Feedback for REG-112607-19 (Additional Rules Regarding Base Erosion and Anti-Abuse Tax)

PROPOSED REGS SECTION NUMBER	SECTION TITLE	ISSUE	RECOMMENDATION	ADDITIONAL EXPLANATION /QUERIES
Prop. Regs. §1.59A-2(f)	**Examples**	Timing of end of year change	A change in ownership of an aggregate group member (either joining or leaving the aggregate group) may trigger a close of that member's tax year. Any such close of tax year for BEAT purposes should align with the close of tax year applied under other provisions of the Code. Specifically, any close of a year-end due for BEAT purposes should be effective as of the *end* of a day, not the *middle* of a day.	Example (2) describes a transaction occurring at noon on June 30. The analysis of the Example states that the taxpayer's close of the taxable year for BEAT purposes occurs just before noon, the time of the transaction. Having a mid-day cutoff solely for BEAT purposes when other Code provisions governing the same transaction apply an end-of-day rule for all other purposes would cause unnecessary complexity and administrative burden. For example, under §381 an acquiring corporation succeeds to and takes into account certain attributes as of the close of the day, not the time of the transaction. We request the close of the year-end for BEAT purposes be effective as of the end of a day.
Prop. Regs. §1.59A-3(c)	**Base erosion tax benefit**	Allowed deductions determined after giving effect to taxpayer's method of accounting and elections	Support approach that allowed deductions (Prop. Regs. §1.59A-3(c)(5)) should be determined after giving effect to the taxpayer's permissible method of accounting and to any election.	Approach simplifies the calculation and administration of the waiver of deductions election.
		Ability to waive should be expanded to other elections (capitalized R&D and opting out of bonus depreciation)	The Chamber welcomes the relief provided in Prop. Regs. §1.59A– 3(c)(6), that provides that a taxpayer may forego a deduction and that those foregone deductions will not be treated as a base erosion tax benefit if the taxpayer waives the deduction for all U.S. federal income tax purposes and follows specified procedures.	Allowing retroactive R&D capitalization or opting out of bonus depreciation would provide relief to taxpayers in certain circumstances. For example, if a taxpayer were above the base erosion percentage but had no BEAT liability for a tax year, a

			However, the Chamber is concerned this is limited in scope. Treasury and the IRS should expand this relief to the election of capitalize R&D under §59(e) and opting out of bonus depreciation under §168(k).	negative U.S. transfer pricing adjustment from a competent authority proceeding could trigger an unintended BEAT liability for that taxpayer by reducing regular tax. Retroactive capitalization measures would provide relief from the unintended and permanent BEAT consequences. By limiting remedies to §59(e) and 168(k), such relief would only allow the use of elections and not method changes, which would be consistent with Prop. Regs. §1.59A–3(c)(6)(ii)(C-D).
		Allow taxpayers to retroactively reduce previously waived deductions as well as retroactively waive <u>additional</u> deductions	Prop. Regs. §1.59A-3(c)(6) provides an election for taxpayers to waive allowed deductions for all purposes of the Code. The proposed regulations allow taxpayers to waive additional deductions on an amended tax return or during an audit, but not reduce the amount deductions waived. The Chamber requests that taxpayers be allowed to reduce previously waived deductions as well as waive additional deductions.	Prop. Regs. §1.59A-3(c)(6)(iii) provides that taxpayers may elect to waive deductions and increase the amount of deductions waived on an amended return or during the course of an exam. The Chamber appreciates this rule. However, the rule provides that taxpayers cannot decrease the amount of deductions waived on any amended tax return or during the course of an examination. The Chamber requests that taxpayers be allowed to decrease the amount of deductions waived just as they are allowed to elect to waive deductions or increase the amount of deductions waived.

