TaxNewsFlash

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Notice 2021-36: Future amendments to regulations under sections 59A and 6038A for reporting qualified derivative payments

The IRS today released an advance version of Notice 2021-36 announcing that the Treasury Department and IRS intend to amend the regulations under sections 59A and 6038A to defer the applicability date of certain provisions relating to the reporting of qualified derivative payments (QDPs) until tax years beginning on or after January 1, 2023.

Read **Notice 2021-36** [PDF 81 KB]

Summary

Final regulations (T.D. 9885) addressing the base erosion and anti-abuse tax (BEAT) under section 59A were published in December 2019. Those final regulations generally apply to tax years ending on or after December 17, 2018. Read ***TaxNewsFlash***

The 2019 final regulations included rules under sections 59A and 6038A about the reporting of QDPs that are not base erosion payments. A payment does not qualify as a QDP unless the taxpayer reports the information required in Reg. section 1.6038A-2(b)(7)(ix) for the tax year, and a taxpayer subject to the BEAT must report on Form 8991 the aggregate amount of QDPs for the tax year and make a representation that all payments satisfy the requirements of Reg. section 1.59A-6(b)(2).

If a taxpayer fails to satisfy these reporting requirements with respect to any payments, Reg. section 1.59A6(b)(2)(ii) (the reporting failure exclusion) provides that the payments are not eligible for the QDP exception and are base erosion payments unless another exception applies.

Today's notice further explains that Reg. section 1.6038A-2(b)(7)(ix) applies to tax years beginning on or after June 7, 2021, and before Reg. section 1.6038A-2(b)(7)(ix) is applicable (the transition period), a taxpayer is treated as satisfying the QDP reporting requirements to the extent that the taxpayer reports the aggregate amount of QDPs on Form 8991, Schedule A, provided that the taxpayer reports this amount in good faith.

Additional final regulations (T.D. 9910) regarding section 59A were published in October 2020. The preamble to the 2020 final regulations reflects a comment recommending that the Treasury Department and IRS address the interaction of the QDP exception; the BEAT netting rule (with respect to positions for which a taxpayer applies a mark-to-market method of accounting for U.S. federal income tax purposes); and the QDP reporting requirements from the 2019 final regulations. Read ***TaxNewsFlash***

Notice 2021-36 explains that Treasury and the IRS "continue to study whether future guidance may be appropriate" and that in the meantime, the transition period is extended.

Thus, with the expected amendments to Reg. section 1.6038A-2(g), Reg. section 1.6038A-2(b)(7)(ix) will apply to tax years beginning on or after January 1, 2023.

Notice 2021-36 further states that until Reg. section 1.6038A-2(b)(7)(ix) applies, the rules described in Reg. section 1.59A6(b)(2)(iv) that apply during the transition period will continue to apply.

Taxpayers may rely on the provisions of Notice 2021-36 before the issuance of the amendments to the final regulations.

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