VIII. Tax Cuts and Jobs Act's BEAT Provision May Violate International Treaties

A. Introduction

At 2017's close, Congress passed and President Trump signed into law the Tax Cuts and Jobs Act (TCJA).[1] The tax overhaul included many modifications to existing law and created wholly new code provisions.[2] One such new provision is the base-erosion and anti-abuse tax, or colloquially, BEAT.[3] Congress enacted BEAT in an effort to prevent income shifting and erosion of the U.S. tax base.[4] Base erosion is the result of payments between a domestic-subsidiary corporation and a foreign-parent company "that are deductible for tax purposes."[5] For example, deductible payments of "interest, royalties and management fees" all work to erode the subsidiary jurisdiction's tax base.[6] Put simpler, base erosion is the result of income shifting, a process that shifts income away from the country of origin, leaving the government with less tax revenue.[7] Income shifting is a method businesses employ where "tax rules permit businesses to reduce their

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[1] Louise Radnofsky, *Trump Sign Sweeping Tax Overhaul into Law*, WALL ST. J. (Dec. 22, 2017, 11:45 AM), https://www.wsj.com/articles/trump-signs-sweeping-tax-overhaul-into-law-1513959753.

[2] Sally P. Schreiber, *President Signs Tax Overhaul into Law*, J. ACCOUNTANCY (Dec. 22, 2017), https://www.journalofaccountancy.com/news/2017/dec/president-signs-tax-cuts-jobs-act-201718112.html [https://perma.cc/EZ9E-5VP2].

[3] I.R.C. § 59A (2018) ("There is hereby imposed on each applicable taxpayer for any taxable year a tax equal to the base erosion minimum tax amount for the taxable year.").

[4] Geoffrey M. Davis et al., *Tax Reform Is Real News: Last Minute Changes and What You Need to Know Now*, LEXOLOGY (Dec. 22, 2017), https://www.lexology.com/library/detail.aspx?g=3f488f30-e1ec-457a-b835-89831ee9a5cd [https://perma.cc/3VGG-TGFV].

[5] Tiffany Weng, *Tax Reform Law Tackles Base Erosion and BEATS Down on Tax Abuse*, INT'L TAX NEWSL. (Briggs & Veselka Co., TX), Jan. 11, 2018, http://bvccpa.com/tax-reform-law-tackles-base-erosion-beats-tax-abuse/ [https://perma.cc/S2DF-48FY] ("Base erosion refers to payments between a domestic corporation and related foreign parties that are deductible for . . . tax purposes.").

[6] *Id*.

[7] THE ORG. FOR ECON. COOPERATION & DEV., ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING 8 (2013) [hereinafter OECD Report], https://www.oecd.org/ctp/BEPSActionPlan.pdf.

tax burden by shifting their income away from jurisdictions where income producing activities are conducted."[8] Ordinarily, income shifting unfolds in one of two scenarios: (1) a business with a high-income bracket transfers income to an affiliated company in a lower bracket; or (2) a business in a geographical location with a high-tax rate transfers income to an affiliated business in a location with a lower-tax rate.[9] As an example, consider a domestic subsidiary of a foreign-parent company that takes a deduction against its U.S. income for expenses relating to management fees that it paid to the foreign parent in a lower-tax jurisdiction.[10] The subsidiary reduces or avoids tax on U.S. soil, and instead, the parent company recognizes the income in the foreign jurisdiction with a lower tax rate.[11]

The BEAT provision assures that at least some of the deducted expenses will be taxed in the United States.[12] The result, however, is double taxation.[13] In explanation, the U.S. first taxes the subsidiaries' deducted expenses, and then, the parent's income relating to the expenses is recognized and again taxed in the foreign jurisdiction.[14] Prior to Congress passing the TCJA, European Union (EU) officials expressed concern the BEAT unfairly treats foreign corporations and even claimed the provision violated income treaties that expressly prohibit double taxation.[15] This article explores in depth BEAT's application and any potential violations of treaties with other nations.

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[8] *Id.*

[9] See *id.* (explaining that generally multinational enterprises take advantage of tax rules allowing them to shift income to a more favorable jurisdiction).

[10] Weng, *supra* note 5 (explaining deducted payments made to foreign parties often take the form of management fees, interest payments, and royalties).

[11] OECD Report, *supra* note 7.

[12] Weng, *supra* note 5 (explaining that pre-reform, there were no minimum taxes required to be paid on deductible payments to foreign affiliates).

