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Final regulations: Base erosion and anti-abuse tax (BEAT) rules for qualified derivative payments (QDPs) on securities lending transactions

The U.S. Treasury Department and IRS today released final regulations (T.D. 10041) regarding how qualified derivative payments (QDPs) in connection with securities lending transactions are determined and reported under the rules governing the section 59A base erosion and anti-abuse tax (BEAT).

The final regulations largely follow the proposed regulations that were released earlier this year. First, the final regulations specify that mark-to-market gains and losses from the securities leg of a securities lending transaction are not treated as QDPs and are excluded from QDP reporting. Second, the regulations provide two approaches to determine whether a taxpayer made a substitute payment or similar payment to a foreign related party. Under the first approach, the taxpayer may use the actual payments to the foreign related party (the “specific identification method”). Under the second approach, the taxpayer treats payments as first being paid to foreign related parties but not in excess of all payments received by foreign related parties from all payors (the “alternative method”).

Two comments were received in response to the proposed regulations (read *TaxNewsFlash*). In response to feedback, the final regulations provide clearer definitions for key terms related to securities lending, such as “substitute payment,” to prevent payments to foreign related parties from being misclassified for tax purposes.

Applicability date

Application of the BEAT netting rule and QDP determination rule relating to securities lending transactions apply to tax years beginning on or after December 17, 2025. However, taxpayers may apply these final rules to a tax year beginning on or after January 10, 2025, and before December 17, 2025.

Rules relating to QDP reporting apply to payments made in tax years beginning on or after January 1, 2027.

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