August 19, 2026

Kevin Salinger
Acting Assistant Secretary, Tax Policy
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Recommendations for Administrative Improvements to Section 59A (Base Erosion and Anti-Abuse Tax)

Dear: Mr. Salinger:

The [Alliance for Competitive Taxation] (ACT) is a group of leading American companies from a wide range of industries that supports a globally competitive tax system.

In ACT's May 29, 2026, submission[1] responding to Notice 2026-23 regarding the 2026-2027 Priority Guidance Plan, we advised that ACT would separately provide recommendations for revisions to the regulatory guidance implementing the Base Erosion and Anti-Abuse Tax (BEAT). We are now writing to provide you with ACT's recommendations with respect to the BEAT.

ACT members would greatly appreciate your consideration of the recommendations set forth below. These recommendations reflect the practical experience of ACT member companies applying section 59A since its enactment and are intended to assist Treasury in identifying targeted opportunities to improve the administration of the BEAT while preserving its fundamental purpose of protecting the U.S. corporate income tax base from inappropriate erosion.

ACT appreciates Treasury's continued commitment to improving tax administration, reducing unnecessary regulatory burdens, and issuing practical guidance that promotes certainty, administrability, and voluntary compliance.

We would welcome the opportunity to discuss these recommendations with Treasury and IRS personnel at your convenience.

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[1] Alliance for Competitive Taxation, *Response to Notice 2026-23: Recommendations for Items to be Included on the 2026-2027 Priority Guidance Plan* (May 29, 2026).

I. Introduction: ACT Members' Experience Applying the BEAT and Treasury's Authority to Address Unintended Outcomes

Section 59A of the Internal Revenue Code (the Base Erosion and Anti-Abuse Tax, or BEAT) was enacted as part of the Tax Cuts and Jobs Act (TCJA) to discourage inappropriate erosion of the U.S. corporate income tax base. Specifically, the Senate Finance Committee noted in its "Reasons for Change" discussion that the pre-TCJA tax system "makes foreign ownership of almost any asset or business more attractive than U.S. tax ownership," and further expressed concerns with respect to "U.S. and foreign corporations outsourcing their U.S. business operations to foreign jurisdictions at the expense of the American worker."[2] The *purpose* of the BEAT was thus to address congressional concerns about shifting of business operations and tax base from the U.S. to foreign jurisdictions. The specific *mechanism* chosen by Congress to address these concerns was to adopt a minimum tax regime applicable to U.S. corporations based on their deductible payments to foreign related parties.

More than eight years after section 59A entered into force, taxpayers and the government have had extensive practical experience applying the BEAT across a range of fact patterns. With the benefit of this experience, we can better assess how the mechanism chosen by Congress is performing in addressing the concerns that led Congress to adopt the BEAT. As discussed more fully below, in certain recurring fact patterns our experience has shown that a rigid application of the BEAT's provisions is actually undermining, rather than advancing, Congress's purposes in adopting the BEAT. Accordingly, ACT believes Treasury has an opportunity to allow the BEAT to better fulfill its purpose as articulated by Congress by implementing targeted administrative refinements that would improve the operation of the existing regulatory framework while remaining fully consistent with the statutory purposes and text of section 59A.

Although the recommendations contained in this submission involve different industries, transaction types, and categories of payments, they share a common profile: they represent legitimate, non-tax motivated commercial arrangements with respect to which the current BEAT regulatory framework actually discourages companies from maintaining or increasing their U.S. business operations or tax base, contrary to Congress's stated purposes for adopting the BEAT. In addition, many of these fact patterns have resulted in taxpayers being required to undergo burdensome restructuring transactions with no commercial benefit in order to limit the potential application of the BEAT.

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[2] S. Rep. No. 115-20 at 396 (2017).

We recognize that Treasury regulations must remain within the authority granted by Congress.[3] We note in this regard that Section 59A grants Treasury authority to adopt regulations "as may be necessary or appropriate to carry out the provisions of this section."[4] We are aware of multiple instances where courts have interpreted this or similar language to permit Treasury to adopt regulations that promote the congressional purpose underlying the relevant statute.[5] In addition, Congress further extended Treasury's authority in section 59A, specifically permitting Treasury to provide for "adjustments to the application of this section as are necessary *to prevent the avoidance of the purposes of this section*..." (emphasis supplied).[6] In the fact patterns discussed in this letter, experience has demonstrated to ACT members that the current regulatory framework is undermining the purposes of the BEAT, such that it is well within Treasury's authority to issue regulations that prevent these outcomes.[7]

As described in more detail below, the principal defect of the current BEAT framework as applied to certain fact patterns is that the regulations apply to deductible outbound payments on a strict payment-by-payment basis to assess whether the payment results in base erosion. While this approach is undoubtedly appropriate in many circumstances, the practical experience of ACT members is that the inability to consider the broader context in which certain types of payments occur can frustrate congressional intent and effectively undermine the operation of the BEAT. In our experience, individual payments often arise within broader commercial arrangements that:

- Generate substantial U.S. taxable income;
- Maintain U.S. ownership of valuable assets;

