substantial gross receipts. Do not complete the remaining lines. Attach Form 8991 to your tax return.

If you check "Yes" on line 1g, continue to line 2a.

Base Erosion Percentage for the Tax Year

Complete lines 2a through 2o to determine your base erosion percentage for the tax year. See the definition of *Aggregation rules*, earlier, for information on how to determine the base erosion percentage for an aggregate group. If the taxpayer is not a member of an aggregate group, the taxpayer should enter its own amounts in lines 2a through 2o.

A taxpayer is subject to the 2% base erosion percentage threshold if it is a member of an affiliated group (as defined in section 1504(a)(1)) that includes a bank (as defined in section 581) or a registered securities dealer under section 15(a) of the Securities Exchange Act of 1934.

Line 2a. Enter the amount of base erosion tax benefits from Schedule A, line 15, column (a-2).

Line 2b. Enter the aggregate amount of deductions allowed under chapter 1 (sections 1 through 1400) for the tax year. The amount entered should be the aggregate deductions allowed to all persons that are treated as 1 person under the aggregation rules. Do not include amounts reported on line 2c (reinsurance payments) or amounts reported on line 2d (payments to expatriated entities).

Line 2c. For reinsurance payments paid or accrued that are base erosion payments described in Regulations section 1.59A-3(b)(1)(iii), enter the aggregate amount of:

- Any reduction under section 803(a)(1) (B) in the gross amount of premiums and other consideration on insurance and annuity contracts for premiums and other consideration arising out of indemnity insurance, and

- Any deduction under section 832(b)(4) (A) from the amount of gross premiums written on insurance contracts during the tax year for premiums paid for reinsurance.

Line 2d. Enter the aggregate amount paid or accrued with respect to expatriated entities that results in a reduction of the gross receipts of the taxpayer.

Line 2f. Enter the amount from Schedule A, line 5b.

Line 2g. Enter the amount from Schedule A, line 9b.

Line 2h. Enter the aggregate amount of deductions allowed under sections 172, 245A, and 250.

Line 2i. If an election is made to waive deductions in accordance with Regulations section 1.59A-3(c)(6)(i); check the "Yes" box on line 2i; complete Schedule B, Waiver of Deductions; and enter the amount from line 15 of Schedule B. If the taxpayer is a member of an aggregate group, and another member of the aggregate group has also made the election to waive deductions as described above, also include the amount of the member's waived deductions in line 2i. See *Schedule B—Waiver of Deductions*, later.

Line 2j. Enter the aggregate amount of deductions for exchange losses from section 988 transactions described in Regulations section 1.59A-2(e)(3)(ii)(D).

Line 2k. Enter the aggregate amount of deductions for TLAC securities and foreign TLAC securities described in Regulations section 1.59A-2(e)(3)(ii)(E).

Line 2l. Enter the aggregate amount of reinsurance losses incurred and claims payments described in Regulations section 1.59A-2(e)(3)(ii)(F).

Line 2p. If you check "No" for line 2p, you are not subject to the tax on base erosion payments of taxpayers with substantial gross receipts. Do not complete the remaining lines. Attach Form 8991 and the completed Schedule A (and, if applicable, Schedule B) to your tax return.

If you check "Yes" for line 2p, continue to Part II.

Part II—Modified Taxable Income

See Regulations section 1.59A-4 for further details on how to determine modified taxable income.

Line 3a. Enter the amount of taxable income after any net operating loss.

If the current year reports a loss, without any net operating loss carryovers, the amount entered here may be less than zero.

If the current year reports taxable income and there is a net operating loss carryover that would reduce taxable income below zero, enter "-0-." Do not enter an amount less than zero.

Line 3b. Enter the amount of base erosion tax benefits for the tax year with respect to base erosion payments from Schedule A, line 15, column (b-2).

Line 3c. Enter the amount of net operating loss deduction to be added back to taxable income for purposes of determining modified taxable income. To calculate this amount, first determine the amount of net operating loss deduction allowed under section 172 that does not exceed taxable income before taking into account the net operating loss deduction for all applicable tax years. Second, multiply this net operating loss deduction by the base erosion percentage for the tax year in which the net operating loss arose. If the net operating loss deduction is attributable to net operating losses that arose in more than one tax year, multiply the net operating loss attributable to each tax year by the base erosion percentage for that tax year and determine the total amount by adding the result from each tax year. For any tax year beginning before 2018, the base erosion percentage is zero.

