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CAMTyland Adventures, Part VI: Notice 2025-28 — A Rainbow of Choices but Few Gumdrops

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In this sixth installment of their "CAMTyland Adventures" series, the authors examine the new election methods under Notice 2025-28 and the impact they will have on partners and partnerships.

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The IRS recently released Notice 2025-28 (the notice),[1] providing interim guidance "simplifying" the application of the corporate alternative minimum tax (CAMT) to partnerships and their partners.[2] Affected taxpayers (such as applicable corporations that are partners in partnerships) appear to be celebrating the optionality provided for in the notice — along with some of the alternatives set forth.

The notice delivers an array of choices regarding the treatment of a partnership investment for CAMT purposes that appear to be more favorable or simpler than last year's proposed regulations in many situations. The new choices may result in reduced corporate adjusted financial statement income (AFSI) with respect to a partnership investment, reducing the likelihood or amount of a CAMT liability. The new choices may likewise reduce the number of calculations or amount of required information sharing. Furthermore, the notice allows taxpayers to make elections on a partnership-by-partnership basis. However, taxpayers need to proceed with caution — or risk — as some may discover that the notice provides more licorice spaces than gumdrop passes. There are numerous provisions within it that have the potential to increase an applicable corporation's AFSI with respect to a partnership investment, and because reliance on the favorable rules within the notice requires binding elections, taxpayers may not realize the downside until it is too late. Furthermore, using many of the favorable rules within Notice 2025-28 will require taxpayers to engage in complex calculations, often involving the creation of parallel CAMT books. This is true even in situations where the name of the election suggests that a taxpayer can "just" use an existing number. Additionally, when a taxpayer makes a "simplifying" election made available by Notice 2025-28, it may unknowingly find itself bound by complicated provisions — both those in the notice itself and, possibly, those in the 2024 CAMT proposed regulations (the "2024 proposed regulations").[3]

This article provides a variety of reasons that affected taxpayers should approach the new CAMT guidance with the understanding that a rainbow of choices does not necessarily mean a plethora of gumdrops. Affected taxpayers need to consider the short- and long-term impacts of any binding elections and, if deciding to rely on any election in the new guidance, need to model how to maximize the benefit. In short, when making any election under the notice, taxpayers should brace themselves for a possible stomachache.

The Notice Aids Partners, Not Partnerships

The notice guidance generally provides the ability to make more favorable and simpler elections to partners that are applicable corporations. These include two methods to determine an applicable corporation's CAMT inclusion from a partnership investment (the "top-down election" and the "taxable-income election") and an election to use a modified version of the partnership contribution and distribution rules contained in the 2024 proposed regulations (the "modified -20 method"). Notably, these elections are not available for upper-tier partnerships. However, partnerships are granted additional options under the notice — the use of a "reasonable method" to determine partners'

[1] Notice 2025-28, 2025-34 IRB 1 (Jul. 29, 2025).

[2] At a high level, the CAMT is a minimum tax imposed solely on applicable corporations and an applicable corporation's potential CAMT liability is based on its adjusted financial statement income (AFSI). AFSI, as computed for income tax liability purposes, is the financial statement income (FSI) of a corporation as set forth on the corporation's applicable financial statement, adjusted to account for certain changes prescribed by the statute and administrative guidance. One of these adjustments requires an applicable corporation to include its distributive share of partnership AFSI with respect to any partnership investment, and numerous questions exist, technically and practically, around this partnership income adjustment. 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.

[3] REG-112129-23 (Sept. 13, 2024).

distributive shares of modified FSI (in other words, to determine the percentage of modified FSI, not to determine what modified FSI is) and the "full subchapter K method" to determine the partners' distributive shares of partnership AFSI resulting from partnership contributions and distributions. Both partnership options appear to represent additional CAMT compliance obligations placed on partnerships (as compared with the 2024 proposed regulations). Thus, the notice, through the elections it provides, can be read as providing no or limited direct relief to partnerships.

