Building a better working world

Washington Dispatch

December 2023, Volume 27, Issue 12

EY's weekly and monthly US international tax podcasts are available on Apple Podcasts and ey.com:

- Listen and subscribe to the weekly podcast on Apple Podcast
- Listen and subscribe to the monthly podcast on Apple Podcast
- Access all podcasts on EY's Tax News Update: Global Edition tool

In this issue

Treasury and IRS news

IRS interim CAMT guidance provides relief from possible double-counting of CFC earnings in AFSI, but possible compliance burdens

The IRS in December 2023 released Notice 2024-10, providing guidance clarifying certain provisions of the corporate alternative minimum tax (CAMT), which was enacted as part of the *Inflation Reduction Act of 2022*.

As background, the CAMT applies to an "applicable corporation" whose "tentative minimum tax" exceeds its regular US federal income tax liability plus its base erosion anti-abuse tax (BEAT) liability. An applicable corporation's tentative minimum tax equals 15% of its applicable financial statement income (AFSI) less the CAMT foreign tax credit for the tax year. AFSI refers to a corporation's net income or loss for a tax year as specified in its AFS, adjusted according to Section 56A.

Notice 2024-10 addresses the impact of certain distributions from a CFC (Covered CFC Distributions) in a taxpayer's applicable AFSI, with guidance that should significantly reduce the potential for the duplication of items in the taxpayer's AFSI.

The guidance on Covered CFC Distributions received by US Shareholders will likely be well-received by many taxpayers. Because Section 959(d) generally excludes previously taxed earnings and profit (PTEP) distributions from a CFC to its US shareholder from gross income, the Notice should allow taxpayers to exclude PTEP distributions received by US Shareholders from AFSI. This appears to be the result regardless of when the PTEP was created.

Also, the rules for Covered CFC Distributions received by CFCs from other CFCs appear intended to result in the exclusion of a significant portion of distributions from Adjusted Net Income or Loss, and consequently from the US Shareholder's AFSI after the application of Section 56A(c)(3).

The Notice allows taxpayers to rely on its rules for Covered CFC Distributions received (i) on or before the date forthcoming proposed regulations are published in the Federal Register or (ii) before 1 January 2024, regardless of when proposed regulations are published. There is no guarantee, but the general expectation is that the proposed regulations will be released in early 2024.

LB&I initiates CAMT compliance campaign

The IRS Large Business and International Division (LB&I) now has an active compliance campaign on the CAMT, according to the LB&I's list of active campaigns. The goal of the campaign is to promote voluntary compliance and will focus on the "highest risk" CAMT issues.

The guidance on Covered CFC Distributions should alleviate many taxpayers' concerns over the double-counting of CFC earnings in AFSI. The exclusions are broad — applicable to earnings generated both before and after the exactment of CAMT, and regardless of whether such amounts were previously included in AFSI under Section 56A(c)(3).

This should reduce the likelihood that CAMT creates a "lockout" effect in which taxpayers are hesitant to repatriate earnings due to concerns over increased CAMT liabilities. Furthermore, the adjustment rules in the Notice avoid, at least temporarily, the creation of a "CAMT PTEP" regime that would require the onerous tracking of a new set of CAMT attributes for each CFC.

Treasury provides guidance on creditability of BEPS Pillar Two taxes, relief for pre-GloBE DCLs and extends temporary relief from FTC regs

Treasury and the IRS issued Notice 2023-80 on 11 December 2023, outlining guidance on the interaction of the foreign tax credit (FTC) rules and dual consolidated loss (DCL) rules with top-up taxes imposed via the Pillar Two Global Anti-Base Erosion Model Rules' (GloBE Rules) Income Inclusion Rule (IIR) or a Qualified Domestic Minimum Top-Up Tax (QDMTT).

The government also announced its intent to issue proposed regulations that will align with this new guidance.

The Notice generally does not provide guidance on the FTC implications of the UTPR; however, Treasury and the IRS are analyzing these issues and plan to release additional guidance.

