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CAMTyland Adventures, Part VII: Will the OBBBA Crack Snow Flake Lake?

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In this seventh installment of their "CAMTyland Adventures" series, the authors explore the effect of the One Big Beautiful Bill Act on application of the corporate alternative minimum tax.

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With the July 4 enactment of the One Big Beautiful Bill Act[1] (P.L. 119-21), taxpayers are beginning to realize that the "favorable" changes that reduce taxable income may have downsides — the potential for a large corporate alternative minimum tax (CAMT) liability and a CAMT credit to be held captive in the Licorice Castle, creating a crack in CAMTyland's Snow Flake Lake.[2] Some changes may negatively affect

[1]While P.L. 119-21 initially had the "One Big Beautiful Bill Act" short title when passed by the House and received in the Senate (see section 1 of H.R. 1 (119th Cong., 1st Sess.) as placed on the Senate calendar on June 28, 2025), such short title was struck as part of the budget reconciliation process in the Senate (commonly referred to as the "Byrd Bath"), hence the official name of the bill is "An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14."

[2]For prior installments in this series, see Monisha C. Santamaria et al., "CAMTyland Adventures, Part I: How to Play the Game — Corporate Alternative Minimum Tax Basics," *Tax Notes Int'l*, July 24, 2023, p. 367; Santamaria et al., "CAMTyland Adventures, Part II: 'Right-Sizing' in the Licorice Lagoon," *Tax Notes Int'l*, July 31, 2023, p. 515; Jonathan Galin, Santamaria, and Natalie Tucker, "CAMTyland Adventures, Part III: 2023 Scope Bubble Corporations — Lost in Lollipop Woods," *Tax Notes Int'l*, Feb. 12, 2024, p. 821; Santamaria et al., "CAMTyland Adventures, Part IV: Retroactive Tax Extenders — Planning for a Move-Backward Card," *Tax Notes Int'l*, Apr. 22, 2024, p. 509; and Santamaria et al., "CAMTyland Adventures, Part V: Coping With CAMTyland Grief," *Tax Notes Federal*, Sept. 16, 2024, p. 2271; and Santamaria et al., "CAMTyland Adventures, Part VI: Notice 2025-28 — A Rainbow of Choices but Few Gumdrops," *Tax Notes Int'l*, Sept. 1, 2025, p. 1335.

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taxpayers' CAMT[3] positions in 2025 and beyond. Taxpayers should carefully consider the CAMT impact of the reinstatement and permanence of the big three business extenders (the higher earnings before interest, taxes, depreciation, and amortization cap on the deduction for interest, 100 percent bonus depreciation, and expensing of domestic research and experimental costs), alongside the changes to the foreign-derived intangible income rules.

The OBBBA addresses many previously scheduled changes in business taxation under the Tax Cuts and Jobs Act, including changes to section 163(j) (business interest expense limitation), section 168(k) (bonus depreciation), and section 174 (amortization of R&E expenditures) (collectively, the "three business extenders"). The changes made by the OBBBA generally decrease taxable income and are generally favorable for regular tax purposes. Also, the OBBBA makes changes to the FDII rules, including decreasing the deduction rate, but also eliminating the deemed tangible income return (DTIR) and preventing interest and R&E expenditures from reducing deduction-eligible income (DEI).[4] Thus, while reducing the FDII deduction may at first blush appear to increase regular taxable income, the favorable changes could significantly increase the amount of income eligible for the FDII deduction and reduce regular tax, particularly for companies with significant fixed assets and R&E activity.

Without considering the CAMT impact of these changes, taxpayers are apt to think the OBBBA changes are sweeter than they are. However, the interplay of the favorable OBBBA changes with CAMT raises many issues, particularly when there is no corresponding decrease in adjusted financial statement income (AFSI). As such, "applicable corporations" celebrating OBBBA changes that decrease or remove any regular tax liability may become CAMT payers for the first time (or pay more in CAMT) — precluding any chance of taking the Rainbow Trail to avoid a combined regular and CAMT liability for 2025. Not only may taxpayers find themselves with a CAMT liability or a larger CAMT liability because of these provisions, but they could find themselves unable to use any resulting CAMT credit in the near future (if at all) — either because of continued CAMT payer status or the general business credit (GBC) and CAMT credit ordering rules. This in turn may require a valuation allowance for financial reporting purposes, creating a higher effective tax rate (ETR) and lower earnings per share (EPS) — a situation that many C-suites may find as unpleasant as eating a bowl of black licorice and that may preclude the ability to use a Gumdrop Pass as part of the 2025 CAMTyland game plan to avoid a financial statement impact.

