Feedback for REG-104259-18: Section 59A,[1] Guidance related to BEAT as of 2/15/2019

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Prop. Regs. §1.59A-2(c)	**Aggregation rules**	Election to Apply Aggregation Rules to the Computation of the Base Erosion Minimum Tax Amount	Provide that a taxpayer may elect to apply the aggregation rules for purposes of determining the base erosion minimum tax amount determined under §59A(b) and not only for the determination of an applicable taxpayer under §59A(e)(1) and the determination of the base erosion percentage determined under §59A(c)(4). The statute is ambiguous as to whether the aggregation rules apply for purposes of §59A(b).	Electing an aggregate approach for determining the base erosion minimum tax amount would treat all taxpayer entities as a single economic unit, permitting groups with multiple consolidated returns to be given full credit for the groups' contributions to the U.S. tax base. In certain instances, business, legal, or regulatory reasons prevent groups with multiple taxpayers from combining in a single consolidated return. The aggregate approach for electing taxpayers could be easily administered with an appropriate schedule reflecting a pro rata allocation among tax groups. Treasury has ample authority to provide an election in final regulations because §59A is ambiguous as to whether the aggregation rules apply for purposes of §59A(b). The flush language of §59A(e) provides that the definition of "applicable taxpayer" applies for all purposes of §59A, and the aggregation rules are an embedded part of the "applicable taxpayer" definition stating that it applies for purposes of §59A(e)(1) and (c)(4).

[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

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				Further, the Joint Explanatory Statement contains the following language: "To determine its modified taxable income, the applicable taxpayer computes its taxable income for the year without regard to any base erosion tax benefit of a base erosion payment or base erosion percentage of any allowable net operating loss deduction." Treasury also has broad authority under §7805 to promulgate final regulations that would permit taxpayers to elect to apply the aggregation rules for purposes of determining the base erosion minimum tax amount determined under §59A(b). The aggregate approach is equitable, results in an insignificant amount of additional complexity, and causes little additional administrative burden to taxpayers and the government. The use of an election would achieve this result without burdening taxpayers who would otherwise prefer not to use the aggregate approach, or adding a material administrative burden to taxpayers adopting the aggregate approach. To facilitate Treasury's concerns about ease of audit, the election could require that each

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				taxpayer joining the election share information needed to compute the aggregate BEAT liability, agree to be allocated a pro rata share of the aggregate BEAT liability and give consent for the statute of limitations to remain open until the audits of all group members with respect to the information used to determine the aggregate BEAT liability have closed. Such an approach would not require a substantial change to the proposed regulations to be implemented in the final regulations.
Prop. Regs. §1.59A-2(e)	**Base erosion percentage test**	De minimis exception for banking and registered securities dealer activities	The proposed regulatory exception should be affirmed in final regulations.	The base erosion percentage is determined on an aggregate group basis, and generally the lower 2% threshold applies if any member of the aggregate group is a member of an affiliated group that includes a bank or registered securities dealer. The proposed regulations provide a limited exception for members of an affiliated group that includes a bank or registered securities dealer where the bank or registered securities dealer activities are de minimis. In the absence of an exception, affiliated groups that are not principally engaged in banking or securities dealing would have been incentivized to alter their business structures to eliminate minimal banks or registered securities dealers from their aggregate groups,

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				leading to tax-motivated, inefficient restructuring costs. A de minimis exception reduces this potential inefficiency without substantially affecting the BEAT base.
		Claims of insurance companies	Regulations should exclude from the definition of base erosion payments (and exclude from the numerator of the base erosion percentage) any claims payments for losses incurred made by a domestic insurance company to a foreign related insurance company related to risks assumed into the United States.	With respect to insurance companies, the preamble stated that "the proposed regulations also do not provide any specific rules for payments by a domestic reinsurance company to a foreign related insurance company" and requested comments on the appropriate treatment of such items. In response to that request for comments, we recommend that claims payments for losses incurred made by a domestic insurance company to a foreign related insurance company in respect of reinsurance of risks into the U.S. should be excluded from the definition of base erosion payments. Such claims payments result from transferring foreign insurance business into the United States, which transfer has the effect of increasing (1) the U.S. tax base, (2) capital investment in the United States, and (3) jobs in the United States. Treating such claims payments as subject to §59A would be contrary to the policy rationale behind the section, as applying §59A to these claims payments would result in a shrinking of the