The guidance also suggests that forthcoming reproposed and/or final regulations may tie a partnership's CAMT compliance and reporting obligations to the elections made by its partners. If so, this framework means that the CAMT information reporting burden borne by partnerships could fluctuate based on the choice of a single partner. For example, if just one partner desires a bottom-up approach for determining its distributive share of partnership AFSI, the partnership may be compelled to undertake substantial and complex CAMT calculations and reporting — potentially on par with the most burdensome CAMT requirements placed on applicable corporations — even if no other partner has the same wish. Additionally, it appears possible that under such regulations, partnerships may have to do multiple CAMT computations if their partners make different CAMT elections. One can query whether partnerships will undertake efforts to protect themselves from these situations (such as through contractual provisions in partnership agreements), as otherwise a single partner's decision would likely trigger significant compliance efforts for the partnership and other partners could be forced to bear the economic costs of these efforts. Given this, one can also query whether partnerships should begin to engage in more ardent advocacy efforts to impact the direction of reproposed or final regulations.

Corporations Make Elections on a Partnership-by-Partnership Basis

Notice 2025-28 provides elections — specifically the top-down election, the taxable-income election, and the modified -20 method election — which are made on a partnership-by-partnership basis. Thus, an applicable corporation holding interests in 10 partnerships could, for example, make the top-down election for four partnerships, make the taxable-income election for four partnerships, and use the rules set forth in prop. reg. section 1.56A-5 in the 2024 proposed regulations (the "-5 rules") for two partnerships.

This flexibility can be viewed as enormously helpful, as it can decrease, maximize, or level out an applicable corporation's AFSI. As such, the flexibility afforded by Notice 2025-28 may create a situation where there are so many flavors of gumdrops that even the most sophisticated taxpayers may find it challenging to determine what elections, if any, are best, given their circumstances. Given that any elections may bind them in future years (at least until the issuance of reproposed CAMT regulations), a poor guess could result in an unknown amount of tax years spent in a licorice swamp.

'Simplified' Methods May Be Less Than Simple

As explained above, the notice generally permits a CAMT entity other than a partnership (such as an applicable corporation) to determine its amount of AFSI from a partnership investment using two new simplified methods: a top-down election and, in some cases, a taxable-income election. Despite their names, neither uses a currently available number.

The top-down election allows an applicable corporation to determine its AFSI from a partnership investment by reference (in part) to the amount the partner reflects on its own AFSI for its partnership investment and allows for a 20 percent haircut of that amount (which may be enormously beneficial). The taxable-income election allows, under limited circumstances (discussed below), an applicable corporation to compute AFSI from a partnership investment by reference (in part) to its taxable income from the partnership investment.

The top-down election inclusion amount is not a number that currently exists. It is not an amount on the partner's applicable financial statement (or a percentage of a number that currently exists on that financial statement). The taxable-income election inclusion likewise is not a number that currently exists (in other words, the

inclusion may be different from either the applicable corporation's taxable income from the partnership or any number on the K-1). Rather, both the top-down election inclusion and the taxable-income election inclusion amounts require a series of modifications and adjustments to arrive at the appropriate AFSI inclusion for the partnership investment.

Notably, both elections require determining the partner's CAMT basis in the partnership investment, including for purposes of prop. reg. section 1.56A(j)(1)'s loss limitation rules.[4] The notice does not provide guidance as to how a taxpayer should determine the partner's CAMT basis in the partnership investment and taxpayers would likely need to consult the 2024 proposed regulations.[5] This is not necessarily an easy task and requires prior-year information and calculations. Furthermore, the mechanical rules that apply may be dependent on which portions of the proposed regulations the partner early adopts. Thus, the simplified methods are a hybrid of book, tax, and CAMT calculations that should not be mistaken as simple. Given this, an applicable corporation should not elect into either the top-down election or the taxable-income election solely based on a belief that the CAMT compliance effort with respect to a partnership investment will be simple, but the corporation should only do so after careful consideration of the impacts of making such an election.

Partner-Level Elections Require a Binding Election

The top-down election, the taxable-income election, and the modified -20 method election each require the applicable corporation to make a binding election. In the case of the top-down election, the election is effective for all tax years beginning before issuance of forthcoming CAMT reproposed regulations. In the case of the taxable-income election, the election is effective for all tax years beginning before issuance of forthcoming CAMT reproposed regulations unless the criteria for eligibility cease to be met, as discussed below.