[13] Lowell D. Yoder, David G. Noren & Jonathan Lockhart, *The New Base Erosion Minimum Tax*, MCDERMOTT WILL & EMERY (Jan. 17, 2018), https://www.mwe.com/en/thought-leadership/publications/2018/01/the-new-base-erosion-minimum-tax_[https://perma.cc/2FTM-PMZ2] (explaining that the BEAT effectively eliminates foreign tax credits, and foreign tax credits are made available to prevent double taxation).

[14] *Id.* (illustrating the BEAT is a tax on deducted payments at the domestic subsidiary level, and that those same payments made to the foreign parent are subject to income tax in the foreign jurisdiction).

[15] Letter from Peter Altmaier et al., Fed. Minister of Fin., Fed. Ministry of Fin., to Steven Mnuchin, Sec'y of the Treasury, U.S. Dep't of the Treasury (2017) (on file with the Federal Ministry of Finance) ("The inclusion of certain less

1. What Is BEAT, and How Does It Work?

BEAT applies to large domestic and foreign corporations with income connected to a U.S. trade or business with average annual gross receipts in excess of $500 million.[16] For 2018, BEAT imposes a 5 percent tax on a corporation's "modified taxable income" net of its regular tax liability.[17] The rate increases in the following years, capping at 12.5 percent beginning in 2025.[18] For certain banks and securities dealers, a 1 percent increased rate applies.[19] To compute a corporation's "modified taxable income," current year deductions resulting from payments to related foreign person are added back to taxable income.[20] A foreign person is related if such foreign person owns at least 25 percent of the domestic-taxpaying corporation's stock.[21] Deductible payments to the related foreign person added back "generally include payments for services, interest, rents and royalties."[22] Additionally, "[d]eductions for depreciation and amortization of property acquired from related foreign persons also are added back to taxable income in calculating 'modified taxable income.'"[23] Upon determining modified taxable income, apply the current BEAT rate.[24] That amount is compared with the taxpayer's regular tax liability, including foreign tax credits.[25] If the resulting amount exceeds regular tax liability, the excess amount is the BEAT.[26]

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conventional international tax provisions could contravene the U.S.'s double taxation treaties . . . .").

[16] I.R.C. § 59A(e)(1)(B) (2018); Weng, *supra* note 5.

[17] I.R.C. § 59A(b)(1)(A); *see also* Yoder, Noren & Lockhart, *supra* note 13.

[18] The ordinary rate is 10 percent. The 10 percent rate will serve as the basis for examples in this article. I.R.C. § 59A(b)(2)(A).

[19] *Id.* at § 59A(b)(3)(A).

[20] *Id.* at § 59A(c)(1); Yoder, Noren & Lockhart, *supra* note 13.

[21] I.R.C. § 59A(g)(1)(A).

[22] *Id.* at § 59A(c)(2)(A)(i); *see also* Yoder, Noren & Lockhart, *supra* note 13.

[23] I.R.C. § 59A(c)(2)(A)(ii).

[24] *See id.* at § 59A(b)(1)(A).

[25] *Id.* at §59A(b)(1)(B) (explaining that the base erosion minimum tax amount is 10 percent of "modified taxable income" over an amount equal to the regular tax liability).

[26] *Id.* at § 59A(b)(1); *see also* Yoder, Noren & Lockhart, *supra* note 13.

2. *The Potential Issue*

Income tax treaties often require the United States to provide a foreign-parent corporation's domestic subsidiary with a foreign tax credit to prevent double taxation of repatriated profits.[27] However, a domestic corporation with significant tax credits will likely become subject to BEAT, and in effect, lose its foreign tax credits.[28] Losing such credits, which are the focus of income tax treaties, may violate international agreements.[29] Indeed, EU officials have taken notice.[30] This may discourage foreign-parent companies from operating in the United States.[31] This article will proceed with a brief overview of the statutory purpose behind BEAT. Then, in Section C, I identify the most pressing issues relating to BEAT's potential violation of income tax treaties. In part D, I analyze possible defenses of the provision.