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				U.S. tax base, the exact consequence Congress was trying to combat in enacting §59A. The proposed regulations exclude exchange loss from a §988 transaction from the definition of base erosion payment, and the preamble states that §988 exchange losses "do not present the same base erosion concerns as other types of losses that arise in connection with payments to a foreign related party." The same logic should apply to exclude from the definition of base erosion payment any claims payments made by a domestic insurance company to a foreign related insurance company in respect of risks assumed into the United States: such claims payments result from transferring foreign insurance business into the United States and the associated broadening of the U.S. tax base, and the ultimate beneficiary of those claims payments are unrelated foreign insureds. In addition, the proposed regulations exclude interest paid or accrued on TLAC securities from the definition of base erosion payments. Treasury in the preamble identifies that exclusion as necessary and appropriate to carry out the provisions of §59A in light of the regulatory framework which requires banks to

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				issue TLAC securities. Just as U.S. regulations may require a bank to pay amounts to foreign related parties with respect to TLAC securities, generally local regulatory requirements in many countries (including the EU) effectively compel the use of a locally-licensed insurance company and restrict the ability of a U.S. insurer to engage directly with the ultimate foreign insureds, resulting in insurance arrangements structured in a way where claims payments are not made directly to a third-party claimant and instead are made through a local related party issuer. In addition, U.S. tax law treats income derived by an insured nonresident alien from U.S. sources upon the surrender of, or at the maturity of, a life insurance policy (i.e., a claim payment), as FDAP income subject to U.S. federal income tax at a 30% (or lower treaty) rate. So, as a practical matter the only way for a domestic insurance company to expand its customer base is establishing a local foreign subsidiary and reinsuring some of that business into the U.S. Accordingly, similar to the TLAC exception, an exception for claims payments made by a domestic insurance company to a foreign related insurance company in respect of risks reinsured into the United States would

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				likewise be necessary and appropriate to carry out the provisions of §59A.
Prop. Regs. §1.59A-3(b)	**Base erosion payments**	Double Taxation of Subpart F / GILTI and BEAT	Regulations should clarify that outbound payments made by an applicable taxpayer should not be treated as base eroding to the extent such payments result in an income inclusion to the applicable taxpayer or a related U.S. shareholder under §951(a) or §951A.	Under the proposed regulations, an applicable taxpayer's payment to a CFC can be treated as base eroding even if the payment is subject to U.S. taxation under subpart F (including the GILTI provisions). The effect of subjecting such payments to the BEAT is double taxation. (Even if foreign tax credits can be used to offset the §951(a) or §951A inclusion, use of such credits increases the applicable taxpayer's BEAT liability.) According to the Preamble, Treasury determined that it is appropriate in defining a base erosion payment to consider the U.S. tax treatment of the foreign recipient (and that payments to a foreign person should not be treated as base eroding to the extent such payments result in effectively connected income to the foreign party). The rationale for this exception applies equally to any case in which an "outbound" payment to a related party is subject to U.S. taxation, albeit in the hands of a U.S. shareholder (often times the same taxpayer that made the payment), yet Treasury offers no explanation for treating deductible payments which result in subpart F

