



CAMT caution advised for applicable corporations after “favorable” OBBB and Notice 2025-28 changes



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The “One Big Beautiful Bill” (OBBB) introduces favorable “regular” tax changes that may inadvertently increase a corporation’s exposure to the Corporate Alternative Minimum Tax (CAMT). This is because many of the generally favorable provisions in the OBBB reduce taxable but leave unchanged adjusted financial statement income (AFSI). For example:

- Section 174A deductions may be greater than book deductions for research and experimentation (R&E) costs, including acceleration of pre-2025 unamortized domestic R&E costs (in 2025 and 2026);
- 100% bonus depreciation in early years may result in no tax basis in section 168 property (in years after assets placed in service);
- Reinstatement of EBITDA for section 163(j) computations may result in greater tax interest expense than book interest expense (most likely in 2025); or
- Increased foreign-derived intangible income (FDII) deductions with no corresponding book deduction.

Furthermore, although CAMT liability results in the generation of a CAMT credit, many taxpayers may be unable to use the CAMT credit in the near future (and thus may need to book a valuation allowance) due to (1) continued CAMT payor status, or (2) the general business credit ordering rules.

Optionality abounds in new CAMT notice addressing partnership issues; but taxpayers need to proceed with ample caution

Treasury and the IRS released [Notice 2025-28](#) (the “Notice”), which attempts to simplify the application of the CAMT regime with respect to partnerships (read [TaxNewsFlash](#)). Although the guidance seems intended to make the CAMT regime easier for applicable corporations who are partners and partnerships and provides very significant optionality, reliance on parts of the Notice appears to require reliance on at least part of the CAMT proposed regulations (and their inherent complexities) and many of the elections available through the Notice are not as easily applied as the headlines imply and may have negative implication for later years.

Taxpayers will likely need to **model** the impact of making the provided elections or otherwise relying on Notice 2025-28 in order to fully understand the impacts on their current and future AFSI. Taxpayers also should note the **binding nature** of the elections made available by Notice 2025-28 and engage in **multi-year forecasts**.

Distributive share of partnership AFSI

After the Notice, there are numerous approaches that appear allowable, at least in certain situations, to determine an applicable corporation's AFSI with respect to a partnership investment (in situations that need not involve a contribution to, or distribution from, a partnership). These include:

1. A "pure" top-down financial statement income (FSI) approach (if the applicable corporation uses investment company or fair value accounting for the partnership investment for financial accounting purposes);
2. An adjusted top-down FSI approach (if the applicable corporation consolidates with the partnership or uses the equity method for the partnership investment for financial accounting purposes);
3. A "pure" one-tier approach (if an upper-tier partnership uses investment company or fair value accounting for the partnership investment for financial accounting purposes);
4. An adjusted one-tier approach (if an upper-tier partnership consolidates with the partnership or uses the equity method for the partnership investment for financial accounting purposes);
5. A bottom-up approach that is a reasonable interpretation of the statute (without the adoption of the -5 rules or the -20 rules), including a bottom-up approach using a partner's section 704(b) ratio for the distributive share percentage or a bottom-up approach using a book-based ratio for the distributive share percentage;
6. A bottom-up approach through the early adoption of the -5 rules and the -20 rules (without modifications from the Notice);
7. A bottom-up approach through the early adoption of the -5 rules or the -20 rules, modified by the Reasonable Method rules (to determine the percentage) in the Notice;
8. A bottom-up approach through the early adoption of the -5 rules (without the adoption of the -20 rules (as permitted by the Notice) and without other modifications from the Notice);
9. A bottom-up approach through the early adoption of the -5 rules (without the adoption of the -20 rules), modified by the Reasonable Method rules (to determine the percentage) in the Notice;
10. A Top-Down Election (as set forth in the Notice and which notably allows a 20% haircut); or
11. A Taxable-Income Election (as set forth in Notice).

There are many need-to-knows about the Notice's new and elective rules to determine an applicable corporation's AFSI distributive share of AFSI, including:

1. Neither the Top-Down Election nor the Taxable-Income Election uses a currently available number. Rather, both the Top-Down Election and the Taxable-Income Election require a series of modifications and adjustments to be made to either FSI or taxable income in order to arrive at the appropriate AFSI inclusion with respect to the partnership investment.
2. Applicable corporations make the Top-Down Election and the Taxable-Income Election on a partnership-by-partnership basis and may mix-and-match such elections, subject to certain but significant constraints. This flexibility can be viewed as enormously helpful for applicable corporations who engage in careful modeling to build the most desirable CAMT election menu.
3. The Top-Down Election and the Taxable-Income Election require a binding election and the early adoption of the -5 rules. Given the permanency of any elections made (at least until revised proposed regulations are released), taxpayers would be wise to engage in multi-year modeling in order to ensure

the most advantageous elections, or combination of elections, are made. Furthermore, the collateral impacts of the adoption of the proposed -5 rules should be carefully examined.

