



CAMT recent developments—changes to instructions for Schedule K-1

April 11, 2024

Overview

The IRS on April 9, 2024, provided a post-release change [updating the 2023 Partner's Instructions for Schedule K-1](#). The updated instructions add to corporations' and partnerships' compliance burdens in an already challenging compliance year and indicate that partners (both corporations who are partners and upper-tier partnerships with indirect or direct corporate partners) will be required to request needed corporate alternative minimum tax (CAMT) information and to maintain such CAMT information (as well as the request itself) in the partner's books and records. These updated instructions raise several questions and may provide tea leaves with respect to the CAMT proposed regulation package expected later this year.

Note that these updates are only accessible on the IRS website's forms product page—as Recent Developments articles—and have not been incorporated in the online version of the 2023 Partner's Instructions for Schedule K-1.

Background

CAMT, which generally imposes a 15% minimum tax on the adjusted financial statement income (“AFSI”) of large corporations whose three-year average annual AFSI exceeds \$1 billion (“applicable corporations”), applies for tax years beginning after December 31, 2022.¹ Treasury and the IRS (collectively referred to as “Treasury” herein) have previously released a series of notices aimed at providing interim guidance on the application of CAMT while taxpayers await proposed and final regulations.² The IRS has also released [Form 4626, Alternative Minimum Tax – Corporations](#), and accompanying [instructions](#) for 2023.³ Proposed regulations under CAMT have not yet been released.

¹ See sections 55(b)(2), 56A and 59(k).

² See Notice 2023-7, 2023-3 I.R.B. 390 (initial CAMT guidance and scope determination safe harbor; see KPMG, [“Initial Observations on CAMT Guidance”](#) (Jan. 4, 2023)); Notice 2023-20, 2023-10 I.R.B. 523 (guidance for the insurance industry; see KPMG, [“Observations From Notice 2023-20”](#) (Feb. 21, 2023)); Notice 2023-42, 2023-26 I.R.B. 1085 (2023 estimated tax payment relief; see KPMG, [“Relief For Corporations That Did Not Pay Estimated CAMT”](#) (June 7, 2023)); Notice 2023-64, 2023-40 I.R.B. 974, modifying and clarifying Notice 2023-7 (among other guidance, lists financial statements that meet the definition of an AFS, provides priority rules for identifying an AFS, and provides general rules for determining FSI and AFSI; see KPMG, [“New CAMT Guidance in Notice 2023-64”](#) (Sept. 28, 2023)); Notice 2024-10, 2024-3 I.R.B. 406 (providing guidance on the treatment of controlled foreign corporation dividends in determining AFSI and the AFS determination for tax consolidated group members; see KPMG, [“Interim Guidance on Corporate Alternative Minimum Tax”](#) (Dec. 15, 2023))

³ See KPMG, [“Updated Draft CAMT Form”](#) (Nov. 17, 2023); KPMG, [“KPMG report: Key takeaways from recent CAMT releases”](#) (Jan. 17, 2024); and KPMG, [“Final Form 4626 and instructions for corporate alternative minimum tax \(CAMT\)”](#) (Feb. 16, 2024).



The computation of AFSI for purposes of determining scope and liability under CAMT generally starts with the net income or loss (“FSI”) reported on an applicable financial statement (AFS).⁴ However, AFSI is calculated differently for determining whether a corporation is an applicable corporation (“scope AFSI”) and for determining an applicable corporation’s CAMT liability (“liability AFSI”). Scope AFSI is the FSI of a corporation as set forth on the corporation’s AFS, as adjusted under the applicable CAMT aggregation rules, and to account for certain adjustments prescribed by the statute (and administrative guidance, if desired). Liability AFSI is the AFSI of the taxpayer (i.e., aggregation rules don’t apply), as adjusted to include adjustments prescribed by the statute (and administrative guidance, if desired).

CAMT and partnerships

Despite CAMT only directly impacting the tax liability of corporations, there are several CAMT provisions that impact partnerships and their partners. Net income or loss (i.e., FSI) of a partnership generally impacts a corporate partner’s scope AFSI and liability AFSI.