[3] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 871 (2024).
[4] Section 59A(i).
[5] See, e.g., *Sidell v. Commissioner*, 225 F.3d 103 (1st. Cir. 2000), applying the language "necessary or appropriate to carry out the provisions of this section" in section 469(l) and concluding that it allows Treasury to adopt regulations to "further the goals of section 469."; *Barnes v. Commissioner*, 130 T.C. 248 (2008), applying the language "necessary to carry out the provisions of this section" in 6015(h) and noting that the regulations in question "rationally promote the Government's legitimate interest". While these and other cases predate the Supreme Court's decision in *Loper Bright*, the *Loper* Court specifically noted that, if the "best reading of a statute is that it delegates discretionary authority to an agency," the role of the reviewing court is to determine if the agency action falls outside the grant of authority. Accordingly, prior caselaw interpreting the breadth of authority granted by the words "necessary or appropriate to carry out the provisions of this section" continues to have relevance.
[6] Section 59A(i).
[7] We recognize that this language in section 59A(i) is followed by specific examples of *taxpayer* behavior that could frustrate Congress's intent in enacting the BEAT (e.g., the use of intermediaries or engaging in transactions "designed" to recharacterize payments in order to avoid the BEAT). Nevertheless, the language draws a specific connection between Treasury's authority to promulgate regulations and Congress's *purpose* in adopting the BEAT. Accordingly, where an overly wooden application of the BEAT is likely to lead to further base erosion in certain fact patterns, Treasury is called upon to address these fact patterns to prevent outcomes that "[avoid] the purposes of this section."

- Produce current U.S. taxation of related income; and/or
- Otherwise support significant economic activity within the United States.

ACT believes it is within Treasury's authority to distinguish, for purposes of carrying out the congressional intent of section 59A, between payments presenting genuine base erosion concerns and payments arising as part of economically integrated commercial arrangements that, when examined in this broader context, do not erode and, in fact, are likely to enhance the U.S. tax base.

ACT recognizes that the BEAT is a challenging statute to interpret and administer, but we strongly believe that administration of the BEAT can be enhanced through modifications to its application in the case of certain readily identifiable fact patterns that do not present base erosion concerns. Accordingly, throughout this submission, ACT proposes objective eligibility criteria and appropriate administrative guardrails designed to ensure that any future guidance remains narrowly tailored, administrable, and consistent with the statutory framework enacted by Congress.

II. Recommendations

This section describes six recommendations for improving the administration of the BEAT regime, including a description of the issue, the current treatment of the issue, the proposed change in treatment, and guardrails.

1. Enhancing the Existing BEAT Waiver Framework

A. The Issue

The existing BEAT waiver regulations have become an important administrative mechanism through which taxpayers manage BEAT exposure. In many circumstances, taxpayers elect to waive otherwise allowable deductions to reduce their base erosion percentage below the applicable statutory threshold or otherwise mitigate BEAT liability.

ACT recognizes that the existing waiver framework provides meaningful flexibility and has become an important component of BEAT administration.

Practical experience has nevertheless demonstrated that the current framework may produce economically inefficient outcomes. In particular, while the ability to waive deductions to mitigate potential BEAT exposure can be a helpful short-term mitigant, the permanent elimination of deductions attributable to ordinary course expenditures increases the cost imposed on taxpayers for performing the underlying activities that give rise to the deduction in the United States. This, in turn, can lead taxpayers to migrate those activities to other jurisdictions (where deductions would not be limited), directly contrary to the congressional intent in adopting the BEAT.

Accordingly, while ACT does not recommend eliminating or replacing the existing waiver regulations, we do recommend that Treasury consider refining the current framework in a manner that preserves its administrative benefits while reducing unnecessary economic distortions.

B. Current Waiver Framework

The existing regulations[8] helpfully provide that the BEAT waiver election can be made on an originally filed return, on a subsequently amended return, or during an examination. The regulations also require that any waived deduction be disallowed for all purposes of the Code and regulations. The effect of waiving a deduction is that the taxpayer will be subject to U.S. federal income tax on an amount exceeding its economic income -- a limitation that, in all likelihood, the taxpayer would not face under foreign law if the activity giving rise to the deduction took place in a foreign jurisdiction.

Thus, although the election frequently succeeds in reducing BEAT liability, the "downstream" consequences of requiring taxpayers to forgo deductions on a permanent basis will often be to discourage the U.S. economic activity that gives rise to those deductions.

C. Recommendation

ACT recommends that Treasury consider enhancing the existing waiver framework through a targeted alternative administrative approach that reduces economically inefficient outcomes while still preserving the BEAT's stated purpose of preventing base erosion.

Specifically, ACT recommends permitting taxpayers to elect within the existing deduction waiver framework to capitalize, rather than permanently waive, deductions that otherwise would qualify for the existing waiver election.

Under such an approach, if elected by a taxpayer:

- Qualifying deductions would be capitalized rather than permanently disallowed;

[8] Treas. Reg. §1.59A-3(c)(6)

- The capitalized amount would be recovered over a recovery period prescribed by Treasury; and
- Taxpayers would continue to bear a meaningful economic cost associated with deduction deferral.

This approach would preserve the integrity of the BEAT while more closely aligning its operation with Congress's underlying policy. Specifically, by allowing taxpayers more flexibility with respect to the timing of potential base-eroding deductions rather than requiring permanent denial of those deductions, taxpayers would retain a meaningful ability to manage their base erosion percentage in any given year but would have less of a tax incentive to migrate economically beneficial activities outside the United States to avoid the imposition of tax on amounts in excess of their economic income. BEAT would still potentially apply as capitalized amounts are deducted over time, thus preserving the existing architecture of the BEAT regime.