Because the top-down election, the taxable-income election, and the modified -20 method election require taxpayers to make a binding election, and because the use of each can result in a larger AFSI inclusion (for example, if either the top-down election or the taxable-income election is made in cases of partnership losses or the sale of the partnership interest), partners are strongly advised to consider future-year projections before making any of these elections.

Top-Down and Taxable-Income Elections and the -5 Rules

The top-down election and the taxable-income election are presented as "modifications" to prop. reg. section 1.56A-5 and prop. reg. section 1.56A-20 in forthcoming reproposed regulations. The notice's language may be read to indicate that an applicable corporation making either election is required to early adopt the -5 rules in the 2024 proposed regulations). However, that requirement is not explicitly stated and there may be other readings of the language in the notice. Furthermore, any such requirement can be viewed as inconsistent with the notice's aim to "Reduce compliance burdens and costs associated

[4] If a taxpayer is not required to adopt the -5 rules to make the top-down election or the taxable-income election, it is unclear whether prop. reg. section 1.56A-5(j)(1)'s loss limitation rules apply only if the taxpayer early adopts the -5 rules. *See e.g.*, Notice 2025-28, *supra* note 1, at section 3.02(1):

> Thus, *under* proposed section 1.56A-5(j)(1), if 80 percent of the top-down amount is a negative number, the CAMT entity partner includes such amount in its AFSI for the taxable year only to the extent that such negative amount does not exceed the CAMT entity partner's CAMT basis in its partnership investment. *Under* proposed section 1.56A-5(j)(3), the CAMT entity partner's CAMT basis in its partnership investment must be increased or decreased (as applicable), but not below zero *pursuant to* proposed section 1.56A-5(j), by 80 percent of the top-down amount and, to the extent provided by the CAMT proposed regulations, the AFSI adjustments described in section 3.02(4) of this notice. [Emphasis added.]

Reframed, we wonder whether section 3.02(1) references to prop. reg. section 1.56A-5 are a coordination rule that applies only in situations where the taxpayer has early adopted the -5 rules.

[5] *See* Notice 2025-28, *supra* note 1, at fn. 1 ("unless otherwise specified, terms used in this notice have the same meaning as in the CAMT proposed regulations"); *see also* Notice 2025-28, *supra* note 1, at fn. 3 ("Proposed section 1.56A-1(b)(7) would define 'CAMT basis' as the basis of an item for purposes of determining AFSI."); Notice 2025-28, *supra* note 1, at section 2.03(3)(a) ("Proposed section 1.56A-20(c)(3) would also provide guidance on the determination of CAMT basis.").

with applying the corporate alternative minimum tax (CAMT) to partnerships and CAMT entity partners."[6]

However, if an applicable corporation making either election is required to early adopt the -5 rules, a taxpayer that makes either a top-down election or a taxable-income election for some but not all of its partnership investments (which is allowed, as discussed below) would appear to be precluded from using a reasonable statutory interpretation regarding partnership investments for which it does not make one of the notice's elections. In such a situation, the bottom-up approach in the -5 rules would appear to be required for investments. Note that for investments where the partnership does not report modified FSI, the applicable corporation could use the helpful modifications in section 5.04(b) of the notice, which allow the applicable corporation to base its distributive share of AFSI with respect to the partnership on its own books and records in such situations.

It is worth noting that the last sentence of section 9 of Notice 2025-28[7] appears to indicate that a taxpayer making the top-down election or the taxable-income election need not early adopt the "specified regulations" (the 18 regulations within the 2024 proposed regulations are designated as the "specified regulations" in the preamble and are proposed to apply to tax years ending after September 13, 2024).[8] In addition, it appears that where provisions of the notice are adopted and the taxpayer has not otherwise early adopted the 2024 proposed regulations, the early adoption stances of its CAMT group members do not have an impact. However, where a taxpayer makes the top-down election or the taxable-income election and early adopts (or otherwise uses) the -5 rules, it is not clear what provisions in the 2024 proposed regulations a taxpayer must early adopt. We wonder whether such a taxpayer must early adopt the specified regulations and whether the early adoption stances of the taxpayers' CAMT group members have an impact.[9]

Taxpayers should consider requesting clarifications.

