



December 6, 2024

VIA ELECTRONIC SUBMISSION

Internal Revenue Service
CC:PA:01:PR (REG-112129-23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Comments to REG-112129-23

To Whom It May Concern:

T-Mobile US, Inc. (“TMUS”) respectfully submits comments regarding the proposed regulations¹ with respect to the application of the corporate alternative minimum tax (“CAMT”) as enacted by Section 10101 of Inflation Reduction Act.² Specifically, our comments, which address the tax liability of a CAMT entity in a foreign parented multinational group (“FPMG”) and the proposed transition rules, are intended to highlight administrative complexities and offer recommendations to reduce such burdens and simplify compliance with the new CAMT.

TMUS provides wireless communications services to more than 131 million customers in the United States. The company’s wireless network has been repeatedly recognized as the largest, fastest, and most advanced 5G network in America, enabling TMUS to offer an unparalleled combination of value and quality to U.S. consumers. Throughout its history, TMUS has disrupted the wireless industry by actively engaging with customers to eliminate their pain points through its “Un-carrier” strategy. TMUS is now beginning to apply that same mindset to the broadband industry as the company looks to provide fast, affordable, and reliable internet connectivity alternatives to millions of additional customers nationwide. TMUS is a publicly traded consolidated group that files its financial statements under U.S. GAAP and is regulated by the Securities and Exchange Commission (“SEC”). TMUS is majority owned by Deutsche Telekom Holding BV, a Netherlands holding company ultimately owned by Deutsche Telekom AG (German ultimate parent (“DT”).³

¹ Corporate Alternative Minimum Tax Applicable After 2022, REG-112129-23, 89 Fed. Reg. 75062 (Sept. 13, 2024) (“Proposed Regulations”).

² Public Law 117-169, § 10101, 136 Stat. 1818 (Aug. 16, 2022) (“IRA”).

³ While DT’s ownership stake in TMUS is currently a majority interest (50.6% as of 2023), DT otherwise maintains a controlling interest requiring TMUS’ financial results to be consolidated into DT’s IFRS financial statements under the International Financial Reporting Standards (“IFRS”). IFRS 10 *Consolidated Financial Statements*, ¶ 20.

I. Foreign Parented Multinational Group Override Rule

Determination of Applicable Corporation

The Proposed Regulation provide rules for determining whether a U.S. corporation (“CAMT entity”) that is part of a foreign-parented multinational group (“FPMG”) for purposes of the initial gating question for the CAMT.⁴ In general, a CAMT entity in an FPMG is in scope as an “Applicable Corporation” if:

- The FPMG parent corporation’s average annual adjusted financial statement income (“AFSI”) for the 3-taxable-year period ending with such taxable year exceeds \$1 billion, and
- The average annual AFSI of the CAMT entity for the 3-taxable-year period ending with such taxable year is \$100 million or more.⁵

For purposes of this gating determination, the Proposed Regulations provide that the forgoing two thresholds generally are based on the FPMG’s financial statements, with the accounting standard defaulting to U.S. Generally Accepted Accounting Principles (“GAAP”) unless an exception applies.⁶ Under the first exception in the Proposed Regulations, IFRS would be the applicable financial accounting standard if the U.S. CAMT entity’s assets, liabilities, equity, income, and expenses are reflected in the consolidated financial statement of its ultimate parent where the ultimate parent uses IFRS as its applicable financial accounting standard.⁷

In this context, we agree that the gating question should look to the U.S. CAMT entity’s AFSI included in the FPMG’s applicable financial statements (“AFS”) and reflected under the FPMG’s accounting standard. The preamble to the Proposed Regulations notes:

The goal of these exceptions is, for cases in which a group prepares a consolidated financial statement that is of the ultimate parent and that is filed with the SEC or a foreign equivalent, to apply the controlling interest test based on the financial accounting standard used in preparing that consolidated financial statement. The Treasury Department and the IRS are of the view that this would appropriately reduce compliance burden because the controlling interest determination required under proposed § 1.59-3(f) would generally already have been made for purposes of preparing the consolidated financial statement and would increase reliability due to review by an external auditor and regulator.⁸

⁴ See generally, § 59(k) of the Internal Revenue Code of 1986, as amended (“Code” or “I.R.C.”), and Prop. Treas. Reg. §§ 1.59-2 and -3.

⁵ I.R.C. § 59(k)(2); § 1.59-2(c)(2).

⁶ Prop. Treas. Reg. § 1.59-3(g)(1).

⁷ Prop. Treas. Reg. § 1.59-3(g)(2)(ii). A consolidated financial statement is defined as a financial statement prepared in accordance with IFRS and filed with the Securities and Exchange Commission (“SEC”) or with an agency of a foreign government that is equivalent to the SEC. Prop. Treas. Reg. § 1.56A-2(c)(2)(i).

