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Global Tax Alert

US proposed BEAT regulations have implications for offshore investors

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Executive summary

The December 2017 *Tax Cuts and Jobs Act* (TCJA)[1] introduced a new concept into the United States (US) Internal Revenue Code (Code) – the base erosion anti-abuse tax (BEAT).[2] The objective behind the new legislation is to prevent corporations (US and non-US) that are subject to US net basis tax above a specified threshold from eroding that tax liability by means of transactions with related foreign parties that generate "base erosion payments."

Over the course of 2018, non-US institutional investors such as sovereign wealth funds (SWFs) and foreign pension funds (FPFs, and together with SWFs, "Offshore Investors") have considered the potential application of BEAT to them and their investee companies (Offshore Investor Affiliates or Affiliates), recognizing the many uncertainties presented by the BEAT provisions. Proposed regulations, issued by the US Treasury Department (Treasury) and the US Internal Revenue Service (IRS) on 13 December 2018 (Proposed Regulations or imply regulations), address some, but not all, of the uncertainties.

This Alert summarizes some of the major consequences of applying the Proposed Regulations (if they were finalized in present form) for Offshore Investors and their Affiliates.[3] It also addresses the impact of BEAT on Affiliates and how, in turn, each Affiliate should consider BEAT in the context of its affiliation with an Offshore Investor.

Building a better working world

Detailed discussion

Impact of BEAT

BEAT imposes an additional US tax liability on any person subject to it. Because this tax liability is calculated without certain tax benefits (portions of deductions, credits, etc.), the tax base for the BEAT will generally be significantly higher than a taxpayer's "regular" tax base, and a BEAT can apply even if the taxpayer subject to it would otherwise have zero US tax liability. That is why the BEAT is sometimes referred to as a new alternative minimum tax.

Accordingly, the BEAT represents an additional, potentially significant tax liability for US corporations and US branches of non-US corporations. Such liability can significantly impact investment internal rate of returns.

Although the BEAT could apply to an Offshore Investor itself, most SWFs and FPFs will invest into the United States (or into US taxable property) through a corporate "blocker."[4] Therefore, it is not, *generally*, expected that such investors would have significant BEAT exposure *directly*. The BEAT can, however, affect an investment by an Offshore Investor. Specific instances in which a BEAT issue can arise include the following:

- **Offshore Investor taints the investee company** – an Offshore Investor and its Affiliates can "taint" a new investee company, thereby subjecting the new investee company to BEAT.[5]
- **A co-investor taints an investee company** – The Offshore Investor's partner or other co-investor, such as another Offshore Investor or certain "GP" sponsors, can subject an investee company to BEAT (i.e., the co-investor's "presence" in the deal "taints" the investee company be).[6]
- **Investee company taints an Offshore Investor's Affiliate** – a new investee company can "taint" a pre-existing Offshore Investor Affiliate, thereby subjecting such pre-existing Affiliate to BEAT.[7]

This "investee company" could be an operating company but it could also be a "blocker" corporation. For example, in the context of US real estate (or infrastructure) transactions, Offshore Investors will frequently form "blockers," which will be part of a larger "aggregate group" (see discussion later).[8]

Because BEAT may apply as a result of the actions or status of an investee company or of a co-investor, the Offshore Investor may consider obtaining contractual representations and covenants from such other parties when making an investment.