Determining Taxable-Income Election Availability Is Complicated

Determining whether the taxable-income election is available is complicated. It requires knowing:

- the applicable corporation's section 52 single employer group and foreign parented multinational group (collectively, "CAMT group") as of the end of the taxable year at issue;
- whether members of the applicable corporation's CAMT group directly own more than 20 percent of the interests in the capital or profits of the partnership as of the end of the taxable year at issue;
- whether the sum of the fair market value of each investment in the partnership held by members of the applicable corporation's CAMT group as of the end of the taxable year at issue is $200 million or less; and
- whether a taxable-income election previously was terminated (because such criteria were not satisfied in any year subsequent to the making of the election).[10]

There are a number of practical questions about the availability of the taxable-income election. First, it is unclear how to measure the capital and profits interests in a partnership.[11] It is also unclear whether each CAMT group's partnership interest must be separately valued and then the valuations summed, as suggested by a literal reading, or whether it is instead

[6] Notice 2025-28, *supra* note 1, at section 1. It is similarly unclear whether a taxpayer making either the top-down election or the taxable-income election must also early adopt the -20 rules. But the notice, read as a whole, suggests an intent not to couple the -5 rules and the -20 rules originally imposed by the 2024 proposed regulations. *See* Notice 2025-28, *supra* note 1, at section 9. Neither section 8 (addressing reliance where provisions of the notice are not adopted) nor section 9 (addressing applicability dates where provisions of the notice are adopted) is directly on point.

[7] Notice 2025-28, *supra* note 1, at section 9:

> A taxpayer's reliance on any of the guidance in sections 3 through 7 of this notice for a taxable year will not cause the taxpayer to become subject to, or to violate, the reliance rules, including the consistency requirements, provided in the preamble of the CAMT proposed regulations, for such taxable year.

[8] *See* REG-112129-23, *supra* note 3, at 75127.

[9] *Id.*

[10] *See* Notice 2025-28, *supra* note 1, at section 4.03.

[11] However, this is an age-old question, perhaps made murkier as the notice adds financial statement capital and profits to the possible mix.

permissible to either collectively value the relevant interests or determine the total value of the partnership and multiply such value by the collective ownership percentage.

Because a taxable-income election can only be made once with respect to a single partnership investment and the election permanently terminates if the criteria are not satisfied in any year after making the election, taxpayers may want to engage in multiyear projections to determine when it is most advantageous to make a taxable-income election. For example, if the 20 percent or below threshold is expected to be met in 2025, 2027, 2028, and 2029 but not 2026, a taxpayer should consider waiting until 2027 to make the taxable-income election.

Additionally, because the rules appear to work differently based on whether CAMT group members hold direct or indirect interests in the partnership, taxpayers may want to consider their structuring options if a taxable-income election is desirable.

The Reasonable Method Is Generally Not Available

The "reasonable method" set forth in the notice provides far less flexibility than its name suggests. A taxpayer focusing on the name may think that a CAMT entity (such as an applicable corporation) is granted permission to use a reasonable method to determine the amount of AFSI from a partnership investment. That simply is not true.

Under the notice's "reasonable method," partnerships are granted the ability to use a "reasonable method" to determine partners' distributive shares of modified FSI. This "reasonable method" is not a rainbow trail — it only allows partnerships that determine and report modified FSI (seemingly under the -5 rules in the 2024 proposed regulations) to take on an additional obligation to determine each partner's share of that number (an obligation currently placed on partners, not partnerships, under the -5 rules in the 2024 proposed regulations) and grants flexibility with respect to the method the partnership uses to determine such percentages.