Line 3d. Combine the amounts on lines 3a through 3c.

Part III—Regular Tax Liability Adjusted for Purposes of Computing Base Erosion Minimum Tax Amount

Line 4a. Enter the amount of regular tax liability (as defined in section 26(b)) of the applicable taxpayer for the tax year.

Consolidated groups. Affiliated groups of corporations filing consolidated returns, please review any additional information at [IRS.gov/Form8991](https://www.irs.gov/Form8991).

Line 4c. Subtract line 4b from 4a. If zero or less, enter "-0-."

Part IV—Computation of Base Erosion Minimum Tax Amount

Line 5b. Enter the applicable tax rate for the tax year. For tax years beginning during 2018, the applicable rate is 5%. For tax years beginning and ending during 2019 through 2025, the applicable rate is 10%. For any tax year that includes January 1, 2026, the applicable rate is 12.5%.

The rates above are increased by 1% if the applicable taxpayer is a member of an

affiliated group (as defined in section 1504(a)(1)) that includes either a bank (as defined in section 581), or a registered securities dealer under section 15(a) of the Securities Exchange Act of 1934.

Line 5e. Subtract line 5d from line 5c. If zero or less, enter “-0-.” This is your base erosion minimum tax amount. For an applicable taxpayer filing Form 1120, enter this amount on Schedule J, line 3. For an applicable taxpayer filing Form 1120-F, enter this amount on Section II, Schedule J, line 3. For an applicable taxpayer filing Form 1120-L, enter this amount on Schedule K, line 3. For an applicable taxpayer filing Form 1120-PC, enter this amount on page 1, line 6.

Schedule A—Base Erosion Payments and Base Erosion Tax Benefits

Schedule A is required to be attached if a corporation has average annual gross receipts of \$500 million or more for the 3-tax-year period ending with the preceding tax year. This schedule requires a taxpayer to report all amounts that are base erosion payments as defined in Regulations section 1.59A-3(b) and base erosion tax benefits as defined in Regulations section 1.59A-3(c). This schedule also requires a taxpayer to report any amounts that qualify for certain exceptions applicable to amounts that are not treated as base erosion payments.

For lines 3 through 11, complete columns (a-1), (a-2), (b-1), and (b-2) for each type of payment made by the taxpayer (or, where applicable, member of the taxpayer's aggregate group) to a foreign related party of the taxpayer during the tax year. For each type of payment reported on lines 3 through 11 of column (a-1), check all applicable boxes in columns (c), (d), and (e) to indicate the type of related party who received the base erosion payment from the taxpayer.

Election to use financial statements for interest expense. If the taxpayer is electing to use financial statements per Regulations section 1.59A-3(b)(4)(i)(D) for purposes of calculating interest expense allocable to a foreign corporation's effectively connected income, check the “Yes” box on the top of Schedule A. Otherwise, check “No”.

Consolidated groups. Affiliated groups of corporations filing consolidated returns, please review any additional information at [IRS.gov/Form8991](https://www.irs.gov/Form8991).

Columns (a-1) and (a-2). Columns (a-1) and (a-2) are used to determine the base erosion percentage, as defined in Regulations section 1.59A-2(e). Enter in columns (a-1) and (a-2) the amount of aggregate base erosion payments and

aggregate base erosion tax benefits, respectively, that correspond to each type of base erosion payment specified on lines 3 through 11. The aggregate base erosion payment entered in these lines should include only those base erosion payments paid or accrued in the current year. The aggregate base erosion tax benefit entered in these lines should only include those base erosion tax benefits allowed in the current year, which may relate to a base erosion payment paid or accrued in the current year or a prior year. The aggregate base erosion tax benefits in column (a-2), lines 3 through 11, should be the amounts determined before applying the exception in Regulations section 1.59A-3(c)(3) (base erosion tax benefits disregarded if tax withheld on base erosion payment).

Aggregate base erosion payments include the base erosion payments of all persons treated as 1 person pursuant to the aggregation rules (see the definition of *Aggregation rules*, earlier). Similarly, aggregate base erosion tax benefits include the base erosion tax benefits of all persons treated as 1 person pursuant to the aggregation rules.

