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Proposed regulations: Guidance on corporate alternative minimum tax (CAMT) confers exceptionally complex regime

The U.S. Treasury Department and IRS released proposed regulations (REG-112129-23) relating to the corporate alternative minimum tax (CAMT) created by Pub. L. No. 117-169 (commonly called the "Inflation Reduction Act of 2022" or IRA).

At a high-level, the CAMT generally imposes a 15% minimum tax on the adjusted financial statement income (AFSI) of corporations who are part of groups whose three-year average annual AFSI exceeds $1 billion ("applicable corporations") and applies for tax years beginning after December 31, 2022.

This highly anticipated proposed regulation package comes more than two years after the passage of the IRA.

Key highlights of the proposed regulations

- Create a massively complex parallel regime requiring the calculation of, for example, CAMT basis in stock and the CAMT basis of a CAMT entity partner's investment in a partnership.
- Generally are consistent with many of the provisions provided in prior CAMT notices.
- Provide a limited scope safe harbor. Many taxpayers who are not in scope as applicable corporations appear unlikely to qualify and will likely need to expend significant time "proving the negative."
- Provide limited relief from the "once an applicable corporation, always an applicable corporation" rule—including when a corporation does not meet the average annual AFSI test for five consecutive tax years.
- Provide that a U.S. subsidiary of a foreign-parented multinational group will have to use the foreign parent's applicable financial statement (consistent with previous guidance) even when equal or higher priority separate financials are available. This will result in a subset of taxpayers potentially paying CAMT on an IFRS, rather than U.S. GAAP, base.
- Generally require taxpayers to apply complex "regular" tax non-recognition concepts, as modified by the Treasury Department and IRS, for CAMT purposes. For example, section 704(c) and section 704(d) concepts appear to apply. The proposed regulations adopt a section 704(c) deferred sale method, a concept that put forth in proposed Subchapter K regulations but ultimately not adopted in the final

Subchapter K regulations. These rules raise numerous technical questions and the potential administrative complexity of such rules cannot be underestimated.

- Address the distributive share of partnership AFSI rule, providing a “bottom-up approach” and complex-multi part methodology. Partnerships are generally responsible for computing the modified FSI of the partnership; partners generally are responsible for computing the “percentage;” and the proposed regulations create separately stated AFSI items. It is notable, especially for certain industries, that there exist special rules when an equity interest is treated as debt for financial statement purposes. Once again, these rules appear likely to raise numerous technical questions and the potential administrative complexity of such rules cannot be underestimated.

- Provide that regular tax realization and recognition are not required for inclusion in AFSI (consistent with previous guidance). As such, certain mark-to-mark amounts (included in financial statement income) may be common CAMT liability drivers. However, favorable rules appear to be provided for certain hedging transactions and hedged items, which will provide relief from CAMT for many taxpayers.

- Provide additional guidance on computing the adjustment to AFSI for depreciation, including additional rules governing disposals, impairments, section 481(a) adjustments with respect to section 168 property, section 168 property held by partnerships, tax credits claimed with respect to section 168 property, and simplified methods method for determining the amount of tax depreciation deducted as part of cost of goods sold (including simplifying methods for both FIFO and LIFO method taxpayers).

- On first blush, provide many (surprisingly) favorable rules for foreign corporations and controlled foreign corporations (“CFCs”), and, in particular, relief for taxpayers that deduct rather than credit foreign taxes.

- Contain numerous reporting requirements, including with respect to tiered structures.

- Provide rules governing AFSI adjustments to prevent certain duplications and omissions, including spread periods for recognizing certain adjustments in AFSI. It is worth noting that such rules preclude a taxpayer from self-identifying an AFSI adjustment that it determines would prevent a duplication or omission but is not otherwise specified by Treasury as being an AFSI adjustment.

- Provide rules governing investments in domestic corporations that are not members of the taxpayer’s tax consolidated group, including rules governing how to account for purchase and push-down accounting adjustments in AFSI, how to determine CAMT basis in domestic stock, and how to account for certain corporate M&A transactions in AFSI.

- Provide rules governing AFSI adjustments for financially troubled companies (e.g., with respect to accounting for debt discharges, fresh-start reporting, and Federal financial assistance).

- Provide special CAMT rules for certain insurance companies and other specified industries.

- Also provide rules governing AFSI adjustments for mortgage-servicing income, certain related-party transactions, CAMT avoidance transactions, and income of foreign governments.

- Once the regulations are finalized, the regulations will generally apply retroactively back through January 1, 2024. A number of provisions within the proposed regulation package adopt different effective dates. As such, most taxpayers generally do not need to revisit their 2023 tax return positions and may generally continue relying on the statute or some combination of statute and notice guidance for 2023 tax returns. However, the regulation package appears to impact current M&A activity. In addition, fiscal year taxpayers with tax years ending after the date the proposed regulations are published in the Federal Register (i.e., September 30 year ends and after) may need to consider certain provisions for their 2023-2024 tax years. It appears that taxpayers may early adopt the proposed regulations, but such early adoption appears to require the taxpayer to early adopt most of the regulation package in many instances. Such early adoption will bind the entire section 52 group (and/or FPMG) to consistently apply the early adopted rules in all affected years.

Read the related IRS release—IR-2024-235 (September 12, 2024)

KPMG observation

The proposed regulations provide clarity to certain previously identified issues, address areas that were left unaddressed in previous guidance, and (surprisingly) provide some favorable and simplifying rules. However, it is worth noting in areas where the proposed regulations "answered" open questions, the answers may be viewed to raise even more (but potentially different) questions. Moreover, the proposed regulation package, as a whole, does not appear to provide the answers taxpayers hoped for on certain issues appears to raise a large number of technical questions and seems almost certain to create additional administrative burdens on many taxpayers (beyond those who are in-scope). As such, taxpayers should strongly consider whether they wish to respond to the invitation to comment on the proposed regulation package, noting that comments are due by December 12, 2024.

Further background information on CAMT is available on a dedicated KPMG website.

Notice 2024-66

The IRS today also released Notice 2024-66 providing a waiver of the addition to tax under section 6655 for underpayment of any installment of estimated income tax of a corporate taxpayer with respect to a taxable year that begins during 2024, to the extent the amount of any underpayment is attributable to a portion of a taxpayer's CAMT liability. Read *TaxNewsFlash*