Accordingly, the proposal is not intended to eliminate tax consequences associated with the existing waiver election, but rather to permit electing taxpayers to replace permanent forfeiture with a timing mechanism that continues to impose a meaningful cost on taxpayers while reducing economically inefficient outcomes and the potential migration of U.S. economic activity.

D. Suggested Administrative Guardrails

To ensure that any enhancement remains appropriately limited, Treasury could consider requiring, in addition to the criteria described above, that:

- The taxpayer otherwise satisfies the requirements for the existing deduction waiver election;
- The election be limited to the amount necessary to reduce the taxpayer's base erosion percentage below the applicable statutory threshold;
- The taxpayer maintains contemporaneous documentation supporting the election and the computation of the capitalized amount; and
- Appropriate anti-abuse rules are included to prevent inappropriate tax results.

These objective criteria would preserve the targeted nature of the existing waiver framework while allowing Treasury to adopt a more economically neutral and administrable approach that continues to further the objectives of the BEAT.

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2. Related-Party Interest Payments Subject to Current U.S. Taxation

A. The Issue

Many multinational enterprises utilize centralized treasury operations to manage financing across their global businesses. These treasury structures commonly include U.S. affiliated entities as well as controlled foreign corporations[9] ("CFCs") that centralize external borrowing in one or more entities and manage group liquidity through a range of intercompany financing arrangements. These arrangements may take a variety of forms — including term loans, revolving credit facilities, intercompany notes, short-term advances, and physical or notional cash pooling — pursuant to which members of the group both on-lend funds and accept funding from other members of the group as part of the overall cash management function.

As a result, U.S. group members may make deductible interest payments to a foreign related party while also receiving interest payments from other foreign related parties as part of this overall intercompany financing activity. Over the course of any given year, amounts are routinely lent, borrowed, advanced, and repaid among a group of affiliated entities pursuant to these arrangements – even including common situations where an entity is in a net lending position for part of the year with a counterparty and in a net borrowing position with that same counterparty at other times during the year. The direction and magnitude of these intercompany positions reflect the group's evolving liquidity needs rather than any base-eroding purpose.

In the case of U.S.-parented multinational groups, any interest income earned by the foreign affiliate is typically included currently in the income of a U.S. shareholder under Subpart F.[10] From an economic and policy perspective, these arrangements present materially different considerations than situations in which deductible related-party payments permanently erode the U.S. tax base. In these fact patterns, the U.S. entities of the group will routinely have interest income as well as interest expense from related-party transactions in the same taxable year. In addition, as noted, the interest paid by U.S. group members to foreign affiliated entities generally remains subject to current U.S. tax through the Subpart F regime.[11]

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[9] See I.R.C. §957(a).

[10] See I.R.C. §§951–965.

[11] For the avoidance of doubt, as described further below, ACT is not recommending in this submission that intercompany interest paid from U.S. group members to related CFCs and taxed under subpart F be carved out of the definition of base erosion payment under section 59A(d).   Rather, ACT is recommending a narrow exception, applicable to U.S.-parented groups, that would permit the netting of intercompany interest income and expense paid among U.S. and non-U.S. group members for purposes of determining the base erosion tax benefit under section 59A(c)(2). The "net" interest paid from the U.S. group members to the related CFCs would continue to be treated as

B. Current Application of the BEAT

Under the current BEAT framework, deductible interest payments made to foreign related parties generally are evaluated independently in determining whether they constitute base erosion payments.

That is, neither the fact that the U.S. group will typically have both interest income and interest expense from these related-party lending transactions each year nor the fact that interest income received by a foreign related party will result in a current inclusion under Subpart F is taken into account in determining the extent to which any deductible interest payments of U.S. members of the group are considered to be base erosion payments.

Accordingly, a taxpayer may incur BEAT liability even though the net amount paid by the U.S. group over the year to foreign affiliates is significantly less than the amount that is considered to be "base eroding" under a strict payment-by-payment analysis and even though the interest income received by the foreign affiliates is already subject to current U.S. taxation through the operation of the Subpart F regime.

As a result, the current rules may overstate the base erosion impact of certain related-party interest payments. Taxpayers devote substantial administrative resources to managing BEAT exposure in these fact patterns through continual monitoring and managing intercompany borrowing positions. These efforts increase compliance costs and operational complexity without changing the group's overall economic financing position, contrary to broader Treasury policy objectives favoring administrable tax rules that minimize unnecessary compliance burdens. Further, as with the other fact patterns described herein, the current application of the BEAT rules on these intercompany interest flows can cause companies to undertake potentially costly restructuring transactions to limit the extent to which non-U.S. affiliates lend to U.S. affiliates (i.e., by putting in place arrangements which reduce the extent to which cash is pooled globally in favor of more constrained approaches). Such restructurings, in turn, can encourage the migration of treasury-related functions outside the United States, directly contrary to the stated

a base erosion payment under Section 59A(d). The fact that the interest paid to the CFCs in such a fact pattern is fully subject to U.S. tax under subpart F provides additional support for the conclusion that the overall arrangement is not "base eroding," such that the narrow exception proposed herein is appropriate.

