

LB&I Training

Tax Cuts & Jobs Act (TCJA)



**Training
Participant Guide
October 2019**

Official IRS Training Material

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All names and numbers used in this material are fictitious. Screen captures included in this guide do not contain any live taxpayer information.

Welcome

LB&I Tax Cuts & Jobs Act Training



IRS Mission Statement



Mission Statement

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

14 General Principles of Ethical Conduct

Please see [**Document 9300**](#) for a complete list of the 14 General Principles of Ethical Conduct for Federal Employees.

Taxpayer Bill of Rights

Please see [Publication 1](#) to read the full text of Your Rights as a Taxpayer.

TCJA Course Overview

LB&I Tax Cuts & Jobs Act training sessions are a large part of LB&I's multi-pronged approach to tax reform training. This mandatory training course covers IRC §§ 199A, 451, 163(j), 951A, 250, 59A, 965, 367 and 91.

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TCJA Course Agenda

Monday - October 21, 2019

- Executive Opening, Introductions and Admin
- IRC § 199A (Qualified Business Income Deduction)

Tuesday - October 22, 2019

- IRC § 451 (Income Recognition Guidance)
- IRC § 163(j) (Limitation on Business Interest Expense)

Wednesday - October 23, 2019

- IRC § 163(j) (Limitation on Business Interest Expense) (cont'd)
- IRC § 367 & 91 (Transfer Pricing/Outbound Transfers)

TCJA Course Agenda (cont'd)

Thursday - October 24, 2019

- IRC § 951A (Global Intangible Low-Taxed Income)
- IRC § 250 (Foreign Derived Intangible Income)

Tuesday - October 29, 2019

- IRC § 965 (Transition Tax)

Wednesday - October 30, 2019

- IRC § 59A (Base Erosion and Anti-abuse Tax)

Thursday – October 31, 2019

- Final Comments and Executive Closing

LB&I Training

Tax Cuts & Jobs Act (TCJA)



§ 59A
Base Erosion Anti-Abuse Tax



**Large Business
& International**

Instructor Introductions

6

Instructor Introductions

Lesson Objectives

At the end of this session, you will be able to:

- Determine whether a taxpayer is an “applicable taxpayer” under section 59A
 - Determine “gross receipts”
 - Apply aggregation rules
- Calculate base erosion percentage
 - Identify base erosion payment
 - Define base erosion tax benefit
- Evaluate Form 8991 and relevant returns
 - Analyze base erosion minimum tax amount reported by taxpayer

General Overview

- Section 59A, added to the Internal Revenue Code by section 14401 of Tax Cuts and Jobs Act (“TCJA”), imposes a new tax often referred to as the Base Erosion Anti-Abuse Tax (“BEAT”)
- Proposed regulations (Prop. Regs.) published in Federal Register on December 21, 2018
 - Taxpayer may rely on the Prop. Regs. for taxable years beginning after 2017 and before they are finalized, provided that the taxpayer and all its related parties consistently apply the rules for all tax years ending before the issuance of final regulations
- Form 8991 and instructions released

General Overview (cont'd)

- BEAT is a minimum tax amount imposed on **applicable taxpayers** that make certain **base erosion payments (“BEPs”)** to **foreign related parties (“FRPs”)**
 - Additional tax separate from regular income tax
 - Different from the old alternative minimum tax (“AMT”); for instance, it is computed differently than AMT and any base erosion minimum tax amount (“BEMTA”) paid is not credited against future taxes
 - Generally targets deductions arising from transactions with foreign related parties

Applicable Taxpayer

- Applicable Taxpayer means a taxpayer, with respect to any taxable year,
 - 1) that is a corporation (other than a RIC, REIT, or S-corporation),
 - 2) that has average annual **gross receipts** for the 3-taxable-year period ending with the preceding taxable year of at least \$500 million, **and**
 - 3) that has **base erosion percentage** (“BE%”) of 3% (2% for bank or registered securities dealer) (discussed further below) or higher for the taxable year
- Gross receipts and base erosion percentage are tested at the aggregate group level (discussed below)

Taxpayer's Aggregate Group

Determine aggregate group for a taxpayer by –

- 1) Identify the controlled group of corporations that include the taxpayer
 - Controlled group means a controlled group as defined in section 1563 except –
 - “more than 50%” replaces “at least 80%” each place it appears in section 1563(a)(1); and
 - sections 1563(a)(4) and (e)(3)(C) are **not** taken into account

(Continue on the next page)

Taxpayer's Aggregate Group (cont'd)

2) Exclude foreign corporations –

- Except with regard to income that is, or is treated as, effectively connected with the conduct of a trade or business in the United States ("ECI"); or
- if the foreign corporation determines its net income under a treaty, except with regard to income taken into account in determining its net taxable income

Taxpayer's Aggregate Group (cont'd)