The Notice also extends, through tax years "ending before the date that a notice or other guidance withdrawing or modifying the temporary relief is issued (or any later date specified in such notice or other guidance)," the temporary relief from the application of regulations under Sections 901 and 903, which identify foreign taxes for which taxpayers may claim a credit (FTC Creditability Regulations) described in Notice 2023-55.

Pillar 2 taxes. Under Notice 2023-80, the creditability of a Pillar Two tax generally depends on whether it is a "final top-up tax," and if so, how it is computed. The Notice treats a foreign income tax as a final top-up tax if the foreign tax law "takes into account":

a. The amount of tax imposed on the direct or indirect owners of the entity subject to the tested tax by other countries (including the United States) with respect to the income subject to the tested tax, or

b. In the case of an entity subject to the tested tax on income attributable to its branch in the foreign country imposing the tested tax, the amount of tax imposed on the entity by its country of residence with respect to such income."

The Notice defines through examples a "final top-up tax" to include an IIR because an IIR is computed by taking into account the pushdown of taxes imposed on direct or indirect owners that are located in other countries. The rule on final top-up tax only applies to taxes that meet the definition of a "foreign income tax" (as defined under Reg. Section 1.901-2) and the examples assume that an IIR and QDMTT meet that definition.

A final top-up tax is not creditable (including for corporate alternative minimum tax purposes) if, under the foreign tax law, any amount of the taxpayer's US federal income tax liability (US tax liability) would be considered in computing the final top-up tax, regardless of whether the taxpayer has a US tax liability that is, in fact, included in the computation of the final top-up tax.

Final top-up taxes paid by controlled foreign corporations (CFCs) and partnerships are treated as creditable foreign income taxes at the level of the CFC or partnership, with any FTC disallowance applied at the level of the US shareholder or partner. According to the Notice, this treatment is intended to allow for the appropriate result when a final top-up tax should be creditable to one US shareholder or partner but not to another.

DCL rules. The Notice also indicates that Treasury and the IRS are studying the extent to which the DCL rules should apply to the GloBE Rules, including whether the GloBE Rules' jurisdictional blending should be treated as "foreign use" of a DCL.

Although the Notice states that more comprehensive guidance is pending, it provides that the Pillar 2 rules do not cause a foreign use to occur with respect to "legacy DCLs," meaning effectively pre-GloBE DCLs, solely because all or a portion of the deductions or losses that comprise a legacy DCL are taken into account in determining Net GloBE Income for a jurisdiction.

Applicability dates. Regarding application of the GloBE Rules to FTCs, the Notice anticipates that forthcoming proposed regulations will apply to tax years ending after 11 December 2023. Taxpayers may rely on the guidance in the Notice for tax years ending after 11 December 2023, and on or before the proposed regulations are published, as long as they apply the guidance consistently to all applicable tax years.

Regarding the application of the GloBE Rules to DCLs, taxpayers may rely on the guidance in the Notice until proposed regulations are published.

Interim guidance released on treatment of basis adjustments under Section 961(c) on inbound liquidation or asset reorganization

Treasury on 28 December 2023 issued interim guidance (Notice 2024-16) allowing domestic acquiring corporations in certain inbound liquidations and asset reorganizations (inbound transactions) to determine basis in the stock of a controlled foreign corporation (CFC) acquired in the transaction (an acquired CFC) as if a transferor CFC's basis from subpart F and GILTI inclusions (Section 961(c) basis) is adjusted basis in the acquired CFC and carries over under Sections 334(b) and 362(b).

US Congress adjourned until early January 2024

The US Congress in late December adjourned and begun its winter break and will return in early January 2024. Congress will need to enact appropriations bills when it returns in the new year, with two looming deadlines: 19 January and 2 February 2024. It remains unclear whether tax provisions can be added to the spending bills either in January or February, or possibly to other legislation.