				As there appears to be no policy concerns to allowing taxpayers to increase their waived deductions, there should no additional administrative burden or policy concerns with allowing taxpayers to decrease their waived deductions.
		Additional effect of election to waive deduction and interaction with §6222	The proposed rules do not address the effect of electing to waive a deduction under the partnership audit rules at §6222. The Chamber recommends that the following clause be added to the regulations to clarify that an election to waive a deduction under Prop. Regs. §1.59A-3(c)(6) is not an inconsistent treatment under §6222: Prop. Reg. sec. 1.59A-3(c)(6)(ii)(E). Not an inconsistent treatment. The election described in paragraph (c)(6)(i) of this section is not an inconsistent treatment under section 6222 and the regulations in this part under section 6222.	Corporate partners who receive a Schedule K-1 from a partnership who elect to waive deductions on the Schedule K-1 are subject to additional reporting requirements. Section 6222 requires that a partner treat each partnership-related item in a manner that is consistent with the treatment of such item on the partnership return. Partners' electing to treat partnership items inconsistently are required to notify the IRS of the inconsistent treatment. Prop. Regs. §1.59A-3(c)(6)(i)(A) – (G) provides for detailed disclosure requirements relating to a taxpayer's election to waive a deduction. The combination of the reporting requirements under Prop. Regs. §1.59A-3(c)(6)(i)(A) – (G) and §6222 and Regs. §301.6222-1 are administratively burdensome. Taxpayer's compliance with reporting requirements under §59A are sufficient for the Commissioner to examine the accuracy of the partners' liability under §59A where the partner elects to waive a deduction. Prop. Regs. §1.59A-3(c)(6)(ii)

				should clarify that a partner's decision to waive a deduction pursuant to proposed Prop. Regs. §1.59A-3(c)(6)(i) is not an inconsistent treatment subject to the requirement under §6222 and § 301.6222-1. As such, a partner should not be required to file a notice of inconsistent treatment to notify the IRS of its decision to waive a deduction pursuant to Prop. Regs. §1.59A-3(c)(6).
		Deduction waiver documentation requirements should be reduced	While the Chamber welcomes the relief provided in Prop. Regs. §1.59A– 3(c)(6), as noted above, Prop. Regs. §1.59A–3(c)(6)(i)(A-G) provides documentation requirements (to be filed with Form 8991) including a detailed description of property relating to deduction, date paid or accrued, Code section allowing deduction, amount of deduction, waiver amount, tax return line number, and identifying information for foreign related party recipient. A "detailed description of the property to which the deduction relates, including sufficient information to identify that item on the property's books and records," as described in Prop. Regs. §1.59A– 3(c)(6)(i)(A) is too onerous. A streamlined disclosure including the amount deducted, amount waived, tax return line item and foreign recipient should be sufficient for the IRS to ascertain the validity of the election without undue burden on taxpayers.	
		Automatic relief for elections taken on 2018 tax return	Request for automatic relief on 2018 returns related to §168(k) bonus depreciation and §59(e)(4) capitalization of R&E expenses in order to elect to waive expenses under the proposed regulations on a 2018 amended return.	Prop. Regs. §1.59A-3(c)(6)(iii) allows taxpayers to elect to waive deductions on an amended tax return.

				For calendar year taxpayers, this proposed regulation (and the election to waive deductions) was issued in December 2019, after the corporate tax return due date for the 2018 tax year, and thus was not available when calendar taxpayers filed their 2018 returns in October 2019. As such, taxpayers may have taken positions on their return, such as electing to forego bonus depreciation under §168(k) or elect to capitalize R&E expenses under §59(e)(4), that would not have been taken if the election to waive expenses would have been available. IRS has already provided certain relief related to the bonus depreciation election under Rev. Proc. 2019-33. The Chamber requests the relief in Rev. Proc. 2019-33 be expanded so taxpayers may make an automatic change in accounting method election related to their 2018 filed return to claim bonus depreciation and change the amount of capitalized R&E on an amended return. If such automatic relief is not provided, taxpayers would be required to request relief through a PLR, which is time consuming and costly for both the IRS and taxpayers. Therefore, providing automatic relief to take advantage of an election provided under the

				proposed regs would be beneficial to both taxpayers and the government.
Prop. Regs. §1.6031(a)-1(b)	**Foreign partnerships**	Clarity due to incorrect reference	Clarify references in Prop. Regs. §1.6031(a)-1(b)(7).	Prop. Regs. §1.6031(a)-1(b)(7) provides: If a foreign partnership is not required to file a partnership return and the foreign partnership has made a payment or accrual that is treated as a base erosion payment of a partner as provided in § 1.59A–7(b)(2), a person required to file a Form 8991 (or successor) who is a partner in the partnership must provide the information necessary to report any base erosion payments on Form 8991 (or successor) or the related instructions. This paragraph does not apply to any partner described in § 1.59A–7(b)(4). However, it doesn't appear that §1.59A-7(b)(2) or (4) exists, either in the proposed or final regulations. Please clarify what references are intended.