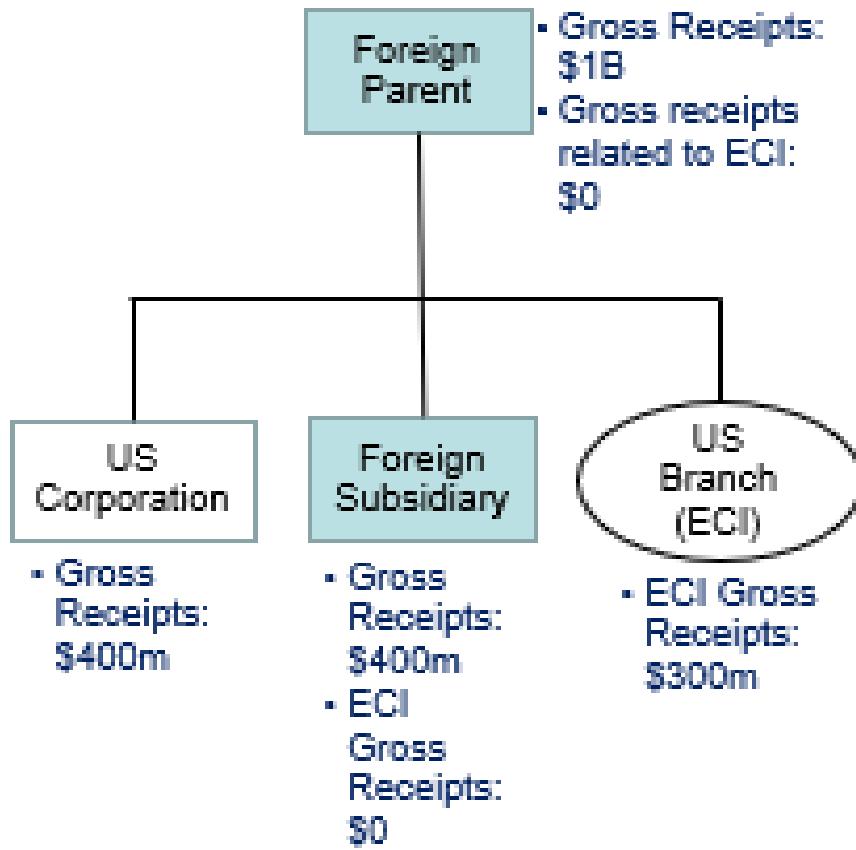
Determination of an aggregate group is made as of the end of taxpayer's taxable year

- Exclude transactions between members of the taxpayer's aggregate group that were members at the time of the transaction in determining gross receipts and BE%

Gross Receipts Test

- Determine gross receipts of aggregate group for a taxpayer based on that taxpayer's taxable year
- Other computational rules –
 - Gross receipts are reduced by returns and allowances made during that taxable year
 - Gross receipts are annualized for short taxable years
 - Consolidated group gross receipts are determined by aggregating the gross receipts of all members (see Treas. Regs. §1.1502-59A(b))
 - For purposes of determining gross receipts, a taxpayer includes any predecessor of the taxpayer, including the distributor or transferor corporation in a transaction described in section 381(a) in which the taxpayer is the acquiring corporation

Gross Receipts Test - Example



- Additional facts:
 - Neither Foreign Subsidiary nor Foreign Parent (other than US Branch) have income that is, or is treated as, ECI; and they do **not** determine their income under an income tax treaty
 - None of the gross receipts result from transactions between members of the aggregate group
 - All of the taxpayers have the same taxable year; none has a short year; and the ownership has not changed during the taxable year.
- Aggregate group: US Corporation and Foreign Parent's US Branch to extent of ECI
 - Foreign entities are only included to the extent of income that is or is treated as, ECI; therefore, Foreign Parent (other than US Branch) and Foreign Subsidiary are **not** taken into account; and US Branch is only taken into account to extent of ECI
 - Used to determine gross receipts and BE%. Reminder: Exclude amounts paid between members of the aggregate group at the time of the transaction from these computations
- Gross receipts for this aggregate group for this year: \$400m + \$300m = \$700m (which is 1 of 3 years needed for gross receipts test)

Base Erosion Percentage

- Base erosion percentage (“BE%”) for any taxable year is determined using the formula below –

$$\text{BE\%} = \frac{\text{Aggregate Base Erosion Tax Benefits}}{\text{Allowable Deductions} + \text{Base Erosion Tax Benefits that are not Deductions}*}$$

* Certain deductions excluded from denominator (discussed further below)

- Determine BE% of aggregate group for a taxpayer based on that taxpayer’s taxable year

Base Erosion Payment (BEP) / Base Erosion Tax Benefit (BETB)

BEP	BETB
Any amount paid or accrued by the taxpayer to a FRP with respect to which a deduction is allowable under Chapter 1	The deduction that is allowed in the taxable year for the BEP
Any amount paid or accrued by the taxpayer to a FRP in connection with the acquisition of depreciable or amortizable property	The deduction allowed in the taxable year for depreciation or amortization with respect to the acquired property

- See *discussions below for additional rules, including exceptions*

BEP / ETB (cont'd)

BEP	BETB
Any premium or other consideration paid or accrued to a FRP for any reinsurance payments taken into account under section 803(a)(1)(B) or 832(b)(4)(A)	Any reduction in the gross amount of premiums or other consideration or any deduction from the amount of gross premium related to the BEP
Reductions in gross receipts from amounts paid or accrued to – <ul style="list-style-type: none">• a corporation that is a surrogate foreign corporation (SFC) after 11/9/2017; or• a foreign corporation that is a member of the same extended affiliated group as an SFC	Reduction to gross receipts for the taxable year with respect to the BEP