4. Determining whether the Taxable-Income Election is available is complicated and requires information sharing among members of a section 52 and/or foreign parented multinational group in a compressed period of time. This information may not be readily available for one CAMT entity partner to determine if they are eligible for the election.
5. The “Reasonable Method” provides less flexibility than its name suggests. It *only* allows partnerships who determine and report Modified FSI under the -5 rules to take on an *additional* obligation to determine each partner’s share of that number (an obligation placed on partners, not partnerships, under the -5 rules in the Proposed Regulations) and grants flexibility with respect to the method the partnership uses to determine such percentages.

The following chart summarizes the key aspects of the Notice’s rules to determine an applicable corporation’s AFSI with respect to a partnership investment:

	Top-Down Election	Taxable-Income Election	Reasonable Method
What is It?	Election to include in AFSI 80% of a top-down amount for partnership investment, subject to certain adjustments	Election to include in AFSI partner’s taxable income from partnership investment, subject to certain adjustments	Partnership may use any reasonable method to determine partners’ distributive share <i>percentage</i>
Who is eligible to make election?	Applicable corporation partners Upper-tier partnerships (including those who have applicable corporations as partners) are NOT eligible	Applicable corporation partners whose CAMT test group does not own more than a 20% profits or capital interest AND does not own more than \$200M FMV in the partnership investment Upper-tier partnerships (including those who have applicable corporations as partners) are NOT eligible	Partnerships (not partners) if the partnership has early adopted -5 and is computing Modified FSI/
How does it work?	CAMT entity’s FSI from partnership is adjusted for specific items and then reduced by 20%. Additional adjustments must be applied to the result to arrive at the AFSI inclusion.	CAMT entity’s taxable income from partnership is adjusted for specific items to arrive at AFSI inclusion.	Partnership reports to partners their distributive share of Modified FSI, using the Reasonable Method to determine the percentage. .
How to elect?	Statement in partner’s return for election year (made on investment-by-investment basis).	Statement in partner’s return for election year (made on investment-by-investment basis).	Statement in partnership’s return describing the reasonable method.
Implications	Although not explicitly stated, it appears to require	Although not explicitly stated, it appears to require adoption of	Appears to require adoption of proposed -5 rules by the partnership.

	Top-Down Election	Taxable-Income Election	Reasonable Method
	<p>adoption of proposed -5 rules by the partner.</p> <p>Binding on the partner until tax year beginning before revised proposed regulations.</p>	<p>proposed -5 rules by the partner.</p> <p>Binding on the partner until tax year beginning before revised proposed regulations, or earlier if eligibility terminates.</p>	<p>Binding on the partnership until tax year beginning before revised proposed regulations.</p>
Pros	<p>Simpler process of computing AFSI than under the -5 rules.</p> <p>Requires less information sharing (as opposed to the -5 rules).</p> <p>20% haircut to book FSI amount may result in less AFSI overall.</p>	<p>Simpler process of computing AFSI than under the -5 rules.</p> <p>Using a tax-based, rather than book-based number, may result in less AFSI overall.</p>	<p>Allows the use of tax provisions-based, rather than book-based, ratio.</p>
Cons	<p>More complex AFSI computation than certain statutory top-down interpretations.</p> <p>Appears to require use of Top-Down Election, Taxable Income Election or -5 computation of AFSI for all partnership investments.</p> <p>May have unfavorable AFSI implications if the taxpayer sells the partnership interest.</p> <p>Loss limitation rules would apply.</p> <p>Requires computing and tracking of the partner's CAMT basis in the partnership investment.</p>	<p>Eligibility testing is complex and required annually.</p> <p>Appears to require use of Top-Down Election or -5 computation of AFSI for non-electing and non-qualifying partnership investments.</p> <p>May have unfavorable AFSI implications if the taxpayer sells the partnership interest.</p> <p>Loss limitation rules would apply.</p> <p>Requires computing and tracking of the partner's CAMT basis in the partnership investment.</p>	<p>Shifts the burden of computing distributive share <i>percentage</i> from partner to partnership.</p> <p>Would require the partnership to early adopt and follow -5 rules (e.g., compute modified FSI).</p>