B. Statutory Purpose: Facilitate the Move Towards a Territorial Tax System

1. *What Is a Territorial Tax System?*

In general, prior to the TCJA, the United States utilized a worldwide taxation system.[32] In the Internal Revenue Code (Code), gross income is expressly defined as all income "from whatever source

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[27] Yoder, Noren & Lockhart, *supra* note 13 ("[M]ost income tax treaties require the United States to provide a foreign tax credit to eliminate double taxation of foreign source income . . . .").
[28] *Id.* (illustrating by way of example that the BEAT has the potential effect of denying foreign-tax credits). The example is discussed further herein. *See* discussion *infra* Section C.1.
[29] *Id.* ("Since most income tax treaties require the United States to provide a foreign tax credit to eliminate double taxation of foreign source income, such a result may raise concerns with treaty partners.").
[30] Letter from Peter Altmaier et al., *supra* note 15 ("The inclusion of certain less conventional international tax provisions could contravene the U.S.'s double taxation treaties and may risk having a major distortive impact on international trade. We would therefore like to draw your attention to some features of the proposals being discussed that cause significant concerns from a European perspective.").
[31] *Id.* ("We also see the possibility that some of the proposed measures could constitute unfair trade practice and may discourage non-U.S. financial institutions from operating in the U.S.").
[32] *See* Davis et al., *supra* note 4.

derived."[33] In a worldwide tax system, "[t]axation of income from all sources," regardless of the income's origin, is precisely the idea.[34] The Code provides some qualifying provisions, but overall, prior to the TCJA, the worldwide tax system dominated U.S. international tax.[35] Problematically for foreign entities operating in the United States, U.S. worldwide taxation obviously does not "disarm the taxing power of other countries."[36] Here is where, absent international-tax treaties, double or even triple taxation can rear its ugly head.[37]

A better way of understanding a worldwide taxation system may be to understand an opposing system, territorial taxation.[38] Under a territorial taxation regime, taxation is limited to income from sources within the nation's own jurisdictional boundaries.[39] Territorial regimes "accommodate other tax systems in the simplest possible way–by not extending their own."[40] Consequently, "double taxation is tamed by taking no account of foreign income."[41] In the end, "[t]he differences between territorial and worldwide tax systems are smaller than [they] first appear."[42] This is because "[t]he combination of worldwide taxation and a foreign tax credit approximates in some respects the effect of territorial taxation" by reducing tax liability in the domestic corporation's jurisdiction, thus eliminating some, if not all, double taxation of repatriated income.[43]

2. *BEAT's Purpose: Prevent Income Shifting and Base Erosion that May Otherwise Flourish in a Territorial Regime*

BEAT is a protectionary response to the consequences that may follow with the move towards a territorial tax system.[44] Such

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[33] I.R.C. § 61(a) (2012).
[34] JOSEPH ISENBERGH, INTERNATIONAL TAXATION 9 (2010).
[35] *Id.*
[36] *Id.* at 10.
[37] *See id.*
[38] *See id.* at 14 (juxtaposing worldwide and territorial taxation).
[39] *Id.* (defining territorial taxation as "taxation limited to income from sources within their boundaries, no matter who derives it").
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] Davis et al., *supra* note 4 ("The Act does move the US in the direction of a territorial system . . . .").

protection may be necessary since "multinationals subject to a territorial tax regime shift more income than those subject to worldwide tax regimes."[45] The legislative history seems to support such concern as "[d]rafters of the tax law say the provision was meant to discourage companies from inappropriately channeling profit generated in the [United States] to lower-tax regimes."[46]

C. Violation of International Treaties and Other Consequences

1. Income Tax Treaty and BEAT's Potential Conflict

BEAT has the potential to effectively jettison foreign tax credits.[47] The BEAT thus presents a problem on an international level because these foreign tax credits are essential pieces of income treaties preventing double taxation.[48] Quite simply, "[a]n income tax treaty is, literally, an act of law 'between nations.'"[49] At its core, a "tax treaty frames a tax regime for economic activity connected with the treaty countries that may differ in important respects both from the wholly domestic taxation of either country and any treaty regime between other countries."[50] Put simpler, "income tax treaties provide for adjustments between the income tax systems of different countries."[51]

In substance, at a fundamental level, an income tax treaty is merely an agreement that Country X will forego taxing income of a domestic corporation with a foreign parent, even though the income was produced on Country X's soil.[52] In form, "most income tax