However, if the taxpayer is not a member of an aggregate group, the taxpayer will enter in columns (a-1) and (a-2) the amount of its own base erosion payments and base erosion tax benefits, respectively, that correspond to each type of base erosion payment specified on lines 3 through 11, determined before applying the exception in Regulations section 1.59A-3(c)(3).

Columns (b-1) and (b-2). Columns (b-1) and (b-2) are used to determine modified taxable income, as described in Regulations section 1.59A-4, of the applicable taxpayer. Enter in columns (b-1) and (b-2) the amount of base erosion payments and base erosion tax benefits, respectively, that correspond to the type of base erosion payments specified in lines 3 through 11. Enter in these columns the applicable taxpayer's own base erosion payments and base erosion tax benefits, without applying the aggregation rules. The base erosion tax benefit in column (b-2), lines 3 through 11, should be an amount determined before applying the exception in Regulations section 1.59A-3(c)(3) (tax benefits disregarded if tax withheld on base erosion payment).

Line 1 and line 2. These lines are reserved and should not be used at this time.

Line 3, columns (a-1) and (b-1). Enter the amount paid or accrued to a foreign related party in connection with the acquisition or creation of intangible property rights (patents, copyrights, trademarks, trade secrets, etc.) that is

subject to the allowance for depreciation (or amortization in lieu of depreciation).

Line 3, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for depreciation (or amortization in lieu of depreciation) with respect to intangible property rights acquired in the current or prior years from a foreign related party.

Line 4, columns (a-1) and (b-1). Enter the amount paid or accrued to a foreign related party for the use or right to use tangible or intangible property resulting in rents, royalties, and/or license fees.

Line 4, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for amounts paid or accrued to a foreign related party for the use or right to use tangible or intangible property that results in rents, royalties, and/or license fees.

Line 5a, columns (a-1) and (b-1). Enter the amount paid or accrued to a foreign related party as compensation or consideration for services, but excluding any amount that falls within the exception in Regulations section 1.59A-3(b)(3)(i). Enter amounts paid or accrued in excess of the total services cost of the services eligible for the services cost method exception (or the mark-up component). Also enter amounts paid or accrued for services ineligible for the services cost method exception.

Line 5a, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for amounts paid or accrued to a foreign related party as compensation or consideration for services, but excluding any deduction for amounts paid or accrued that fall within the exception in Regulations section 1.59A-3(b)(3)(i). Enter amounts of deductions allowed under chapter 1 for the tax year for amounts paid or accrued in excess of the total services cost of the services eligible for the services cost method exception (or the mark-up component). Also enter amounts of deductions for services ineligible for the services cost method exception.

Line 5b. Enter the amount paid or accrued to a foreign related party as compensation or consideration for services that are defined under the exception in Regulations section 1.59A-3(b)(3)(i). Determine the amount of compensation or consideration eligible for this exception after applying the aggregation rules.

Line 6, columns (a-1) and (b-1). Enter the amount of all interest paid or accrued to a foreign related party with respect to which a deduction is allowable in the tax year.

Line 6, columns (a-2) and (b-2). Enter the amount of deductible interest expense allowed under chapter 1 for the tax year with respect to amounts paid or accrued to a foreign related party. For purposes of completing line 6, columns (a-2) and (b-2), any reduction in the amount of interest for which a deduction is allowed for the tax year under section 163(j) is treated as allocable first to interest paid or accrued to persons who are not related parties with respect to the taxpayer and then to such related parties.

Line 7, columns (a-1) and (b-1). Enter the amount paid or accrued to a foreign related party for the purchase of tangible personal property.

Line 7, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for amounts paid or accrued to a foreign related party for the purchase of tangible personal property.

Line 8, columns (a-1) and (b-1). Enter the amount of any premiums or other consideration paid or accrued to a foreign related party for insurance and reinsurance that are taken into account under section 803(a)(1)(B) (relating to return premiums and premiums or other consideration arising out of indemnity reinsurance that reduces life insurance gross income) or section 832(b)(4)(A) (relating to amounts deducted from gross premiums written on insurance contracts for return premiums and premiums paid for reinsurance). See Regulations section 1.59A-3(b)(1)(iii).

