

26 U.S. Code § 59A - Tax on base erosion payments of taxpayers with substantial gross receipts

(b) BASE EROSION MINIMUM TAX AMOUNT For purposes of this section—

(1) IN GENERAL Except as provided in paragraphs (2) and (3), the term “base erosion minimum tax amount” means, with respect to any applicable taxpayer for any taxable year, the excess (if any) of—

(A) an amount equal to 10 percent (5 percent in the case of taxable years beginning in calendar year 2018) of the modified taxable income of such taxpayer for the taxable year, over

(B) an amount equal to the regular tax liability (as defined in section 26(b)) of the taxpayer for the taxable year, reduced (but not below zero) by the excess (if any) of—

(i) the credits allowed under this chapter against such regular tax liability, over

(ii) the sum of—

(I) the credit allowed under section 38 for the taxable year which is properly allocable to the research credit determined under section 41(a), plus

(II) the portion of the applicable section 38 credits not in excess of 80 percent of the lesser of the amount of such credits or the base erosion minimum tax amount (determined without regard to this subclause).

(2) MODIFICATIONS FOR TAXABLE YEARS BEGINNING AFTER 2025 In the case of any taxable year beginning after December 31, 2025, paragraph (1) shall be applied—

(A) by substituting “12.5 percent” for “10 percent” in subparagraph (A) thereof, and

(B) by reducing (but not below zero) the regular tax liability (as defined in section 26(b)) for purposes of subparagraph (B) thereof by the aggregate amount of the credits allowed under this chapter against such regular tax liability rather than the excess described in such subparagraph.

(3) INCREASED RATE FOR CERTAIN BANKS AND SECURITIES DEALERS

(A) In general

In the case of a taxpayer described in subparagraph (B) who is an applicable taxpayer for any taxable year, the percentage otherwise in effect under paragraphs (1)(A) and (2)(A) shall each be increased by one percentage point.

(B) Taxpayer described A taxpayer is described in this subparagraph if such taxpayer is a member of an affiliated group (as defined in section 1504(a)(1)) which includes—

(i) a bank (as defined in section 581), or

(ii) a registered securities dealer under section 15(a) of the Securities Exchange Act of 1934.

(4) APPLICABLE SECTION 38 CREDITS For purposes of paragraph (1)(B)(ii)(II), the term “applicable section 38 credits” means the credit allowed under section 38 for the taxable year which is properly allocable to—

- (A) the low-income housing credit determined under section 42(a),
- (B) the renewable electricity production credit determined under section 45(a), and
- (C) the investment credit determined under section 46, but only to the extent properly allocable to the energy credit determined under section 48.

(e) APPLICABLE TAXPAYER For purposes of this section—

(1) IN GENERAL The term “applicable taxpayer” means, with respect to any taxable year, a taxpayer—

(A) which is a corporation other than a regulated investment company, a real estate investment trust, or an S corporation,

(B) the average annual gross receipts of which for the 3-taxable-year period ending with the preceding taxable year are at least \$500,000,000, and

(C) the base erosion percentage (as determined under subsection (c)(4)) of which for the taxable year is 3 percent (2 percent in the case of a taxpayer described in subsection (b)(3)(B)) or higher.

(2) GROSS RECEIPTS

(A) Special rule for foreign persons

In the case of a foreign person the gross receipts of which are taken into account for purposes of paragraph (1)(B), only gross receipts which are taken into account in determining income which is effectively connected with the conduct of a trade or business within the United States shall be taken into account. In the case of a taxpayer which is a foreign person, the preceding sentence shall not apply to the gross receipts of any United States person which are aggregated with the taxpayer’s gross receipts by reason of paragraph (3).

(B) Other rules made applicable

Rules similar to the rules of subparagraphs (B), (C), and (D) of section 448(c)(3) shall apply in determining gross receipts for purposes of this section.

(3) AGGREGATION RULES

All persons treated as a single employer under subsection (a) of section 52 shall be treated as 1 person for purposes of this subsection and subsection (c)(4), except that in applying section 1563 for purposes of section 52, the exception for foreign corporations under section 1563(b)(2)(C) shall be disregarded.