Section 961(c) basis applies, by statute, solely for purposes of Section 951(a); conversely, basis adjustments under Section 961(a) are treated as adjusted basis for all purposes. This mismatch creates the potential for basis to be "lost," which has complicated inbound transactions for CFCs with significant previously taxed earnings and profits in lower-tier CFCs. In particular, this lost basis could result in non-economic gain upon distributions of those earnings and profits or sales of stock of those lower-tier CFCs in the future.

Notice 2024-16 covers inbound transactions only to the extent certain stock ownership thresholds are met. Domestic acquiring corporations cannot treat Section 961(c) basis as adjusted basis if:

- Money or other property (boot) exceeding 1% of the total fair value of the stock of the transferor CFC is received in the transaction
- The transferor CFC's total basis in the stock of the acquired CFC (taking into account Section 961(c) basis) immediately before the inbound transaction exceeds the total fair market value of that stock
- Stock of the acquired CFC is transferred outside of the consolidated group in a transaction described in Section 368(a)(2)(C) or Reg. Section 1.368-2(k)(1)
- Stock of the acquired corporation is transferred to a partnership or foreign corporation under a plan, which is deemed to exist for transfers within two years of the inbound transaction
- The domestic acquiring corporation(s) are regulated investment companies, real estate investment trusts or S corporations

Taxpayers may rely on the interim guidance in the Notice for transactions completed before the date of the forthcoming regulations, provided the taxpayer and all related parties consistently apply all the rules in the Notice.

JCT releases 'Bluebook" explanation

The congressional Joint Committee on Taxation (JCT) on 21 December released the "General Explanation of Tax Legislation Enacted in the 117th Congress," also known as the Bluebook.

US officials offer international regulatory update

An IRS official in mid-December said proposed regulations addressing previously taxed earnings and profits (PTEP) are now expected for release in 2024.

The government also reportedly plans to finalize proposed regulations under Section 892 in 2024 that address the foreign government exemption on qualified US investments. The coming regulations reportedly will finalize both 2011 and 2022 proposed regulations as a single regulatory package.

Finally, a Treasury official confirmed the US is working on regulations to implement the OECD Crypto-asset Reporting Framework (CARF).

Tax treaties

US Treasury announces entry into force of the US-Chile tax treaty

The United States and Chile in December 2023 exchanged instruments of ratification for the first-ever US-Chile income tax treaty.

The treaty entered into force on 19 December 2023, when the US notified Chile that it had satisfied all applicable procedures to bring the treaty into force.

For taxes withheld at source, the treaty will have effect for amounts paid or credited on or after 1 February 2024. For all other taxes, the treaty will have effect for tax periods beginning on or after 1 January 2024.

The US Senate gave its advice and consent to ratify the treaty, including two reservations concerning Section 59A (the Base Erosion and Anti-abuse Tax) and Article 23 (Relief from Double Taxation). Provisions relating to the reservations were subsequently approved by the Chilean Congress.

Significant provisions of the treaty include:

- Reduced withholding tax rates on certain payments of dividends, interest and royalties
- A permanent establishment (PE) provision that deems a PE to exist from the provision of services under certain circumstances
- A limitation-on-benefits provision that includes a "headquarters company test" and a triangular provision
- Provisions on the sale of shares or other rights in Chilean resident companies
- Provisions providing for exchange of information between the tax authorities of the United States and Chile

IRS updates list of treaties

The IRS issued Notice 2024-11 on 28 December 2023, updating "the list of treaties that meet the requirements of Section 1(h)(11) (qualified dividends)." The Notice adds the new US treaty with Chile and removes the US treaties with Russia and Hungary.

Courts

US Supreme Court hears oral arguments in *Moore* transition tax case

The US Supreme Court heard oral arguments in the *Moore v. United States* tax case on 5 December 2023, in which the taxpayer argued the transition tax under Section 965 violates the Constitution›s Apportionment Clause and the Due Process Clause of the Fifth Amendment because the transition tax was a direct tax on unrealized income.