Line 8, columns (a-2) and (b-2). Enter the amount of any reduction under section 803(a)(1)(B) in gross premiums and other consideration on insurance and annuity contracts for premiums and other consideration arising out of indemnity insurance paid to a foreign related party, and the amount of any deduction under section 832(b)(4)(A) from the amount of gross premiums written on insurance contracts during the tax year for premiums paid to a foreign related party for reinsurance.

Line 9a, columns (a-1) and (b-1). Enter the amount paid or accrued to a foreign related party with respect to any derivative contract that is not a qualified derivative payment as defined in Regulations section 1.59A-6. Do not include any amount paid that is a qualified derivative payment.

Line 9a, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for amounts paid or accrued to a foreign related party with respect to any payment that is not a qualified derivative payment. Do not include any deductions allowed under chapter 1 for the tax year if the deductible amount is a qualified derivative payment.

Line 9b. Enter the amount paid to a foreign related party that is a qualified derivative payment excepted by Regulations section 1.59A-6(b). Determine the amount of the qualified derivative payments after applying the aggregation rules. Generally, a qualified derivative payment is any payment made by the taxpayer pursuant to a derivative contract provided that the taxpayer recognizes gain or loss on the derivative contract as if it were sold for its fair market value on the last business day of the tax year; treats the gain or loss as ordinary; and treats the character of all other items of income, deduction, gain, or loss with respect to a payment pursuant to the derivative as ordinary. A payment is not a qualified derivative payment if the payment would be treated as a base erosion payment if it were not made pursuant to a derivative (such as interest, royalty, or services income). With respect to a contract with both derivative and non-derivative components, a payment is not a qualified derivative payment if it is properly allocable to the non-derivative component.

A taxpayer meets the reporting requirement of Regulations sections 1.59A-6(b)(2) and 1.6038A-2(b)(7)(ix) by entering the amount on line 9b. For tax years beginning after June 7, 2021, a taxpayer will also need to provide a representation that all payments satisfy the requirements of Regulations section 1.59A-6(b)(2) and meet the reporting requirement of Regulations sections 1.59A-6(b)(2) and 1.6038A-2(b)(7)(ix).

Line 10, columns (a-1) and (b-1). Enter the amount paid or accrued to certain expatriated entities that results in a reduction of the gross receipts of the taxpayer. This amount includes payments to a surrogate foreign corporation that is a related party, but only if the entity first became a surrogate foreign corporation after November 9, 2017. The amount also includes payments to a foreign person that

is a member of the same expanded affiliated group, as defined in section 7874(c)(1), as the surrogate foreign corporation. A surrogate foreign corporation is defined in section 7874(a)(2)(B), but does not include a foreign corporation that is treated as a domestic corporation under section 7874(b).

Line 10, columns (a-2) and (b-2). Enter the amount of the reduction to gross receipts with respect to payments to expatriated entities that were used to compute gross income for the tax year.

Line 11, columns (a-1) and (b-1). Enter the total amount of any other base erosion payments that were paid or accrued to a foreign related party and for which a deduction is allowable under chapter 1. Only include those amounts that have not otherwise been included in Schedule A on lines 3 through 10.

Line 11, columns (a-2) and (b-2). Enter the amount of deductions allowed under chapter 1 for the tax year for other base erosion payments paid or accrued to a foreign related party. Only include those amounts that have not otherwise been included in Schedule A on lines 3 through 10.

Attach a statement for line 11. For amounts reported on line 11, attach a statement describing the type and amount of other payments, using the same column headings as specified in Schedule A: "Aggregate Group's Base Erosion Payments," "Aggregate Group's Base Erosion Tax Benefits," "Taxpayer's Base Erosion Payments," and "Taxpayer's Base Erosion Tax Benefits." For each type of payment, the attachment must identify the relationship of the recipients consistent with the categories and instructions for columns (c), (d), and (e) of Schedule A.

Line 12. For columns (a-1), (a-2), (b-1), and (b-2), add lines 3 through 11 and enter the total amount.

Line 13. Enter the aggregate amount of base erosion tax benefits from columns (a-2) and (b-2) of lines 3 through 11 on which tax is imposed under section 871(a) or section 881, and with respect to which tax has been deducted and withheld under section 1442 at a 30% rate.