Taxpayers would be wise to quantify the impact of the OBBBA by modeling their overall tax liability (the sum of regular tax liability, section 59A base erosion and antiabuse tax liability, and CAMT liability) and expected tax attributes (for example, GBCs and CAMT credits) — both for 2025 and future years. Early consideration is important because taxpayers and tax advisers need to quickly take into account the impact of the OBBBA, including the three business extenders and FDII on CAMT, for 2025 financial statement quarterly reporting.[5] Further, because elections are available under the new rules, planning and modeling may allow taxpayers to minimize their overall tax liability and reported ETR and maximize their EPS and CAMT credit usage — setting up an escape from Licorice Castle.

CAMT — In General

A CAMT-applicable corporation is one that, taking into account certain aggregation rules, averages more than $1 billion of AFSI for the three-taxable-year period preceding a current year (for example, 2022 through 2024 for a calendar-year corporation testing for 2025).[6] Once

[3] CAMT is a minimum tax based on financial statement income that is imposed on applicable corporations, effective for tax years beginning after December 31, 2022. See section 10101(f) of P.L. 117-169 (Inflation Reduction Act of 2022).

[4] *See* section 250, as amended by the OBBBA, generally effective for tax years beginning after 2025.

[5] Note that the IRS recently favorably waived tax additions for tax years beginning in 2025 to the extent the amount of any underpayment is attributable to a portion of a taxpayer's CAMT liability under section 55. *See* Notice 2025-27, 2025-26 IRB 1; and "KPMG Report: Notice 2025-27 Provides Additional CAMT Interim Guidance" (June 2, 2025).

[6] Special rules apply for members of foreign-parented multinational groups.

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a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-taxable-year average AFSI falls to $1 billion or less. Conversely, if a taxpayer does not meet the definition of an applicable corporation in a given year, it must repeat the scope determination in each future tax year to determine whether it has become an applicable corporation in that tax year.

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 financial statement income (FSI) of a corporation as set forth on the corporation's applicable financial statement, as adjusted to include 100 percent of the AFSI of other members of the taxpayer's section 52 single-employer group or foreign-parented multinational group (as applicable) and to account for certain adjustments prescribed by the statute (such as section 56A) and administrative guidance (as applicable).[7] Liability AFSI is the AFSI of the taxpayer (aggregation rules don't apply), as modified to include adjustments prescribed by the statute and administrative guidance.

It's important to remember that both scope AFSI and liability AFSI can differ from both FSI and taxable income for many reasons, including differences between the book and tax treatment of business interest expense, depreciable assets, and R&E expenditures, as discussed below. Even more importantly, especially after the OBBBA, applicable corporations need to remember that claiming tax deductions that aren't reflected in AFSI, such as the FDII deduction, increases the chance a taxpayer has a CAMT liability.

In general, an applicable corporation's CAMT liability is the excess of its tentative minimum tax minus the sum of its regular tax and BEAT liabilities. The tentative minimum tax is 15 percent of the taxpayer's liability AFSI (reduced by financial statement net operating loss carryovers not exceeding 80 percent of AFSI[8]), less CAMT-specific foreign tax credits. GBCs (for example, the research credit) may generally offset a portion of a taxpayer's combined regular tax (minus regular tax FTCs) and CAMT liability. Importantly, GBCs reduce a taxpayer's regular tax liability before any CAMT credit carryforward can be used in a tax year, as discussed below.

CAMT Implications of OBBBA Provisions: Overview

Payer Status More Likely

Taxpayers are more likely to have a CAMT liability (that is, be CAMT payers) because of the OBBBA. This is because certain OBBBA changes lead to a reduction in regular taxable income but not in AFSI (at least in many instances), and a taxpayer is more susceptible to a CAMT liability when taxable income is lower than AFSI.[9] Notably, because taxable income does not determine whether a taxpayer is subject to the CAMT (that is, an applicable corporation), these changes generally do not affect CAMT status.

The specific changes made by the OBBBA that are most likely to drive a CAMT liability are reinstatement and permanence of the big three business extenders (the higher EBITDA cap on the deduction for interest, 100 percent bonus depreciation, and expensing of domestic R&E costs) and modifications to FDII. Some of these changes may decrease taxable income without decreasing AFSI. Others are potentially adverse for CAMT purposes because of timing considerations. Consider 100 percent bonus depreciation. Claiming bonus depreciation relating to section 168 property decreases a taxpayer's scope AFSI in the year the asset is

[7] *See, e.g.*, the 2024 CAMT proposed regulations (REG-112129-23); Notice 2025-27 (providing an expanded optional simplified method for determining applicable corporation status and a waiver of the addition to tax for tax years beginning in 2025 for underpayments attributable to CAMT); and Notice 2025-28, 2025-34 IRB 1 (providing additional interim guidance on the application of CAMT to partnerships and their partners).

