HEINEKEN

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Re: Comments on Tax Treatment of Pre-TCJA NOLs for Calculating Tax Under Proposed BEAT Regulations (REG-104259-18)

HEINEKEN USA wishes to comment on the proposed Base Erosion and Anti-Abuse Tax (BEAT) regulations published in the Federal Register on December 21, 2018.

We are concerned that the proposed regulations will have an unintended effect in reducing the value of pre-enactment net operating losses. The proposed regulations recognize – through a zero-percent base erosion percentage – that pre-Tax Cuts and Jobs Act NOLs should not be affected by the BEAT. However, the proposed regulations do not fully address the retrospective impact on pre-enactment NOLs. Unless the proposed regulations are modified, they may result in taxpayers having significantly higher tax liability as every base erosion payment will reduce the benefit of pre-enactment NOLs utilized in determining regular tax liability.

We are aware that several other companies – including HSBC North America Holdings Inc and FortisUS – have written to you to recommend a Proxy Method modification to the computation of BEAT liability. Under this Proxy Method for purposes of computing BEAT tax, the taxpayer's regular tax paid would be treated as increased by a percentage (equal to the difference between the regular tax rate and the BEAT tax rate) of the NOLs utilized in computing regular tax. The HSBC letter dated February 19, 2019 and the FortisUS letter dated May 3, 2019 both include the following proposed language to implement the Proxy Method:

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Recommendation — Suggested Final Language (addition in italics)

> Final Treas. Reg. § 1. 59A-1 (b)(16) Regular Tax Liability. The term regular tax liability has the meaning provided in section 26(b). *For the purposes of calculating the base erosion minimum tax under section 59A(b), regular tax liability shall also include an amount equal to the differential between the current tax rate under section 11(b) and the applicable base erosion tax rate under section 59A(b) times any Section 172 deduction actually used to reduce taxable income for the current year for a net operating loss that arose in a taxable year ending prior to January 1, 2018.*

HEINEKEN USA supports the recommended Proxy Method language and believes it will appropriately treat pre-enactment NOLs while satisfying the Treasury Department/IRS goal of reducing computational complexity.

Thank you for your consideration.

Sincerely,

Thomas Tulfer
Chief Financial Officer