purposes of Congress in enacting section 59A to prevent "the migration of U.S. business operations to foreign jurisdictions at the expense of the American worker."[12]

C. Recommendation

ACT recommends that Treasury provide targeted administrative guidance in the form of a regulatory exception that permits netting of related-party interest expense and interest income arising from intercompany financing arrangements among the U.S. and non-U.S. members of a U.S. group during the same taxable year. This commonsense approach would reflect the recognition that the liquidity management functions of a U.S. group cannot reasonably be viewed as base eroding on the basis of the gross amount of each outbound interest payment to foreign members of the group, when (a) the U.S. members of the group also receive interest payments in the same year from foreign members (often the same foreign members to whom the U.S. group is making interest payments) and (b) the interest paid from the U.S. to foreign members of the group is currently taxed under the U.S. subpart F rules. Providing that the gross amount of such payments are not base erosion payments within the meaning of section 59A would also obviate the need for taxpayers to engage in restructuring of the type described above (which, as noted, can result in taxpayers shifting more of their treasury-related functions outside the United States).

ACT's recommendation is limited to circumstances in which:

- Interest is paid among the U.S. and foreign members of a U.S. group pursuant to intercompany financing arrangements entered into in furtherance of the group's overall liquidity management strategy, including term loans, revolving credit facilities, intercompany notes, short-term advances, and physical or notional cash pooling;
- The foreign recipients of interest paid by members of the U.S. group are controlled foreign corporations; and
- The corresponding interest income received by controlled foreign corporation members is currently included in U.S. taxable income under Subpart F.

[12] In addition, the current BEAT approach, by unnecessarily constraining the ability of U.S. group members to utilize excess foreign cash, limits the ability of the group to deploy that cash in the United States (e.g., to expand U.S. facilities, increase U.S. employment, or return excess cash to shareholders as dividends).

D. Suggested Administrative Guardrails

To ensure that any administrative relief remains appropriately targeted, Treasury could require that:

- The taxpayer maintains contemporaneous documentation establishing the relationship between the deductible interest payment and the corresponding Subpart F income inclusion;
- The taxpayer applies the methodology consistently from year to year; and
- Relief would not apply where the arrangement produces duplication of tax benefits or other inappropriate results.

These objective criteria would appropriately limit relief to circumstances in which the related income is already subject to current U.S. taxation, while providing an administrable and readily verifiable standard for both taxpayers and the Internal Revenue Service.

The recommendation does not create a broad exemption for related-party interest expense. Rather, it recognizes that viewing related-party interest payments among a U.S. group in isolation is punitive and makes it more costly for companies to centralize their cash management functions in the United States. Treasury has the authority to adopt "necessary and appropriate" rules to rationalize the treatment of these intercompany cash management arrangements and, by so doing, to protect the U.S. tax base from the potential erosion that can result from a strictly mechanical, payment-by-payment application of the BEAT.

3. Transfer Pricing Balancing Adjustments

A. The Issue

Many multinational enterprises apply established transfer pricing methodologies that require periodic balancing adjustments to ensure that the ultimate allocation of profits is consistent with the arm's-length standard.[13]

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[13] For example, a foreign affiliate of a U.S. taxpayer may enter into a contract directly with a foreign customer to perform services. All of the underlying intellectual property of the business is owned directly by the U.S. taxpayer. Under the terms of the contract, the third-party customer makes annual payments to the foreign affiliate, without regard to the extent of the services actually performed by the foreign affiliate in that year. During years in which limited services activity is required, the foreign affiliate will make deductible royalty payments to the U.S. taxpayer (consistent with the role of the U.S. taxpayer as the IP owner). During years in which extensive services activity is performed by the foreign affiliate, the U.S. taxpayer will make net deductible payments to the foreign affiliate to

Such balancing adjustments arise under a variety of transfer pricing methods and operating structures, including branch-principal arrangements, limited-risk operating models, centralized service organizations, and other structures in which routine returns and residual profits are allocated among related parties pursuant to documented transfer pricing policies.

Because these balancing adjustments merely implement the underlying transfer pricing methodology, they frequently result in corresponding adjustments over time. An entity that makes a balancing payment during one taxable year may receive an offsetting balancing adjustment in a subsequent year, or another entity within the same operating structure may receive a compensating balancing adjustment pursuant to the same documented transfer pricing methodology.

Accordingly, the balancing adjustment itself does not represent additional economic activity, but completes the pricing of the underlying covered transaction. Rather than representing a separate commercial transaction, the adjustment implements the appropriate arm's-length approach for the underlying controlled transactions under the documented transfer pricing methodology.

B. Current Application of the BEAT

Under the current BEAT regulations, outbound balancing adjustments generally are evaluated independently in determining whether they constitute base erosion payments.

Corresponding inbound adjustments or other economically related balancing payments arising under the same documented transfer pricing methodology generally are not considered in determining the taxpayer's base erosion tax benefits.

As a result, BEAT liability may be determined by reference to a gross outbound balancing adjustment in one year even though the taxpayer's overall economic position under the transfer pricing methodology reflects a substantially smaller net transfer of income or, in some cases, an overall allocation of income that increases rather than erodes the U.S. tax base.