[8] Section 56A(d) provides for a reduction to AFSI for financial statement NOLs. For CAMT liability purposes only, AFSI for a particular tax year is reduced by the lesser of: (1) the aggregate amount of the corporation's financial statement NOL carryovers to the year, or (2) 80 percent of the AFSI for the tax year computed without regard to financial statement NOL carryovers. A financial statement NOL is the amount of an AFSI loss (determined without regard to a financial statement NOL) for tax years ending after December 31, 2019. Financial statement NOL carryovers can be carried over indefinitely.

[9] However, because the 15 percent CAMT rate is lower than the 21 percent regular corporate tax rate, the situation will usually result in less total tax being paid than would have been paid without the OBBBA changes.

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placed in service but may increase AFSI in later years (as compared to a situation where bonus depreciation was not claimed).[10]

Each of these changes, and their CAMT impact, is discussed in detail below.

Higher Cash Tax and Reported ETR More Likely

As noted above, if a taxpayer has a CAMT liability in a given year, it will receive a CAMT credit for the amount that may be carried forward indefinitely to offset regular tax and BEAT liabilities in a future year, subject to a limitation based on the taxpayer's tentative minimum tax in the carryforward year. The sweetness of this gumdrop depends on when a taxpayer thinks it will be able to use the CAMT credit — when, and the extent to which, its regular tax and BEAT liabilities will exceed its tentative minimum tax for a tax year.

As noted above, under section 38(c)(1) and (c)(6)(E), taxpayers are generally permitted to offset up to approximately 75 percent of the sum of regular tax and CAMT liabilities with GBCs. Also, a corporation that has a CAMT liability is allowed a credit for any CAMT imposed (that is, the amount by which the tentative minimum tax exceeds regular tax plus BEAT) that may be used against regular tax in future tax years, but only to the extent regular tax reduced by GBCs exceeds the tentative minimum tax in the subsequent year.[11] Thus, in a year in which the taxpayer pays regular tax but not CAMT, GBCs reduce regular tax liability before any CAMT credit carryforward may be used. In addition, if a taxpayer has a CAMT credit carryforward to a tax year in which its regular tax and BEAT liabilities exceed its tentative minimum tax, and the taxpayer claims GBCs, the CAMT credit may only be used to the extent that the GBCs do not reduce the taxpayer's total tax liability below its tentative minimum tax for the year. In effect, the rules may operate to effectively convert GBCs to CAMT credits and prevent the full usage of GBCs and CAMT credits.[12]

The interaction of the GBC and CAMT credit rules is best illustrated with an example:

> In year 1, assume Taxpayer has a regular tax liability of $60 million, no BEAT liability, a tentative minimum tax of $150 million, and GBCs of $112 million.
>
> In year 1, Taxpayer has a CAMT liability of $90 million ($150 million tentative minimum tax - regular tax liability of $60 million). Taxpayer may generally use all its GBCs ($150 million total tax * 75 percent = $112 million), hence its cash tax paid will equal $38 million ($150 million total tax - $112 million of GBCs). Taxpayer has a CAMT credit carryforward of $90 million and GBC carryforward of $0 to year 2.
>
> Continuing the example, assume in year 2 Taxpayer has a regular tax liability of $120 million, no BEAT liability, a tentative minimum tax of $100 million, and GBCs of $112 million.
>
> In year 2, Taxpayer does not have a CAMT liability because its tentative minimum tax of $100 million is less than its regular tax liability of $120 million. Taxpayer may generally use $90 million of its GBCs ($120 million total tax * 75 percent). However, Taxpayer may not use any of its CAMT credit because its tentative minimum tax of $100 million is more than its tax liability after GBCs of $30 million ($120 million - $90 million). As a result, Taxpayer's year 2 cash tax paid will equal $30 million ($120 million total tax - $90 million of GBCs), and it will have a CAMT credit carryforward of $90 million and GBC carryforward of $22 million ($112 million - $90 million) to year 3.

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[10] Taxpayers with consistent section 168 asset additions each year, however, may not have detriments in later years (at least until the 100 percent bonus is no longer available (*e.g.*, in the case of new section 168(n) property which is required to be placed in service before 2031)).

[11] *Id.*

[12] Whether a GBC or CAMT credit is "better" depends on the taxpayer's facts. GBCs generally can be carried back one year and forward 20 years while a CAMT credit can be carried forward indefinitely. Thus, for example, a taxpayer with an expiring but unusable GBC may find it advantageous to convert the GBC into a CAMT credit.

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It is important to note that Taxpayer is unable to use any of its CAMT credit because of the presence of GBCs. For financial accounting purposes, Taxpayer will need to determine whether to make a valuation allowance for the CAMT credit, which may increase Taxpayer's reported ETR and lower EPS. Further, if Taxpayer is unable to use the CAMT credit in any future year, Taxpayer's cash tax is increased on a permanent basis. (See table.)

