Section 59A Qualified Derivative Payments Reporting Extension

Notice 2022-30

I. PURPOSE

This Notice announces that the Department of the Treasury ("Treasury Department") and the Internal Revenue Service ("IRS") intend to amend the regulations under sections 59A and 6038A to defer the applicability date of certain provisions of the regulations relating to the reporting of qualified derivative payments ("QDP") until taxable years beginning on or after January 1, 2025.

II. BACKGROUND

On December 6, 2019, the Treasury Department and the IRS published TD 9885 in the **Federal Register** (84 FR 66968), which contains final regulations addressing the base erosion and anti-abuse tax ("BEAT") of section 59A (the "2019 final regulations"). The 2019 final regulations generally apply to taxable years ending on or after December 17, 2018. The 2019 final regulations included rules under sections 59A and 6038A addressing the reporting of QDPs, which are not base erosion payments.

Under §1.59A-6(b)(2)(i), a payment does not qualify as a QDP unless the taxpayer reports the information required in §1.6038A-2(b)(7)(ix) for the taxable year. Section 1.6038A-2(b)(7)(ix) requires a taxpayer subject to the BEAT to report on Form 8991 the aggregate amount of QDPs for the taxable year and make a representation that all payments satisfy the requirements of §1.59A-6(b)(2). If a taxpayer fails to satisfy the reporting requirements of §1.59A-6(b)(2)(i) with respect to any payments, §1.59A-6(b)(2)(ii) (the reporting failure exclusion) provides that those payments are not eligible for the QDP exception described in §1.59A-3(b)(3)(ii) and are base erosion payments unless another exception applies.

Section 1.6038A-2(b)(7)(ix) applies to taxable years beginning on or after June 7, 2021. Section 1.6038A-2(g). Before §1.6038A-2(b)(7)(ix) is applicable (the "transition period"), a taxpayer is treated as satisfying the QDP reporting requirements to the extent that the taxpayer reports the aggregate amount of QDPs on Form 8991, Schedule A, provided that the taxpayer reports this amount in good faith. See §1.59A-6(b)(2)(iv) and §1.6038A-2(g).

In Notice 2021-36, 2021-26 I.R.B. 1227, the Treasury Department and the IRS announced the intention to extend the transition period through taxable years beginning before January 1, 2023, while the Treasury Department and the IRS study the interaction of the QDP exception, the BEAT netting rule in §1.59A-2(e)(3)(vi), and the QDP reporting requirements in §§1.59A-6 and 1.6038A-2(b)(7)(ix). The Treasury Department and the IRS have not yet issued regulations amending the applicability date of §1.6038A-2(g). The Treasury Department and the IRS continue to study these provisions and have determined that it is appropriate to further extend the transition period.

III. AMENDED APPLICABILITY DATE

The Treasury Department and the IRS intend to amend §1.6038A-2(g) to provide that §1.6038A-2(b)(7)(ix) will apply to taxable years beginning on or after January 1, 2025. Until §1.6038A-2(b)(7)(ix) applies, the rules described in §1.59A-6(b)(2)(iv) that apply during the transition period will continue to apply.

IV. TAXPAYER RELIANCE

Taxpayers may rely on the provisions of this Notice before the issuance of the amendments to the final regulations described in section III of this Notice.

V. EFFECT ON OTHER DOCUMENTS

Notice 2021-36 is modified, and as so modified, is superseded.

VI. DRAFTING INFORMATION

The principal author of this Notice is Sheila Ramaswamy of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Sheila Ramaswamy at (202) 317-6938 (not a toll-free call).