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				income or a GILTI inclusion as a base erosion tax benefit. Notably, Treasury treated GILTI the same as subpart F for purposes of the exceptions in the §245A(e) and §267A proposed rules. In the Preamble to those rules, Treasury acknowledged that a payment that results in a subpart F or GILTI inclusion does not present a risk of eroding the U.S. tax base. (Thus, for example, Treasury extended the statutory exception to §267A disallowance for payments that result in a subpart F inclusion (see §267A(b)(1)) to payments included in the U.S. tax base under GILTI in order to avoid double taxation.) Treasury should provide that base erosion payments or tax benefits do not include deductible payments that increase the applicable taxpayer's (or a related party's) subpart F or GILTI inclusion.
		Treatment of non-recognition exchanges as base erosion payments	Provide that a payment be treated as a BEAT payment only if it results from an actual payment or accrual. For instance, it is hard to see the statutory basis for treating stock exchanged in a §332 liquidation as a "payment." In ordinary course situations, a "purchase" would be linked to a "payment," but that would not be the case in a §332 liquidation (i.e., exchanging stock for property in a §332 liquidation is not a "purchase" for U.S. tax purposes).	The proposed regulations under §59A (the proposed BEAT regulations) take an expansive view of the circumstances in which a base erosion payment may arise. In particular, the proposed BEAT regulations (in Prop. Regs. §1.59A-3(b)(2)(i)) provide that the types of consideration that may be treated as an "amount paid or accrued" include not only payments made in cash and property, but also stock or the

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				assumption of a liability. The preamble further notes that in some cases, a non-cash payment to a foreign party may meet the definition of a base erosion payment in the context of a transaction that qualifies under certain non-recognition provisions of the Code. The preamble lists as one of the examples of such transactions a domestic corporation's acquisition of depreciable assets from a foreign related party in a liquidation described in §332. For example, if a domestic corporation wholly owns a foreign corporation and the foreign corporation liquidates (pursuant to a "check-the box" election or otherwise) in a liquidation to which §332 applies (a §332 liquidation), Regs. §1.332-1 provides that the assets of the liquidating foreign corporation are treated as in full payment in exchange for the stock of the liquidating corporation. The proposed BEAT regulations, according to the preamble, would treat that deemed exchange of the stock of the liquidating corporation as a base erosion payment to the extent that the domestic corporation receives depreciable or amortizable property in the liquidation. The preamble notes that no specific exception is provided for transactions eligible for non-recognition treatment, and includes a fairly

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				extensive discussion of why Treasury and the IRS believe that to be the correct result. The preamble emphasizes that the statutory definition of a base erosion payment that results in the acquisition of depreciable or amortizable assets in exchange for a payment or accrual to a foreign related party is based on the amount of imported basis in the asset, which applies equally to carryover basis in a non-recognition transaction. In contrast, the preamble acknowledges that the receipt of property by the shareholder in a non-liquidating distribution under §301 is not a base erosion payment because there is no amount paid or accrued to the distributing corporation. The treatment of a §332 liquidation as a base erosion payment seems harsh, especially in light of the preamble's acknowledgement that an acquisition of depreciable or amortizable property in a §301 distribution (which generally would result in a stepped up basis in the property in the hands of the recipient) is not a base erosion payment. Moreover, in a §332 liquidation the amount deemed to be paid or accrued (i.e., the stock in the liquidating corporation) ceases to exist for U.S. federal income tax purposes as a result of the transaction, and the recipient of the amount deemed paid or accrued (i.e., the liquidating corporation) also ceases to exist for U.S. federal income tax purposes as a result of the

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				transaction. There is no indication in the statute or legislative history for treating the stock of the liquidating corporation as paid or accrued to the liquidating corporation. Further, inbound non-recognition transactions are often used in post-acquisition restructurings to align a target's legal structure with that of the acquirer, and in other internal restructurings to better align a multinational's legal structure with its commercial operations. Notably, they are often used to bring IP into the United States. By treating such transactions as constituting BEAT payments, the regulations provide a significant disincentive to move IP and other income-producing assets to the United States, which will reduce the U.S. tax base and frustrate the goals of the legislation.
		Acquisition of depreciable or amortizable property in non-recognition transactions	Issuance of equity should not be treated as an amount "paid or accrued" for BEAT purposes.	Prop. Regs. §1.59A-3(b)(2)(i) provides that base erosion payments include amounts paid or accrued using any form of consideration, including stock. The Preamble further clarifies Treasury's view that neither the non-recognition of gain or loss to the transferor nor the absence of a step-up in basis to the transferee establishes grounds to create a "separate exclusion" from the definition of a base erosion payment. Thus, the proposed regulations do not include any