⁸ 89 Fed. Reg. at 75117.

In our case, while TMUS uses U.S. GAAP for accounting and SEC reporting purposes, we prepare an IFRS reporting package annually, which is provided to DT as the ultimate parent of the FPMG. At its level, DT performs journal entries, elimination journal entries, and other adjustments to TMUS reporting package, all of which flows into the DT's consolidated financial statements that are the FPMG AFS for purposes of the CAMT. Importantly, IFRS does not require that TMUS recast its U.S. GAAP financial statements in their entirety for its annual financial results to be included in the DT consolidated financial statements.

In this regard, the inconsistency between TMUS' accounting standard and that of its ultimate parent are reconciled annually under existing accounting procedures. Accordingly, for purposes of determining whether TMUS meets the two-prong test required of an Applicable Corporation, it is a relatively straightforward analysis – whether AFSI is above the two thresholds. Moreover, in most cases that assessment will be a once-and-done process, since the CAMT continues to apply to an Applicable Corporation until one of two fairly narrow exit/termination events occur as provided in the Proposed Regulations.⁹

Determination of FSI and AFSI

In contrast to the rules for identifying an Applicable Corporation, the annual determination of financial statement income ("FSI") and AFSI once a CAMT entity is within the scope of the CAMT is substantially (and arguably unnecessarily) more complicated where the entity is part of a FPMG. The Proposed Regulations would require the CAMT entity to begin the process with its separate AFS, in effect disaggregated from the FPMG's consolidated financial statements used for the gating determination discussed above.¹⁰ The CAMT entity's separate financial statements, is determined based on the statement with the highest priority of the permissible financial statements enumerated in the Proposed Regulations, with U.S. GAAP being the preferred and priority accounting standard.¹¹

As a general rule, in the case of a CAMT entity within a consolidated group, the Proposed Regulations would allow the CAMT entity to use its individual financial statement where it has a higher priority than the group's financial statement.¹² However, this rule does not apply in the case of a CAMT entity that is a member of an FPMG:

If a CAMT entity is a member of an FPMG, and if the FPMG common parent prepares a consolidated financial statement for a financial statement group that includes the CAMT entity (FPMG consolidated AFS), *then the CAMT entity uses the FPMG consolidated*

⁹ See Prop. Treas. Reg. § 1.56A-2(h).

¹⁰ Prop. Treas. Reg. § 1.56A-1(c)(3).

¹¹ Prop. Treas. Reg. § 1.56A-2(c) provides a priority listing, in the following order:

- U.S. GAAP statements,
- IFRS statements,
- Financial statements prepared in accordance with other GAAP standards,
- Other government and regulatory statements,
- Unaudited external statements, and
- Tax returns.

¹² Prop. Treas. Reg. § 1.56A-2(g).

AFS as its AFS, regardless of whether the CAMT entity's financial results also are reported on a separate financial statement that is of equal or higher priority to the FPMG consolidated AFS.¹³

As a result, a CAMT entity with an otherwise AFS at the highest priority – a U.S. GAAP financial statement – must use the FPMG's AFS as the basis for determining its CAMT liability.

For TMUS, the FPMG override rule creates significant added complexity and compliance burdens. In effect, the Proposed Regulations would require the company to extract its financial results from DT's consolidated financial statement, disaggregating all the consolidation and elimination journal entries and other adjustments made at the FPMG level to meet IFRS standards. In critical respects, TMUS will not have access to the detailed information necessary to reconcile its IFRS financial information to that of the overall IFRS group. Even with visibility into those adjustments at the FPMG level, there would be significant administrative burden to reconcile the results and likely require reliance on the ultimate foreign parent's IFRS accounting expertise, rather than TMUS' U.S. accountants with the greatest familiarity with its financial results.

Moreover, even with an effectively recast TMUS financial statement based on IFRS, we may not have the necessary information to make the necessary adjustment for the CAMT. For example, an investment in a U.S. joint venture structured as a partnership for tax purposes will result in an annual IRS Form K-1s reflecting the partners' distributive share of the entity's AFSI. That information return, however, will likely be determined on a U.S. GAAP basis, which may not provide sufficient information to make adjustments under the CAMT on an IFRS basis.¹⁴ Overall, for TMUS, and we expect for many other U.S. CAMT entities within a FPMG, this added complexity results in no material change in the AFSI or CAMT liability.

Fundamentally, we also question the basis for the FPMG override rule in the context of determining a CAMT entity's minimum tax liability. Unlike section 59(k), which specifically provides a special rule for FPMGs for purposes of defining an Applicable Corporation, neither section 55 nor section 56A suggest that Congress intended for U.S. GAAP to have to give way to foreign accounting rules in the case of a FPMG. If Congress had wanted to take on conformity of the accounting rules with international rules standards, it could have provided specific authority. More importantly, Congress arguably would have called for safeguards to prevent a foreign accounting-standard setter from manipulating U.S. tax law by taking advantage of the FPMG override to supersede U.S. GAAP with more favorable accounting rules for its domestic multinational companies. Absent such evidence of congressional intent, there is no basis for inferring it.

