

# The BEAT and the Treaties

H. David Rosenbloom  
Washington, DC

Code Section 59A Imposes a Tax Equal to the Base Erosion Minimum Tax Amount on Each Applicable Taxpayer.

BEAT Is an Add-On Minimum Tax on an Alternative Tax Base.

The Alternative Tax Base Does Not Include Deductible Payments to Related Foreign Persons. It Does Include Deductible Payments to Related US Persons.

Code Section 901(c) Disallows a Foreign Tax Credit Against Any Tax Treated as a Tax Not Imposed by This Chapter (Chapter 1 — Normal Taxes and Surtaxes — of Subtitle A — Income Taxes — of Title 26 — Internal Revenue Code).

Code Section 26(b)(2)(B) Provides That the Tax Imposed by This Chapter Does Not Include the Tax Imposed By Section 59A.

Hence, There Is No Statutory Foreign Tax Credit Against the BEAT.

## Article 2 (Taxes Covered) of the US Model Income Tax Convention States in Relevant Part:

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of property.
3. The existing taxes to which this Convention shall apply are:
  - a) In the case of \_\_\_\_\_:
  - b) In the case of the United States: the Federal income taxes imposed by the Internal Revenue Code (which do not include social security and unemployment taxes) and the Federal taxes imposed on the investment income of foreign private foundations.

## Article 23 (Relief From Double Taxation) of the US Model States in Relevant Part:

In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow a resident or citizen of the United States as a credit against the United States tax on income applicable to residents and citizens:

- a) The income tax paid or accrued to \_\_\_\_\_ by or on behalf of such resident or citizen; and
- b) In the case of a United States company owning at least 10 percent of the voting stock of a company that is a resident of \_\_\_\_\_ and from which the United States company receives dividends, the income tax paid or accrued to \_\_\_\_\_ by or on behalf of the payor with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in subparagraph (a) of paragraph 3 and paragraph 4 of Article 2 (Taxes Covered) shall be considered income taxes.

## Article 24 (Non-Discrimination of the US Model States in Relevant Part:

Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), or paragraph 7 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.