- See discussions below for additional rules, including exceptions

BEP – Operating Rules

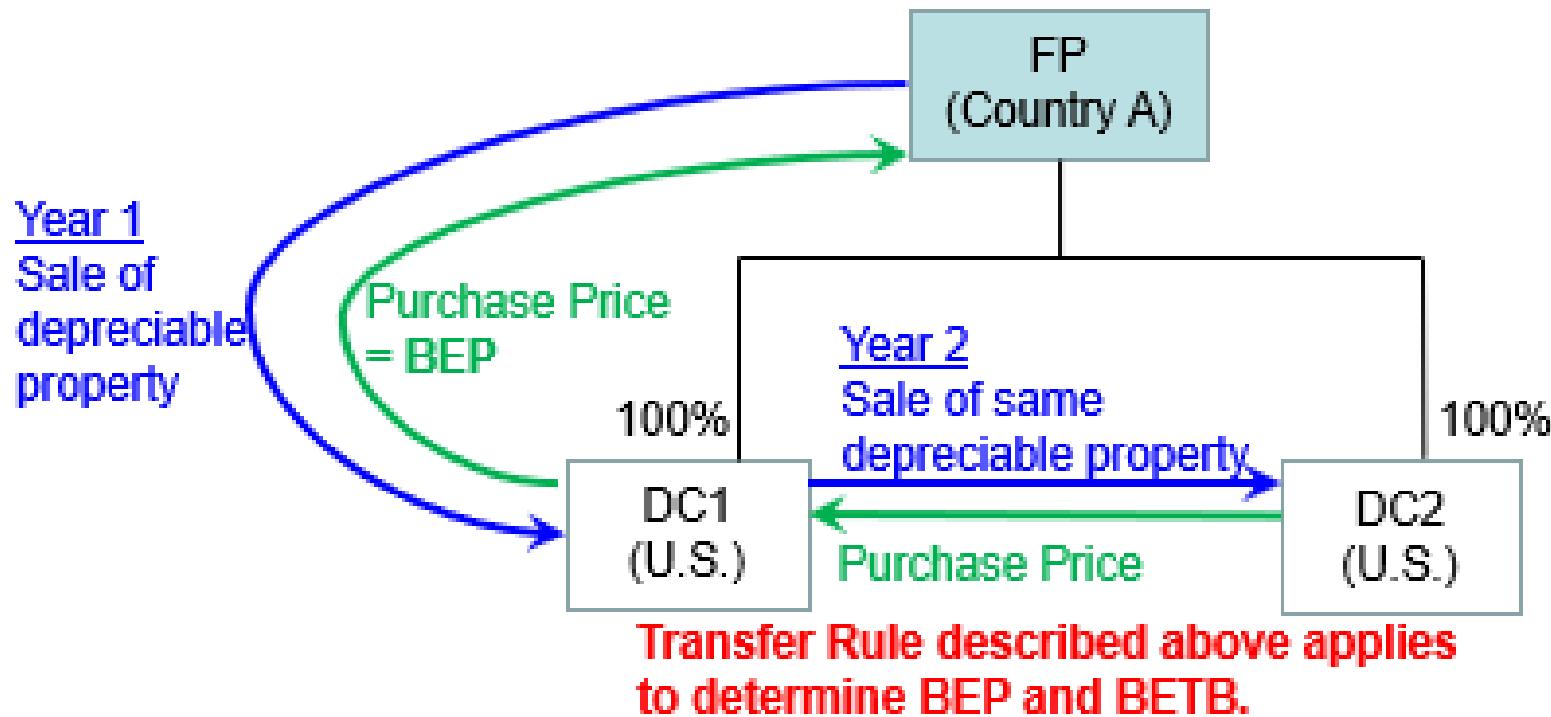
- Amount paid or accrued includes any form of consideration, including cash, property, stock or assumption of liability
- Amount of BEP is determined on a gross basis; i.e., no netting allowed, except as otherwise permitted by the Code or regulations and an MTM rule (discussed further below)
 - Contractual or legal rights to make or receive payments on a net basis not relevant
 - Payments to certain domestic passthrough entities will be treated as made to foreign related parties that are beneficiaries or shareholders of the entities

BEP – Operating Rules (cont'd)

- If depreciable or amortizable property is acquired with a BEP and transferred to an aggregate group member, any depreciation or amortization deduction that would be a BETB to the transferor will remain a BETB to the transferee (the “Transfer Rule”)

BEP – Operating Rules (cont'd)

- Example of the Transfer Rule –



BEP – Exceptions

Exceptions to BEPs –

- Amounts paid or accrued in taxable years beginning before January 1, 2018 (subject to special aggregate group rules)
- Certain payments for services (services cost method or SCM exception, discussed further below)
- Qualified derivative payments (QDP exception, discussed further below)
- Amounts paid or accrued to a FRP that are subject to tax as income that is ECI and for which a withholding certificate claiming ECI withholding exemption under section 1441 or 1442 (or, if a treaty applies, amounts taken into account in determining the FRP's net taxable income) has been obtained from the FRP

BEP – Exceptions (cont'd)

Exceptions to BEPs –

- Amounts paid or accrued to a foreign insurance company electing to be treated as a domestic corporation under section 953(d)
- Exchange loss on a section 988 transaction
- Amounts paid or accrued with respect to total loss absorbing capacity (“TLAC”) securities (discussed further below)
- Section 163(j)(2) disallowed business interest carried forward from taxable years beginning before January 1, 2018

BEP – SCM Exception

Amounts paid or accrued by the taxpayer to a FRP for services that meet the following requirements are not BEPs to the extent of their total services cost –

- Services are those defined in Treas. Regs. §1.482-9(l)(2)
- Services are performed by a FRP
- Services provide a benefit as defined in Treas. Regs. §1.482-9(l)(3) to the taxpayer
- All of the requirements of Treas. Regs. §1.482-9(b) must be satisfied, except –
 - the business judgment rule under Treas. Regs. §1.482-9(b)(5) do not apply, and
 - adequate books and records must be maintained in accordance with the rules under section 59A, instead of Treas. Regs. §1.482-9(b)(6)