Tax accounting

FASB modifies income tax disclosure rules

The Financial Accounting Standards Board (FASB) on 14 December 2023, issued Accounting Standards Update 2023-09 (ASU), which modifies the rules on income tax disclosures to require entities to disclose (1) specific categories in the rate reconciliation; (2) the income or loss from continuing operations before income tax expense or benefit (separated between domestic and foreign); and (3) income tax expense or benefit from continuing operations (separated by federal, state and foreign).

The ASU also requires entities to disclose their income tax payments to international, federal, state and local jurisdictions, among other changes.

The amendments apply to public business entities for annual periods beginning after 15 December 2024. For other entities, the amendments apply to annual periods beginning after 15 December 2025.

In case you missed it …

US headquartered FG500 companies increase, reversing downward trend

The decades-long decline in the number of the world's largest companies headquartered in the United States has begun to reverse. In 2021, the US began gaining back some of these headquarters, and in 2023 the US surpassed China as the country with the highest number of headquarters for the world's 500 largest companies by revenue (Fortune Global 500 or FG500).

Even with this recent reversal, however, the US has seen the number of companies headquartered there decline nearly 25% (from 179 to 136) between 2000 and 2023. In contrast, the number of FG500 companies headquartered in China increased more than ten-fold (from 10 to 135) over this same period. That growth, however, has appeared to level out with China's numbers holding relatively steady since 2021, and even dropping by one in 2023.

Looking at the numbers through a broader lens, the United States, China, Japan, Germany, France, and the United Kingdom have consistently ranked as the countries with the most FG500company headquarters; that is, until 2023 when South Korea surpassed the United Kingdom. The UK has experienced its own reshuffling, with the number of FG500 company headquarters located there declining more than 60% (from 38 to 15) since 2000.

Collectively, the top 10 countries (by the number of FG500 company headquarters located in the country) hosted 434 (87%) of FG500 company headquarters in 2023, up from 411 (82%) in 2010, but down slightly from 451 (90%) in 2000.

Many factors can affect a company's choice of headquarters location, such as a country's regional economic growth and stability, local infrastructure, regulatory environment, labor availability and productivity, transportation and other input costs, and tax policies.

OECD developments

OECD/G20 IF releases BEPS Pillar Two GloBE rules guidance, new Pillar One MLC timeline

The OECD/G20 Inclusive Framework on BEPS on 18 December 2023 released the third set of administrative guidance on the global minimum tax under Pillar Two and a statement on a new timeline for the Multilateral Convention (MLC) under Pillar One. The Agreed Administrative Guidance for the Pillar Two GloBE Rules (December) 2023 (December Guidance) follows earlier administrative guidance releases in February and July 2023.

The December Guidance addresses application of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour and provides a Simplified Calculations Safe Harbour for non-material entities. It also addresses allocation of blended controlled foreign company (CFC) taxes, among other technical issues under the GloBE Rules. According to an OECD press release issued on the same day, the new Administrative Guidance will be included in a revised Commentary to the GloBE Rules to be released in 2024.

The December Guidance provides additional guidance on the Transitional CbCR Safe Harbour with respect to areas that tax administrations and Multinational Enterprise (MNE) Groups identified as requiring further clarification. The guidance also indicates that the Inclusive Framework has become aware of certain transactions that exploit differences in the source of financial information or differences between tax and financial accounting treatment to allow a Constituent Entity to qualify for the Transitional CbCR Safe Harbour.

It describes these transactions as typically involving the use of arrangements in which the parties are able to account for the income, expenses, gains, losses or taxes under that arrangement in an inconsistent or duplicative manner and in a way that purports to allow one of the Constituent Entities to qualify for the Transitional CbCR Safe Harbour and thereby avoid GloBE Top-up Taxes that would otherwise arise.

In this regard, the December Guidance provides that, for purposes of determining if a jurisdiction qualifies for the Transitional CbCR Safe Harbour, adjustments must be made to the jurisdiction's Profit (or Loss) before Tax (PBT) and income tax expense with respect to any Hybrid Arbitrage Arrangements entered into after 15 December 2022. For these purposes, a Hybrid Arbitrage Arrangement is: (i) a deduction/non-inclusion arrangement; (ii) a duplicate loss arrangement; or (iii) a duplicate tax recognition arrangement. Finally, the guidance indicates that further guidance will be provided to address hybrid arbitrage arrangements in the context of applying the GloBE Rules outside the safe harbor context.