If a partnership takes on the obligation to determine the percentages, partners adopting the -5 rules are not obligated to compute their own percentage using the rules set forth in the -5 rules in the 2024 proposed regulations (which are generally based on book, not tax, amounts). Instead, the partnership may use any "reasonable method," subject to certain limitations, to compute a CAMT entity partner's distributive share percentage and then must allocate modified FSI based on that percentage. Partners may then use this product to determine their distributive share of partnership AFSI. In essence, the reasonable method is relevant only when both the partner and partnership adopt the proposed -5 rules, including as modified by any provisions of the notice. One can query how many partners or partnerships will choose to do so before the issuance of reproposed or final regulations.

A method is only a reasonable method if it is used by the partnership for all of its CAMT entity partners (however, the partners do not appear to be bound by the calculations if they are not early adopters of the 2024 proposed regulations) and if the method does not result in the partnership allocating more or less than all of its modified FSI to its partners. A reasonable method includes one that determines modified FSI based on the partner's relative share of section 704(b) items for the taxable year and one that is based on provisions in the partnership agreement that the partnership uses to allocate net section 704(b) income or loss, provided the allocations comply with section 704(b). The description of the methods explicitly deemed reasonable by the notice contains special rules regarding guaranteed payments. Partnerships considering the use of a reasonable method that also make guaranteed payments would be wise to carefully consider these rules. Finally, a reasonable method does not include one undertaken with a principal purpose of avoiding applicable corporation status or reducing or avoiding a CAMT liability.[12]

[12]It is, however, unclear why Treasury implies the reasonable method has an impact on the scope determination. Under Treasury guidance, the scope inclusion with respect to a partnership investment is either the FSI reported on the tested corporation's applicable financial statement or 100 percent of partnership AFSI. *See e.g.*, prop. reg. section 1.59-2(c)(1)(ii).

The Modified -20 Method Raises Numerous Questions

The secretary was given a statutory mandate in section 56A(c)(15)(B) to create rules to carry out the purposes of CAMT, including rules addressing partnership contributions and distributions — prop. reg. section 1.56A-20 (the -20 rules) attempts to fulfill this mandate. Specifically, the -20 rules generally require inclusion of FSI from partner-partnership transactions, except in the case of certain contributions and distributions (such as full and partial nonrecognition transactions under sections 721 and 731). In such instances, the 2024 proposed regulations would generally adopt an installment sale approach for the FSI resulting from the contribution or distribution of property, but with provisions that add complexity to what a taxpayer generally might have expected an installment sale approach to require (the 2024 proposed regulations refer to this as the "deferred sale approach"). Notice 2025-28 permits taxpayers to make changes to this deferred sale approach under the modified -20 method that generally appear favorable. These changes include more favorable treatment of partnership debt, a single (but perhaps longer) recovery period, no recovery for assets that are not depreciable or amortizable for either book or tax purposes (such as land), and fewer acceleration events.

However, the modified -20 method raises numerous questions. For example, it is a partner-level election, but it is unclear how this would work with respect to partnership distributions because under the modified -20 method, partnership distributions would affect partnership-level modified FSI as generally computed under the -5 rules. Thus, it is not entirely clear whether a partner's election of the modified -20 method binds either the partner or the partnership to the adoption of the -5 rules. If the partner is bound to adopt the -5 rules in such an instance but the partnership is not, it is unclear what such result means practically (in other words, what happens if the partnership does not report modified financial statement incomes (FSIs) at all). Further, it is notable that these rules may be read to suggest that, once final regulations are issued, the partnership may be bound to report to each partner computations based on a single partner making the modified -20 election. Specifically, if a partner chooses the modified -20 method, the notice suggests the partnership must make computations using that method. What then happens if a different CAMT entity partner does not elect into the modified -20 method but follows the existing -20 rules? Once these rules are finalized, it appears possible, if not likely, that there will be both a general set of rules and an electable modified set of rules. If so, query if the partnership is intended to keep multiple sets of CAMT books tracking deferred sale property and deferred distribution gain using different sets of rules for different partners. In that event, will Globby rise from the Molasses Swamp, with mayhem ensuing?