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[45] Kevin S. Markle, *A Comparison of the Tax-Motivated Income Shifting of Multinationals in Territorial and Worldwide Countries* 1 (Oxford Univ. Ctr. for Bus. Taxation, Working Paper No. 12/06, 2010) ("I find that multinationals subject to territorial tax regimes shift more income than those subject to worldwide tax regimes . . . .").
[46] Sam Schechner & Nina Trentmann, *BEAT Up? U.S. Tax Provision May Sting Foreign Firms*, WALL ST. J. (Feb. 13, 2018, 8:00 AM), https://www.wsj.com/articles/beat-up-u-s-tax-provision-may-sting-foreign-firms-1518526800 [https://perma.cc/9G36-ETSE].
[47] *See* Yoder, Noren & Lockhart, *supra* note 13.
[48] *Id.* ("[M]ost income tax treaties require the United States to provide a foreign tax credit to eliminate double taxation . . . .").
[49] ISENBERGH, *supra* note 34, at 221.
[50] *Id.*
[51] *Id.*
[52] *Id.* at 227.

treaties require the United States to provide a foreign tax credit to eliminate double taxation of foreign source income."[53]

The following example provided by McDermott Will & Emery illustrates how BEAT has the potential to render foreign tax credits inoperative.

> Assume a corporation has regular taxable income of $1 billion and would pay $210 million of tax before taking into account foreign tax credits. Assume foreign tax credits reduce its regular tax liability to $180 million and R&D credits reduce such liability by $10 million to $170 million. Further assume the taxpayer has modified taxable income of $2 billion, which, applying the 10 percent tax rate, would result in $200 million of tax. The BEAT would be $20 million ($200 million less $180 million), which has the effect of denying a credit for that amount of foreign taxes (but not for the R&D credits).[54]

Here, the taxpayer has effectively been denied two thirds of the foreign tax credit's value ($30 million tax credit less $20 million BEAT tax).[55] This example illustrates how "[a] domestic corporation with significant foreign tax credits might become subject to the BEAT, effectively losing the benefit of all or a portion of the credits."[56] Thus, "[s]ince most income tax treaties require the United States to provide a foreign tax credit to eliminate double taxation of foreign source income," it follows that BEAT's potential to render such credits ineffectual might violate these treaties.[57]

2. *BEAT's Other Consequences: Unfair Treatment of International Firms and the Financial Sector*

American firms may have a competitive advantage over similar foreign entities.[58] After all, the BEAT tax can be seen to be pur-

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[53] Yoder, Noren & Lockhart, *supra* note 13.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] Ivana Kottasova, *Does Tax Overhaul Violate Global Trade Rules? Europe Thinks So*, CNN MONEY (Dec. 19, 2017, 3:15 PM, http://money.cnn.com/

posefully discriminatory, affecting only foreign-based corporations.[59] In effect, the Code, through BEAT, provides domestic corporations an advantage over foreign corporations of the same industry.[60] The advantage is particularly noticeable in companies engaged in cross-border financial transactions.[61] For example, cross-border transfers within banks, finance companies, and insurance businesses are treated as non-deductible and subject to a 10 percent tax.[62] This puts foreign lenders at a disadvantage compared to their U.S. counterparts who are free to make intra-group transactions with the benefit of deductions and no BEAT tax.[63]

BEAT's discrimination is even more evident when comparing its impact across industries.[64] In explanation, BEAT has the potential to hurt the global financial sector more than any other field.[65] First, in all other industries, BEAT is applied if 3 percent of a company's total allowable deductions are associated with foreign activity.[66] However,

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2017/12/19/news/economy/us-tax-overhaul-wto-trade-europe/index.html [https://perma.cc/2WE7-97TW] ("The finance ministers of Germany, France, Britain, Spain and Italy sent a letter to Treasury Sec. Steven Mnuchin last week, arguing the rule changes would give American firms an unfair advantage over their international rivals.").

[59] I.R.C. § 59A(d)(1) (2018) ("The term 'base erosion payment' means any amount paid or accrued by the taxpayer to a foreign person which is a related party of the taxpayer and with respect to which a deduction is allowable under this chapter.").

[60] Kottasova, *supra* note 58 (explaining BEAT places international lenders at a disadvantage compared to domestic lenders).

[61] *Id*.

[62] Letter from Peter Altmaier et al., *supra* note 1; Kottasova, *supra* note 58.

[63] *See also* Letter from Peter Altmaier et al., *supra* note 15 (arguing BEAT could constitute unfair trade practices since BEAT applies only to international enterprises).