BEP – SCM Exception (cont'd)

- Total services cost has the same meaning as in Treas. Regs. §1.482-9(j)
- Any amount in excess of total services cost remains a BEP

BEP – QDP Exception

A QDP is any payment (subject to certain exclusions, see discussions on the following page) made by a taxpayer to a FRP pursuant to a derivative with respect to which the taxpayer –

- Recognizes gain or loss as if the derivative were sold for its fair market value on the last business day of the taxable year (and any additional time required by the Code or the taxpayer's method of accounting),
- Treats any gain or loss so recognized as ordinary, and
- Treats the character of all items of income, deduction, gain, or loss with respect to a payment pursuant to the derivative as ordinary

BEP – QDP Exception (cont'd)

QDP Exception is not available to –

- Taxpayer that fails to satisfy reporting requirements
- Payments that would be treated as a BEP if it were not made pursuant to a derivative, including any interest, royalty, or service payment, or
- In the case of a contract that has derivative and non-derivative components, that portion of the payment properly allocable to the non-derivative component

BEP – QDP Exception (cont'd)

A derivative is (subject to exceptions on the next page) any contract the value of which, or any payment or other transfer with respect to which, is (directly or indirectly) determined by reference to one or more of the following –

- Any share of stock in a corporation,
- Any evidence of indebtedness,
- Any commodity that is actively traded,
- Any currency, or
- Any rate, price, amount, index, formula, or algorithm

BEP – QDP Exception (cont'd)

The following are not derivatives –

- Any direct interest in any of the items listed on the previous page
- Any insurance, annuity, or endowment contract issued by an insurance company to which subchapter L applies (or, issued by a foreign corporation, to which subchapter L would apply if that corporation were a domestic corporation)
- Any securities lending transaction, sale-repurchase transaction, or substantially similar transaction
- American depository receipts or any similar instruments with respect to shares of stock in a foreign corporation

BEP – TLAC Exception

Any amounts paid or accrued to FRPs with respect to TLAC securities are not BEPs (subject to the limitation below) –

- A TLAC security is an eligible internal debt security as defined in 12 CFR 252.161
- Limitation: The amount excluded from BEP treatment is no greater than the scaling ratio x amounts paid or accrued to foreign related parties with respect to TLAC securities for which a deduction is allowed
 - Scaling ratio for a taxable year = average TLAC long-term debt required amount / average TLAC securities amount, may not be greater than one
 - Average TLAC securities amount = average of the TLAC securities amounts for the year, computed on a monthly basis
 - Average TLAC long-term debt required amount = average of the TLAC long-term debt required amounts for the year, computed on a monthly basis

BEP – Special Rules

Special rules for determining the amount of BEP

- Interest expense allocable to ECI
- Other deductions allocable to ECI
- Internal dealings under an income tax treaty that has adopted the Authorized OECD Approach (an “AOA treaty”)
- Deductions attributable to a permanent establishment (“PE”) under a non-AOA treaty
- Section 163(j) business interest expense ordering rule

BETB – Exception

A BETB does not include a payment subject to tax under section 871 or 881 when the tax has been deducted and withheld under section 1441 or 1442

- The **resulting BETB** =

$$\text{BETB without exclusion} \times \left(\frac{\text{Non-Treaty rate} - \text{Treaty rate}}{\text{Non-Treaty rate}} \right)$$

Foreign Related Party

- A foreign related party (“FRP”) is a foreign person that is a related party with respect to the taxpayer
 - A foreign person is any person who is not a United States person
 - A United States person is defined under section 7701(a)(30), except that –
 - any individual who is a citizen of any U.S. possession (but not otherwise a U.S. citizen); and
 - who is not a U.S. resident
 - is **not** a United States person
 - Special rules apply for partnerships (discussed further below)

Related Party

- A related party means, with respect to a taxpayer –
 - Any 25-percent owner of the taxpayer,
 - Any person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer or any 25-percent owner of the taxpayer, or
 - A controlled taxpayer within the meaning of Treas. Regs. §1.482-1(i)(5) together with, or with respect to, the taxpayer
- A 25-percent owner is any person who owns at least 25% of –
 - Total voting power of all classes of stock of the corporation entitled to vote, or
 - Total value of all classes of stock of the corporation

Related Party (cont'd)

- Section 318 attribution rules apply except –
 - “10 percent” replaces “50 percent” in section 318(a)(2)(C), and
 - Sections 318(a)(3)(A), (B), and (C) are not applied so as to consider a United States person as owning stock that is owned by a person who is not a United States person
- Special rules apply for partnerships (discussed further below)

BE% – The Denominator

- The denominator of BE%, as discussed above, is the sum of allowable deductions and BETBs that are not deductions
- Total deductions in the denominator do not include –
 - net operating losses (NOL) under section 172
 - deduction for foreign source portion of dividends received from specified 10 percent owned foreign corporations (section 245A)
 - deduction for foreign-derived intangible income and global intangible low-taxed income (section 250)
 - exchange losses from section 988 transactions
 - deduction not allowed in determining taxable income for the taxable year

BE% – The Denominator (cont'd)