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				"specific exceptions" for these types of transactions. However, it is unclear whether any "separate exclusion" or "specific exception" from the definition of a base erosion payment is necessary to prevent transactions qualifying for non-recognition treatment from being treated as base eroding. The wording of §59A(d)(2) suggests that the issuance of stock or a partnership interest was not intended to be covered. Specifically, §59A(d)(2) states that a base erosion payment includes "any amount paid or accrued" by the taxpayer to a foreign related person in connection with the acquisition of depreciable property by the taxpayer. The issuance of equity is not normally considered an "amount paid or accrued." Subjecting inbound non-recognition transactions to BEAT seems contrary to the TCJA which is intended to encourage taxpayers to relocate business functions and assets to the United States and expand business activities in the United States. If Congress wished to subject non-recognition transactions to BEAT, it would have done so more explicitly. Further, inbound non-recognition transactions are often used in post-acquisition restructurings

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				to align a target's legal structure with that of the acquirer, and in other internal restructurings to better align a multinational's legal structure with its commercial operations. Notably, they are often used to bring IP into the United States. By treating such transactions as constituting BEAT payments, the regulations provide a significant disincentive to move IP and other income-producing assets to the United States, which will reduce the U.S. tax base and frustrate the goals of the legislation. For example, problems can arise when BEAT is applied to §351 transactions in the post-merger and acquisition integration context. Post M&A, newly acquired companies and business lines must be integrated with the existing business lines of the acquiring enterprise. How such integration is accomplished takes into account business and tax issues. With respect to the latter, existing U.S. tax rules, such as the cost-sharing arrangement described in Regs. § 1.482-7, provide regulatory benefits for intellectual property or other assets held by domestic entities. Post-acquisition structuring and restructuring is necessary to comply with these rules and is often accomplished through inbound non-recognition transactions. If these ordinary integration activities produce adverse BEAT consequences, acquirers with U.S. activities will

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				be at a competitive disadvantage in foreign asset acquisitions relative to buyers located and operating outside of the United States because of the relatively higher integration costs. Sound U.S. tax policy would encourage post-M&A integrations that bring intellectual property or other assets into the United States. As an example, consider that a U.S. based company acquires a foreign company with significant U.S. operations. The U.S. company is at a competitive disadvantage if it cannot consolidate its historic and acquired U.S. operations without creating a potentially significant BEAT liability. In the case of a U.S. acquirer, the acquired depreciation deductions create BEAT exposure while the same depreciation deductions acquired by the foreign company do not. In order to prevent this disparity in treatment, there should be some exception for post-third party acquisition restructurings, specifically the transactions that involve §351 contributions.
		Section 301 Transactions	Regulations should explicitly provide that no base erosion payment arises in a distribution to which §301 applies, including §302(d) redemptions.	The preamble of the proposed regulations state that there is no base erosion payment in an “in-kind distribution subject to section 301.” This language does not appear in the proposed regulations.