For example, under section 56A(c)(2)(D), if a taxpayer (e.g., a corporation) is a partner in a partnership (“corporate partner”), the taxpayer is generally required to adjust its AFSI to “only” take into account the taxpayer’s distributive share of AFSI of the partnership (the “distributive share only” rule). The AFSI of the partnership is the partnership’s FSI, adjusted under rules similar to the rules applicable to the determination of a corporation’s AFSI.⁵ In Notice 2023-7, Treasury provided that the distributive share only rule is inapplicable for all scope determination purposes.⁶ Additionally, Notice 2023-64 indicates that for scope AFSI, a corporate partner generally “includes in its AFSI the FSI amount it reports with respect to its partnership investment (for example, under the fair value method or equity method), rather than its ‘distributive share’ of the AFSI of the partnership.”⁷ Further, the CAMT statute directs Treasury to issue guidance that specifically addresses partnerships.⁸

CAMT tax forms

The 2023 instructions to Form 4626 confirm that all corporations are required to file Form 4626 unless the corporation is an S corporation, a regulated investment company (RIC), a real estate investment trust (REIT), or a corporation that meets the scope safe harbor provided in Section 5 of Notice 2023-7.⁹ Part I (Applicable Corporation Determination) of Form 4626 is required to be completed by all corporations filing Form 4626 (unless they have already determined they are applicable corporations) and details the computation of scope AFSI. If a corporation’s computations in Part I reveal that it is an applicable corporation (or if it determines in advance it is an applicable corporation and, therefore, skips Part I), the remaining parts of the form related to computing the CAMT liability and the CAMT foreign tax credit (FTC) should be completed. Any Form 4626 filer who is a member of a section 52 single employer group or FPMG must complete Part V, which requires listing other members of such groups and certain other information.

⁴ Section 56A(a).

⁵ Section 56A(c)(2)(D)(ii).

⁶ See Section 7.01 of Notice 2023-7.

⁷ Section 13.04 of Notice 2023-64.

⁸ See sections 56A(c)(15) and 56A(e).

⁹ Notice 2023-7 provides a safe harbor method (the “Simplified Method”) that a corporation may choose to apply to determine whether it is an applicable corporation for the first tax year beginning after December 31, 2022. In general, under the Simplified Method, the AFSI thresholds are modified by substituting \$500 million for \$1 billion (or \$50 million for \$100 million in the case of foreign-parented multinational groups (“FPMG”s)). AFSI is also modified for purposes of the Simplified Method, as certain adjustments under section 56A(c) are turned off for purposes of computing AFSI from FSI.



Recent instruction updates

The IRS on April 9, 2024, provided a post-release change to [update the 2023 Partner's Instructions to Schedule K-1](#). Specifically, the instructions for Box 20, Code ZZ were updated to provide:

If you're required to file Form 4626, Alternative Minimum Tax – Corporations, and are a partner in a partnership (or if you're a partnership that has as a direct or indirect partner that is an entity that must file such form and you're a partner in a lower-tier partnership), and you can't determine your distributive share of the partnership's (including a lower-tier partnership's) adjusted financial statement income (AFSI) without receiving certain information from the partnership, you must request in writing such information from the partnership and maintain a copy of the request and information received in your books and records.

Previously, on March 28, 2024, the IRS provided the following post-release [changes to the 2023 Partnership Instructions for Schedule K-1](#), Box 20, Code ZZ CAMT:

The partnership will furnish to a partner, upon request, any information needed to figure their corporate alternative minimum tax (CAMT). For partnerships subject to BBA, if the requested information isn't furnished by the date on which the partnership is required to furnish information under section 6031(b), see section 6227 and the Instructions for Form 8082, Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR), for electronic filers; and the Instructions for Form 1065-X, Amended Return or Administrative Adjustment Request (AAR) for paper filers. For partnerships that have made a valid election out of BBA, if the requested information isn't furnished by the date on which the partnership is required to furnish information under section 6031(b), see the Instructions for Form 1065 on filing an amended return.