In regard to the MLC on Amount A of Pillar One, the Inclusive Framework intends to finalize the MLC by the end of March 2024, with a view to a signing ceremony by the end of June 2024.

According to the OECD press release, the OECD will release further administrative guidance on an ongoing basis in regard to various aspects of the GloBE Rules and "where necessary to address aggressive tax planning that may undermine the integrity of the rules or their application." The Inclusive Framework also plans to "develop simplifications on key compliance items," including on the application of deferred tax liability recapture rules and the allocation of deferred taxes such as CFC regimes. The guidance on simplifications is planned for the first half of 2024.

EY Member Firm US Tax Desks

Australia	**Scott Hes**, *Sydney*	scott.hes@au.ey.com
Bahrain	**Joe Kledis**, *Manama*	joe.kledis@bh.ey.com
Canada	**George Guedikian,** *Toronto*	george.b.guedikian@ca.ey.com
	Emad Zabaneh, *Toronto*	emad.m.zabaneh@ca.ey.com
	Asif Rajwani, *Toronto*	asif.rajwani@ca.ey.com
	Ryan Coupland, *Calgary*	ryan.coupland@ca.ey.com
	George Tsitouras, *Montreal*	george.tsitouras@ca.ey.com
	Denis Rousseau, *Montreal*	denis.rousseau@ca.ey.com
	Adam Seliski, *Vancouver*	adam.seliski@ca.ey.com
China	**Jeremy Litton,** *Hong Kong*	jeremy.litton@hk.ey.com@hk.ey.com
	Winona Zhao, *Hong Kong*	winona.zhao1@hk.ey.com
	Peter Kao, *Shanghai*	peter.kao@cn.ey.com
	Michelle Li, *Shenzhen*	michelle.li@cn.ey.com
France	**Carmen Encarnacion,** *Paris*	carmen.encarnacion@ey-avocats.com
Germany	**Thomas Day,** *Munich*	thomas.day@de.ey.com
	Zsuzsanna Kadar, *Munich*	zsuzsanna.kadar1@de.ey.com
	Josh McKniff, *Munich*	josh.mckniff@de.ey.com
	Dmitri Bordeville, *Frankfurt*	dmitri.bordeville@de.ey.com
	Ann-Kristin Kautz, *Frankfurt*	ann-kristin.kautz@de.ey.com
	Lee-Bryan Serota, *Frankfurt*	lee.b.serota@de.ey.com
Israel	**Amir Chenchinski,** *Tel Aviv*	amir.chenchinski@il.ey.com
	Tal Levy, *Tel Aviv*	tal.levy@il.ey.com
	Itai Ran, *Tel Aviv*	itai.ran@il.ey.com
Mexico	**Alberto Lopez,** *Mexico City*	alberto.r.lopez@mx.ey.com
	Manuel Solano, *Mexico City*	manuel.solano@ey.com
Singapore	**Carter Wood,** *Singapore*	carter.wood2@sg.ey.com
	Kevin Hughes, *Singapore*	kevin.m.hughes@sg.ey.com
Switzerland	**Michael Parets,** *Zurich*	michael.parets@ch.ey.com
United Kingdom	**Noah Lewis,** *London*	noah.lewis1@uk.ey.com
	Leif Jorgensen, *London*	ljorgensen@uk.ey.com
	Jillian Symes, *London*	jsymes@uk.ey.com

EY | Building a better working world

About EY
EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

prepared by Ernst & Young LLP's Washington International Tax Services summarizing recent developments and "inside-the-beltway" news pertinent to multinational companies. For additional information, please contact your local international Tax professional.

EYG no. 000163-24Gbl

1508-1600216 NY
ED None

ey.com