Base Erosion and Anti-Abuse Tax (BEAT) Basic

Center Forward Basics

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Overview

In the 2017 Tax Cuts and Jobs Act (TCJA), Congress included a new minimum tax for base erosion payments paid or accrued in taxable years. This tax, known as Base Erosion and Anti-Abuse Tax (BEAT), is aimed at preventing multinational corporations operating in the United States from avoiding domestic tax liability by shifting profits out of the U.S. BEAT is currently a 10 percent minimum tax but is set to increase after 2026. The Biden Administration and members of Congress have expressed interest in both changing the structure of BEAT or eliminating the tax altogether.

What is BEAT?

BEAT limits the ability of multinational corporations to shift profits out of the U.S. by making deductible payments to their affiliates in lower-tax countries. Because the BEAT is a minimum tax add-on, U.S. corporations calculate their regular U.S. tax, at a 21 percent rate, and then recalculate their tax at a lower BEAT rate after adding back the deductible payments. If the regular tax is lower than the BEAT, then the corporation must pay the regular tax plus the amount by which the BEAT exceeds the regular tax. The BEAT rate is 10 percent for tax years beginning in 2019 to 2025. After 2026, the tax rate is raised to 12.5 percent. The rate is also increased by 1 percent for certain banks and security dealers. BEAT is limited to large multinational corporations with gross receipts of $500 million or more (over a three year period). It applies to domestic corporations other than S corporations, real estate investment trusts (REIT), and regulated investment companies (RIC). Specifically, the tax does not apply unless the base erosion payments exceed 3 percent of total deductions taken by a corporation - this does exclude the base erosion payments that are capitalized into cost of goods sold and overhead costs.

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Center Forward brings together members of Congress, not-for profits, academic experts, trade associations, corporations and unions to find common ground. Our mission: to give centrist allies the information they need to craft common sense solutions, and provide those allies the support they need to turn those ideas into results.

In order to meet our challenges we need to put aside the partisan bickering that has gridlocked Washington and come together to find common sense solutions.

For more information, please visit www.center-forward.org

Key Terms

- **Base Erosion Payments:** payments that corporations based in the U.S. make to related foreign corporations.
- **Deductible payments:** interest, royalties, and certain service payments.

What Does BEAT Mean for Companies?

BEAT may increase the cost of conducting business and also hurt future investments in the U.S. While international companies employ more than 7.8 million Americans, because of the impacts of BEAT, these companies may be less likely to invest in the U.S. Additionally, since the implementation of BEAT there have been many unforeseen consequences that affect millions of jobs and overall economic growth from international investments.

The Future of BEAT

Some members of Congress have indicated support of international tax reform, including reform of BEAT, with the intended purpose to further discourage corporations from moving operations and investments abroad. In April 2021, both President Biden and Senator Wyden proposed changes. Similarly, American companies are expressing their concerns with this approach, in that it builds new penalties on top of a structure that some businesses believe is already flawed, which would therefore discourage economic growth. President Biden proposed replacing BEAT with a new regime: Stopping Harmful Inversions and

Ending Low Tax Developments (SHIELD). SHIELD would fully deny tax deductions on all payments to foreign related parties that are subject to a low effective tax rate, as defined by a multilateral agreement or - prior to an agreement - set at a proposed increased GILTI rate of 21 percent. Tax deductions would be fully disallowed even if the foreign effective tax rate is only 0.1 percent below the prescribed rate. This proposal also seeks to disallow deductions related to cost of goods sold, raising constitutionality issues (as a tax on gross profit instead of income) of SHIELD as well. But, many American companies are voicing their concerns to the SHIELD concept because it may hurt American investment and jobs. Senator Wyden and some Senate Democrats proposed reforming BEAT by adding a higher tax rate for income tied to base erosion payments while retaining the 10 percent BEAT rate for "regular" taxable income, permitting all domestic business tax credits, and possibly addressing foreign tax credits as well. Overall, Senator Wyden's and the Biden Administration's plan propose differing structural changes for both federal and international tax policy.

Links to Other Resources

- Bloomberg Tax – How Wyden's Global Tax Plan Stacks Up with Biden, 2017 Tax Law
- EY – US proposed BEAT regulations have implications for offshore investors
- Forbes – The Biden And Wyden Tax Plans
- KPMG – Comparing Biden and Wyden international tax proposals
- PwC – Senate Finance Democrats, Treasury Secretary Yellen call for international tax policy changes
- Tax Foundation – Base Erosion and Anti-Abuse Tax (BEAT)
- Tax Policy Center – What is the TCJA base erosion and anti-abuse tax and how does it work?
- U.S. Senate Committee on Finance – Overhauling International Taxation