Risks Abound for Corporate Minimum Tax Proposal's Early Adopters

By Monisha Santamaria and Natalie Tucker

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The IRS's mammoth proposed regulations for the corporate alternative minimum tax (a 15% tax based on adjusted financial statement income) contain effective dates and early reliance requirements that are as complex as the framework itself.

With the current freeze on rulemaking, and changes in tax priorities with the Trump administration and Republican control of Congress, it's unclear when (if ever) the CAMT regulations will be finalized.

Taxpayers considering early adoption should weigh the advantages and disadvantages of doing so carefully before being locked into unfavorable rules for an indeterminate amount of time.

Deciphering a Hieroglyphic

Reading the applicability dates of the regulations is akin to deciphering hieroglyphics, with a myriad of dates applying to different provisions; the package contains more than 30 proposed sections. More than a dozen provisions—the specified regulations—would apply to tax years ending after Sept. 13, 2024, and include most of the bones of the proposed regulations.

The specified regulations include rules governing how to determine financial statement income, applicable financial statements, and applicable corporation status (including under a simplified method). They also include rules relating to foreign corporations, adjustments to prevent duplications and omissions, and CAMT avoidance transactions.

Outside of the specified regulations, the consolidated return provisions would apply to consolidated return tax years for which the due date of the consolidated return (without extensions) is after the date final regulations are published in the Federal Register.

Provisions other than the specified regulations and consolidated return provisions generally would apply to tax years ending after the date final regulations are published in the Federal Register. The other regulations include rules relating to certain tax credits, partnership distributive share computations, tax code Section 168 property, various corporate and partnership transactions, certain hedges, and troubled companies.

Limited provisions—such as certain reporting rules—in the other regulations share the applicability date of the specified regulations,. This makes deciphering applicability dates even harder.

Early Adoption Questions

Complicating matters more are the different standards of reliance that apply for different provisions of the proposed regulations.

Taxpayers generally can apply any provision to a tax year ending on or before the date of publication of final regulations in the Federal Register. But they can do so only if the taxpayer and each member of its CAMT test group consistently applies that provision, and the specified regulations in their entirety, to that year and any subsequent year until the first tax year in which the final regulations apply.

There are certain notable caveats and exceptions. A taxpayer can't apply the rules in proposed Section 1.56A-5 (relating to partnership distributive share computations) unless the taxpayer and each member of its test group generally applies all of that proposed section, as well as proposed Section 1.56A-20 (relating to partnership contributions and distributions) and the specified regulations for the tax year and any subsequent year until the first tax year in which the final regulations are applicable.

There are many reasons taxpayers both out of and in scope may want to adopt the specified regulations.

Smaller corporations may want to adopt or continue using the simplified method for determining applicable corporation status. The simplified method was first promulgated in Notice 2023-7 and likely widely used for 2023 tax years.

Under the simplified method, taxpayers can apply lower thresholds for both the general AFSI test and, if applicable, a special test for members of a foreign parented multinational group ($500 million and $50 million, respectively), and apply only limited adjustments to arrive at AFSI.

The simplified method initially was available only for a corporation's first tax year beginning after 2022. Notice 2023-64 extended its availability for tax years beginning before 2024. However, the proposed regulations remove a taxpayer's ability to rely on the notices for tax years ending after Sept. 13, 2024.

While proposed Section 1.59-2(g) makes permanent the simplified method, the IRS hasn't issued guidance extending the simplified method (or the Form 4626 filing exception) for eligible taxpayers who don't want to early adopt the proposed regulations for their 2024 tax years.

For in-scope corporations, favorable provisions in the specified regulations (notably those concerning controlled foreign corporations in proposed Section 1.56A-6) and in the other regulations (notably the hedging rules in proposed Section 1.56A-24) may cause certain taxpayers to want to adopt the specified regulations.

Be forewarned, though—there are many aspects of the specified regulations that are potentially unfavorable.

For example, under proposed regulation 1.59-3(g), a US taxpayer who is a member of a foreign parented multinational group and included in the group's consolidated financial statements would have to use the group's consolidated applicable financial statements, even if it prepares its own separate financial statements under generally accepted accounting principles.

With the divergence between GAAP and the International Financial Reporting Standards, this can cause higher or lower starting financial statement income.

Burdensome Aspects

Additionally, aspects of the specified regulations are administratively burdensome, even if not unfavorable. Proposed regulation 1.59-1 contains complicated rules for determining starting financial statement income, along with extensive substantiation requirements.

Proposed regulation 1.59-17(d) has requirements that might be unworkable. When retained earnings are adjusted for certain financial accounting situations (such as a change in financial accounting concept or restatement), amounts in a retained earnings restatement generally are required to be bifurcated into those attributable to pre-2020 and post-2019 periods.

Reporting retained earnings in this way may be a near-impossible, if not totally impossible, task because it requires a full rather than modified retrospective approach. The Financial Accounting Standards Board permits a modified retrospective approach to adjust retained earnings because computing adjustments on a full retrospective basis often isn't practical or possible.

With the effective and reliance dates of the proposed regulations, affected taxpayers need to carefully consider whether to early adopt any portion of the regulations. They should also be cognizant of what that would entail from both a CAMT group coordination and tax reporting perspective, as well as the uncertainty of the timeline for final regulations.

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