A	B	C	D	E
Type of base erosion payment	Amount of base erosion tax benefit	Treaty-reduced withholding rate	Divide column C by 30% (0.30) (round to four decimal places)	Multiply column B by column D
		%		
		%		
		%		
		%		
		%		
Add the amounts in column E and enter the total on the appropriate line on Schedule A, line 14.				

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Line 14. Complete the worksheet above to determine the portion of the base erosion tax benefits from lines 3 through 11 on which tax is imposed under section 871 or section 881, and with respect to which tax has been deducted and withheld at a reduced withholding rate (but not exempt from tax) pursuant to a U.S. income tax treaty. The amount to be entered on line 14 is the same proportion of such base erosion tax benefits as the reduced rate of tax specified by the relevant treaty bears to the rate of tax imposed without regard to the treaty. Complete a separate worksheet for column (a-2) amounts and column (b-2) amounts on line 14, as necessary. Keep a copy of the completed worksheet for your records.

Line 15. Subtract the sum of line 13 and line 14 from line 12, and enter the amount on line 15. Line 15, column (a-2), is the total amount of aggregate base erosion tax benefits for the tax year that is used for purposes of determining the taxpayer's base erosion percentage. Line 15, column (b-2), is the total amount of base erosion tax benefits for the tax year that is used for purposes of determining the taxpayer's modified taxable income. Line 15, column (b-2), is also the total amount of base erosion tax benefits for the tax year that is used for purposes of determining the taxpayer's base erosion percentage when the taxpayer is not a member of an aggregate group.

Instructions for Worksheet for Schedule A, Line 14, Columns (a-2) and (b-2)

General

Use a separate row for each type of base erosion payment and each treaty-reduced withholding tax rate to which the corresponding base erosion tax benefit is subject.

Do not include a base erosion tax benefit that is subject to the 30% statutory withholding tax rate or a base erosion tax

benefit that is exempt from tax pursuant to relevant income tax treaty provisions.

Do not combine the base erosion tax benefits that are subject to different withholding rates. Do not enter any blended withholding tax rates.

Column A. Enter the type of base erosion payment that corresponds to the type of base erosion payment in Schedule A.

Column B. Enter the amount of base erosion tax benefits that correspond to the specific type of base erosion payment on which tax is imposed under section 871 or section 881, and with respect to which tax is deducted and withheld at a reduced withholding rate pursuant to a U.S. income tax treaty.

Column C. Enter the treaty-reduced withholding tax rate to which the base erosion tax benefit is subject.

Column D. Divide the tax rate in column C by 30% (0.30). Round to four decimal places.

Column E. Multiply the amount in column B by column D. The amount is the portion of base erosion tax benefits with respect to the specific type of base erosion payment and the specific treaty-reduced rate of withholding that is not taken into account in computing modified taxable income. Add the amounts in column E and enter the total on Schedule A, line 14, column (a-2) or (b-2).

Schedule B—Waiver of Deductions

Schedule B is used to report all the deductions being waived for the tax year in accordance with Regulations section 1.59A-3(c)(6)(i). Columns (a) through (i) are to be completed for each item or property of which a deduction related to such item or property is being waived.



You should use Lines 1 through 13 to report only your own deductions that you are electing to waive. If a member or members of your

aggregate group has also elected to waive any of its deductions, complete a separate attachment for each member of the aggregate group that is waiving deductions which contains the name and EIN of the aggregate group member and the information shown in columns (a) through (i). Attach each attachment to Schedule B. Include the total amount of the deductions being claimed by all of your aggregate group members with respect to the items or property that their respective waiver elections relate to on line 14, column (h) and the total of all of the deductions being waived by the members on line 14, column (i). See instructions for line 14.

Column (a). Enter a brief description of the item or property to which the deduction relates to; for example, debt instrument, intangible property (such as patent, trademark, or license), personal property, real property, etc.

Column (b). Enter the date on which, or the time period which the waived deduction was paid or accrued.

Column (c). Enter the provision of the Code (and regulations, as applicable) that allows the deduction for the item or property to which the election relates.

Column (d). Enter the schedule and line number of the controlled group's federal income tax return where the deduction is reflected (or would have been reflected).

Column (e). Enter the name of the foreign related party that is or will be the recipient of the payment that generates the deduction.

Column (f). Enter the tax identification number of the foreign related party payee that was entered in column (e). This can be an EIN, ITIN or FTIN (Foreign Tax Identification Number).

