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Challenge Met? Still Questioning the Tax Treaty-BEAT Connection

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Challenge Met? Still Questioning The Tax Treaty-BEAT Connection

To the Editor:

We appreciate and respect the challenge accepted by Patricia A. Brown, the director of the Graduate Program in Taxation and Taxation of Cross-Border Investment, University of Miami School of Law, to our article, "The Debate on Treaty Application to Section 965, GILTI, and BEAT" (*Tax Notes Int'l*, May 20, 2019, p. 733), in her letter of June 6, 2019 ("Tax Treaty — BEAT Connection: Challenge Accepted,"*Tax Notes Int'l*, June 10, 2019, p. 1053).

However, we still fail to see how paragraph 4 of article 24 is applicable since: (1) the base erosion and antiabuse tax provisions do not deny deductibility; and (2) a U.S. C corporation (regardless of ownership) paying another related C corporation is not in the same position as a U.S. C corporation (regardless of ownership) paying a related foreign corporation. The tax benefit from obtaining the deduction is subject to BEAT (no denial of nor reduction of the amount deductible). Furthermore, as an example, under pre-Tax Cuts and Jobs Act section 163(j), the limitation on deductibility did not violate paragraph 4 (the OECD concurred that such a provision was not discriminatory). Thus, our rationale for not considering the applicability of paragraph 4, which makes the "later-in-time" rule moot. ■

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