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		Where total amount paid for services includes a markup	The proposed regulatory change of §59A(d)(5) should be affirmed in final regulations.	Section 59A(d)(5) (the SCM exception) provides that a base erosion payment shall not include "any" amount paid or accrued for services if (1) the services are eligible for the services cost method under §482 (determined without regard to the business judgment rule) and (2) the amount constitutes the total services cost with no markup component. When an amount paid or accrued for services exceeds the total services cost, but the payment otherwise meets the requirements set forth in §59A(d)(5), Treasury clarified in Prop. Regs. §1.59A-3(b) that the SCM exception is available for the cost component. Treasury's interpretation is consistent with the plain language of §59A(d)(5) and the only interpretation that gives effect to the operative statutory language. Because the statute explicitly provides that taxpayers can qualify for the SCM exception even if they cannot satisfy the business judgment rule, this exception explicitly includes services that cannot qualify for the services cost method described in Regs. §1.482-9(b). Importantly, such services must be priced at arm's length; that is, with a markup rather than at cost. The Preamble is correct that Treasury's interpretation gives effect to §59A(d)(5)'s

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				reference to the business judgment rule. In contrast, an alternative interpretation to disallow the SCM exception to any portion of a payment that includes a markup component would ignore the statutory parenthetical reference to the business judgment rule. Thus, such an alternative interpretation would violate a fundamental principle of statutory construction which provides that every word and every provision should be given effect, none should be ignored. To give effect to every operative provision of §59A(d)(5), Treasury should affirm its interpretation of the SCM exception in the final regulations.
		"Excluded activities" and Service Cost Method Exception	Provide that the cost element of payments for services on the "excluded activities" list at Regs. §1.482-9(b)(4) (including but not limited to R&E by a U.S. person that owns the IP being developed or enhanced) do not constitute base erosion payments. The excluded activities list in the §482 regulations serves the same purpose in the transfer pricing regulations as the business judgment rule of Regs. §1.482-9(b)(5): to identify services that should be subject to more robust transfer pricing analysis. Accordingly, they can be provided the same treatment under §59A. Because the services exception is limited to the cost element of any service fee, no U.S. tax base erosion can result from applying the exception to payments for these services. Moreover, many of these costs will be U.S. base enhancing arrangements. This	Base erosion payments do not include certain amounts paid or accrued for services. The proposed regulations interpret this services exception to apply to the cost component of any amount paid for services that satisfy the requirements of the regulatory services cost method, with two exceptions: (1) the business judgment rule in Regs. §1.482-9(b)(5) does not apply, and (2) a different rule is provided to ensure the maintenance of adequate books and records. Accordingly, payments for services on the "excluded activities" list of Regs. §1.482-9(b)(4) do not qualify for the BEAT services exception. While legislation may be required to fully align the operation of

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			supports the policy objectives of the BEAT and the legislation overall.	this rule with the objectives of the BEAT, a regulatory exception should be considered as an interpretation of the effect of the statute relieving the business judgment rule.
		Services performed by foreign related parties on behalf of unrelated customers	Clarify that a "base erosion payment" does not include payments made pursuant to a services contract where a U.S. taxpayer makes a payment to a foreign related party for services provided by the foreign related party directly to an unrelated customer. Such payments are more properly treated as the U.S. taxpayer transferring a payment it received from the unrelated customer to the foreign related party for work performed by the foreign related party outside of the United States.	U.S. headquartered companies often sell equipment in conjunction with service agreements to maintain and repair the equipment. Such service agreements are often managed centrally from the United States, with the U.S. taxpayer making a payment to a foreign affiliate to service the equipment now owned by an unrelated buyer. These payments should not be treated as "base erosion payments." Rather, the U.S. taxpayer should be treated as a "middleman" that is passing on a payment to a foreign related party for services it performed for an unrelated customer. Excluding these payments from the definition of "base erosion payments" and allowing these structures to continue enhances the U.S. tax base by keeping high-value operations located in the United States. Similarly, U.S. companies may enter agreements with unrelated clients to deliver other types of services via offshore affiliates. As with equipment maintenance or repair services, where the services are provided by an offshore affiliate to an unrelated client,

