

**Register** on Friday, December 6, 2019. Treasury Decision 9885 implementing the base erosion and anti-abuse tax, designed to prevent the reduction of tax liability by certain large corporate taxpayers through certain payments made to foreign related parties and certain tax credits.

**DATES:** *Effective date.* This correction is effective on February 19, 2020 and is applicable on December 6, 2019.

**FOR FURTHER INFORMATION CONTACT:** Concerning § 1.59A–9, Azeka J. Abramoff, Sheila Ramaswamy, or Karen Walny at (202) 317–6938; concerning § 1.6038A–2, Brad McCormack or Anand Desai at (202) 317–6939 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9885) that are the subject of this correction are under sections 59A and 6038A of the Internal Revenue Code.

**Need for Correction**

As published December 6, 2019 (84 FR 66968), the final regulations (TD 9885; FR Doc. 2019–25744) contained errors that may prove misleading and therefore need to be corrected.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.59A–9 is amended by revising the text of paragraphs (b)(1) and (c)(2)(ii) and the first sentence of paragraph (c)(5)(ii) to read as follows:

**§ 1.59A–9 Anti-abuse and recharacterization rules.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \* If a taxpayer pays or accrues an amount to one or more intermediaries (including an intermediary unrelated to the taxpayer) that would have been a base erosion payment if paid or accrued to a foreign related party, and one or more of the intermediaries makes (directly or indirectly) corresponding payments to or for the benefit of a foreign related party as part of a transaction (or series of transactions), plan or arrangement

that has as a principal purpose of avoiding a base erosion payment (or reducing the amount of a base erosion payment), the role of the intermediary or intermediaries is disregarded as a conduit, or the amount paid or accrued to the intermediary is treated as a base erosion payment, as appropriate.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \* The arrangement between FP, DC, and Corp A is deemed to result in a \$95x base erosion payment under paragraph (b)(1) of this section because DC's payment to Corp A would have been a base erosion payment if paid to a foreign related party, and Corp A makes a corresponding payment to FP as part of the series of transactions that has as a principal purpose of avoiding a base erosion payment.

\* \* \* \* \*

(5) \* \* \*

(ii) \* \* \* The transactions between FP, DC, and Bank are deemed to result in a base erosion payment under paragraph (b)(1) of this section because DC's payment to Bank would have been a base erosion payment if paid to a foreign related party, and Bank makes a corresponding payment to FP as part of the series of transactions that has as a principal purpose of avoiding a base erosion payment. \* \* \*

\* \* \* \* \*

■ **Par. 3.** Section 1.6038A–2(g) is amended by revising the third sentence to read as follows:

**§ 1.6038A–2 Requirement of return.**

\* \* \* \* \*

(g) \* \* \* Paragraph (b)(7)(ix) of this section applies to taxable years beginning on or after June 7, 2021. \* \* \*

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

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**DEPARTMENT OF THE TREASURY**

**Financial Crimes Enforcement Network**

**31 CFR Part 1010**

**Financial Crimes Enforcement Network; Inflation Adjustment of Civil Monetary Penalties**

**AGENCY:** Financial Crimes Enforcement Network (“FinCEN”), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN publishes this final rule to reflect inflation adjustments to its civil monetary penalties (“CMPs”) as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as the “2015 Act”). This rule adjusts certain CMPs within the jurisdiction of FinCEN to the maximum amount required by the 2015 Act.

**DATES:** Effective February 19, 2020.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Resource Center at (800) 767–2825 or email [frc@fincen.gov](mailto:frc@fincen.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“Inflation Adjustment Act”), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (“2015 Act”), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial “catch-up” adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, without needing to provide notice and the opportunity for public comment otherwise required by 5 U.S.C. 553. The 2015 Act provides that any increase in a CMP shall apply to CMPs that are assessed after the date the increase takes effect, regardless of whether the underlying violation predated such increase.<sup>1</sup>

**II. Method of Calculation**

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act and the Office of Management and Budget (“OMB”) guidance required by the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (“CPI-U”) for the October preceding the date of the adjustment and the prior year’s October CPI-U. As set forth in OMB Memorandum M–20–05 of December 16, 2019, the adjustment multiplier for 2020 is 1.01764. In order to complete the 2020 annual adjustment, each current CMP is

<sup>1</sup> The increased CMPs, however, apply only with respect to underlying violations occurring after the date of enactment of the 2015 Act, *i.e.*, after November 2, 2015.

multiplied by the 2020 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of \$1.

#### Procedural Matters

##### 1. Administrative Procedure Act

Section 701(b) of the 2015 Act requires agencies, beginning in 2017, to make annual adjustments for inflation to CMPs without needing to provide notice and the opportunity for public comment required by 5 U.S.C. 553. Additionally, the methodology used for adjusting CMPs for inflation, effective 2017, is provided by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. FinCEN is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and an opportunity for public comment and a delayed effective date are not required for this rule.

##### 2. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

##### 3. Executive Order 12866

This rule is not a significant regulatory action as defined in section 3.f of Executive Order 12866.

##### 4. Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

#### List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign

currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

For the reasons set forth in the preamble, Part 1010 of Chapter X of title 31 of the Code of Federal Regulations is amended as follows:

#### PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. Amend § 1010.821 by revising Table 1 to read as follows:

#### § 1010.821 Penalty adjustment and table.

\* \* \* \* \*

(b) \* \* \*

TABLE 1 OF § 1010.821—PENALTY ADJUSTMENT TABLE

U.S. Code citation	Civil monetary penalty description	Penalties as last amended by statute	Maximum penalty amounts or range of minimum and maximum penalty amounts for penalties assessed on or after February 19, 2020
12 U.S.C. 1829b(j) .....	Relating to Recordkeeping Violations For Funds Transfers.	\$10,000	\$21,410
12 U.S.C. 1955 .....	Willful or Grossly Negligent Recordkeeping Violations .....	10,000	21,410
31 U.S.C. 5318(k)(3)(C) .....	Failure to Terminate Correspondent Relationship with Foreign Bank.	10,000	14,482
31 U.S.C. 5321(a)(1) .....	General Civil Penalty Provision for Willful Violations of Bank Secrecy Act Requirements.	25,000	58,328
31 U.S.C. 5321(a)(5)(B)(i) .....	Foreign Financial Agency Transaction—Non-Willful Violation of Transaction.	– 100,000	– 233,313
31 U.S.C. 5321(a)(5)(C)(i)(I) .....	Foreign Financial Agency Transaction—Willful Violation of Transaction.	10,000	13,481
31 U.S.C. 5321(a)(6)(A) .....	Negligent Violation by Financial Institution or Non-Financial Trade or Business.	100,000	134,806
31 U.S.C. 5321(a)(6)(B) .....	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.	500	1,166
31 U.S.C. 5321(a)(7) .....	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business.	50,000	90,743
31 U.S.C. 5321(a)(7) .....	Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures.	1,000,000	1,448,191
31 U.S.C. 5330(e) .....	Civil Penalty for Failure to Register as Money Transmitting Business.	5,000	8,606

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