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ensure that the foreign affiliate earns an appropriate margin on its services costs incurred in that year. Over the life of the customer contract, the U.S. taxpayer earns the residual economic value, while the foreign affiliate earns an appropriate transfer pricing margin above its total services costs incurred. In any given year, however, the arrangement may result in the U.S. taxpayer receiving net payments from the foreign affiliate or making net deductible payments to the foreign affiliate. A typical multinational enterprise will, of course, involve multiple contracts with customers (both U.S. and non-U.S.) and multiple affiliates engaged in services activities for which the amounts received directly from customers must be adjusted over time to ensure appropriate arm's-length margins are earned by each affiliate.

In many cases, the direction or amount of a balancing adjustment is driven solely by changes in business performance, timing differences, or periodic application of the pre-existing transfer pricing methodology based on actual costs, revenues, volumes, allocation keys, or other relevant financial data, rather than by any change in the location of underlying economic activity.

As a consequence, taxpayers confronted with BEAT exposure in these circumstances may be incentivized to undertake costly restructuring of their operating models or intercompany arrangements solely to reduce the U.S. affiliates' participation in these transfer pricing balancing adjustments. At a minimum, such restructuring increases the complexity of the group's overall transfer pricing and commercial contracting arrangements. In some cases, the practical effect of limiting the U.S. affiliates' participation may be to reduce the amount of taxable income earned in the United States (e.g., by migrating valuable functions or ownership of intangibles that give rise to residual profits), thereby producing a result that is inconsistent with Congress's objective of protecting the U.S. tax base through the enactment of the BEAT.

C. Recommendation

ACT recommends that Treasury adopt targeted administrative guidance recognizing transfer pricing balancing adjustments arising under a single documented transfer pricing methodology.

Such guidance could permit taxpayers to take into account corresponding balancing adjustments that arise solely from implementation of the same transfer pricing policy.

ACT is **not** recommending broad netting of unrelated intercompany payments or the offset of independent transactions.

Rather, the recommendation is limited to balancing adjustments that:

- Are required by a pre-existing written intercompany agreement;
- Are calculated under a consistently applied transfer-pricing methodology using actual results;
- Adjust the consideration for identified controlled transactions or an integrated series of controlled transactions;
- Can operate in either direction; and

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- Do not arise from a change in methodology, functions, assets, risks, or contractual relationships.[14]

D. Suggested Administrative Guardrails

To ensure that any administrative relief remains appropriately limited, Treasury could require, in addition to satisfying the criteria described above, that:

- Taxpayers consistently apply the methodology from year to year; and
- Discretionary intercompany payments or transactions undertaken independently of the transfer pricing methodology remain fully subject to existing BEAT rules.

These limitations would ensure that any administrative relief remains confined to computational transfer pricing adjustments rather than broader categories of related-party payments.

The recommendation does not seek to redefine the statutory concept of a base erosion payment or create a general exception for transfer pricing adjustments. Rather, it recognizes that balancing adjustments implementing a documented transfer pricing methodology present materially different administrative and policy considerations than independent deductible payments that may give rise to genuine base erosion concerns. As discussed above, the congressional intent in enacting the BEAT was to encourage more valuable economic activity (i.e., functions, assets, and risks) in the United States, but the failure of the current BEAT regulations to permit a holistic view of these transfer pricing adjustments encourages exactly the opposite result. Treasury's authority under section 59A(i) should be appropriately exercised to prevent this outcome.[15]

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[14] The balancing adjustments described in this recommendation could in many fact patterns be viewed as adjustments to gross income amounts recognized in prior years. See, e.g., Arrowsmith v. Commissioner, 344 U.S. 6 (1952). The existing BEAT regulations provide that amounts treated as "reductions to determine gross income" are not base erosion payments. Treas. Reg. Sec. 1.59A-3(b)(2)(viii). This recommendation is essentially to apply that existing regulatory concept in a more flexible and reasonable manner to permit taxpayers to take into account the overall economic reality of their transfer pricing arrangements over time in assessing the extent to which a payment is treated as a base erosion payment.

[15] ACT members would also welcome discussing with Treasury and IRS whether a similar approach could apply in the case of "telescoped" adjustments under an advance pricing agreement (APA). These adjustments can have a similarly distortive effect in the application of the BEAT.

4. Contract Research and Development Supporting U.S.-Owned Intellectual Property

A. The Issue

U.S.-based multinational enterprises frequently engage foreign affiliates to develop IP such as through the performance of research services under contract research and development arrangements. In some industries, these arrangements are driven by legal or regulatory requirements or commercial necessity, including in many cases the need to perform certain research in the jurisdiction to obtain approval to sell a product in that jurisdiction.[16]

In these arrangements, the U.S. taxpayer often chooses to retain legal and economic ownership of the resulting intellectual property in the United States, with a U.S. affiliate bearing the entrepreneurial risks associated with development and remaining entitled to the future economic returns generated by the intangible assets.

Accordingly, the foreign affiliate performs development activities on behalf of the U.S. owner rather than developing or owning intellectual property for its own account.

From an economic perspective, these arrangements support continued U.S. ownership of valuable intangible assets while contributing to future royalty income and other returns that remain subject to U.S. taxation.

B. Current Application of the BEAT

Payments made by a U.S. taxpayer to a foreign related party to perform contract research or development activities may constitute base erosion payments.