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				payment through the U.S. affiliate should also be excluded from the definition of "base erosion payments." Allowing U.S. companies to facilitate the sale of offshore services to unrelated clients without adverse BEAT consequences also supports keeping high-value operations in the United States. Treasury has the authority to make these clarifications under §59A(i), which gives Treasury the authority to prescribe regulations to implement the BEAT and under §7805(a), which gives Treasury the authority to adopt "all needful rules and regulations." The TLAC and §988 exceptions from the proposed regulations further demonstrate that Treasury has the authority to scope out those payments that do not give rise to "base erosion."
		Effectively connected income (ECI)	Prop. Regs. §1.59A-3(b)(3)(iii) includes an exception for effectively connected income (ECI) from being counted as a base erosion payment. This exception would exclude payments that are already subject to U.S. net income tax by the payee. The Preamble of the proposed regulation correctly notes that those amounts are subject to U.S. tax on a net basis in substantially the same manner as amounts paid to a U.S. resident or domestic corporation. This approach is appropriate as not addressing this issue would be tantamount	

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			to double taxation. The final regulations should affirm this approach.	
		Related publicly traded companies	Provide that related publicly traded companies are not treated as related for purposes of §59A. Relatedness is defined as any 25% owner of the taxpayer; any person who is related under §267(b) including any corporate ownership interest greater than 50% of vote or value; or controlled taxpayers within the meaning of Regs. §1.482-1(i)(5).	The TLAC and §988 exceptions demonstrate that Treasury has the authority to scope out those payments that do not give rise to "base erosion." Additionally, Treasury has provided relief for publicly traded companies in the past where it did not have explicit legislative history or statutory authority to do so. For example, in Regs. §1.367(e)-1(d)(3), Treasury and the IRS provided relaxed rules for determining whether less than 5% distributee shareholders of a publicly traded corporation are "qualified U.S. persons." Regs. §1.382-2T(j) also provides relaxed rules for 5% shareholders of a publicly traded corporation, and various provisions under the cost-sharing regulations provide special rules for publicly traded corporations. In defining a publicly traded company, we recommend using the definition from §7704 (publicly traded partnerships), "The stock of such corporation is regularly traded on an established securities exchange."

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Prop. Reg. § 1.59A-3(b)-(c)	**Base erosion payments / Base erosion tax benefits**	Application of provisions in the context of tax-free partnership contributions	Clarify depreciation deductions allocated to a taxpayer by a partnership that are attributable to property contributed to the partnership by a foreign related partner are not treated as base erosion tax benefits if such property was contributed to the partnership prior to the effective date of the BEAT.	Under Prop. Regs. §1.59A-3(b)(1)(ii), a base erosion payment includes any amount paid or accrued by an applicable taxpayer to a foreign related party of the taxpayer "in connection with" the acquisition of property by the taxpayer from the foreign related party if the character of the property is subject to the allowance for depreciation (or amortization in lieu of depreciation). Under Prop. Regs. §1.59A-3(c)(1)(ii), in the case of a base erosion payment described in Prop. Regs. §1.59A-3(b)(1)(ii), any deduction allowed for depreciation (or amortization in lieu of depreciation) with respect to the property acquired with that payment constitutes a base erosion tax benefit. The Preamble explains that if a partnership acquires property from a foreign related party of a taxpayer that is a partner in the partnership through a nontaxable contribution to the partnership, depreciation deductions attributable to such property that are allocated to the taxpayer generally are base erosion tax benefits, in part, because the partnership is treated as acquiring the property in exchange for an interest in the partnership under §721.

