

## 35th Annual TEI-SJSU High Tech Tax Institute

# Still Keeping to the BEAT

November 5, 2019

## Presenters

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# Agenda

- 1 Overview of the BEAT
- 2 Proposed BEAT Regulations
- 3 Outbound Structures
- 4 Inbound Structures



## Overview of the BEAT

# Base Erosion and Anti-Abuse Tax (BEAT)

Section 59A is an alternative minimum tax imposed on US corporate taxpayers making “base erosion payments”

10% tax on “modified taxable income” (5% in 2018, 12.5% after 2025)

1% higher rate for certain banks and securities dealers

Key concepts

Applicable taxpayer

Base erosion percentage

Base erosion tax benefit

Base erosion payment

Base erosion minimum tax

## Applicable Taxpayer under the BEAT

Three requirements:

A corporation other than an RIC, REIT, or S corporation

\$500 million in average gross receipts in preceding 3 years

A “base erosion percentage” of 3% or more

(2% for certain banks and securities dealers)

Aggregate all persons treated as a single emp Tc -01 0 Td< Tw 1.12614(p-2

# Base Erosion Percentage

Ratio of “base erosion tax benefits” to:

Total deductions

Plus other base erosion tax benefits related to reinsurance and payments to surrogate foreign corporations (SFCs) that reduce gross receipts

Minus deductions under sections 172, 245A, and 250

Minus payments for certain excluded services and qualified derivatives

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# Base Erosion Tax Benefit

In general ...

any **deduction** allowed for  
an amount **paid or accrued**  
by a **corporation**  
to a **foreign** person  
that is a **related** party

## Base Erosion Payment

Payment to a foreign related party  
for which a deduction is allowable  
to acquire depreciable property  
premium or other consideration for reinsurance

Special rule for a foreign related person that becomes a SFC after  
November 9, 2017

Payments to the SFC or foreign affiliates of the SFC that reduce  
gross receipts (e.g., COGS)

## Base Erosion Payment Exceptions

Payments that reduce gross receipts (e.g., COGS) other than to a SFC  
Payments at cost for low

# Base Erosion Minimum Tax

The BEAT tax equals the excess of

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## Proposed BEAT Regulations

## SCM Exception

Propose regulations confirm that cost reimbursement qualifies, while mark-up on costs does not

Qualifying for the exception

Not on “black list” of Treas. Reg. §1.482-9(b)(4)

On “white list” of “specified covered services” in Rev. Proc. 2007-13  
**OR** median comparable mark-up of 7% or less

Can you charge more than 7% mark-up and still qualify?

Include stock-based compensation in the cost base?

# Non-Recognition Transactions

Proposed regulations treat non-cash consideration in non-recognition transactions as an amount “paid or accrued” to acquire property

Thus depreciation/amortization of basis in transferred assets is a base erosion tax benefit

Deemed non-cash consideration also can give rise to a BEAT issue

Does not apply to section 301 distributions



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# Outbound Structures

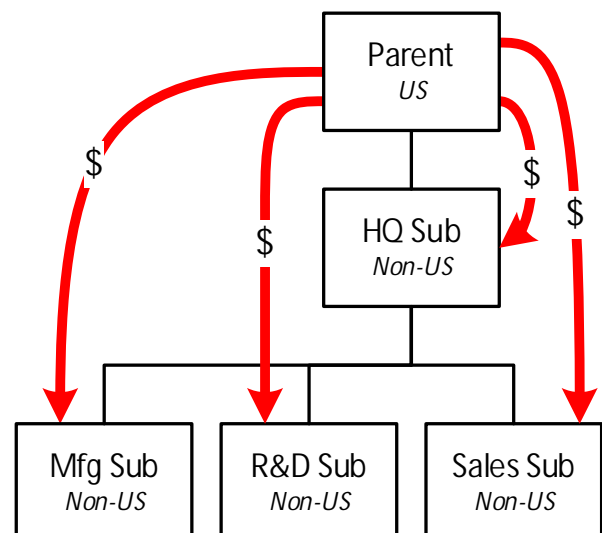
## Outbound Service Fees

Contract manufacturing could be included in COGs

SCM exception likely applies to G&A services

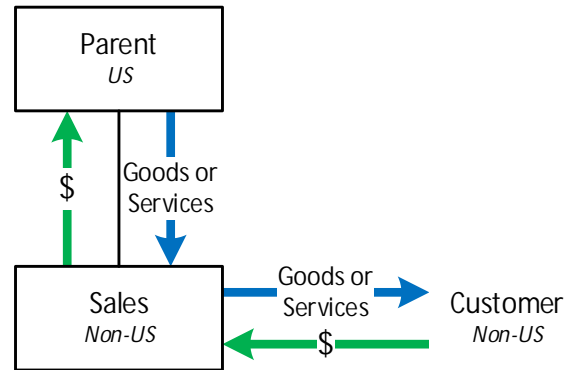
Sales and R&D likely treated as base erosion payments

What about marketing or data center costs?