KPMG observations for partners

The updated Schedule K-1 instructions suggest that partners – both corporations and upper-tier partnerships – may need to request CAMT information. Specifically, the following partners may need to request CAMT information:

- 1) Applicable corporations, as defined in section 59(k), and
- 2) "Upper-tier" partnerships (e.g., partnerships that have an interest in another "lower-tier" partnership) that have direct or indirect applicable corporations as partners.

Additionally, the updated instructions may be read to suggest that the following partners may need to request CAMT information:

- 1) Corporations who need to complete Form 4626 to prove their out-of-scope CAMT status (i.e., "scope bubble corporations") (see discussion below), and
- 2) "Upper-tier" partnerships with direct or indirect scope bubble corporations.

The requirement to request AFSI information from a partnership applies if the corporation or upper-tier partnership cannot determine its "distributive share of the partnership's (including a lower-tier partnership's) adjusted financial statement income (AFSI) without receiving certain information from the partnership." Read literally, the requirement to request partnership AFSI information does not appear to require that the requesting entity (or indirect or direct partner of the requesting entity) actually needs to know its distributive share of partnership AFSI. As discussed earlier, Notice 2023-64 provides that for scope determination



purposes, a corporation should generally look to its FSI with respect to a partnership for scope AFSI purposes (unless certain aggregation rules apply). In such instances, a corporation therefore [arguably] does not need partnership AFSI (unless and until it tests in as an applicable corporation). Query if the Schedule K-1 instructions' requirement for a partner to request AFSI information it will not actually use is intentional. Furthermore, if a partner can determine its distributive share of partnership AFSI without information from the partnership, a literal reading of the instructions suggests that partner does not need to request AFSI information from the partnership.

As noted above, for purposes of determining CAMT liability, an applicable corporation that is a partner in a partnership is generally required to adjust AFSI to take into account only the taxpayer's distributive share of partnership AFSI. The statute does not provide guidance as to the meaning of a "taxpayer's distributive share of adjusted financial statement income of [a] partnership" and, to date, none of the notices issued by Treasury providing interim CAMT guidance have provided insight on the issue. However, this update to the Partner's Instructions for Schedule K-1 suggests a potential requirement in future guidance for an applicable corporation to potentially apply a "bottom-up approach" to determining a distributive share of partnership AFSI. One possible "bottom-up approach" is that the AFSI of a top-tier partnership would be computed by reversing its FSI included with respect to a lower tier partnership and instead picking up its distributive share of the AFSI reported up by or computed with respect to the lower-tier partnership. This approach uses each partnership's AFSI to compute its own partnership-level AFSI, beginning with the "lowest" bottom-tier partnership. The resulting partnership-level AFSI would need to be broken into each partner's "distributive" share of such AFSI, and the results would then be pulled up the chain of partnerships for each tier up to the corporate partner.

KPMG observations for partnerships

The requirement for a partnership to supply the relevant CAMT information to partners upon request, coupled with the requirement that a partner request the information in writing, could be viewed as allowing a partnership to avoid penalties for not providing any information in an initial Schedule K-1 to the extent it did not receive a request from a partner.

However, the March and April updates to the Schedule K-1 instructions leave many unanswered questions, including process-related questions. For example, the April update to the Schedule K-1 instructions does not provide a time constraint for a partner to request the information necessary for it to compute its CAMT liability. Time constraints were provided in other situations (e.g., Schedule K-3 and section 1061 carried interest reporting). As such, partnerships could be receiving partner requests for information up to, and beyond, the extended due date or filing date of the partnership's 2023 Form 1065.

The concern presented by a "late" request is heightened by the fact that the updates to the Schedule K-1 instructions appear to contemplate that CAMT information is provided in a specific manner. Once a partner makes a CAMT information request, the references to Forms 8082 and 1065-X (and filing an amended return for non-BBA partnerships) imply that the IRS contemplates that such information be provided on a return filed with the IRS. Providing a supplemental letter subsequent to the release of the Schedule K-1, but prior to filing Form 1065, does not appear to be contemplated by the post-release updates to the Schedule K-1 instructions. The return filed with the IRS may be filed as a superseding return if the partner request is received prior to the due date, including extensions, for the partnership return. If the partner request is received after the due date for filing Form 1065, an AAR or amended return will be needed to provide the necessary CAMT information.



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