As another example, the subchapter K rules regarding partnership liabilities and the disguised sale rules appear to apply, at least in some instances, to determine whether a section 721 or 731 transaction is tax free for CAMT purposes. However, based on the language of the notice, which refers to encumbered transfers of property, it is unclear whether the disguised sale rules and their exceptions apply for such determination when there is no encumbered property (for example, when an applicable corporation contributes land and receives cash in a putative disguised sale).

Thus, applicable corporations that may benefit from the modified -20 method would be wise to ponder the numerous questions attendant to using such a method before binding themselves to it.

The Full Subchapter K Method Raises Even More Questions

As addressed above, Notice 2025-28 provides the full subchapter K method to allow a partnership to determine its partners' distributive share of partnership AFSI resulting from contributions to or distributions from the partnership. The full subchapter K method is applied using all relevant subchapter K principles that apply for regular tax purposes and CAMT inputs (such as CAMT basis of property). Thus, the full subchapter K method appears to result in a parallel CAMT universe — where many, if not all, of the rules of subchapter K apply and CAMT inputs, instead of regular tax inputs, are used (but

the application of this parallel CAMT universe does not seemingly affect the computation of AFSI for all purposes, just AFSI related to partnership contributions and distributions).

The full subchapter K method appears to provide more favorable rules than the -20 rules and the modified -20 method in several instances. For example, the full subchapter K method would appear to generally delay any AFSI from the contribution of nondepreciable property until such property is sold by the partnership or distributed in a transaction that is subject to the mixing bowl rules or other partnership exceptions to nonrecognition provisions.[13] This would also appear to allow partnerships to distribute property to a partner other than an applicable corporation without the inclusion of any AFSI with respect to that property at that time. In such a case, the AFSI is arguably not eliminated, as the built-in CAMT gain may become latent in the partnership interests held by the remaining partners, and perhaps in the property so distributed (if it even became held by an applicable corporation).

The full subchapter K method raises a myriad of questions. Preliminarily, it is unclear why its impact is limited to "partners' distributive shares of partnership AFSI resulting from partnership contributions and distributions."[14] FSI from a partnership contribution is generally reflected in partner-level FSI — raising the question of why there is a stated limitation to partnership AFSI and a concern that a literal reading may not cover partner-level FSI from partnership contributions. Furthermore, the application of subchapter K principles appears to affect items that do not result from a contribution or distribution (like the sale of property purchased by the partnership whose basis was adjusted under section 734(b) or items affected by reverse section 704(c) layers). Thus, one could ask why the parallel universe set forth in this method purports to affect only a component of a partner's distributive share of partnership AFSI.

More fundamentally, it is unclear what it means to apply the "principles of relevant provisions in subchapter K." Section 704(b) would appear to apply with CAMT inputs because the notice specifically indicates that section 704(c) and the section 704(c) methods chosen for tax purposes are applicable to the CAMT basis items. Section 704(b) allocations are needed to determine the section 704(c) result among contributing and noncontributing partners. Given this, would the partnership need to maintain "CAMT 704(b) capital accounts" based on CAMT inputs? If so, it is unclear how a taxpayer would determine CAMT 704(b) allocations for many preexisting partnerships.

For example, consider a partnership with a cash-driven allocation agreement (a "waterfall-based agreement"). It is uncertain whether the partnership would need to apply the waterfall using CAMT inputs for prior years to determine where in the waterfall it was for CAMT purposes in any given year or whether it would use another method (presume the same tier of the waterfall applied for regular tax and CAMT purposes). It is equally unclear what impact the CAMT capital accounts would have upon the partnership's liquidation entitlements, if any. Further, assuming the applicable partnership agreement provides that regular tax 704(b) capital accounts, rather than CAMT 704(b) capital accounts, determine the partners' entitlements upon liquidation, there would appear to be no economic impact from maintaining the CAMT 704(b) capital accounts, so the exercise may be viewed to be without economic consequences (and thus arguably inconsistent with the core section 704(b) principle to align tax with the underlying economics). Subchapter K also uses concepts and inputs without, or arguably without, book or CAMT analogs. This raises additional questions. For example, query whether section 752 would only apply where there was debt basis in a partnership investment for book purposes (consistent with the -20 rules but inconsistent with the modified -20 method as it applies to transfers of encumbered property) or whether section 752 would apply for CAMT basis using the partner's share of debt as computed for regular tax purposes.