Column (g). Enter the country of organization of the foreign related party that was entered in column (e).

Column (h). For each item or property reported under columns (a) through (g), enter the amount of the deduction claimed on the tax return (after the waiver indicated in column (i)).

Column (i). For each item or property reported under columns (a) through (g), enter the amount of the deduction being waived.

Line 14. If additional space is necessary, complete and attach a separate worksheet with the same information as shown under columns (a) through (l) for each additional item or property. Enter the total of deductions claimed for the tax year on line 14, column (h) and the total of deductions waived on line 14, column (i).

Also include on this line the total of deductions being claimed (column (h)) and waived (column (i)) from other taxpayers that are members of your aggregate group, if applicable.

Schedule C—Credits Reducing Regular Tax Liability in Computing Base Erosion Minimum Tax Amount (BEMTA)

Part I—Credits Allowed Against Regular Tax

Line 1. You must enter the total credits allowed against your regular tax liability in the tax year, except for credits allowed under sections 33, 37, and 53. Total credits include the sum of all credits shown on Form 1120 or other applicable return.

Line 2. Enter the total amount of credit for increasing research activities reported on line 1c, “Increasing research activities (Form 6765),” of all Parts III, Form 3800, with box A, B, C, or D checked. This total

equals the available credit for increasing research activities in the tax year.

Line 3. Enter only the portion of the available credit for increasing research activities which was included on Form 3800, Part II, line 38, and used against regular tax liability. You must apply the general rules and the ordering rules for use of general business credits from the Instructions for Form 3800. The Instructions for Form 3800 provide that credits reported on Form 3800 are treated as used on a first-in, first-out basis by offsetting the earliest earned credits first. Therefore, the order in which the credits are used in any tax year is:

- Carryforwards to that year, the earliest ones first;
- The general business credit earned in that year; and
- The carryback to that year.

If your general business credits exceed your tax liability limit, the credits are used in the order as they are listed in section 38(b). Although general business credits are aggregated on Form 3800, you should have a separate record of each credit.

Line 5. Section 59A(b)(1)(B)(ii)(II) limits the allowable adjustment for applicable section 38 credits to 80% of the lesser of applicable section 38 credits or the BEMTA computed without the adjustment for applicable section 38 credits computed in Part III.

Part II—Applicable Section 38 Credits

Line 8. Enter the total amount of credit shown on line 1d, “Low-income housing (Form 8586, Part I only),” and line 4d, “Low-income housing (Form 8586, Part II),” of all Parts III, Form 3800, with box A, B, C, or D checked. This total equals the available credit for low-income housing in the tax year.

Line 9. Enter the total amount of section 45 credit shown on Form 3800, lines 1f and 4e, “Renewable electricity, refined coal, and Indian coal production (Form 8835),” of all Parts III, with box A, B, C, or D checked (other than any amount allocable to refined coal and Indian coal production). This total equals the available credit for renewable electricity production in the tax year.

Line 10. Enter only the total amount of investment credit allocable to the section 48 energy credit shown on line 4a, “Investment (Form 3468, Part III)” of all Parts III, Form 3800, with box A, B, C, or D checked. The section 48 energy credit portion of the amount in Part III, line 4a, equals the sum of the amounts reported in Form 3468, Part III, Energy credit, on lines 12a, 12b, 12c, 12d, 12g, 12j, 12m, 12p, 12s, 12v, 12x, 12y, 12z, 12aa, 12bb, 12cc, 12dd, 12ee, 12ff, and 12gg. This total equals the available investment credit properly allocable to the energy credit in the tax year.

Line 11. Enter only the portion of the available applicable credits which was included on Form 3800, Part II, line 38, and used against regular tax liability. This represents the amount of applicable credits allowed in the current year. Refer to the ordering rules described in the earlier instructions for Schedule C, line 3.

Part III—BEMTA Determined Without Adjustment for Applicable Section 38 Credits

Line 15. Subtract line 14 from line 13. If zero or less, enter “-0-.”

Line 16. You must compute the BEMTA without adjustment for applicable section 38 credits to allow computation of the limitation of applicable section 38 credits on lines 4 and 5 of Part I.

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The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123 and is included in the estimates shown in the instructions for their business income tax return.