[64] *See* Joe Kirwin, *EU Finance Chief Warns of U.S. Tax Plan's Harmful Trade Effects*, BLOOMBERG LAW (Dec. 11, 2017), https://www.bna.com/eu-finance-chiefs-n73014473020/_[https://perma.cc/KFL5-TS7N] ("This is most evident in the financial sector where the provision appears to have the potential of being extremely harmful for international banking and insurance business . . . .").

[65] *Id.* (arguing BEAT's harmful effects are most evident in the financial sector since intra-group financial transactions are treated as non-deductible).

[66] I.R.C. § 59A(e)(1)(C) (2018) ("[T]he base erosion percentage; Julie Martin, *Final US Tax Bill Rewrites International Tax System*, MNE TAX (Dec. 17, 2017), https://mnetax.com/final-us-tax-bill-rewrite-international-tax-system-25215 [https://perma.cc/34VX-7Y99].

financial institutions are subject to a lower trigger threshold of 2 percent.[67] Although the general BEAT rate applicable to companies is 10 percent, certain banks and securities dealers are subject to a 1 percent rate increase.[68]

Aside from punitive rates that target the finance sector, the way in which financial institutions operate place them directly in BEAT's path.[69] Indeed, "tax experts say among the harder hit could be non-U.S. companies in the technology, banking and pharmaceutical sectors."[70] That is because "[c]ompanies in those businesses often pay themselves interest for intracompany loans or for the rights to sell their software or drugs in the [United States], cutting down on their taxable profit in the [United States]."[71]

Finally, financial markets at home and abroad could suffer.[72] U.S. operations of foreign financial institutions may be subject to a greater than 100 percent tax rate or double taxation.[73] This leaves open the possibility that non-U.S. financial institutions may be discouraged from operating in the United States.[74]

D. Argument That BEAT Does Not Violate International Treaties

Authorities claim BEAT has been thoroughly vetted and does not violate WTO agreements.[75] A spokeswoman for the House Ways and Means Committee, as well as the Senate Finance Committee, sent a statement to Bloomberg Tax urging that "lawmakers are confident

[67] I.R.C. § 59A(e)(1)(C); Martin, *supra* note 66 ("[T]he final bill uses a two percent threshold for financial institutions . . . .").
[68] I.R.C. § 59A(b)(3)(A); Yoder, Noren & Lockhart, *supra* note 13.
[69] *See* Yoder, Noren & Lockhart, *supra* note 13.
[70] Schechner & Trentmann, *supra* note 46.
[71] *Id.*
[72] Letter from Peter Altmaier et al., *supra* note 15 (indicating if "cross-border intra-group financial transactions [are] treated as non-deductible and subject to a 10% tax," the resulting tax charges could "harmfully distort international financial markets").
[73] *Id.*
[74] *Id.* ("[S]ome of the proposed measures could constitute unfair trade practice and may discourage non-U.S. financial institutions from operating in the U.S.").
[75] Kirwin, *supra* note 64 ("[L]awmakers are confident the tax provisions are in compliance with international rules.").

the tax provisions are in compliance with international rules."[76] The spokeswomen further reasoned BEAT "applies equally to foreign and domestic companies subject to U.S. tax."[77]

The fact that BEAT does not apply to all international firms lends more credence towards assurances of compliance with international law and is perhaps more convincing than the word of lawmakers.[78] The BEAT is limited to C-corporations, notably excluding Regulated Investment Companies, Real Estate Investment Trusts, and S-corporations.[79] Further, BEAT does not reach all C-corporations, depending on the type of deductions on which the enterprise relies.[80] That is, BEAT only affects corporations making payments to a related foreign person in services, rents, interests, and royalties.[81] Payments for cost of goods sold are not included.[82]

Even C-corporations that BEAT applies to may, by working together with tax practitioners, avoid the tax altogether through savvy planning.[83] More specifically, companies can restructure their inter-company transactions.[84] That is, related party payments can be "made from foreign affiliates to the U.S., rather than from the U.S. to the foreign affiliate."[85] Further,"[i]t may be desirable to restructure opera-

