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### Base Erosion and Profit Shifting

- IRS, Treasury to Consider Anti-Base Erosion Tax Rule Guidance  
BNA Snapshot
- Will look at single-employer aggregation under BEAT
- IRS faces administration as well as policy problems, government official says



By Sony Kassam

Treasury and the IRS will consider guidance on how the new tax law's anti-base erosion rules affect different situations concerning partnerships, a Treasury official said.

"The way the rules read on their face is that the payee, when it's a partnership, is a foreign person," Kevin C. Nichols, senior counsel in the office of the International Tax Counsel at Treasury, said Jan. 25. He was speaking at a conference on the new tax law sponsored by the District of Columbia Bar Taxation Community.

Treasury has heard comments "a number of times" about how there are no specific rules for partnerships under the base erosion anti-abuse tax (BEAT), Nichols said.

The BEAT imposes a blanket tax on any payment by a large corporation deemed a "base-eroding payment." It's an additional tax on corporations with average annual gross receipts for the last three years of more than \$500 million that make "base-eroding payments to related foreign persons" of 3 percent or more of their deductible expenses, or 2 percent for certain banks and securities dealers.

Nichols said the fact pattern used in describing partnerships under the BEAT was that generally the partnership is a payor and the corporation would be a payee. Tax practitioners have questioned what happens in a situation where the roles between a partnership and corporation switch.

"It seems like something that we should be thinking about as we think about guidance in this space," Nichols said.

"How the IRS could ever know all of those questions that are deeply raised here" and writing guidance on the "ultimateness" of rules is a difficult task, said Viva Hammer, legislation counsel at the Joint Committee on Taxation. "There's administration problems, not only policy problems," she said.

The government will take a closer look at the single-employer aggregation rule, Hammer said.

### Jumping Through Hoops

Government officials speaking on the same panel as Nichols said the BEAT serves multiple functions, and taxpayers must keep in mind that they have to fulfill various criteria listed in the BEAT to determine whether it concerns them.

“The policy underlying the BEAT is anti-base erosion but is also intended to function as an inbound minimum tax,” said Jennifer S. Acuna, a senior tax counsel and policy adviser to the Senate Finance Committee. “It gets you into the BEAT, but if you satisfy a minimum level of tax in the United States, you don’t have BEAT liability.”

“You have to jump through a lot of hoops to get through the BEAT,” Hammer said. “It’s not like the first thing you do when you wake up in the morning is have a BEAT. So far, we spent an hour going through all the requirements you need to get to the BEAT. That’s the key here.”

The conference was hosted by Jones Day and co-sponsored by Bloomberg Tax and Tax Analysts.

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