Partnership contributions and distributions

A tax-free contribution to, or distribution from, a partnership can result in AFSI. Treasury and the IRS have sought to use regulatory authority to mitigate this result. After Notice 2025-28, there exist six options for taxpayers who seek to defer for CAMT purposes FSI that results from a tax-free contribution to, or distribution from, a partnership. These are:

1. The "Modified -20 Method," which is a modification of the method previously proposed in Prop. Reg. Sec. 1.56A-20 (i.e., the "-20 rules"), and which is available upon the election of an applicable corporation who is a partner;

2. The “Full Subchapter K Method,” which is only available if the partnership makes an election (with the consent of all impacted partners);
3. The Taxable-Income Election (if available);
4. The -20 rules applied alongside the specified regulations but without the application of -5 rules;
5. The -20 rules, applied alongside the -5 rules and the specified regulations; or
6. A reasonable interpretation of the statute (e.g., one under which all partner-level FSI from a partnership contribution is included or one under which no partner-FSI from a property contribution is included).

The following chart summarizes the key aspects of the Notice’s rules to defer FSI from certain partnership contributions and distributions.

	Modified -20 Method	Full Subchapter K Method
What is it?	Election to apply proposed -20 rules with specific modifications to determine AFSI resulting from partnership contributions and distributions.	Election to apply principles of subchapter K to determine AFSI resulting from partnership contributions and distributions.
Who is eligible to make the election?	Any CAMT entity partner.	Partnerships (with consent of all relevant partners).
How to elect?	Statement in partner’s return for the electing year.	Statement in partnership’s return for the electing year.
Implications	Appears to require adoption of proposed -20 rules by the electing partner. Unclear whether an electing partner is required to also adopt proposed -5 rules. Binding until tax year beginning before issuance of revised proposed regulations.	Must apply to all contributions and distributions for the year for which the method is adopted and for all taxable years beginning before issuance of revised proposed regulations.
Pros	Generally simpler and more favorable than proposed -20 rules (e.g., more favorable treatment of partnership debt, more favorable recovery rules, and fewer acceleration events).	More favorable than proposed -20 rules and Modified -20 rules in some situations.

	Modified -20 Method	Full Subchapter K Method
Cons	<p>May be less favorable than Proposed Regulation's -20 rules in some circumstances.</p> <p>Unclear how an election impacts partnership reporting.</p> <p>May require partnerships to keep several sets of CAMT books to track deferred sales property and deferred distribution gain or loss property attributes.</p>	<p>Creates a complex, parallel system that raises many technical questions (e.g., application to partner-level financial statement income from a contribution).</p> <p>Requires significant time investment.</p> <p>May be less favorable than Proposed Regulation's -20 rules and Modified -20 Election; very fact dependent.</p>

Other items in Notice 2025-28

Notice 2025-28 provided several other pieces of guidance that appear to apply to taxpayers who are adopting the proposed -5 and/or -20 rules, including:

- Ability to disregard in computing AFSI with respect to a partnership investment, any FSI amounts attributable to a consolidation, remeasurement, deconsolidation, dilution, or change in ownership from a partner other than the electing partner if (and only if) transaction giving rise to the FSI was not a realization event.
- Revised reporting rules for partnerships, resulting in more time for reporting CAMT information to partners under the proposed regulations.
- Revised reliance rules for taxpayers wishing to adopt the proposed -5 or -20 rules (without modifications from the Notice) which would allow decoupling (e.g., adoption of either regulation without adoption of the other). However, early adoption of the "specified regulations" appears to be required.
- Revised reliance rules for taxpayers relying on Notice 2025-28 which appear to permit taxpayers to adopt either the proposed -5 or -20 rules as modified by the Notice to do so without adopting the specified regulations or following the test group consistency requirement.

How to move forward

Taxpayers will likely need to model (and in some cases, forecast and model) to assess the impact of the OBBB and the various elections in Notice 2025-28. The OBBB's changes that are favorable for regular tax purposes may cause an applicable corporation to have a significant CAMT liability, bringing taxpayer focus and interest back to the CAMT provisions. The application of the elections in the Notice, in some cases, will result in decreased AFSI and, in other cases, increased AFSI. Timing may be different. And the administrative burden may be significantly increased or decreased. Furthermore, because the elections are binding, a taxpayer should not make an election without carefully weighing the benefits and detriments. Applicable corporations may be able to deploy these elections to their advantage, but a careful assessment of the taxpayer's facts is necessary in order to assess the impact of making one or more of these binding selections.

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