UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS

February 3, 2020

Charles P. Rettig
Commissioner
Internal Revenue Service 1111 Constitution Avenue, NW
Washington, DC 20044

RE: IRS REG-112607-19 – Additional Rules Regarding Section 59A (Base Erosion and Anti-Abuse Tax)

Dear Commissioner Rettig:

USCIB[1] is pleased to provide comments on the proposed regulations regarding guidance related to the Base Erosion and Anti-Abuse Tax ("BEAT") under section 59A (REG-112607-19).

Determination of the Aggregate Group

The proposed regulations relating to the determination of the aggregate group provide guidance for taxpayers entering and leaving groups and the calculation of short taxable years. Section 1.59A-2(c)(4) provides that a member that joins or leaves the aggregate group is treated as having a taxable year-end immediately before or leaving the group. This can be accomplished either through closing the books or allocating items (other than extraordinary items) on a pro rata basis without closing of the books.

Section 1.59-A(c)(5), rather than providing more detailed guidance, provides that the taxpayer must use a reasonable method to determine gross receipts and the base erosion percentage. A reasonable method will not double count or undercount these amounts. USCIB supports this approach to determining the correct amount – a reasonable method will permit flexibility and by avoiding double counting or undercounting will reach reasonable results.

USCIB believes that the example (§1.59A-2(f)(2) should be modified to eliminate the reference to immediately before noon and take into account the results Corporation 2 items for the entire day of June 30 of Year 1. This is inconsistent with how taxpayers determine the close of the taxable year for other purposes of the Code. For example, under section 381 an acquiring corporation succeeds to and takes into account certain attributes as of the close of the day, not

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the time of the transaction. USCIB requests that the example be conformed to the common "end-of-day" convention.

In addition, proposed §1.59A-2(c)(4) states that to determine a taxpayer's gross receipts and base erosion percentage, the taxpayer takes into account only the portion of another corporation's taxable year during which the corporation is a member of the taxpayer's aggregate group. The preamble to the 2019 proposed regulations discusses this in more detail and states that the 2019 proposed regulations "take into account only items of members that occur during the period that they were members of the taxpayer's aggregate group" and, thus, "[i]tems of members that occur before a member joins an aggregate group of a taxpayer are not taken into account by the taxpayer." USCIB supports this rule. However, USCIB recommends that §1.59A-2(c)(4) be revised so as to better align with the preamble to the 2019 proposed regulations and to clarify that items that accrue economically in a period *before* a company joins the taxpayer's aggregate group (e.g., interest expense not currently deductible due to the of requirement section 267(a) of such interest having been paid to a foreign entity, or pursuant to section 163(j)) is not part of the taxpayer's base erosion calculation if such previously accrued amount becomes deductible and thus no longer deferred *after* the corporation joins the taxpayer's aggregate group.

Elections to Waive Deductions

Proposed §59A-3(c)(6) permits taxpayers to waive deductions, in which case the deduction is not an "allowed" deduction and is not considered a base eroding payment. USCIB supports this taxpayer election to waive deductions. USCIB also supports the timing rules, which permit the election to be made on an original return, an amended return, or on audit.

Sincerely,

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Chair, Taxation Committee
United States Council for International Business (USCIB)

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