Example — CAMT Credit Ordering Rules

	Year 1	Year 2
Regular tax	$60 million	$120 million
Tentative minimum tax	$150 million	$100 million
CAMT liability	$90 million	$0
Allowable GBCs (generally 75 percent of total tax)	$112 million	$90 million
Cash tax	$38 million	$30 million
CAMT credit carryforward to next tax year	$90 million	$90 million
GBC carryforward to next tax year	$0	$22 million

The interaction of the GBC and CAMT credit rules may negatively affect a taxpayer's cash tax profile on a *permanent* basis. This, in turn, has the potential to affect its financial statements. For taxpayers with meaningful GBCs and who find themselves in CAMT payer status post-OBBBA, this may be surprising and significantly out of line with the taxpayer's expectations regarding benefits of the OBBBA — akin to biting into a sour apple.

CAMT Implications of OBBBA Provisions: Section 163(j)

In general, section 163(j) precludes a taxpayer from deducting business interest expense in excess of the sum of the taxpayer's (1) business interest income, (2) 30 percent of adjusted taxable income (ATI) from a trade or business, and (3) floor plan financing interest for the tax year (the "business interest limitation"). Any disallowed business interest expense may be carried forward indefinitely. Special rules apply in the case of partnerships.

ATI is generally defined as taxable income computed (A), without regard to:

- items not allocable to a trade or business;
- business interest expense or business interest income;
- net operating losses under section 172; and
- the 20 percent deduction for qualified business income under section 199A.

And (B), with any adjustments provided by the Treasury secretary.

Additional adjustments apply for certain years. For tax years beginning in 2018 and through 2021 and, as a result of the OBBBA, after 2024, ATI is computed without regard to any tax depreciation, amortization, or depletion deductions (that is, it is applied based on EBITDA).[13] The reinstatement of EBITDA in determining ATI for tax years beginning after 2024 is generally taxpayer-favorable — that is, it generally results in a taxpayer having higher ATI and therefore more allowed business interest expense deductions and lower taxable income.

Some of the OBBBA changes, however, cut in the other direction. For tax years beginning after 2025, ATI statutorily excludes subpart F, global intangible low-taxed income, and section 78 income (codifying current regulations), as well as the section 245A deduction for subpart F inclusions attributable to the section 964(e) and section 78 inclusion.[14] Further, for tax years beginning after 2025, the section 163(j) business interest expense limitation applies *before* elective interest capitalization provisions (other than amounts capitalized under sections 263(g) or 263A(f)), potentially reducing the amount of interest that may be taken into account in determining taxable income for a tax year.[15]

For tax years beginning after 2025, taxpayers may or may not have lower taxable income as a result of the OBBBA's amendments to section 163(j). However, for 2025, the changes are

[13]The OBBBA amended section 163(j) to reinstate the addback to ATI for tax depreciation, amortization, and depletion, among other things. *See* section 70303 of P.L. 119-21.

[14]*See* section 70342 of P.L. 119-21.

[15]*See* section 70341 of P.L. 119-21.

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expected to be most favorable for regular tax purposes because taxpayers will have the benefit of the return to EBITDA for ATI, while the unfavorable limitations on ATI and treatment of capitalized interest will not apply until 2026. Nonetheless, for many taxpayers the increased section 163(j) limitation as a result of the reinstatement of EBITDA will continue to result in lower taxable income beyond 2025, potentially freeing up the use of previously unavailable business interest expense carryforwards.

CAMT Implications

In general, if a taxpayer's business interest expense deduction is limited by section 163(j), the amount of interest expense deducted for tax purposes will likely be less than the amount expensed for financial statement purposes. This is because U.S. generally accepted accounting principles and international financial reporting standards generally do not have a similar limitation on business interest expense that is not subject to capitalization. In addition, there is no specific adjustment to FSI for interest expense for purposes of determining AFSI.

As such, taxpayers may experience a favorable CAMT result in a tax year in which their business interest expense deduction is limited, because the business interest expense in FSI may be greater than the amount allowed as a deduction for tax purposes. However, disallowed business interest expense carries forward without limitation for tax purposes. Beginning in 2025, the business interest expense carried forward may become usable because of the adjustments to ATI for tax depreciation, amortization, and depletion deductions. This may create a CAMT liability because regular tax would be reduced by any carried-forward business interest expense now allowed as a deduction, but there would be no corresponding reduction in AFSI.

CAMT Implications of OBBBA Provisions: Section 168(k)

Under section 168(k), taxpayers may generally write off a specified percentage of the cost of qualified property for tax purposes (commonly referred to as bonus depreciation). Qualified property generally includes depreciable business assets (machinery, equipment, computers, appliances, furniture, etc.) with a recovery period of 20 years or less and certain other property (for example, computer software).[16]

Before the enactment of the OBBBA, a 100 percent rate applied to qualified property placed in service (and specified plants planted or grafted) through 2022 (through 2023 for property with a longer production period and certain aircraft). Starting with property placed in service in 2023, the 100 percent rate phased down by 20 percent per year (80 percent bonus depreciation applied in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026).[17] A taxpayer may elect out of bonus depreciation on an asset recovery class basis.[18]

The OBBBA reinstates 100 percent bonus depreciation for qualified property acquired and placed in service (and specified plants planted or grafted) after January 19, 2025.[19] The changes made to section 168(k) will generally decrease taxable income when compared to previous law, unless a taxpayer elects out of bonus depreciation on one or more asset recovery classes.