- Total deductions in the denominator also do not include –
 - payment or accrual for services to related foreign person not treated as BEP under section 59A(d)(5) (SCM exception)
 - deduction for qualified derivative payment not treated as BEP under section 59(h)
 - deduction for amounts paid or accrued with respect to TLAC securities
- However, if a payment in any of the three (3) items above qualifies for the ECI exception and the amount is paid to an FRP that is not in the aggregate group, then that payment is included in the denominator of BE%
- Reminder: Transactions between members of an aggregate group are not included in computing BE%

BE% – MTM Rule

- Special rule for mark-to-market (“MTM”) transactions
 - For any transactions with respect to which taxpayer applies the MTM method of accounting, taxpayer must combine all items of income, gain, loss, or deduction arising from the transaction for the taxable year
 - Regardless of how each item arises; for instance, from a payment, accrual or a mark
- Only one mark allowed for taxable year on earlier of last business day of taxpayer’s taxable year or the disposition of position

Banks / Registered Securities Dealers

- A bank is an entity defined in section 581
- A registered securities dealer is any dealer defined in section 3(a)(5) of the Securities Exchange Act of 1934 (the “Act”) that is registered, or required to be registered, under section 15 of the Act

Banks / Registered Securities Dealers (cont'd)

- Reduced BE% of 2% (vs. 3%; i.e., lower threshold) applies if an aggregate group includes a bank or registered securities dealer that is a member of an affiliated group (as defined in section 1504(a)(1))
 - Reduced BE% does **not** apply if the gross receipts attributable to the bank or registered securities dealer < 2% of total gross receipts of the aggregate group for the taxable year (or, if there is a consolidated group and no aggregate group, < 2% of total gross receipts of the consolidated group)
 - 1% added to regular BEAT rate if taxpayer is a member of an affiliated group that includes a bank or registered securities dealer

Base Erosion Minimum Tax Amount

Base erosion minimum tax amount (“BEMTA”) is the excess, if any, of –

- BEAT rate **x** Modified Taxable Income (“MTI”)
over
- regular tax liability (as defined by section 26(b)) for the taxable year reduced (but not below zero) by the excess, if any, of
 - Credits allowed under Chapter 1 against regular tax liability **over**
 - The sum of certain credits (discussed further below)

BEMTA – BEAT Rate

- BEAT rate:
 - 5% for 2018
 - 10% for 2019 through 2025
 - 12.5% after 2025
- Again, additional 1% to each rate above for an affiliated group that includes a bank or registered securities dealer
- Fiscal year taxpayers must use a blended rate for their taxable years ending in 2019 and 2026 (section 15)

BEMTA – MTI

- **MTI = Taxable Income + BETB + (NOLs × BE%)**
 - In other words, use an add-back method; and not a re-computation of taxable income or any attributes
- NOL rules
 - Taxable income cannot be reduced below zero as a result of an NOL deduction
 - BE% applied to the NOL deduction is the BE% for the year in which the NOL arose
 - BE% multiplied by NOLs that offset positive taxable income
 - BE% is zero for NOL that arose in taxable years beginning before January 1, 2018

BEMTA – Credits

The following credits do **not** reduce the regular tax amount in the BEMTA calculation –

- Credits allowed under sections 33 and 37, and
- For taxable years beginning on or before December 31, 2025 –
 - Credit allowed under section 38 for the taxable year that is allocable to the research credit under section 41(a), and
 - the portion of the **applicable section 38 credits** (discussed further on the following page) not in excess of 80% of the lesser of the amount of those credits or the BEMTA (determined without regard to this rule)

BEMTA – Credits (cont'd)

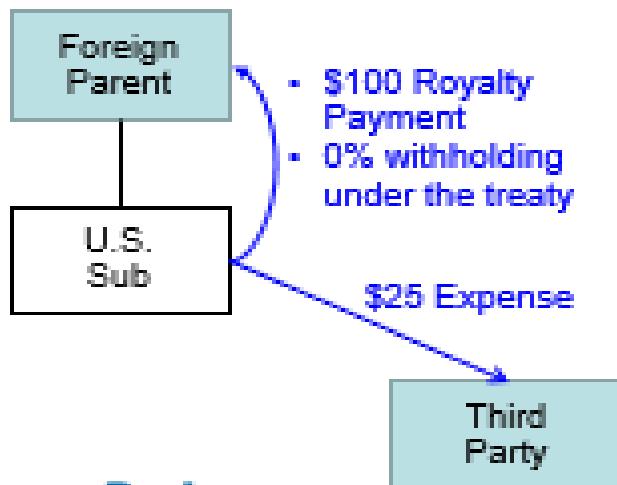
Applicable section 38 credits are credits allowed under section 38 for the taxable year that are properly allocable to –

- Low income housing credit determined under section 42(a),
- Renewable electricity production credit determined under section 45(a), and
- Investment credit determined under section 46, but only to the extent properly allocable to the energy credit determined under section 48

BEMTA – Example

Facts (all amounts in million):

- Tax year: 12/31/2019
- U.S. Sub meets gross receipts test
- U.S. Sub gross income: \$200
- Foreign Parent has no ECI
- U.S. Sub claims \$4 research credits under section 41(a) and \$6 foreign tax credits; no applicable section 38 credits



U.S. Sub Regular Tax Liability (RTL) 12/31/2019

- Taxable Income: \$75 ($\$200 - (\$100 + \$25)$)
- RTL before credits: \$15.75 ($\$75 \times 21\%$)
- Chapter 1 credits: \$10 ($\$4 + \6)
- RTL after credits: \$5.75 ($\$15.75 - \10)