The full subchapter K method is made at the election of the partnership and requires the written consent of all CAMT entity partners that have not made a top-down or taxable-income

[13] *See, e.g.*, IRC sections 704(c)(1)(B), 721(b), 721(c), 737, and 751(b).

[14] Notice 2025-28, *supra* note 1, at section 6.03.

election. Consider a partnership with four applicable corporation partners and six partners who are not applicable corporations — if the first applicable corporation partner makes a top-down election and the second applicable corporation partner makes a taxable-income election, the partnership may elect into the full subchapter K method if, and only if, both the third and fourth applicable corporation partners consent.[15] Thus, applicable corporations should carefully consider the membership of the partnerships in which they are a member (which they may not even know and be contractually precluded from knowing) if the full subchapter K method is potentially desirable. Furthermore, the full subchapter K method election is binding on all future taxable years, even if new CAMT entity partners are admitted (or if an existing partner becomes a CAMT entity partner), so due diligence may be advised for new investments into existing partnerships. Such partners should consider provisions in their agreements that may be implicated. For example, some partnership agreements may require certain approvals before any tax election is made, which may include election into the full subchapter K method.

Applicable corporations drawn to the potentially large benefits from the full subchapter K method would also be wise to factor in the time and expense associated with its use and the impact of this cost on the partnership and the other partners. The use of the full subchapter K method, at least in some situations, could require applicable corporations, partnerships, and their advisors to spend hundreds of hours unraveling mysteries, and the parallel nature of the full subchapter K method could double the time spent on subchapter K computations.

Removal of Some Non-Realization Gains Comes at a Cost

Under the notice, an applicable corporation can disregard certain FSI amounts without a tax analogue. Specifically, section 7 of Notice 2025-28 permits a CAMT entity partner to disregard any FSI attributable to consolidation, remeasurement, deconsolidation, dilution, or change in ownership of a different CAMT entity partner to the extent such transactions are not realization events for regular tax purposes. Taxpayers would be wise to pay attention to the limitations on what amounts can be excluded under this rule. For example, deconsolidation gain resulting from an applicable corporation's sale of a partnership interest is not excludable. Consider the following situation: An applicable corporation is a 51 percent partner in a partnership and sells a 2 percent interest (decreasing its interest to 49 percent). Under the GAAP rules, this may trigger the inclusion of 100 percent of the book built-in gain in the partnership's assets. The notice does not provide relief in this case — if an event is a realization event for tax purposes, there is no option to exclude FSI under section 7. Additionally, consider a recapitalization: If an applicable corporation's interest in a partnership is recapitalized and that event results in FSI, taxpayers may need to rely on the full subchapter K method instead of section 7 (though this is arguably unclear based on long-standing questions regarding partnership recapitalizations).

Furthermore, the relief provided under section 7 is not permanent. An applicable corporation is required to make adjustments to any relevant CAMT attributes to ensure that the disregarded FSI amounts are not permanently eliminated. As such, there would appear to be consequences to the applicable corporation's CAMT basis in its partnership investments, and this rule could create a whipsaw when combined with, for example, the top-down election or taxable-income election.

Eleven (or More) Methods for the Partnership Inclusion in AFSI

Because of the statutory language in section 56A(c)(2)(D), the 2024 proposed regulations, and Notice 2025-28, there are numerous approaches that appear allowable to determine an applicable corporation's AFSI from its partnership investments (in situations that need not involve a contribution to, or distribution from, a partnership). These include:

[15] Note also that the consent rule appears to include upper-tier partnership partners that have applicable corporations as partners (as these are CAMT entities), but since these partners cannot themselves make a top-down election or a taxable-income election, it is unclear how the consent rules work.