CAMT Implications

While accelerated depreciation is generally used for federal income tax purposes, the straight-line method of depreciation is generally used for financial accounting purposes (the cost of an asset minus its salvage or residual value is generally recovered ratably over the asset's depreciable life).[20] In addition, the recovery periods used for financial accounting purposes are often longer than those used for federal income tax purposes because they generally reflect an asset's useful life

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[16] An election is also available to claim bonus depreciation on certain plants bearing fruits and nuts ("specified plants") planted or grafted during the year. *See* section 168(k)(5).

[17] In the case of property with a longer production period and certain aircraft, the phasedown starts in 2024 (such that 100 percent bonus depreciation applies in 2023, 80 percent in 2024, 60 percent in 2025, 40 percent in 2026, and 20 percent in 2027).

[18] *See* section 168(k)(7).

[19] *See* section 70301 of P.L. 119-21. However, new section 168(k)(10), as amended by section 70301(b)(3) of the OBBBA, provides a transitional election under which taxpayers may elect to apply 40 percent bonus depreciation for the first tax year ending after January 19, 2025, for property placed in service after January 19, 2025 (60 percent for certain aircraft and property with a longer production period).

[20] *See* GAAP Accounting Standards Codification (ASC) 360, "Property, Plant, and Equipment"; and IFRS Accounting Standard (IAS) 16, "Property, Plant, and Equipment." *See also* KPMG, Handbook: IFRS® Compared to US GAAP (Nov. 2024).

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(rather than a recovery period prescribed by statute or administrative guidance). Further, a tax recovery period for an asset may not be used for GAAP purposes if it doesn't fall within a reasonable range of the asset's useful life.[21] As such, even without the availability of bonus depreciation, book depreciation is typically spread over a longer period of time than tax depreciation, meaning that taxpayers typically see favorable book-tax differences for depreciation in the earlier years of an asset's useful life that flip to unfavorable book-tax differences as the tax depreciation winds down and book depreciation continues. This whipsaw effect in later years is intensified when bonus depreciation is claimed, especially when the bonus depreciation rate is 100 percent.

One of the statutorily mandated adjustments to FSI in determining AFSI (both scope AFSI and liability AFSI) is an adjustment that, at a high level, removes book depreciation expense and replaces it with tax depreciation deductions for section 168 property (the "depreciation adjustment").[22] Generally, section 168 property includes all tangible property as well as certain intangible assets eligible for bonus depreciation (for example, computer software). For years in which bonus depreciation is claimed, the depreciation adjustment is generally favorable for CAMT purposes because book depreciation expense in FSI will be replaced with greater tax depreciation deductions in determining AFSI. However, if a taxpayer does not have a steady amount of assets being placed in service each year in which 100 percent bonus depreciation is taken, the CAMT depreciation adjustment for this section 168 property may be unfavorable in future years. This is because the book depreciation expense will need to be added back to FSI in determining AFSI, and no amount of tax depreciation deduction will be available as a corresponding reduction to AFSI (because qualified property will be fully depreciated for federal income tax purposes in the placed-in-service year unless the taxpayer elects out of bonus depreciation for one or more asset classes).

With the reinstatement of 100 percent bonus depreciation in 2025, taxpayers should engage in multiyear modeling to determine if claiming bonus depreciation in 2025 will result in the creation of, or increase in, CAMT liability for future tax years and whether they should elect the reduced bonus depreciation rate for 2025 or elect out of bonus depreciation for certain classes of assets. This exercise is particularly vital if the depreciable basis of bonus-eligible assets that are placed in service varies year-over-year.

CAMT Implications of OBBBA Provisions: R&E Expenditures

Under section 174, taxpayers are generally required to capitalize R&E expenditures paid or incurred after December 31, 2021, and recover them through amortization over five tax years for R&E expenditures incurred in the United States ("domestic R&E expenditures") and over 15 tax years for R&E expenditures incurred outside the country ("foreign R&E expenditures"), starting with the midpoint of the tax year in which they were incurred.

The OBBBA modifies section 174 to only apply to foreign R&E expenditures and enacts new section 174A, which permits taxpayers to expense domestic R&E expenditures paid or incurred in tax years beginning after 2024 but also provides an election to capitalize and amortize these costs.[23] The OBBBA also provides a transition rule for section 174A that permits taxpayers, as of the start of their first tax year beginning in 2025, to elect to accelerate any unamortized domestic R&E expenditures ratably over either one or two tax years.[24]

CAMT Implications

R&E expenditures are generally expensed for financial accounting purposes (subject to certain exceptions and special rules for certain types of costs).[25] In addition, there is no specific adjustment to FSI for R&E expenditures (whether

[21]*See id.*, ASC 360-10-35-9, "Unacceptable Depreciation Methods."