U.S. Sub section 59A Liability 12/31/2019

- BETB: \$100 deduction for royalty paid
- Total deductions: \$125
- Base erosion percentage: 80% ($\$100 / \125)
- MTI: \$175 ($\$75 + \100)
- 10% of MTI: \$17.5 ($\$175 \times 10\%$)
- RTL before credits (\$15.75) reduced by excess of Chapter 1 credits (\$10), over sum of research credit (\$4) and portion of applicable section 38 credits (\$0): \$9.75 ($\$15.75 - (\$10 - \$4)$)
- BEMTA: \$7.75 ($\$17.5 - \9.75)
- Total U.S. tax liability: \$13.50 (RTL after credits \$5.75 + BEMTA \$7.75)

Partnerships 2

Generally, section 59A applies at the partner level and the provisions of section 59A should be interpreted consistent with this approach

- Any amount paid or accrued **by** a partnership is treated as paid or accrued by each partner based on the partner's distributive share
 - Small partner exception
- Any amount paid or accrued **to** a partnership is treated as paid or accrued to each partner based on the partner's distributive share

Partnerships (cont'd)

- Gross receipts: partner includes a share of partnership gross receipts in proportion to the partner's distributive share of items of partnership gross income
 - Foreign corporation – only with regard to gross receipts that produce income that is effective connected with a U.S. trade or business (or, if a treaty applies, only with regard to gross receipts taken into account in determining net taxable income)
- Registered securities dealer – If partnership or partnership branch is a registered securities dealer, each partner is treated as a registered securities dealer
 - Small partner exception
 - Foreign related party determined at partner level

Partnerships (cont'd)

- Other relevant items: subject to the small partner exception, each partner is treated as owning its share of partnership items determined under section 704, including the assets of the partnership
 - For items allocated to partners (including deductions and BETBs) = distributive share
 - For items not allocated to partners = proportionate with partner's distributive share of partnership income
- Tiered partnerships: apply rules iteratively until partner is not a partnership
 - Small partner exception only applied at level where partner is not a partnership

Additional Considerations

- Existing law applies to determine the beneficial owner of income/asset and the related tax consequences, including principal-agent principles, case law conduit principles, and assignment of income, as well as the appropriate treatment of a payment
- Anti-abuse rules
 - Transactions involving unrelated persons, conduits, and intermediaries
 - Transactions to increase the amount of deductions taken into account in the denominator of the BE%
 - Transactions to avoid the application of rules applicable to banks and registered securities dealers

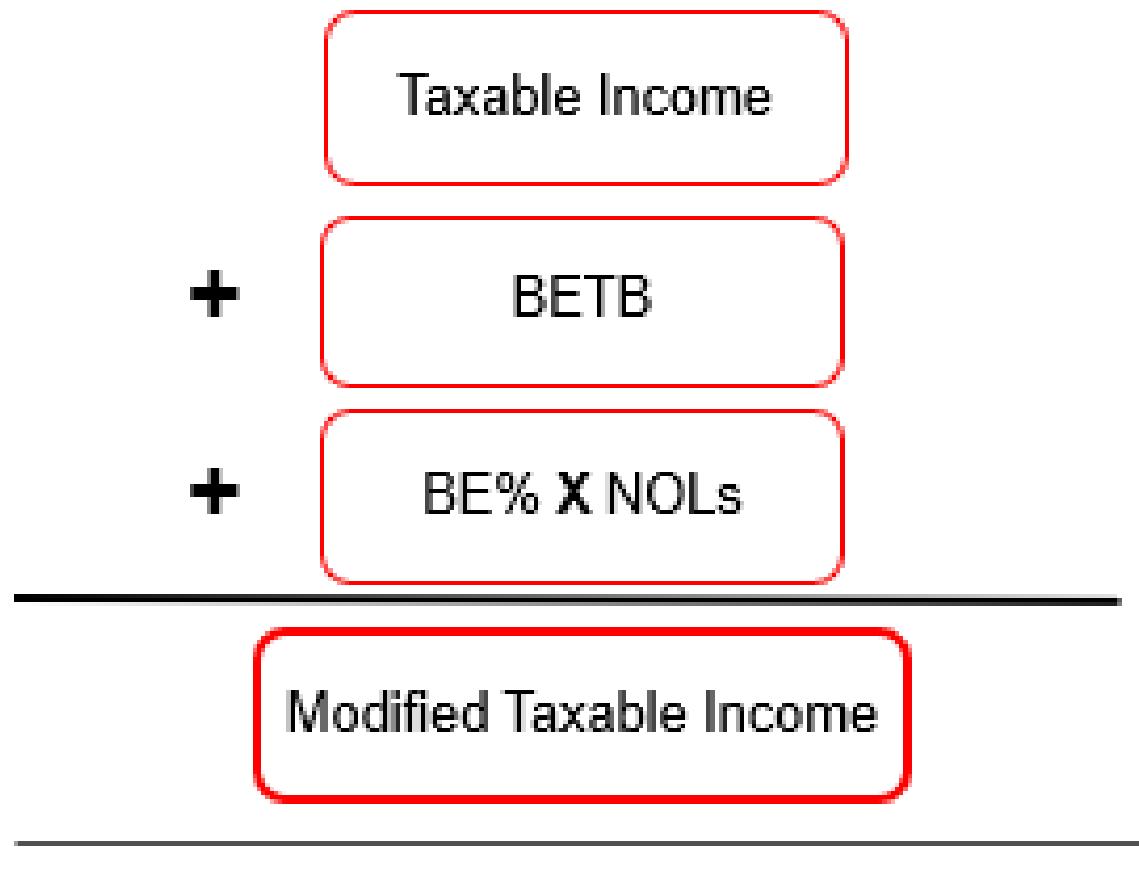
Recap

Step 1: Determine whether taxpayer is an Applicable Taxpayer

- A. Determine whether taxpayer is a corporation (other than a RIC, REIT, or S Corp)
- B. Determine taxpayer's aggregate group
- C. Determine aggregate group's gross receipts
- D. Determine aggregate group's base erosion percentage
- E. Determine whether taxpayer is subject to the bank or registered securities dealer rules
- F. If an Applicable Taxpayer, perform the calculations on the following pages