The current BEAT framework generally evaluates those payments independently without considering the broader economic arrangement under which:

- The U.S. taxpayer is legally, regulatorily, or commercially required to perform certain IP development activities outside the United States;
- The U.S. taxpayer bears the entrepreneurial risks associated with development;
- The resulting intangible assets remain owned in the United States; and

[16] One such example is the conduct of clinical trials prior to approval of a new pharmaceutical product for sale in a country. Some countries require trials to be conducted within the country before the drug can be approved for sale to patients in that country.

- Future income subject to U.S. taxation generated by those assets continue to be subject to U.S. taxation.

As a result, the current rules may focus on current outbound development payments without fully reflecting the long-term U.S. economic benefits generated by the same intellectual property. In particular, because the taxpayer has no realistic alternative with respect to performing these activities outside the United States, the taxpayer's only realistic option to minimize BEAT exposure may be to fund the development of (and to own) the resulting intellectual property outside the United States.

C. Recommendation

ACT recommends that Treasury consider providing targeted administrative guidance addressing contract research and development arrangements in which:

- The IP development is legally, regulatorily, or commercially required to be performed outside the United States;[17]
- The U.S. taxpayer retains legal and economic ownership of the resulting intellectual property;
- The U.S. taxpayer bears the principal entrepreneurial risks associated with development;
- Foreign affiliates perform research or IP development activities solely under contract; and

[17] We recognize that regulations would need to provide further specificity with respect to this requirement. We propose that criteria similar to the following could be included as part of a regulatory exception: (a) legal or regulatory requirement under local law (e.g., product registration rules, clinical trial rules, health authority requirements, government procurement rules, data localization requirements, biospecimen rules, or similar criteria require local performance of the IP development activities); (b) regulatory approval or market access necessity (foreign IP development is not literally mandated, but is reasonably necessary to obtain or maintain approval, registration, or commercial access in the relevant market); (c) scientific or clinical necessity (IP development must be performed in a foreign jurisdiction because of patient populations, disease prevalence, clinical sites, investigators, environmental conditions, product-use conditions, or other scientifically relevant factors); (d) specialized local capability (the foreign affiliate in the relevant jurisdiction has specialized personnel, laboratories, licenses, facilities, permits, or technical capabilities that are materially relevant to the IP development); and (e) local adaptation or validation (IP development activities in the jurisdiction are needed to adapt, validate, test, or support a product for use in the local market, including language, safety, technical, manufacturing, packaging, or regulatory specifications). The burden of proof to demonstrate satisfaction of these criteria would be on the taxpayer, and in no event would the criteria be satisfied if the relevant arrangements were put into place or materially modified with a principal purpose of avoiding the application of the BEAT.

- The resulting economic returns remain subject to U.S. taxation in the United States.

Such guidance would permit Treasury to recognize the broader economic relationship between qualifying outbound contract research and IP development payments and the future income subject to U.S. taxation generated by the resulting intellectual property. Further, by permitting a narrow exception for these contract research and IP development activities, Treasury would be utilizing its regulatory authority to prevent the erosion of the U.S. tax base that would likely result if taxpayers funded the development (and therefore owned the resulting IP) outside the United States.

D. Suggested Administrative Guardrails

To ensure that any administrative relief remains appropriately limited, Treasury could require, in addition to the criteria described above, that:

- Outbound payments relate solely to contract research or IP development services;
- Contemporaneous transfer pricing documentation supports the contractual arrangement and arm's-length compensation;
- Future income generated by the resulting intellectual property remain subject to U.S. taxation; and
- Relief does not apply to arrangements involving outbound transfers of ownership of intellectual property or transactions intended to migrate intangible assets outside the United States.

These objective criteria would appropriately limit relief to arrangements that continue to support substantial U.S. ownership of valuable intangible assets.

5. U.S. Principal Structures with Foreign Activity

A. The Issue

A common commercial business model employed across numerous industries involves a U.S. entity serving as the principal contracting party with third-party customers while foreign affiliates perform portions of the underlying services outside the United States.[18]

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[18] A typical example of this fact pattern involves a U.S. company that sells high-value equipment with a long expected lifespan to a foreign customer. In many such fact patterns, the U.S. company will, contemporaneously or

These arrangements are typically driven by commercial considerations rather than tax planning. Customers frequently require or prefer a single U.S. contracting entity responsible for commercial oversight, project management, customer relationships, contractual performance, and warranty obligations, while operational, regulatory, or workforce considerations require portions of the services to be performed by foreign affiliates.

As a result, the U.S. entity generally recognizes the third-party customer revenue and performs significant commercial functions while compensating foreign affiliates for services performed outside the United States.

From an economic perspective, these arrangements increase the U.S. tax base when compared to the potential alternatives, because the U.S. entity retains the customer relationship, earns the third-party revenue, and performs meaningful entrepreneurial and commercial functions. Potential alternative arrangements, in addition to being more challenging from a customer relations perspective,[19] would almost inevitably result in the U.S. receiving less overall income from the arrangement, as more commercial and entrepreneurial functions would migrate to non-U.S. affiliates. Nevertheless, the related outbound service payments may constitute base erosion payments[20] under the existing section 59A regulations.

B. Current Application of the BEAT

The current BEAT framework generally evaluates the deductible outbound service payment in isolation, without considering the broader context of the overall customer arrangement.