[22]Section 56A(c)(13).

[23]*See* section 70302 of P.L. 119-21.

[24]*See* section 70302(f)(2) of P.L. 119-21.

[25]*See* ASC 730, Research and Development; and IAS 38, Intangible Assets. *See also* KPMG, Handbook: IFRS® Compared to US GAAP (Nov. 2024).

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subject to section 174 or section 174A) when determining AFSI.[26] Thus, the capitalization and amortization of R&E expenditures for regular tax purposes may be helpful for CAMT purposes because it could result in taxable income being higher than FSI and potentially cover for a taxpayer's other book-tax differences, such as those related to section 168 assets or stock-based compensation.

With the OBBBA's reinstatement of expensing of domestic R&E expenditures for regular tax purposes, taxpayers could potentially experience AFSI that is higher than taxable income in 2025, depending on a taxpayer's other book-tax differences and elections made on either capitalizing and amortizing the amounts and even potentially accelerating unamortized domestic R&E costs. For example, if a taxpayer makes an election to accelerate 100 percent of its unamortized domestic R&E costs into 2025, it could spring a CAMT liability if such an election causes the taxpayer's taxable income to be significantly lower than its AFSI for 2025 after taking into account the unamortized balance in addition to 2025 domestic R&E expenditures. Taxpayers should therefore revisit their CAMT models to determine the impact of immediate expensing for domestic R&E expenditures, as well as the transition rules to accelerate the deduction of unamortized domestic R&E costs from 2022 through 2024.

CAMT Implications of OBBBA Provisions: FDII Deduction

Under pre-OBBBA law, section 250 provides a 37.5 percent deduction for FDII, subject to a taxable income limitation.[27] The amount of the FDII deduction is generally determined by reference to foreign-derived deduction-eligible income (FDDEI), which is a subset of a taxpayer's deduction-eligible income (DEI).[28] Under pre-OBBBA law, DEI is defined as all gross income of a U.S. corporation, less certain excluded categories of income (such as dividends, controlled foreign corporation inclusions, financial services income, branch income, and domestic oil and gas extraction income), reduced by allocable expenses.[29] For the FDII deduction, DEI is also currently reduced by the DTIR, generally 10 percent of qualified business asset investment, to arrive at deemed intangible income.[30] In the context of the FDII deduction, QBAI is generally the quarterly average of the adjusted basis in tangible property that produces DEI.[31] The amount eligible for an FDII deduction, under pre-OBBBA law, is deemed intangible income multiplied by the ratio of FDDEI to DEI.[32]

The OBBBA made favorable and unfavorable modifications to the section 250 deduction for FDII, generally effective for tax years beginning after December 31, 2025. On the unfavorable side, the bill made *permanent* a reduced deduction rate of 33.34 percent.[33] This is a decrease in the FDII deduction rate from the pre-OBBBA 37.5 percent rate; however, it is less of a decrease than the 21.875 percent rate that (pre-OBBBA) was scheduled to go into effect for 2026.[34] Another unfavorable change would prevent income from certain sales or dispositions of property, including intangible property and property subject to depreciation, amortization, or depletion, from being included in DEI to the extent the transfer occurred after June 16, 2025.[35] On the generally favorable side, for tax years beginning after December 31, 2025, gross DEI is reduced by expenses and deductions properly allocable to such gross income *other than* interest expense and R&E expenditures.[36] Also, the OBBBA excludes the DTIR from the FDII calculation such that a taxpayer's deduction for tax years beginning after

[26] R&E expenditures are not section 168 property. *See* section 174(c). However, under previous interim guidance and the proposed regulations under section 56A, depreciation that is capitalized under section 174 can be part of the section 56A(c)(13) adjustment when deducted as part of the section 174 amortization deduction (or section 174A deduction under the bill).

[27] Section 250(a)(1)(A) and (a)(2).

[28] Section 250(a)(1)(A) and section 250(b)(4).

[29] Section 250(b)(3).

[30] Section 250(b)(2).

[31] Section 250(b)(2)(B).

[32] Section 250(b)(1).

[33] Section 70321 of P.L. 119-21.

[34] Former section 250(a)(3)(A) (2025).

[35] Section 70322(a) of P.L. 119-21.

[36] Section 70322(b) of P.L. 119-21.