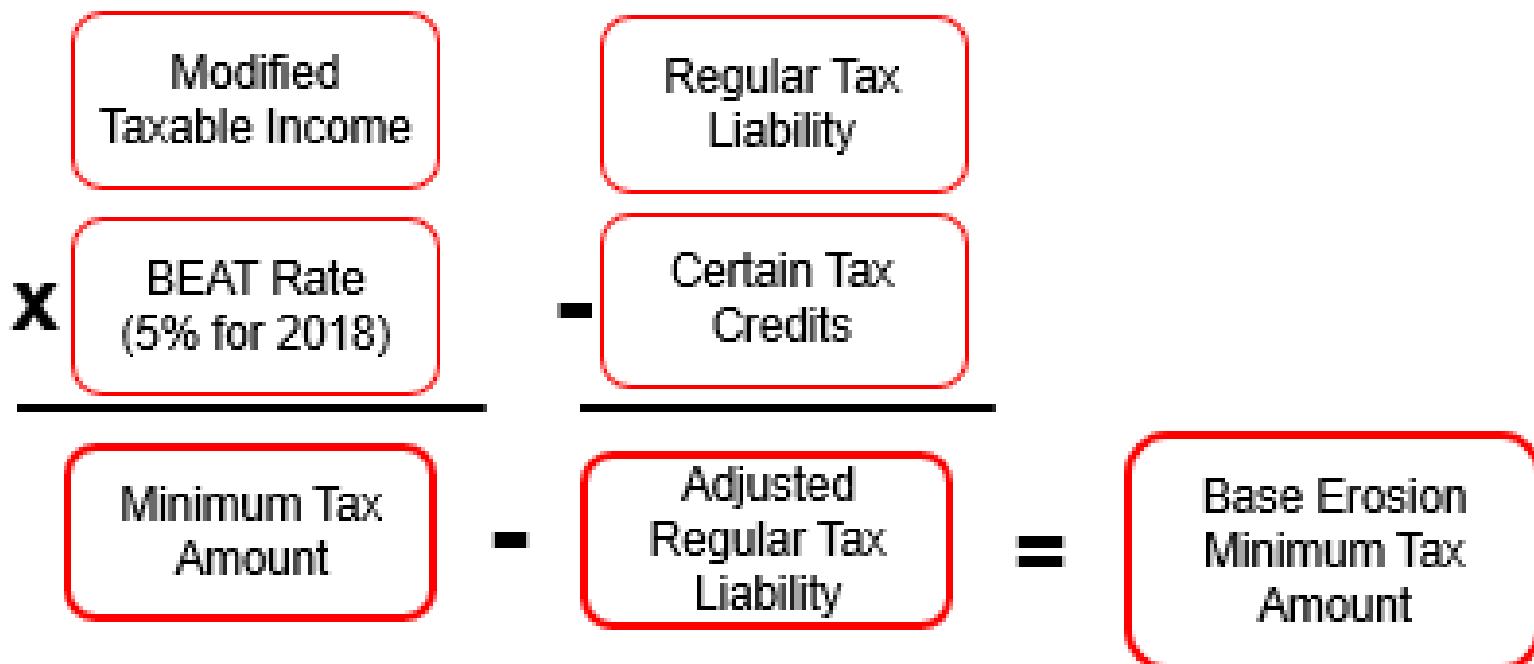
Recap (cont'd)

Step 2: Determine Modified Taxable Income



Recap (cont'd) 2

Step 3: Calculate Base Erosion Minimum Tax Amount (BEMTA)



Form 8991

- 2018 Form 8991 and instructions implementing section 59A released in February 2019, links below –
 - <https://www.irs.gov/pub/irs-pdf/f8991.pdf>
 - <https://www.irs.gov/pub/irs-pdf/i8991.pdf>
- FAQ page under development to address certain issues while Proposed Regulations are being finalized
- Who must file a Form 8991: Any corporation (other than a RIC, REIT, or an S corporation) that has gross receipts of at least \$500 million in one or more of the three preceding tax years ending with the preceding tax year.

