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The new corporate alternative minimum tax in the United States

Potential impact on U.K.-headed groups with U.S. subsidiaries

On August 16, 2022, President Biden signed H.R. 5376, commonly called the Inflation Reduction Act of 2022, which includes a new corporate alternative minimum tax (Corporate AMT) based on 15 percent of adjusted financial statement income (AFSI) for applicable corporations. The new Corporate AMT will be effective for tax years beginning after December 31, 2022.

Corporate AMT scope

Notably, the U.S. subsidiary corporations of U.K.-headed groups will be considered applicable corporations (and thus subject to the Corporate AMT) if the U.K. group overall has a three-year average annual AFSI in excess of US$1 billion and that AFSI includes an annual average of US$100 million of U.S.-related AFSI.[1]

Under the Corporate AMT, an applicable corporation's minimum tax would be equal to the amount by which the tentative minimum tax (15 percent of AFSI, after certain adjustments, reduced by AMT foreign tax credits) exceeds the corporation's regular tax for the year, including its base erosion and anti-abuse tax liability, but prior to the consideration of general business credits. AFSI is the net income or loss of the taxpayer stated on the taxpayer's applicable financial statement with various modifications. For foreign-parented groups, the AFSI generally would be limited to U.S.-related AFSI. A taxpayer would be allowed to claim a credit for Corporate AMT paid against regular tax in future years, but the credit could not reduce that future year's tax liability below the computed minimum tax for that year. (See Analysis and observations: Tax law changes in the "Inflation Reduction Act" from KPMG in the United States for more insights on how the Corporate AMT is calculated.)

What should groups be doing now?

Groups that are potentially in-scope should quickly assess the potential impact of the new tax and determine what additional information may be needed to estimate the potential Corporate AMT liability for tax years beginning after December 31, 2022. The KPMG report noted in the prior paragraph is a good starting point for more information; however, taxpayer-specific advice and modeling will be essential.

Interaction with Pillar 2

U.K.-headed groups expecting to pay Corporate AMT in the United States will need to model the interaction of Corporate AMT with Pillar 2, given the expected implementation of the Income Inclusion Rule (IIR) in the United Kingdom from 2024.

Corporate AMT is unlikely to be considered a qualified IIR with respect to its application to foreign earnings. Like the global intangible low-taxed income (GILTI) regime, it aggregates income, losses, and taxes across all controlled foreign corporations (and similarly allows cross-crediting of the taxes imposed on the operations of a U.S. consolidated group without regard to whether the operations are conducted in the United States or through a foreign branch), whereas

[1] Applicable corporations also include U.S.-parented corporations with a three-year average annual AFSI in excess of $1 billion, among other requirements.

Pillar 2 only allows income, losses, and taxes to be aggregated on a country-by-country basis. Instead, the Corporate AMT, similar to GILTI, is likely be treated as a "Controlled Foreign Corporation (CFC) Tax Regime" for Pillar 2 purposes, so that any taxes paid with respect to foreign earnings would be "pushed down" to the jurisdiction that earned the underlying income, using a to-be-developed allocation method, and taken into account in computing the effective tax rate in that jurisdiction for purposes of the IIR and undertaxed profits rule. The interaction of CFC Tax Regimes and Qualified Domestic Top-up Taxes (QDMTTs) is not yet resolved; however, it seems unlikely that the Corporate AMT would be considered a QDMTT. (See the KPMG report noted above for more on how the Corporate AMT compares to Pillar 2.)

Even though both Corporate AMT and Pillar 2 apply where groups have effective tax rates below 15 percent, these regimes calculate effective tax rates in materially different ways. This means that it is feasible that a group could be subject to additional tax under both Corporate AMT and Pillar 2, or one but not the other—reemphasizing the importance of modeling both.

For U.K.-headed groups with U.S. subsidiaries that own CFCs, the Inflation Reduction Act, coupled with the U.S. GILTI regime and its uncertain interaction with Pillar 2, creates additional complexities. Groups should consider whether it makes sense to transfer the CFCs out from under the United States.

The table below provides a quick comparison of the Corporate AMT and Pillar 2, highlighting some of the key differences

	Corporate AMT	Pillar 2
Scope	>US$1b of global adjusted financial statement income	>€750m of global revenue
Rate	15%	15%
Tax blending	Global, but limited to the amount of book minimum tax imposed on aggregate CFC income	Country by country
Base	Financial statement net income with adjustments	Financial statement net income with adjustments; the Pillar 2 tax base entails several adjustments not contained in the book minimum tax (e.g., stock compensation)
Net operating losses	Carryforward for financial statement net operating losses (with a limited transition rule)	Deferred tax asset mechanism (with a more generous transition rule)
Other timing differences	Indefinite credit carryforward mechanism	Deferred tax accounting with adjustments
Treatment of tax credits	General business credits (GBCs) generally protected	GBCs generally not protected (except potentially credits via entities for which equity method accounting applies)
Substance carve-out	None	Fixed return on payroll + tangible assets

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