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December 31, 2025, is simply its FDDEI multiplied by 33.34 percent, without any QBAI hurdle.[37]

CAMT Implications

There is no FDII deduction for financial accounting purposes and the CAMT contains no downward adjustment to AFSI for the FDII deduction allowed against regular tax. This is not new in the OBBBA; taxpayers were similarly exposed to a CAMT liability under pre-OBBBA law because FDII-eligible income is generally able to achieve an ETR of 13.125 percent for regular tax purposes (at a deduction rate of 37.5 percent), which is a lower rate than the 15 percent CAMT rate. So why is FDII a bigger issue post-OBBBA, when the FDII deduction rate is decreasing to 33.4 percent (for an ETR on FDDEI of 13.99 percent)? The reason has to do with how the base is determined.

Pre-OBBBA, the FDII deduction was limited by the QBAI hurdle, which limited the benefit for taxpayers with significant investment in fixed assets. The FDII deduction was also limited by allocation of interest and R&E expenses that reduce gross DEI. Without these two limiting provisions, some taxpayers may find that more of their income is eligible for the deduction, which means more of their income is subject to a reduced rate of regular tax, which at just under 14 percent potentially leaves them more exposed to a CAMT liability (or bigger CAMT liability).

Alongside the big three business extenders discussed above, the changes to FDII warrant modeling and forecasting. Taxpayers would be well-advised to model whether the FDII changes result in a CAMT liability in future years and, if so, when they could use the resulting CAMT credit. If taxpayers were assuming in their modeling that the FDII deduction would be 21.875 percent for 2026 and subsequent tax years, as was previously scheduled to take effect, these taxpayers might have incorrectly concluded they did not have a CAMT liability or that they could use a CAMT credit. Taking into account the changes to FDII will, therefore, be imperative for any taxpayer looking to avoid OBBBA black licorice.

Illustrations of OBBBA CAMT Effects

Example 1

Nana Nutt Co., a calendar-year U.S. corporation not subject to the BEAT, determines that it is an applicable corporation for purposes of the CAMT for its 2025 tax year (determined by reference to its AFSI in the 2022, 2023, and 2024 tax years). Before the enactment of the OBBBA, Nana Nutt Co. computed 2025 regular taxable income of $300 million, which included $10 million of FDII deduction, $200 million of 40 percent bonus depreciation arising from placing in service $500 million of qualified property, and an unfavorable book-tax difference for the business interest expense limitation computed under section 163(j) of $120 million. Nana Nutt Co. computed its 2025 AFSI as $400 million and therefore did not anticipate paying CAMT for the 2025 tax year because its 2025 tentative minimum tax of $60 million ($400 million * 15 percent) did not exceed its 2025 regular tax liability of $63 million ($300 million * 21 percent).[38]

Upon enactment of the OBBBA, Nana Nutt Co. has an additional bonus depreciation deduction of $300 million for 2025, and it recomputes its FDII deduction and section 163(j) limitation to be $0. Nana Nutt Co. now computes a regular tax NOL of ($120 million) for the 2025 tax year ($300 million original taxable income - $120 million of additional interest expense - $300 million of additional bonus depreciation), and its 2025 AFSI is recomputed as $100 million ($400 million original AFSI - $300 million of additional tax depreciation). Accordingly, even though Nana Nutt Co.'s regular tax liability is recomputed as $0, it will now owe $15 million ($100 million * 15 percent) of CAMT liability for the 2025 tax year ($15 million tentative minimum tax - $0 regular tax). However, notwithstanding the loss for regular tax purposes of its FDII deduction (resulting in a *permanent* loss) and ability to deduct business interest expense under section

[37] Section 70323 of P.L. 119-21. This change also results in the replacing of the terms DII and FDII with FDDEI throughout the code. Nonetheless, for simplicity, this article continues to refer to the "FDII deduction" as opposed to the FDDEI deduction.

[38] Assume that Nana Nutt Co. does not have any FTCs and also does not have any NOL carryovers for regular tax purposes or financial statement NOL carryovers for CAMT purposes.

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163(j) (generating an interest expense carryforward), Nana Nutt Co.'s overall tax liability (including CAMT) for the 2025 tax year will be lower than its pre-enactment tax liability — and Nana Nutt Co. will have a CAMT credit carryforward of $15 million — as a result of the OBBBA.

Example 2

Princess Lollipops Co., a calendar-year U.S. corporation not subject to the BEAT, determines that it is an applicable corporation for purposes of the CAMT for its 2025 tax year (determined by reference to its AFSI in the 2022, 2023, and 2024 tax years[39]). Princess Lollipops Co. incurred $75 million of domestic R&E expenditures in 2024 and $50 million of domestic R&E expenditures in 2025, which are deducted for financial accounting purposes but, pre-OBBBA, are capitalized for tax purposes and amortized ratably over a 5-year period, beginning with the midpoint of the year in which the R&E costs are incurred. For the 2024 and 2025 tax years, Princess Lollipops Co. is not subject to any limitations on its business interest expense under section 163(j) and elects out of bonus depreciation for all eligible asset classes. Before the enactment of the OBBBA, Princess Lollipops Co. computed 2025 regular taxable income of $500 million (which included deductions for $15 million of amortization for 2024 domestic R&E expenditures and $5 million of amortization for 2025 domestic R&E expenditures).[40] Princess Lollipops Co. computed its 2025 AFSI as $600 million and therefore did not anticipate paying CAMT for the 2025 tax year because its 2025 tentative minimum tax of $90 million ($600 million * 15 percent) did not exceed its 2025 regular tax liability of $105 million ($500 million * 21 percent).[41]