¹³ Prop. Treas. Reg. § 1.56A-2(g)(2)(v) (emphasis added).

¹⁴ For example, FSI under IFRS standards and any needed adjustments, such as an add-back of IFRS depreciation on I.R.C. § 168 property. Similarly, tracking partnership basis adjustments under U.S. GAAP may not correspond to IFRS standards.

Recommendations

Eliminate override: With the forgoing in mind, we recommend that the FPMG override should be limited to the determination of applicable corporations, as currently provided in section 1.59-2 and -3 of the Proposed Regulations. It is an appropriate approach for determining the initial gating for the CAMT regime, with compliance burdens that are limited in their scope and to the front end of the overall minimum tax regime.

With such a limitation, a CAMT entity in a FPMG would follow the general rule under section 56A and the Proposed Regulations:

[I]f a CAMT entity's financial results are consolidated with the financial results of one or more other CAMT entities on one or more consolidated financial statements described in paragraphs (c)(1) through (5) of this section, the CAMT entity's AFS is the consolidated financial statement with the highest priority under paragraphs (c)(1) through (5) of this section.¹⁵

Accordingly, a CAMT entity would continue to look to the highest priority certified financial statement – in most cases U.S. GAAP – as the basis for determining CAMT liability and reporting. We believe this approach not only would provide the most accurate determination of CAMT liability, but also appropriately reduce compliance burdens in keeping with the objectives of Treasury Department and the IRS as stated in the Proposed Regulations.

Exception for U.S. Publicly Traded Companies: If the FPMG override must be retained for purposes of section 56A, the final regulations should provide an exception for CAMT entities that are traded on an organized exchange in the United States and file 10-K financial statements with the SEC based on U.S. GAAP. Not only are such financial statements certified by outside auditors, but they are also subject to the SEC's regulatory regime and shareholder scrutiny, which provide additional layers of third-party oversight with respect to the financial data presented while again appropriately reducing compliance burdens.

By ensuring the primacy of U.S. GAAP for U.S. publicly traded companies, such an exception would also provide an important safeguard against the ability of foreign accounting-standard setters to manipulate U.S. tax law by making adverse changes to foreign accounting standards that would otherwise override U.S. accounting rules, and by extension, potentially undercut the CAMT. While the courts ultimately will have to decide whether the delegation of the CAMT rules to a non-governmental agency is permissible, FASB clearly should be the preferable accounting-standard setter in the United States over the IASB or other foreign governments or accounting regulators.

II. Transition Rules

The preamble to the Proposed Regulations invited comments on three potential transition-rule approaches that the Treasury Department and the Internal Revenue Service are considering to “address AFSI and CAMT attribute adjustments necessary to implement the rules in final

¹⁵ Prop. Treas. Reg. § 1.56A-2(g)(1).

regulations if a CAMT entity accounted for and reported the AFSI adjustment or CAMT attribute in a manner inconsistent with the final regulations in prior taxable years.”¹⁶ These approaches include (1) transition year adjustment approach; (2) cut-off basis transition approach; and (3) fresh-start transition approach.¹⁷

The preamble suggests that different approaches may be used in specified circumstances and possibly for different items (e.g., the cut-off basis transition approach would be applied to disposed assets, while the transition year adjustment approach would be applied to assets still in service). Requiring such diversity in transition-rule approaches at best would be extremely complex to implement and add to the already substantial compliance costs of the CAMT.

For example, if a CAMT entity in an FPMG used U.S. GAAP in taxable years prior to the final regulations but adopts the ultimate parent’s IFRS method going forward, should the CAMT entity’s CAMT basis rely on U.S. GAAP for some assets and adjustments, but apply IFRS for others?

We recommend that the final regulations adopt the cut-off basis transition approach in order to reduce administrative burdens and improve taxpayers’ ability to comply with the Proposed Regulations. Additionally, we urge the Treasury Department and the IRS to apply the transition-rule approach on a consistent basis to minimize confusion and complexity. Finally, we recommend that automatic consent be allowed for all AFSI-only method changes to streamline compliance and administration of the CAMT.

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Thank you in advance for your consideration of these comments. We appreciate the opportunity to provide our input on the Proposed Regulations and would welcome the opportunity to meet with the Treasury Department and the Internal Revenue Service to discuss it in greater detail or to answer any questions that you may have.

Respectfully submitted,



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¹⁶ 89 Fed. Reg. at 75124.

¹⁷ *Id.*