Applying BEAT

Neither the statute nor the Proposed Regulations provide any specific exception for passive Offshore Investors. No exemption applies for an SWF's Affiliates,[9] even if that SWF takes the position that it qualifies under Section 892 of the Code.[10] There is also no exemption for an FPF's Affiliates even if that FPF takes the position that it qualifies as a qualified foreign pension fund (QFPF).[11]

While there may be situations in which an investment is unlikely to have any BEAT effect, the extreme complexity of the BEAT rules makes it difficult to discard BEAT categorically even in relatively simple investment scenarios.[12]

That said, an investee company itself should not be subject to BEAT if that company:

(A) Does not have *any* US income or revenues subject to US net basis taxation

or

(B) Does not make *any* base eroding payments or accruals to any non-US "related party" (Related Party)

Even in this case, the Offshore Investor's investment can cause issues for existing Offshore Investor Affiliates. This is because an investment can create a Related Party relationship tainting existing transactions. For this purpose, a "Related Party" is tested with a 25% ownership threshold but (A) complicated aggregation rules apply and (B) the statute and Proposed Regulations apply section 482's broad common "control" concept, which includes "control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose."[13]

Tested party (Concept of the "Taxpayer")

The regulations clarify how to apply BEAT, beginning with identification of a "taxpayer." This presupposes that the person is taxable in the US on a net basis either as a US person or by being subject to US net basis taxation (the Effectively Connected Income (ECI) regime or, otherwise, to net basis taxation under an applicable US tax treaty). For purposes of this Alert, such income will be referenced as "US Net Basis Income." Further, such person must be a corporation[14] under US tax law principles (each person that is potentially subject to BEAT is referenced as a "Taxpayer").[15]

Thus, the first task for any Offshore Investor is to help its Affiliates identify whether any of them are or have any Taxpayers within their individual subgroups. In general, such Taxpayers will include US corporations and US branches of foreign corporations.

Determining if the Taxpayer is subject to BEAT

Once an Offshore Investor Affiliate has been identified as a Taxpayer, it must determine whether it could also be subject to BEAT (i.e., whether it is an "Applicable Taxpayer"). Each Taxpayer makes its own separate determination as to whether it is an Applicable Taxpayer, but must make that determination on an "aggregate group" (AG) basis.

The BEAT does not apply (either in the determination of who it applies to or how it applies) to an AG. The AG is merely a computational concept that is used to determine whether a Taxpayer is an Applicable Taxpayer, (i.e., whether it may be subject to BEAT). Each Taxpayer must make its very own Applicable Taxpayer determination and to do that it needs to make its own separate AG determination. If an Offshore Investor Affiliate is part of an AG, it will have its very own AG.[16]

Taking this into account, the Proposed Regulations provide guidance on how each Taxpayer determines whether it is an Applicable Taxpayer. There are two tests for this determination:

(1) **Gross Receipts Test** – the US$500 million[17] gross receipts (GR) test

(2) **Base Erosion Test** – the base erosion percentage (BE%) test (generally referred to as the "3% test").[18]

In making these determinations, the two preceding concepts come into play:

- The AG concept (i.e., generally, >50% relationship) is relevant for both tests
- The Related Party concept (i.e., a complicated 25%/"control" relationship) is relevant only to determine base erosion payments for the BE% test, i.e., the BE% test assesses base erosion payments made to Related Parties

Both concepts are discussed in more detail below.

Gross receipts test

In general, the appropriate revenues for the GR test are only (A) revenues of a US corporation or (B) revenues taken into account in determining income that is subject to US Net Basis Income taxation, including revenues taken into account to compute net taxable income under an income tax treaty (Subject Revenues). Next (and here is where the AG concept comes into play for the first time), whether a Taxpayer meets this test is determined by looking at the Taxpayer's AG. The AG is relevant to a Taxpayer because (A) the Taxpayer looks at not just its Subject Revenues but also those of its AG and (B) intra-AG Subject Revenues are, in general, disregarded.[19]

Thus, the question is: Did the Taxpayer's AG have at least $500m in average Subject Revenues for the three-year period ending with the Taxpayer's preceding year?

This preceding year is the preceding calendar or preceding fiscal year depending on the Taxpayer's (then current) tax year. The year of any other member of the AG is irrelevant for this purpose. In effect, the Taxpayer must look at the GR of the Taxpayer's AG[20] calculated with respect to the Taxpayer's own (prior) tax years.