Although the U.S. entity recognizes the associated third-party revenue, retains contractual responsibility, and performs significant commercial functions, those factors generally are not considered in determining the taxpayer's base erosion tax benefits.

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shortly after the sale, enter into a long-term services contract with the customer to maintain the equipment over its useful life. Depending on the facts, it will often be impractical or impossible for the services activities relating to the equipment to be performed in the United States, so the U.S. parent will subcontract with foreign affiliates to perform the services activities, while the U.S. parent will retain much of the profit from the overall transaction with the customer.

[19] As noted above, customers of a U.S. MNC with global operations will generally prefer to enter into a long-term services contract with the U.S. parent or a significant U.S. subsidiary rather than contracting with a foreign affiliate. Similarly, multi-party "consortium" contracts, in which numerous U.S. and foreign affiliates enter into the contract with the customer can be commercially cumbersome and impractical, as customers generally prefer to contract with and make payment to a single counterparty rather than potentially paying several different counterparties each time services are performed.

[20] I.R.C. §59A(d).

Accordingly, BEAT exposure potentially arises even where the arrangement enhances, rather than erodes, the U.S. tax base and even though any potential restructuring to mitigate the BEAT would very likely result in diminution of the U.S. tax base.

C. Recommendation

ACT recommends that Treasury provide targeted administrative guidance permitting a base erosion tax benefit to be measured for these arrangements after netting economically matching items of income and expense.

Such guidance could permit taxpayers to demonstrate that qualifying outbound service payments are directly associated with identifiable third-party revenue generated through the same commercial arrangement.

ACT is not recommending broad netting of all related-party service payments.

Rather, the recommendation is limited to arrangements in which:

- The U.S. taxpayer serves as the principal contracting party with an unrelated customer;
- The U.S. taxpayer retains meaningful functions, assets, and entrepreneurial risks, and the income received from the customer over the life of the arrangement (before taking into account deductible services payments to foreign affiliates) significantly exceeds the deductible services payments to foreign affiliates;
- The foreign affiliate performs operational services supporting the same customer arrangement, which are performed outside the United States for non-tax commercial reasons (e.g., impossibility or commercial impracticality of performing the services in the United States);[21] and

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[21] We recognize that regulations would need to provide more specificity with respect to "non-tax commercial reasons" and propose that criteria similar to the following could be included: (a) customer or contract requirements (the unrelated customer requires performance in the foreign market or local personnel are needed to satisfy customer service, project delivery, warranty or similar obligations); (b) legal or regulatory requirements (local law, licensing rules, data localization, industry regulation, or similar rules require or materially favor in-country performance); and (c) operational necessity or commercial impracticality (the services must be performed near the customer, project site, asset or facility). With respect to these or similar criteria, the burden of proof would be on the taxpayer to demonstrate that the relevant criteria are satisfied. In no event would the relevant criteria be met if the taxpayer's contract with the customer was created or materially modified with a principal purpose of avoiding the application of the BEAT.

- The outbound payment is directly connected to the associated third-party revenue (i.e., eligible services are limited to services performed by the foreign affiliate that are described in the contract between the U.S. entity and the third-party customer).

Treasury could implement this recommendation through an elective matching methodology that permits qualifying outbound service payments to be considered together with directly associated third-party revenue solely for purposes of determining the taxpayer's base erosion tax benefits, thereby providing a targeted administrative framework for evaluating economically integrated service arrangements in a manner consistent with the purposes of section 59A.

D. Suggested Administrative Guardrails

In addition to requiring the conditions described above, to ensure that any administrative relief remains appropriately limited, Treasury could require:

- Contemporaneous documentation linking the outbound payment to specific third-party customer revenue;
- Evidence that the U.S. taxpayer retains meaningful commercial functions, assets, and risks;
- Arm's-length compensation supported by contemporaneous transfer pricing documentation; and
- Consistent application of the methodology from year to year.

These safeguards would appropriately limit relief to arrangements that do not present meaningful base erosion concerns.

Our recommendation does not alter the statutory definition of a base erosion payment. Rather, in limited circumstances, it proposes to recognize that evaluating the outbound services payment in isolation may not accurately reflect the broader commercial arrangement within which that payment occurs.[22] The failure of the current BEAT regulations to view that payment in its

[22] Treasury has previously recognized, in limited circumstances, that payments which might otherwise constitute base erosion payments may warrant different treatment where the surrounding facts demonstrate that the arrangement does not present the type of base erosion concerns section 59A was intended to address. Although the service arrangements described in this recommendation would not generally be characterized as conduit or similar arrangements, ACT believes this recommendation represents a modest extension of this principle, which is discussed in the preambles to the proposed and final BEAT regulations, to economically integrated service arrangements satisfying objective eligibility criteria.

broader context makes it more costly and challenging for companies to conduct these activities in the United States, directly contrary to the congressional purpose in adopting the BEAT. Accordingly, promulgating regulations to prevent that result is an appropriate exercise of Treasury's regulatory authority.

6. Regional Licensing Structures Supporting U.S.-Owned Intellectual Property making payments from foreign branches of U.S. companies

A. The Issue

Many U.S.-based multinational enterprises centralize certain licensing, commercialization, and regional management activities through regional entities that support operations across multiple jurisdictions. These structures are adopted for legitimate commercial reasons, including centralized licensing administration, regional management, coordination of local commercial operations, and efficient management of intellectual property rights across multiple markets.