If, upon enactment of the OBBBA, Princess Lollipops Co. elects to deduct all of its unamortized 2024 domestic R&E expenditures in its 2025 tax year, the company, in its 2025 tax return, will deduct $50 million of domestic R&E incurred in 2025 and unamortized 2024 domestic R&E expenditures of $67.5 million ($75 million * 90 percent).[42] Princess Lollipops Co. would recompute its 2025 regular taxable income as $402.5 million ($500 million original taxable income + $20 million original amortization - $50 million 2025 domestic R&E expenditures - $67.5 million unamortized 2024 domestic R&E expenditures). The company's AFSI would remain unchanged, and therefore its tentative minimum tax of $90 million would exceed its recomputed regular tax liability of $84.5 million ($402.5 million * 21 percent) by $5.5 million and would generate a CAMT credit carryforward in its 2025 tax year.

However, if Princess Lollipops Co., instead of electing to account for all of its unamortized 2024 domestic R&E expenditures in its 2025 return, elects to account for the amounts ratably over the 2025 and 2026 tax years, its recomputed 2025 regular taxable income would be $436 million ($500 million original taxable income + $20 million original amortization - $50 million 2025 domestic R&E expenditures - $33.8 million unamortized 2024 domestic R&E expenditures).[43] As such, its 2025 regular tax liability of $91.6 million ($436 million * 21 percent) would exceed its tentative minimum tax of $90 million in this scenario. Accordingly, Princess Lollipops Co. would pay $1.6 million more tax in 2025 ($91.6 million - $90 million) if it elects to recognize 50 percent of the

[39] As noted above, once a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-taxable-year average AFSI falls below $1 billion. *See* section 59(k)(1)(A). Thus, for example, a sale of a line of business during a year could result in gain that is large enough for a taxpayer to become an applicable corporation and retain that status. While exceptions to this rule exist, each exception appears to require an affirmative rule or determination by Treasury. *See* section 59(k)(1)(C). Note that if the taxpayer elects to adopt the proposed regulations, prop. reg. section 1.59-2(h)(2) provides a "termination test," under which, if a corporation does not exceed the relevant scope determination for five consecutive tax years, its applicable corporation status would terminate as of the first day of the immediately succeeding tax year.

[40] The amortization deduction in the 2025 tax year for 2024 R&E expenditures is computed as $75 million/five years. Amortization for 2025 R&E expenditures is computed as $50 million/five years * 50 percent.

[41] Assume that Princess Lollipops Co. did not have any FTCs and also does not have any NOL carryovers for regular tax purposes or financial statement NOL carryovers for CAMT purposes.

[42] The first-year deduction for amortization of domestic R&E expenditures equals 10 percent of the total costs incurred because the amortization is deducted ratably over five tax years, beginning with the midpoint of the year in which the costs are incurred. Thus, 90 percent of the costs are unamortized as of the beginning of the 2025 tax year.

[43] If the election to deduct the unamortized 2024 domestic R&E expenditures ratably over two years is made, the deduction for the 2025 tax year related to these costs would be 50 percent of the remaining unamortized amount, computed as $75 million * 90 percent remaining balance as of January 1, 2025 * 50 percent.

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unamortized 2024 domestic R&E in its 2025 return, rather than elect to account for the entire amount of unamortized 2024 domestic R&E amortization in 2025. However, making such an election would prevent Princess Lollipops Co. from having $5.5 million of CAMT liability, which would be particularly important if the company was unsure of its ability to use a CAMT credit in future tax years.

Conclusion

The recent enactment of the OBBBA creates opportunities and challenges for taxpayers in determining whether the three business extenders and FDII have a material impact on a taxpayer's taxable income and CAMT profile. In the case of an applicable corporation, the challenges are intensified when trying to determine AFSI to either prevent or minimize a CAMT liability (or use a CAMT credit) for 2025 and beyond. While the recent enactment and permanence of the three business extenders is sweet news for regular tax purposes, these provisions may have undesirable effects on CAMT — that is, the CAMT impact of the OBBBA may be a crack in CAMTyland's Snow Flake Lake. Any modeling done now could help ease tax and financial reporting pain and prevent a black licorice-flavored CAMT credit (that is, one that may never be used).[44] ■

[44]The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG LLP.

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