A Taxpayer must average the Subject Revenues of its AG for that three-year period. In this respect, again, Subject Revenues exclude any intra-AG Subject Revenues.

In general, an AG is a group of corporations related by more than 50% ownership. The regulations require the AG to be determined as of the end of the Taxpayer's tax year for which the BEAT liability is being computed.

The GR test is a three-year test. Although the Proposed Regulations are not entirely clear on the point, the Preamble states that the Taxpayer must take into account the gross receipts of "those aggregate group members" that are members of the AG as of the end of the BEAT test year (i.e., whether or not these same persons and/or other persons were members of the Taxpayer's AG as of the end of the tax years making up the three-year averaging period). The regulations however, also made another point in time relevant since what is intra-AG revenue depends on who was a member of the AG at the time of the given transaction.

Thus, it seems that the Taxpayer must calculate AG[21] Subject Revenues as of each annual period in the Taxpayer's three-year testing period but would have to exclude those Subject Revenues that were generated among members of its AG as of the time of payment.

If the Treasury and IRS retain this interpretation, a Taxpayer will not be able simply to rely on prior-year data in constructing the next tax year's GR test average (i.e., because the relevant AG for each of the current tax year's "prior three years" may have changed by then).

The regulations are clear that foreign corporations are generally excluded from the AG except for their US Net Basis Income. Thus, a foreign corporation that is >50% related to a Taxpayer must be analyzed as being a composite of two parts – the US "branch" part that generates US Net Basis Income (and the related Subject Revenues) and a second part that is not subject to US Net Basis Income taxation. The first (i.e., the branch) part is a "member" of the AG. The second part is not. For purposes of the GR test, (i) the branch part's revenues are included in the US$500 million calculation except to the extent those revenues are intra-AG revenues (in which case they are ignored) and (ii) the revenues of the second part are ignored. Thus, for example, the SWF or FPF parent, assuming it is not itself subject to US Net Basis Income taxation, will not be part of anyone's AG nor (making the same assumption) will it itself be subject to BEAT.

This does *not* mean, however, that the connection is erased to the extent an SWF or FPF (or any other excluded non-US corporation) serves as the "link" connecting a Taxpayer to another member of an AG. In other words, a person that is not an AG member may still create the "more than 50%" relation (by connecting the Taxpayer with other entities into one AG) that results in a BEAT problem.

Once again, the Offshore Investor may want to help its Affiliates understand that the Offshore Investor's ownership of an Affiliate may create the BEAT linkage for that Affiliate with other Affiliates (since an Affiliate may well be unaware of the potential for such a "connection" to exist).

Base erosion test

The Taxpayer's AG is also a concept used to calculate the Taxpayer's BE%. For this purpose, the AG is determined the same as in the GR test. The calculation is performed at the end of the Taxpayer's tax year by, very generally, looking at the base erosion benefits of the AG derived from the AG's base erosion payments (BEPs) as a percentage of the AG's total deductions.[22]

Again, this AG calculation is based on the transactions during the Taxpayer's tax year. Payments outside of that year are not considered in the calculation for that year.

In determining BEPs, the AG looks at the payments to foreign related parties. For payments made to AG members that are foreign corporations, the AG considers payments that are not (i) included in ECI or (ii) taken into account in determining net taxable income under an income tax treaty. Thus, BEPs may include payments to (or accruals with respect to)[23] persons whose US branches are members of the AG as well as to Related Parties, no part of which is a member of the AG.

A base erosion "Related Party" includes any: (1) 25% (or greater) owner (by vote or value) of an investee company, (2) person that is related (under extremely complicated relationship attribution rules) to that investee company or to a 25% owner of the investee company, or (3) person controlled "directly or indirectly by the same interests" as the taxpayer (including the person doing the "controlling"). Again, the "control" concept includes "control resulting from the actions of two or more taxpayers acting in concert or with a common goal or purpose."[24]

Thus, amounts that are otherwise deductible against US Net Basis Income tax liability and that are paid or accrued to persons that are not Related Parties are not BEPs and are, generally, included in the denominator[25] of the BE% fraction (but not the numerator).