- a "pure" top-down FSI approach (available if the applicable corporation uses investment company or fair value accounting for the partnership investment for financial accounting purposes);
- an adjusted top-down FSI approach (available if the applicable corporation consolidates with the partnership or uses the equity method for the partnership investment for financial accounting purposes);
- a "pure" one-tier approach (available if an upper-tier partnership uses investment company or fair value accounting for the partnership investment for financial accounting purposes);
- an adjusted one-tier approach (available if an upper-tier partnership consolidates with the partnership or uses the equity method for the partnership investment for financial accounting purposes);
- 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;
- a bottom-up approach through the early adoption of the -5 rules and the -20 rules, without any modifications from the notice;
- a bottom-up approach through the early adoption of the -5 rules and the -20 rules, modified by the reasonable method rules (to determine the percentage) in the notice;
- a bottom-up approach through the early adoption of the -5 rules but not the -20 rules (as permitted by section 8 of the notice), without any other modifications from the notice;
- a bottom-up approach through the early adoption of the -5 rules but not the -20 rules (as permitted by section 8 of the notice), modified by the reasonable method rules (to determine the percentage) in the notice;
- a top-down election (as set forth in the notice); and
- a taxable-income election (as set forth in the notice).

The approaches are akin to the assortment in a box of chocolates and may result in very different stomachaches, as the AFSI inclusion for each may differ. Furthermore, as discussed above, applicable corporations have a limited ability to mix and match methods for their partnership investments. Modeling may be necessary to determine the best approach (or combination of approaches) in many, if not most, situations, as a taxpayer will need to consistently apply an approach for each partnership investment once chosen.

Methods for Deferral of FSI From 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 with Notice 2025-28, and there now exist five 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:

- the modified -20 method (which is a modification of the method in the -20 rules of the 2024 proposed regulations), which is available upon the election of an applicable corporation that is a partner;
- the full subchapter K method, which is only available if the partnership makes an election (with the consent of all affected applicable corporation partners);
- the taxable-income election (if the partner is eligible to so elect);
- the -20 rules applied alongside the specified regulations but without the application of -5 rules (as permitted by section 8 of the notice);
- the -20 rules, applied alongside the -5 rules and the specified regulations; and
- potentially, a reasonable interpretation of the statute (such as one under which no partner FSI from a property contribution is included).

Only the last two options existed before the notice's release. The optionality provided by the notice presents both an opportunity and a challenge to applicable corporations. Applicable corporations seeking deferral of FSI that results from a contribution to, and distribution from, a

partnership should model which method is most advantageous, knowing that the determination will be fact-dependent. Furthermore, taxpayers should consider the impact of potential future events. For example, if an applicable corporation contributes property that is not depreciable or amortizable for either tax or book purposes and there is a low possibility that such property will be distributed to another partner in the seven-year mixing-bowl period, such potentiality could favor the modified -20 method or the full subchapter K method over the proposed -20 rules. However, if there is a higher possibility that such property will be distributed to another partner in the seven-year mixing-bowl period, such potentiality could favor the proposed -20 rules over the modified -20 method or the full subchapter K method, unless an exception to the mixing-bowl rules is available. Of course, every situation will need to be judged holistically, and drawing conclusions before a very detailed study of each option is akin to making caramel in trying circumstances (like a very humid day) and expecting perfect results.

Decisions Require Multiyear Modeling

CAMT liabilities are generally minimized when taxable income is approximately 72 percent (the 15 percent CAMT rate divided by the 21 percent regular tax corporate rate) of AFSI in every year. An applicable corporation's long-term CAMT exposure is not necessarily minimized by minimizing AFSI in the current year (because lower AFSI in the current year may result in no current-year CAMT benefit and more AFSI in future years).

Thus, both because of the general optionality that exists regarding the determination of an applicable corporation's AFSI with respect to a partnership investment and because Notice 2025-28 provides elections that are made on a partnership-by-partnership basis, applicable corporations should model the various scenarios and the impact of different combinations of elections on AFSI.

Such corporations should also model to decide which elections, if any, to request their partnerships make under the notice. Furthermore, because the elections provided by Notice 2025-28 are binding, forecasting and multiyear modeling is advisable before assembling the chosen gumdrops from the rainbow of CAMTyland's newest offerings.[16] ■

[16]This 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.

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