In these arrangements, the U.S. parent retains legal and economic ownership of the underlying intellectual property while granting regional licensing rights to an affiliate that performs meaningful commercial, managerial, and administrative functions. The regional affiliate, in turn, administers licensing arrangements or sublicenses intellectual property to operating affiliates throughout a particular geographic region.

Accordingly, these structures facilitate the commercial exploitation of U.S.-owned intellectual property without transferring ownership of the underlying intangible assets outside the United States.

B. Current Application of the BEAT

Under the current BEAT framework, royalty or licensing payments made by a foreign branch of a U.S. taxpayer to a foreign related party may constitute base erosion payments, even in circumstances where ultimate ownership of the underlying intellectual property remains with the U.S. parent or another U.S. affiliate.

In these arrangements, the United States continues to own the underlying intangible assets and remains entitled to the associated economic returns. The regional affiliate performs commercial and administrative functions that facilitate the exploitation of U.S.-owned intellectual property in foreign markets but does not replace the United States as the owner of the intangible assets who is ultimately entitled to the residual economic return from the intangible.

Accordingly, BEAT exposure may arise even where the overall licensing structure enhances the U.S. tax base because the underlying intellectual property remains ultimately owned by and licensed to foreign affiliates by the U.S. taxpayer.

C. Recommendation

ACT recommends that Treasury consider providing targeted administrative guidance for integrated licensing structures in which the United States retains legal and economic ownership of the underlying intellectual property but royalty payments with respect to that intellectual property are made by a foreign branch of a U.S. affiliate to a foreign affiliate (e.g., a foreign branch makes royalty payments to a regional principal that licenses the intellectual property from the U.S. and sub-licenses it to the foreign branch). In the absence of such guidance, taxpayers are discouraged from involving U.S. affiliates in these integrated licensing arrangements, directly contrary to congressional intent in adopting the BEAT.

Such guidance could permit Treasury to evaluate qualifying royalty or licensing payments in light of the broader commercial arrangement supporting the exploitation of U.S.-owned intangible assets rather than considering individual payments in isolation.

The recommendation would be limited to arrangements in which:

- The U.S. parent or another U.S. affiliate retains legal and economic ownership of the underlying intellectual property and, as a result, the U.S. exercises primary taxing jurisdiction over the intellectual property;
- The regional principal performs meaningful commercial, managerial, or licensing functions;
- The regional structure serves legitimate business purposes; and
- The residual economic returns associated with ownership of the intellectual property remain subject to U.S. taxation.

ACT is **not** recommending relief for transactions involving the migration of ownership of intellectual property outside the United States or for conduit arrangements lacking meaningful commercial substance.

This recommendation is limited to arrangements in which ownership of the underlying intellectual property remains in the United States.

D. Suggested Administrative Guardrails

To ensure that any administrative relief remains appropriately limited, Treasury could require, in addition to satisfying the criteria described above, that:

- The arrangement is supported by contemporaneous transfer pricing documentation; and
- Relief does not apply to conduit arrangements or transactions involving the migration of ownership of valuable intangible assets outside the United States.

These objective criteria would appropriately limit any administrative guidance to integrated commercial structures that do not present the policy concerns section 59A was designed to address. As with the other fact patterns discussed in the letter, ACT believes Treasury should exercise its authority to prevent the strict application of the BEAT regulations from resulting in further erosion (rather than protection) of the U.S. tax base.[23]

III. Conclusion

When originally enacted in 2017, the BEAT represented an entirely new statutory paradigm, which presented both taxpayers and the government with numerous interpretive and policy issues that neither had previously faced. In recognition of the significance of these policy changes, Congress explicitly authorized Treasury to promulgate regulations that are "necessary or appropriate to carry out the provisions" of section 59A, including by making "such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section." That is, Congress had a clear purpose of protecting the U.S. tax base from inappropriate base erosion, adopted a novel set of statutory changes to advance that purpose, and authorized Treasury to promulgate refinements and adjustments in order to prevent the avoidance or frustration of that purpose.

Eight years after its entry into force, it is clear that strict application of the BEAT's statutory provisions without any consideration of their broader context can lead to outcomes that directly undermine the purposes that led Congress to adopt the BEAT. As each of the fact patterns above demonstrates, the BEAT can result in punitive outcomes in circumstances where the taxpayer's activity is enhancing, rather than eroding, the U.S. tax base. Subjecting these fact patterns to tax under the BEAT can have the perverse effect of incentivizing taxpayers to undertake costly

[23] As discussed above (see footnote 22 and surrounding text), Treasury has previously recognized, in limited circumstances, that payments which might otherwise constitute base erosion payments may warrant different treatment where the surrounding facts demonstrate that the arrangement does not present the type of base erosion concerns section 59A was intended to address.

restructurings that reduce economic activity (and the resulting tax base) in the United States. Accordingly, we encourage Treasury to exercise its authority to provide targeted regulatory refinements to the BEAT regime to prevent these inappropriate outcomes that undermine the congressional purpose of the BEAT.

ACT appreciates Treasury's continued willingness to engage with taxpayers regarding opportunities to improve tax administration and we would welcome the opportunity to discuss these recommendations further.

Alliance for Competitive Taxation

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