These otherwise deductible amounts that are paid or accrued to Related Parties are treated as follows for purposes of the BE% test:

- Amounts paid or accrued to AG members including US branches of non-US corporations are disregarded entirely (i.e., not included in the numerator or the denominator of the BE% fraction)
- Amounts paid or accrued to non-AG members may be further broken down into:
  - Those amounts that represent US Net Basis Income to the payees, in which case they are included in the denominator but not the numerator of the BE% fraction (i.e., they are not BEPs)
  - Those amounts that do not represent US Net Basis Income to the payees, in which case they are included in the numerator and the denominator of the BE% fraction (i.e., they are BEPs)[26]

The regulations differentiate between the two US Net Basis Income categories: the ECI category requires obtaining a W-8ECI certificate; if the related foreign party determines its net taxable income under a US treaty, no such certificate is required.[27] That said, a putative BEP payor may want to obtain confirmation from the related foreign party as to the party's intended treatment of such payments even in the latter case.

For payments that would be BEPs but are subject to US gross basis withholding (so-called FDAP income), the regulations confirm that a treaty claim will produce a pro rata reduction in BEP status (e.g., given the base US 30% FDAP withholding rate, a treaty claim of 15% withholding will result in 50% of the amount paid being treated as a BEP). (Of course, any reduction in withholding will require the payor to receive a proper withholding certificate under the usual US withholding rules).

Finally, subject to a *de minimis* exception, if a Taxpayer is a member of a US "affiliated" group (generally requiring an 80% chain of ownership, i.e., a concept that is more narrowly defined than an AG) that includes a US bank or registered securities dealer, then the threshold BE% is reduced to 2% (even if the Taxpayer is *not itself* a US bank or registered securities dealer).[28]

Applying the BEAT

An Applicable Taxpayer must calculate its "modified taxable income" (MTI) to determine whether the BEAT applies (i.e., to see if it paid "too little" in US tax).

The computation of MTI begins with the Taxpayer's taxable income (or loss) (Starting Point Income) and adds back the tax benefits of BEPs, as well as the BEP percentage of NOL carryovers. For this purpose, the regulations make clear that current year losses can reduce Starting Point Income below zero but NOL carryovers cannot (though they can reduce it *to zero*). NOL carryovers from pre-BEAT years work the same way except that their BEP percentage is zero (i.e., they do not result in any addbacks).

This means that the value of any losses for any BEAT calculation may depend on whether these losses are current year losses or NOLs – something that companies subject to BEAT should consider when planning to trigger losses.

Once a Taxpayer's MTI is determined, it is multiplied by the BEAT tax rate to determine the Taxpayer's "minimum tax" liability. The BEAT rates are generally:[29]

- 5% ("ramp up" rate) for tax years beginning in calendar year 2018
- 10% for tax years beginning in calendar years 2019 through 2025
- 12.5% for tax years beginning in calendar years 2026 and later

These rates are increased (subject to certain exceptions) by one percentage point for a Taxpayer that is a member of a US affiliated group (generally requiring an 80% chain of ownership) that includes a US bank or registered securities dealer.[30]

Additionally, the US bank or securities dealer must be a member of that Taxpayer's affiliated group (a narrower concept than a Taxpayer's AG). Consequently, members of a Taxpayer's AG that are not also members of the Taxpayer's affiliated group (if any) should not cause that Taxpayer to be subject to a higher BEAT tax rate.

Finally, if the "minimum" tax liability amount determined as previously described is greater than the Taxpayer's "regular" tax liability amount (reduced by certain credit amounts), the Taxpayer must pay the excess amount as "BEAT."