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				Consistent with the effective date of §59A, the proposed regulations confirm that a deduction for depreciation with respect to property acquired by a base erosion payment does not qualify as a base erosion tax benefit if the deduction relates to a base erosion payment that occurred in a taxable year beginning before January 1, 2018. Thus, depreciation deductions allocated to a taxpayer by a partnership that are attributable to property contributed to the partnership by a foreign related partner should not be treated as base erosion tax benefits if such property was contributed to the partnership prior to the effective date of the BEAT. Although the proposed regulations and preamble suggest this conclusion in the partnership context, the regulations should confirm this result explicitly.
Prop. Regs. §1.59A-4(b)	**Computation of modified taxable income**	NOLs	The proposed regulations properly clarify that NOLs that arose in a taxable year beginning before January 1, 2018 have a base erosion percentage of zero. The final regulations should affirm this treatment.	This treatment is appropriate because pre-2018 NOLs cannot have a base erosion percentage because they arose in years prior to the effective date of §59A.
		Add-back basis	The proposed regulations properly clarify that the computation of modified taxable income is done on an add-back basis, rather than a complete recomputation of income under an approach similar to the former alternative minimum tax. The final regulations should affirm this treatment.	This treatment is much simpler and easier to administer than a recomputation approach, which the Preamble notes would require “a more complex tracking of separate attributes on a BEAT basis similar to the repealed corporate AMT.”

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Prop. Regs. §1.59A-5(b)	**In general**	Whether pre-2018 AMT credit carryforwards utilized post-2017 should be considered in calculation of BEMTA under Prop. Regs. §1.59A-5(b)(2)	Exclude AMT credits from the definition of credits allowed under chapter 1 in Prop. Regs. §1.59A-5(b)(2)(i) as they are income taxes imposed in a previous tax year allowed as credits in a subsequent year (§53(a)).	The AMT regime was repealed effective 1/1/18 with a provision to allow full utilization of credit (against regular tax or as a refundable credit) in post-2017 tax years. These transition credits should be excluded from the determination of BEMTA in the same manner as other tax credits related to prior year income taxes (preamble p. 52). More generally, the preamble provides specific guidance related to credits generated pre-2025 and utilized post-2026 but does not address the treatment of credits generated prior to the BEAT effective date in determining BEMTA.
Prop. Regs. §1.59A-5(c)	**Base erosion and anti-abuse tax rate**	Blended BEAT rate for fiscal year taxpayers	Revise Prop. Regs. §1.59A-5(c)(3) to provide that §15 does not apply to any taxable year that begins in 2018.	Prop. Regs. §1.59A-5(c)(3) provides that §15 applies to determine the BEAT rate for any taxable year of a fiscal year taxpayer which begins after January 1, 2018. Presumably this regulation would require a fiscal year taxpayer to determine the BEAT rate for its first taxable year subject to BEAT by using the blended rate principles of §15. Section 15(a) applies to taxable years that include the effective date of a change in rate. Section 15(c) defines the effective date of a rate adjustment for changes to taxable years “beginning after,” “ending after,” or “beginning on or after” a certain date. In contrast, §59A(b) establishes 10% as the

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				default BEAT rate and applies a 5% rate (as an exception to the default rate) for "taxable years beginning in calendar year 2018." The fact that §59A(b)(1)(A) uses the phrase "beginning in" (a term not contemplated by §15) instead of "beginning after" like Congress did in §59A(b)(2) (a term that is within purview of §15) indicates Congressional intent that the 5% BEAT rate applies for a taxpayer's entire taxable year which begins in calendar year 2018.
Prop. Regs. §1.59A-7(b)	**Application of §59A to a partnership**	Partnership look-thru rules	Prop. Regs. §1.59A-7(b)(3) appropriately characterizes payments made to a partnership by reference to the distributive share received by each partner. The final regulations should affirm this treatment. In §59A(f), the statutory definition of a 'foreign person' for purposes of determining whether a base erosion payment has been made refers to §6038A(c)(3), which in turn refers to §7701(a)(30). Applying an entity approach to the definition of foreign person would lead to the conclusion that a payment to a partnership is characterized for BEAT purposes based on the country in which the partnership was created or organized, which could lead to situations in which a payment to a foreign partnership with only U.S. partners only the United States, which is not base eroding, is treated as a base erosion payment. Conversely, a payment to a U.S. partnership with foreign related partners would escape BEAT.	