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Report No. 1397
July 16, 2018

The Honorable David J. Kautter
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Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable David J. Kautter
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

The Honorable William M. Paul
Principal Deputy Chief Counsel and
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Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: *Report No. 1397 on Base Erosion and Anti-Abuse Tax*

Dear Messrs. Kautter and Paul:

Among the many changes effectuated by P.L. 115-97 (the "Act"), one of the most novel is the Base Erosion and Anti-abuse Tax (the "BEAT"), enacted as Section 59A of the Internal Revenue Code of 1986. The BEAT essentially imposes on U.S. corporations that meet the definition of "applicable taxpayer" a minimum tax on taxable income without regard to (i) payments to related foreign persons, and (ii) a certain percentage of net operating loss carryovers.

The BEAT was introduced in the Act in conjunction with other similarly directed provisions of the new law, including the anti-hybrid provisions of Section 267A, the strengthened interest deduction limitation

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imposed under Section 163(j), the global intangible low taxed income provisions in Section 951A, and the broadening of Section 367(d), governing outbound transfers of intangible property, to foreign goodwill. Unlike these other provisions, however, the BEAT has no predecessor in prior law, prior proposals by Congress, or in the deliberations of the Organisation for Economic Co-operation and Development's Base Erosion and Profit Shifting initiatives.

This Report considers the structure and context of the new BEAT and makes suggestions for the Department of the Treasury and the Internal Revenue Service to consider for regulations under Section 59A. The statutory language contains ambiguities as well as clear drafting errors that should be interpreted with a meaning that accomplishes its policy goals. The Report discusses the issues under the BEAT that we have identified so far and that we consider most significant. Part III of the Report is a detailed analysis of certain features of the BEAT provisions and discussion of our recommendations. In general, we comment on the statute as written without proposing revisions to it.

We appreciate your consideration of our recommendations. If you have any questions or comments regarding this Report, please feel free to contact us and we will be glad to assist in any way.

Respectfully submitted,



Karen G. Sowell
Chair

Enclosure

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