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Banking: Focus on the Future

2023 Financial Services Tax Conference

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Shaping the future:
convergence & collaboration
2023 Financial Services Tax Conference

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Agenda

01

Taxation of Digital Banking Products

Shaping the future:
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Banking top 10 drivers for innovation and growth

01 Digital Transformation

02 Earnings Growth

03 Payments

04 Mergers & Acquisitions

05 Risk & regulatory

06 Cybersecurity

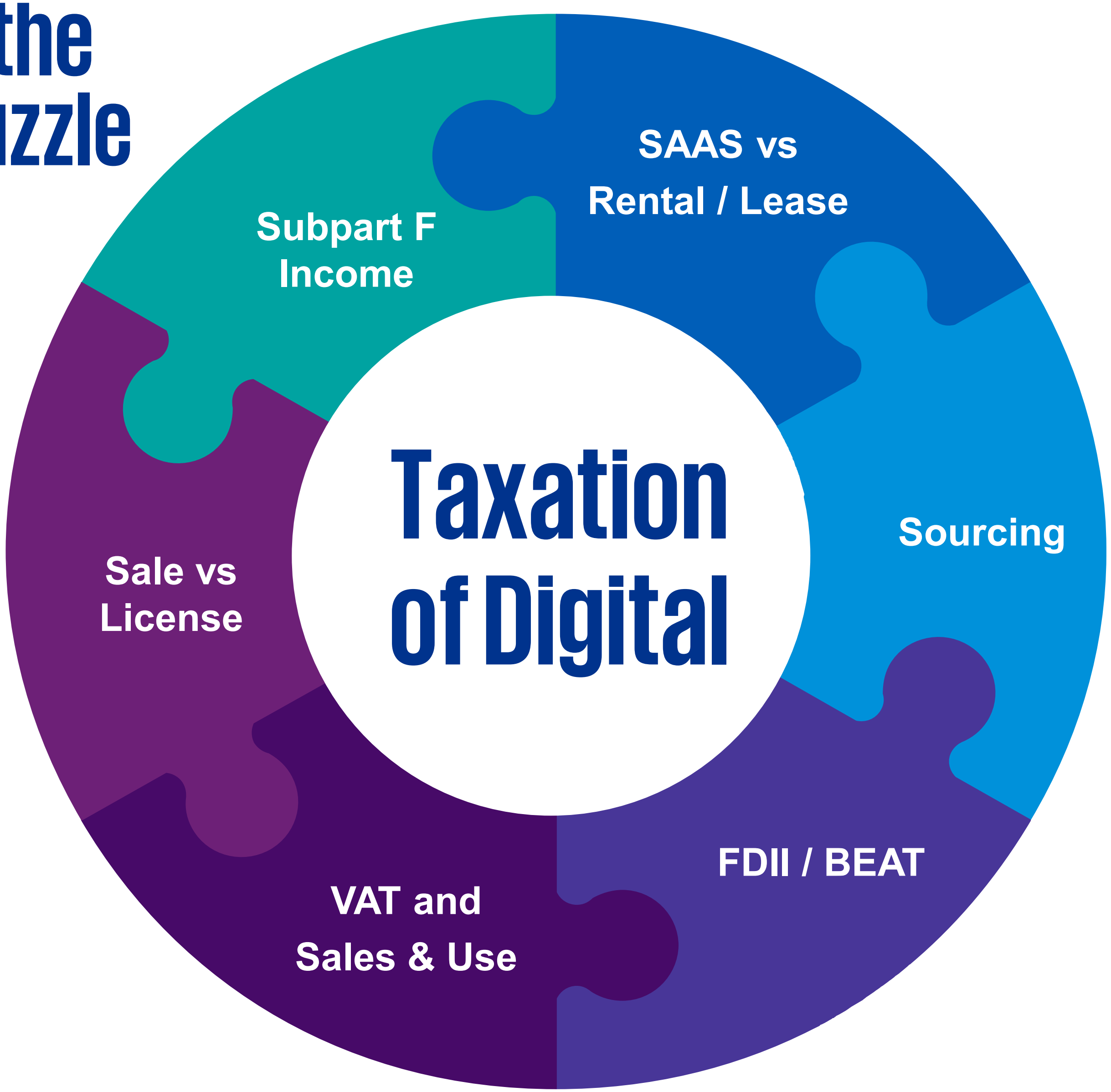
07 ESG

08 Innovation

09 Talent

10 Tax

Understanding the Pieces of the Puzzle



02

Corporate Alternative Minimum Tax

Corporate Alternative Minimum Tax

Applicable Corporation

Entity test and income test – US MNCs and FPMNGs
Aggregation Rules

Applicable Financial Statement

Starting point
Investment in Partnership and CFCs
Different accounting standards
Liability Determination and use of credits

Adjustment Financial Statement Income "AFSI"

Safe harbor, scope and liability determination
Investment in Partnership
Investment in CFCs
Adjustments to AFSI

Current Available Guidance – Notice 2023-7/Notice 2023-20

M&A transactions – nonrecognition and recognition transactions
Application of the Single employer rule
Depreciation

Open Items

Table 3.
Net Tax Hikes by Industry from the Inflation Reduction Act Book Minimum Tax from 2023 to 2032, Detailed Industries