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[76] *Id.*
[77] *Id.*
[78] *See* Tax Alert, Ernst & Young, US Tax Cuts and Jobs Act and its Impact on Technology Sector 3 (Dec. 26, 2017), http://www.ey.com/Publication/vwLUAssets/US_Tax_Cuts_and_Jobs_Act_and_its_impact_on_technology_sector/$FILE/2017G_07175-171Gbl_US%20TCJA%20and%20its%20impact%20on%20technology%20sector.pdf [hereinafter E&Y Tax Alert] (discussing different scenarios in which BEAT may apply).
[79] *Id.*
[80] *Id.* (explaining modified taxable income does not include cost of goods sold, thus companies not relying on deductions for services rendered to them by their parent may be affected very little, if at all).
[81] Yoder, Noren & Lockhart, *supra* note 13.
[82] E&Y Tax Alert, *supra* note 78 ("Base erosion payments do not include cost of goods sold . . . .").
[83] Client Update from Crowell Moring, Davis J. Fischer, Charles C. Hwang & Andrew S. Park, Tax Reform in Small Bites: Beating the Beat (Base Erosion and Anti-Abuse Tax) (Jan. 30, 2018), https://www.crowell.com/NewsEvents/AlertsNewsletters/all/Tax-Reform-in-Small-Bites-Beating-the-BEAT-Base-Erosion-and-Anti-Abuse-Tax__[https://perma.cc/X9QN-XLZC] [hereinafter Crowell Moring Client Update] (explaining restructuring intercompany transactions can help avoid BEAT).
[84] *Id.*
[85] *Id.*

tions to cause more income to be subject to U.S. tax as such additional income may have a low marginal tax rate when the effect of the BEAT tax is taken into account."[86] A foreign parent could also charge its domestic subsidiary a smaller cost for services rendered, thus leaving the parent with much less realized income on foreign soil.[87] Lastly, the provision could be avoided by allocating profits into costs of goods sold.[88]

Finally, even if BEAT effectively denies a company's foreign tax credit required by an international treaty, it is important to note the same EU officials asserting BEAT's unfairness conceded base erosion and profit shifting are legitimate concerns.[89] Yet, these officials offered no alternative to BEAT in their letter to Secretary Mnuchin.[90]

E. Conclusion

In cases in which foreign tax credits apply (which is conceivably most international enterprises), BEAT does pose a risk of rendering such credits inoperative, resulting in double taxation of income domestic subsidiaries produce and which then repatriate to the foreign-parent corporation.[91] Since foreign credits were put in place to comply with international income tax treaties, such an effect can be construed as violating these agreements.[92]

On the other hand, the double taxation applies namely only to companies that pay service fees, interest, rent, or royalties to its

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[86] *Id.*
[87] *Id.*
[88] *Id.* ("Some payments relating to sales of products in the U.S. might properly be accounted for under the inventory method as cost of goods sold (COGS), rather than as deductible payments. Payments included in COGS reduce BEAT modified taxable income in the same manner as they reduce regular taxable income."); Andrew Velarde, *Senate Wins on Base Erosion, Interest Limitation Drops,* TAXANALSYSTS (Dec. 18, 2017), http://www.taxanalysts.org/content/senate-wins-base-erosion-interest-limitation-drops [https://perma.cc/KF53-DGZQ] (noting since BEAT does include costs of goods sold, practitioners are already speculating the provision could provide companies with planning opportunities through allocation of profits into costs of goods sold).
[89] Letter from Peter Altmaier et al., *supra* note 15 ("Preventing base erosion is an important goal.").
[90] *See generally id.*
[91] Yoder, Noren & Lockhart, *supra* note 13.
[92] *Id.*

parent.[93] There are also strategic means of avoiding or structuring around BEAT.[94] Even when BEAT does apply, there is always the possibility that only a portion of foreign tax credits are wiped out. Thus, whether BEAT violates any particular income tax treaty is likely only answerable on a case-by-case basis.[95] Historically, the EU has complained about U.S. multinationals profit-shifting and erosion of the European tax base, thus, the EU may have difficulty asking the United States to not hold EU companies accountable for similar profit-shifting under BEAT.[96]

Michael Horowitz[97]

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[93] *Id.*
[94] Crowell Moring Client Update, *supra* note 83.
[95] *See* discussion, *supra* Section C.1.
[96] Stephanie Soong Johnston, *EU Finance Ministers Fire Warning Shot on U.S. Tax Reform*, TAXANALYSTS (Dec. 12, 2017), http://www.taxanalysts.org/content/eu-finance-ministers-fire-warning-shot-us-tax-reform [https://perma.cc/A53M-Z2SR] (quoting Douglas S. Stransky of U.S.-based firm Sullivan & Worcester's as finding the EU official's BEAT complaint as ironic since these same officials complain about base erosion and profit shifting of U.S.-based multinationals on their soil).
[97] Student, Boston University School of Law (J.D. 2019).