## Convert Sales Agent to Reseller

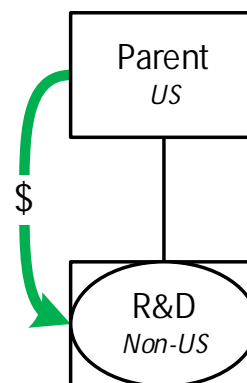
- No more outbound payment
- Subpart F treatment of sales income generally the same
- Possible transfer pricing impact on sales profit
- Not always easy/possible to change the contracting party



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## R&D Service Branch

- Eliminates outbound payment
- Foreign branch income
  - Separate FTC basket
  - Not FDII



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# Cost Sharing

R&D services fee disregarded

R&D costs included in IDC pool

CST could be US-inbound

PCT royal /LBo71.81 Tmxifinbound

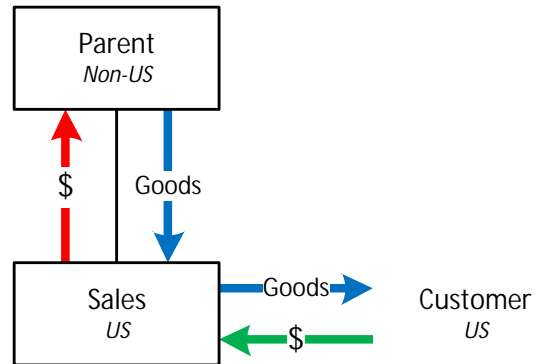


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# Inbound Structures

## US Reseller of Goods

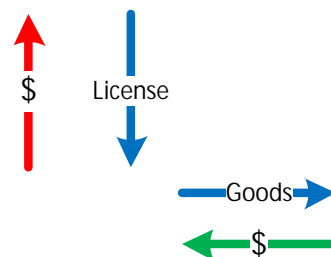
BEAT generally not a problem  
 Outbound payment is COGS  
 Not a BEAT payment unless  
 Parent is a new SFC  
 Identify additional costs that can  
 be capitalized to inventory cost



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## US Manufacturer of Goods

BEAT should be manageable  
 Royalty for licensed IP  
 Royalty avoids BEAT if included  
 in COGS under 263A  
 May require change of  
 accounting method



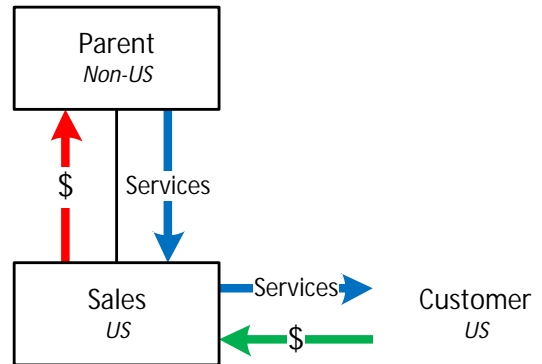
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# US Reseller of Services

In contrast to goods, resale of services is a problem

Outbound payment is deductible, not a reduction in gross receipts

BEAT payment unless services cost method applies



## Shared Services Hub

BEAT on round-tripping of costs  
US share is BEAT, even if

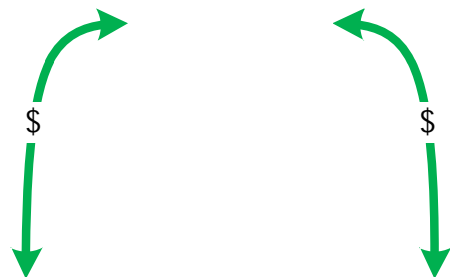
## Cost Contribution Arrangement

Avoid round-tripping

Pool and allocate costs rather  
than charge in both directions

Recharge costs within US

Can reduce or eliminate US-  
outbound payments



# Questions

