

**TAX EXECUTIVES INSTITUTE–U.S. DEPARTMENT OF THE TREASURY  
OFFICE OF TAX POLICY  
LIAISON MEETING  
FEBRUARY 28, 2019  
AGENDA**

**I. Welcome and Introductions**

**II. Deregulatory Priorities<sup>1</sup>**

**III. Guidance Under Public Law 115-97 (Tax Cuts and Jobs Act or TCJA)**

**A. Forthcoming Guidance Projects**

- i. Foreign-Derived Intangible Income (FDII) (including review by OECD’s Forum on Harmful Tax Practices)
- ii. Other Subjects and Timing

**B. Proposed Regulations on the New Limitation on the Deduction for Business Interest Expense Under Section 163(j)**

- i. Definition of Adjusted Taxable Income
- ii. Definition of Interest
- iii. Application of Section 163(j) to Foreign Corporations and Their Shareholders
- iv. Reliance and Inadvertent Adoption

**C. Proposed Regulations on the Base Erosion and Anti-Abuse Tax (Section 59A)**

- i. Recommendation for exception to definition of a BEAT payment for payments that are subpart F income: similar to payments that are ECI in payee’s hands; payments constituting subpart F income are not base eroding. (BEAT Letter, pp. 4–5)<sup>2</sup>
- ii. Application of the BEAT to nonrecognition transactions; inconsistent with “paid or accrued” statutory language; complicates post-acquisition

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<sup>1</sup> Including removal of regulations under section 385.

<sup>2</sup> “Letter” page number references are to TEI comment letters.

restructuring and puts U.S. based companies at a disadvantage vis a vis foreign based companies in certain acquisitions; possibility of narrowly tailored exception. (BEAT Letter, pp. 5–7)

- iii. Application of the BEAT to recognized loss transactions; inconsistent with concept of payment for property; is a U.S. economic loss and thus proper to take on U.S. return; section 267 guardrail. (BEAT Letter, p. 7)
- iv. “Blended” first year BEAT rate under section 15; blended rate for fiscal year taxpayers is inconsistent with statutory language and legislative history. (BEAT Letter, p. 10)
- v. Base erosion percentage of net operating loss deductions; ability to use a “recomputation” approach for prior year NOLs; fairness and equity concerns outweigh added complexity and compliance burden. (BEAT Letter, p. 12–13)

#### **D. Additional First Year Depreciation Deduction (Proposed Section 168(k) Regulations)**

- i. Acquisition of Property – Written Binding Contract
- ii. Acquisition of Property – Self-constructed Property
- iii. Acquisition of Property – Components of Self-constructed Property
- iv. Description of Qualified Property

#### **E. Guidance Related to Section 951A (Global Intangible Low-Taxed Income)**

- i. Determination of Qualified Business Asset Investment (QBAI) and temporarily held property – recommendation to eliminate 12-month presumption rule as unadministrable, requiring amended returns to adjust QBAI calculations for ordinary course transactions, and creates financial statement volatility (GILTI Letter, pp. 2–4)

#### **F. Modification of Net Operating Loss Deduction Under Section 172**

- i. In the absence of a statutory ordering rule that specifies which deduction takes priority, guidance is needed to address potential complications posed by other Code sections that also limit deductions based on the taxpayer’s taxable income (e.g., section 170(b)(2)).

- ii. The Act generally repeals the two-year net operating loss carryback provision in former section 172(b)(1)(A) of the Code. The *Joint Explanatory Statement of the Committee of Conference* provides that the House bill, Senate amendment, and conference agreement all intended for the provision to “appl[y] to losses arising in taxable years beginning after December 31, 2017.” The language in section 13302(e)(2) of the Act, however, provides that subsection (b) “shall apply to net operating losses arising in taxable years ending after December 31, 2017.” This appears to be a scrivener’s error; remedial administrative guidance is requested pending the enactment of a legislative technical correction.

**G. Interim Guidance on Parking Expenses for Qualified Transportation Fringes Under Section 274(a)(4) (Notice 2018-99)**

- i. TEI respectfully recommends that Treasury and the Service issue regulatory or other guidance exempting employer-provided parking with no, or a de minimis, fair market value from the qualified transportation fringe expense disallowance in section 274(a)(4).
- ii. The interim guidance fails to address the most administratively burdensome step facing taxpayers that own or lease all or a portion of a parking facility: determining and allocating the taxpayer’s total parking expenses for the parking facility.
  - 1. Undue Administrative Burden and Complexity
  - 2. Safe-harbor Proposals

**H. Guidance Related to the Foreign Tax Credit, Including Guidance Implementing Changes Made by the TCJA**

- i. Allocation and Apportionment of Deductions and the Calculation of Taxable Income for Purposes of Section 904(a)
  - 1. Repeal of Fair Market Value Method and Transition Relief
  - 2. Allocation and Apportionment of Research and Experimental Expenditures
- ii. Foreign Tax Credit Limitation Under Section 904 – Foreign Branch Category Income

1. Attribution of Gross Income to Which Disregarded Payments Are Allocable
2. Certain Transfers of Intangible Property

**I. Certain Special Rules for Taxable Year of Inclusion Under Section 451(b) & (c)**

**J. Repeal of Section 958(b)(4)**

**IV. OECD “Digitalization of the Economy” Consultation**

**A. Overall Need for the Consultation Given the Recent Conclusion of the BEPS Project, Its Ongoing Worldwide Implementation, and Enactment of the TCJA**

**B. Revised Profit Allocation and Nexus Rules**

- i. Treasury’s preferred alternative among: (a) user participation proposal; (b) marketing intangibles proposal; and (c) significant economic presence proposal.
- ii. Likelihood of achieving consensus; implications for unilateral actions already implemented around the world; impact on U.S. tax treaty network.
- iii. If implemented, what’s left of the arm’s length standard?

**C. Global Anti-base Erosion Proposal**

- i. Views of the Treasury. Similarities to BEAT and GILTI.
- ii. Consultation Document says “subject to tax” rule would apply to deny benefits of several OECD Model Convention Articles, including those applicable to business profits (Article 7), associated enterprises (Article 9), as well as dividends, interest, rents, royalties and capital gains (Articles 10–13). Views of the Treasury Department.

**D. Treasury Reaction to/view of Gross Basis Digital Services Taxes**

**V. Treasury’s View of “Brexit” and Implications for Affected U.S. Tax Treaties**