Industry	$ millions	% of income
Steel Works, etc.	$2,763	19.4%
Automobiles and Trucks	$8,882	4.6%
Recreation	$1,886	3.9%
Utilities	$42,176	3.6%
Aircraft, Ships, and Railroad Equipment	$8,759	3.6%
Petroleum and Natural Gas	$29,609	2.2%
Everything Else	$3,448	2.1%
Precious Metals, Non-Metallic, and Industrial Metal Mining	$450	1.8%
Construction and Construction Materials	$1,772	1.8%
Transportation	$9,233	1.7%
Banking, Insurance, Real Estate, Trading	$49,502	1.6%
Chemicals	$3,642	1.6%
Fabricated Products and Machinery	$4,255	1.4%
Wholesale	$1,372	1.0%
Healthcare, Medical Equipment, Pharmaceutical Products	$8,246	0.7%
Communication	$4,348	0.6%
Tobacco Products	$2,292	0.5%
Textiles	$29	0.4%
Business Equipment	$6,995	0.4%
Restaurants, Hotels, Motels	$645	0.3%
Retail	$3,467	0.3%
Food Products	1$,153	0.3%
Beer & Liquor	$362	0.2%
Apparel	$207	0.2%
Personal and Business Services	$1,308	0.1%
Printing and Publishing	$0	0%
Consumer Goods	$0	0%
Business Supplies and Shipping Containers	$0	0%
Electrical Equipment	$0	0%
Coal	$0	0%
Total	$196,800	1.2%

Source: Compustat financial data, Tax Foundation Corporate Tax Model, author calculations.

Corporate Alternative Minimum Tax & Pillar 2

	US Corporate Alternative Minimum Tax	Pillar 2
Scope	$1b global adjusted financial statement income and, for inbounds, >$100m of US-related income	>€750m of global revenue during the testing period
Rate	15%	15%
Base	Financial statement income with adjustments (e.g., tax depreciation on tangible assets)	Financial statement income with different adjustments (e.g., election for tax deduction for stock-based compensation)
Tax blending	US profits blended with branches All CFC profits are blended	Country-by-country
Net operating losses	Carryforward for financial statement NOL (with a limited transition rule)	Deferred tax asset mechanism (with a more generous transition rule)
Other timing differences	Liability results in nonrefundable credit to be used against future regular tax liability	Deferred tax accounting with adjustments
Substance-based carve out	None	Fixed return on payroll + tangible assets
US nonrefundable GBCs	Favorable treatment	Potential unfavorable treatment

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Corporate Alternative Minimum Tax - Income Tax Accounting

US GAAP

CAMT is an alternative minimum tax as discussed in ASC 740

CAMT is a separate but parallel system for a company to pay a minimum level of tax which results in an entity never paying less than it would under its regular tax regime

- Account for incremental tax owed under CAMT as it is incurred
- Measure deferred taxes at regular tax rates, unadjusted for estimated future effects of CAMT
- Deferred taxes are not recognized for CAMT specific temporary differences
- Consider expected CAMT status (i.e., whether the entity expects to be subject to the AMT in perpetuity) when evaluating valuation allowances on CAMT credit carryforwards
- Consistently apply accounting policy election whether to consider CAMT status for deferred taxes under the regular tax system.

IFRS

Like U.S. GAAP:

- It appears an entity should account for incremental tax owed under CAMT as it is incurred
- It appears an entity should measure deferred taxes at regular tax rates, unadjusted for estimated future effects of CAMT
- Consider expected CAMT status when evaluating the realizability of deferred tax asset for CAMT credit carryforwards

Unlike U.S. GAAP:

- It appears entities should consider CAMT status when assessing to what extent deductible temporary differences and unused tax losses under the regular tax will be realized in the future

03

Purchasing Tax Credits

Purchased Credits

For tax year beginning after December 31, 2022, certain eligible credits can be purchased for cash from an unrelated party

- Credits can be purchased as late as the extended due date for the tax return of the seller
- Purchasers of credits cannot claim the credit on their return until the project has been “registered” with the IRS and received an identification number from the IRS and a “transfer election statement” has been signed between the buyer and seller.

  Registry system will be available by the end of the calendar year, according to the IRS.
- According to a statement in a JCT pamphlet, the difference between the face amount of the credit purchased and the price paid for the credit is not included in taxable income.
- According to a statement in the preamble to the proposed regulations on transferability, for estimated tax purposes, taxpayers that use the annualization method can take into account credits purchased or expected to be purchased during the taxpayer year in calculating their quarterly estimated tax payments

  This rule does not appear in the regulations itself, and further clarification in the estimated tax regulations would be helpful.

For tax years beginning after December 31, 2022, eligible credits can be carried back three years and forward 22 years.

- A Form 1139 carryback may be available

Purchased Credits

For tax year beginning after December 31, 2022, certain eligible credits can be purchased for cash from an unrelated party

- In the case of a partnership, the credit can only be sold by the partnership and not the partners
  - Partnerships can sell part of the credit, and specially allocate the retained credit to a specific partner or partners as further specified in the regulations.
- In the case of a partnership, the credit can be purchased by a partnership and allocated to its partners in accordance with how they share in section 705(a)(2)(B) expenditures used to fund the purchase of such transferred credits.
- Purchasers of credits retain underpayment risk, including risks for interest and penalties
  - Purchasers will likely seek indemnity protection for recapture risk, credit eligibility and credit amount
  - Purchasers may demand that sellers purchase tax insurance to backstop against these risks
- If the seller-partnership sells the ITC eligible property within 5 years of the placed in service date, the buyer has ITC recapture; if a partner in the seller-partnership sells its interest in the partnership within 5 years of the placed in service date, the ITC recapture accrues to the partner in the seller partnership.
- Partnership level reductions in ITC eligible basis apply even in a situation where the credit is being sold, i.e.,
  - ITC haircut where there are unblocked tax-exempt partners that are not subject to UBIT (e.g., “super tax-exempts”)
  - ITC haircut where there are individual partners and nonqualified nonrecourse financing exceeds certain thresholds under Code section 49
  - ITC haircut where project is financed with tax-exempt bonds
- Passive activity rules continue to apply to individual purchasers of credits

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Q&A

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Thank you!

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