Once again, this is all determined at the Taxpayer level. Thus, the BEAT is the tax of the Applicable Taxpayer and only the Applicable Taxpayer is liable for that tax (e.g., not the Offshore Investor "parent" or any other member of the Applicable Taxpayer's AG).[31]

Additional observations on the Proposed Regulations

- The statute provides that any interest deduction limitation resulting from the new 30% interest deduction cap under Section 163(j) first applies to interest paid or accrued to unrelated parties, thereby maximizing the potential BEP characterization of payments/accruals. For example, if a US corporation with $100 of income subject to these rules pays $60 in interest to an unrelated bank and pays $40 in interest to its related party non-US shareholders, the entire $70 disallowance under Section 163(j)[32] applies first to the bank interest. Of the $40 paid to the related shareholders, $10 is subject to the Section 163(j) disallowance; the remaining $30 that has been allowed as a deduction for the year is subject to BEAT).

  The Proposed Regulations further provide for a proportionate allocation of the remaining disallowed amounts between US and non-US related parties. As such, the 10 of Section 163(j) disallowance in the prior example would be apportioned between US domestic (if any) and non-US related parties on a proportionate basis.

  These rules will be relevant to any blocker entities or corporate investments with related party leverage (e.g., the entities would not otherwise be "controlled commercial entities" under the Section 892 regulations and leverage is employed).

- Partnerships are generally treated as "look-throughs" for purpose of the BEAT rules. As a result, for purposes of both the GR test and the BE% test, Taxpayers will need to "look through" entities treated (for US income tax purposes) as partnerships. Regarding the BE% test, (1) the "look-through" applies for purposes of determining payments or accruals made by a partnership (subject to an exception), as well as payments made to a partnership[33] and (2) the foreign related party test also applies at the partner level. The "look-through" rules apply through multiple partnership tiers. Entities that are not partnerships but are instead disregarded (again, for US income tax purposes) are ignored for these purposes (i.e., they are, effectively, also "looked through").

This means that every SWFG affiliate should revisit its ownership structure to analyze whether different entity classification elections could improve (or impair) its BEAT situation. In addition, in theory, each such affiliate dealing with a partnership (or a disregarded entity) must determine the nature of the ownership of the counterparty ("all the way up"). This may raise significant practical difficulties.

- The regulations also provide for look-through rules for payments or accruals to certain US non-grantor trusts, RICs and REITs whose beneficiaries include related foreign persons with respect to the payee.
- The regulations confirm that, for payments qualifying for the services cost method only, the "plus" component will potentially be considered a BEP, not the "cost" component of the payment (or accrual). However, the "cost" component (similarly to certain other excepted payments) will not be included in the denominator of the BE% test unless the related foreign party (A) treats such amount as subject to US Net Basis Income taxation and (B) is not a member of the payor's (or accruer's) AG.

  The regulations confirm that the portion of the statutory relatedness definition (for purposes of the BE% test) that invokes the US transfer pricing rules (Section 482) refers to the "control" test under those rules. As discussed above, this control test includes the concept of acting "in concert or with a common goal or purpose." The Treasury's preference for (arguably required by the Code) retaining such a highly factual determination likely increases the potential for litigation absent further guidance and/or objective limitations on the use of the concept.

  The practical impact of this definition is that, even in cases where the Offshore Investor or its Affiliate owns less than 25% of a particular Taxpayer, payments or accruals to the Offshore Investor group may be considered BEPs, e.g., consider a minority investment in a US corporation that is structured as part equity and part debt, the interest on which would otherwise be deductible.
- Although the regulations provide exceptions for amounts subject to Net Basis Income taxation and for amounts that are subject to US FDAP tax, they do not provide any exception for amounts that may be subject to US tax under other US regimes such as the "controlled foreign corporation" regime or the "qualified electing fund" regime.
- Consistent with the effective date of the provision, the Proposed Regulations confirm that a depreciation (or amortization) deduction allowed in tax years beginning after 31 December 2017, for depreciable (or amortizable) property acquired from a foreign related party before that tax year is not a base erosion tax benefit.
- The regulations expand on the specific filing requirements for entities that are Applicable Taxpayers (e.g., Form 8991).