Form 8991 (cont'd)

<p>Form 8991</p> <p>(December 2018)</p> <p>Department of the Treasury Internal Revenue Service</p>	<p align="center">Tax on Base Erosion Payments of Taxpayers With Substantial Gross Receipts</p> <p>For tax year beginning _____, 20_____, and ending _____, 20_____</p> <p align="center">► Go to www.irs.gov/Form8991 for instructions and the latest information. ► See instructions.</p>																		
OMB No. 1545-0123																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Name</td> <td style="width: 50%;">Employer identification number</td> </tr> </table>		Name	Employer identification number																
Name	Employer identification number																		
<p>Part I Applicable Taxpayer</p> <p>Check box if this form is being filed by a taxpayer with which another taxpayer has been aggregated under section 59A(e)(3) . ► <input type="checkbox"/></p> <p>If the above box is checked, attach a statement listing the names and EINs of all separate taxpayers taken into account in the determination of "1 person" under section 59A(e)(3).</p>																			
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%; text-align: center;">(a)</th> <th style="width: 33%; text-align: center;">(b)</th> <th style="width: 33%; text-align: center;">(c)</th> </tr> <tr> <th style="text-align: center;">First Preceding Tax Year</th> <th style="text-align: center;">Second Preceding Tax Year</th> <th style="text-align: center;">Third Preceding Tax Year</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		(a)	(b)	(c)	First Preceding Tax Year	Second Preceding Tax Year	Third Preceding Tax Year												
(a)	(b)	(c)																	
First Preceding Tax Year	Second Preceding Tax Year	Third Preceding Tax Year																	
<p>1a Gross receipts of the applicable taxpayer. See instructions</p> <p>b Gross receipts from partnerships</p> <p>c Gross receipts of all other persons treated as 1 person as the "applicable taxpayer" pursuant to section 59A(e)(3)</p> <p>d Gross receipts. Combine lines 1a through 1c</p> <p>e Gross receipts of first, second, and third preceding tax years. Combine columns (a), (b), and (c) of line 1d</p> <p>f 3-year average annual gross receipts (Divide line 1e by 3.0)</p> <p>g Is line 1f \$500 million or more?</p> <p><input type="checkbox"/> Yes. Continue to line 2.</p> <p><input type="checkbox"/> No. STOP here and attach this form to your tax return.</p>																			
<p>1e</p> <p>1f</p>																			

Form 8991 needs to be attached even if taxpayer determines that it does not meet the gross receipts test



Other Relevant Forms

- In connection with the release of Form 8991, related revisions were made to various returns; for instance –
 - **Form 1120, Schedule J, Part I, Line 3 –**
 - “Base erosion minimum tax (attach Form 8991)”
 - **Form 1120-F, Page 2, Additional Information, Question DD –**
 - “Does the corporation have gross receipts of at least \$500 million in any of the 3 preceding tax years ...?”
 - **Form 1065, Schedule K-1, Line 20, Other Information –**
 - “AG Gross receipts for section 59A(e)”

Other Relevant Forms (cont'd)

- Other examples of revisions to relevant returns –
 - **Form 5471, Schedule G, Other Information**
 - “4a During the tax year, did the filer pay or accrue any base erosion payment ...”
 - **Form 5472, Part VIII, Base Erosion Payments and Base Erosion Tax Benefits under section 59A**
 - **Form 8858, Schedule G, Other Information**
 - “6a During the tax year, did the FDE or FB receive, or accrue the receipt of, any amounts defined as a base erosion payment ...”
 - “7a During the tax year, did the FDE or FB pay, or accrue the payment of, any amounts defined as a base erosion payment ...”

Information Reporting

- Section 59A authorizes the Secretary of the Treasury to prescribe additional reporting requirements under section 6038A relating to –
 - the name, principal place of business, and country or countries in which organized or resident of each person which
 - is a related party to the reporting corporation, and
 - had any transaction with the reporting corporation during its taxable year
 - the manner of relation between the reporting corporation and the person related to it; and
 - transactions between the reporting corporation and each related foreign person

Information Reporting (cont'd)

- Under the new information reporting requirements, an “applicable taxpayer” may need to report the following:
 - base erosion payments paid or accrued during the taxable year by the taxpayer to a foreign person which is a related party of the taxpayer,
 - base erosion tax benefits
 - such information as the Secretary of the Treasury finds necessary to determine the base erosion minimum amount, and
 - such other information as the Secretary of the Treasury determines is necessary
- Penalties provided for under section 6038A(D)(1) and (2) are both increased to \$25,000 from \$10,000

Resources

- Jurisdiction to Tax – Inbound (CBA) Practice Network (link to SharePoint page below)
[https://organization.ds.irsnet.gov/sites/LBIINTL/JurisdictionToTax/SitePages/Jurisdiction%20to%20Tax%20-%20Inbound%20\(CBA\)%20-%20IPN.aspx](https://organization.ds.irsnet.gov/sites/LBIINTL/JurisdictionToTax/SitePages/Jurisdiction%20to%20Tax%20-%20Inbound%20(CBA)%20-%20IPN.aspx)
- Practice Unit “Outbound Services by U.S. Companies to CFCs” on transfer pricing issues relating to services in general (link below)
https://portal.ds.irsnet.gov/sites/vl008/_layouts/15/WopiFrame.aspx?sourcedoc=/sites/vl008/PracticeUnits/Outbound%20Services%20by%20US%20Companies%20to%20CFCs.ppt&action=default
- Practice Unit “Services Cost Method Inbound Services” specifically on services cost method (see link below)
https://portal.ds.irsnet.gov/sites/vl008/_layouts/15/WopiFrame.aspx?sourcedoc=/sites/vl008/PracticeUnits/Services%20Cost%20Method%20Inbound%20Services.ppt&action=default

Lesson Summary 6

You should now be able to:

- Determine whether a taxpayer is an “applicable taxpayer” under section 59A
 - Determine “gross receipts”
 - Apply aggregation rules
- Calculate base erosion percentage
 - Identify base erosion payment
 - Define base erosion tax benefit
- Evaluate Form 8991 and relevant returns
 - Analyze base erosion minimum tax amount reported by taxpayer

Questions



Thank You

Thank you for your participation!