Finally, the regulations include broad anti-abuse provisions aimed at transactions using intermediate entities to avoid the related foreign party rules, certain transactions designed to increase the denominator of the BEP fraction and certain other transactions.

Implications

General review posture: Offshore Investors should review the potential impact of the BEAT legislation and the Proposed Regulations on both themselves and their Affiliates. Questions to ask include:

- Do any of my Affiliates include US corporations or US branches of non-US corporations?
- For any such Affiliate, how broad is the Affiliate's AG and are there any Related Party payments (including accruals) being made to or by such an Affiliate?
- Has the Affiliate met the three-year GR test (taking into account the Affiliate's AG) or the BE% test (looking at Related Party payments of the Affiliate's AG)?

Even if an investee company (or potential investee company) would not rise to the level of being an Affiliate, the Offshore Investor may, nevertheless, consider inquiring about that company's BEAT compliance plans. This will be an annual exercise with processes that need to be put in place to collect and analyze the required information.

Transactional review: Any SWF or FPF Affiliate involved in an acquisitive transaction (whether as acquirer or as target) should consider the BEAT effects of the acquisition. BEAT could be triggered (or the BEAT rate increased) as a result of an acquisition, such as:

- Crossing the GR test threshold
- Crossing the BE% test threshold
- Bringing entities (such as US banks or registered securities dealers) into an Affiliate's US affiliated group

Additionally, the BEAT could be triggered in a myriad of other ways, such as certain transactions that are otherwise tax-free.

Interested taxpayers are invited comments on the proposed regulations.

Endnotes

1. *Tax Cuts and Jobs Act* (P.L. 115-97).
2. 26 U.S.C. 59A.
3. This Alert does not address the regulations generally and, instead, focuses on the regulations' potential resolution of those questions. The terms SWF, FPF and SWF/FPF Affiliates are referenced in a non-tax sense. For example, it is not assumed that an SWF qualifies (or does not qualify) under Section 892 of the Code or that an FPF is necessarily a "qualified foreign pension fund" under Section 897(l) of the Code. Nor it is assumed a priori that such Affiliates are necessarily members of any BEAT "aggregate group," US "affiliated group" or otherwise "related parties" for purposes of the BEAT rules.
4. For example, most SWFs do not wish to be subject to tax on "commercial activity income." Hence, they may use a "blocker" for any investment likely to generate such income.
5. This could happen, for example, if the investee company already has potential base erosion payments and the investment causes the investee company to become subject to BEAT. This could also happen when there are pre-existing dealings between an Offshore Investor Affiliate and the investee company and the transaction itself turns those dealings into "bad" base erosion payments by creating a control relationship between that investee company and that Offshore Affiliate. In this case, the investee's tax rate may go up. This could also happen if the investee company already is subject to BEAT and the investment itself is structured using base erosion payments. In this case, the expected tax benefits (e.g., of interest deductions) may not materialize because of BEAT.
6. This could arise in the same fashion as described in note 5 (and the effect on the investee company should be similar).
7. This could happen because the investee company could have base erosion payments or US taxed revenues that would have to be taken into account in that Affiliate's determination as to whether it is subject to BEAT. This could also happen when there are pre-existing dealings between an Offshore Investor Affiliate and the investee company and the transaction itself turns those dealings into "bad" base erosion payments by creating a control relationship between that investee company and that Offshore Affiliate.
8. Some offshore blockers may benefit from the "qualified foreign pension fund" regime for FPFs. That regime provides relief from the "FIRPTA" tax imposed on gain from US real estate interests. However, even such FIRPTA-exempt blockers may have other types of income that could be taxed in the United States on a net basis.
9. As mentioned previously, although the BEAT could directly apply to SWF or a FPF, this is less likely than the BEAT's application to their Affiliates. If the BEAT did apply to any Offshore Investor directly, the analysis should be similar to the analysis we discuss later.
10. All "Section" references are to the Internal Revenue Code of 1986, and its regulations.
11. QFPF status is provided by Section 897(l).
12. It may be easier in those cases to estimate's the BEAT's significance.
13. See the later discussion of the Related Party concept.
14. A US consolidated group will constitute a single Taxpayer for this purpose. In general, all members of such a group must be US corporations and transactions between such corporations are covered by a separate set of US rules. The only limited exception is for certain interactions with Section 163(j).

15. Some entities that technically are corporations, e.g., RICs, REITs and "Subchapter S" corporations are, in general, excluded from being subject to the BEAT regime (in some cases, however, *payments to* such entities may still subject the payor to BEAT). Outside of certain private REITs or RICs, this exclusion will be less relevant to Offshore Investors.
16. As discussed later, that AG will, potentially, also change each tax year, including for purpose of making prior-year "gross revenue" calculations. See the discussion later.
17. Currency references in this Alert are to US$.
18. In some cases, a 2% BE% may apply. See the discussion later.
19. The idea is that payments or accruals that are, very generally, subject to US tax do not erode the US tax base and such amounts should also not artificially inflate revenues for the GR test.
20. Again, as discussed below, this is the "current" AG.
21. Again, the AG being determined as of the end of the current BEAT test year. In effect, the revenues of this "current" AG have to be calculated looking three years back as if such AG had existed (with the same constituent members) during those periods.
22. We say "very generally" because numerous exceptions and modifications abound. For example, various amounts are excluded from the denominator, such as certain deductions qualifying for the services cost method, certain derivative payments and certain other deductions.
23. The regulations also clarify that BEPs include amounts paid or accrued using cash or any other form of consideration (including property, stock or the assumption of a liability).
24. See the discussion referenced in note 13. The statute treats an AG as "one person" but the regulations explicitly state that they do not ignore BEPs made among AG members (except for amounts that are subject to net basis income taxation) with the Preamble stating, correctly, that any other interpretation would have eliminated the BEPS concept except for any BEPs to those persons that are "related persons" but not AG members. Again, the related person test is broader than the AG measure of relatedness. The test keys off a 25% relationship and includes many ancillary relatedness concepts (as set out in Sections 267, 707, 482 and even 318) that are not generally implicated in the AG definition.
25. Such amounts should not be seen as payable (or accrued to) members of the same AG since the Related Party definition should be broader than the AG definition.
26. Such amounts should not be seen as payable (or accrued to) members of the same AG since the Related Party definition should be broader than the AG definition.
27. This reflects a deficiency in the W-8 certification process wherein the W-8ECI certificate does not provide space for making treaty claims.
28. However, members of a Taxpayer's AG that are not also members of such Taxpayer's affiliated group (if any) should not cause that Taxpayer to be subject to a lower BE% threshold.
29. Fiscal year taxpayers may, in some cases, be subject to a blended rate with respect to a "straddle" calendar period.
30. However, members of a Taxpayer's AG that are not also members of such Taxpayer's affiliated group (if any) should not cause that Taxpayer to be subject to a higher BEAT tax rate.
31. Such other person could have *its own* BEAT liability. Also, if BEAT liability arises (and/or liability for related interest or penalties), then any shareholder may economically bear such costs through a reduction in the value of its investment (in the company subject to BEAT).
32. The $70 disallowed interest equals the excess of the 100 of total interest reduced by the "allowed" portion. That allowed portion is 30% of $100 total income that is subject to the limitation of Section 163(j).
33. As a technical matter, such determinations are made by looking at each partner's "distributive share" of the partnership's items of income, gain, deduction or of other amounts that could be base erosion tax benefits. For the GR test, the distributive share is of items of gross income.

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