

Latest Corporate Alternative Minimum Tax (“CAMT”) Guidance – Notice 2023-64

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PRACTICES Tax

Background

The Inflation Reduction Act of 2022 created the Corporate Alternative Minimum Tax (“**CAMT**”) which imposes a 15 percent minimum tax on the adjusted financial statement income (“**AFSI**”) of large corporations for taxable years beginning after December 31, 2022. The CAMT generally applies to “applicable corporations” with AFSI exceeding \$1 billion. In enacting the CAMT, and basing the tax on book income rather than taxable income, Congress was focused on large, high-earning corporations that might otherwise pay little or no tax.

Notice 2023-64 contains the latest guidance released by the IRS to help corporations determine whether the CAMT applies to them and how to compute the tax.

Notice 2023-64

On September 12, 2023, Treasury and the IRS released Notice 2023-64 (the “Notice”) providing additional interim guidance on application of the CAMT. Prior guidance clarifying the application of the CAMT was released earlier this year in Notices 2023-7, 2023-20 and 2023-42, but questions remained for taxpayers and practitioners grappling with the application and calculation of the new tax. The Notice clarifies areas of uncertainty in applying the CAMT and requests further comments on topics to be addressed in future guidance. The following topics are addressed in the Notice:

- **Definition of Taxpayer**: The Notice provides that the term “taxpayer” includes any entity identified in Section 7701 of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations thereunder (including a disregarded entity), regardless of whether the entity is subject to internal revenue tax.
- **Determining a Taxpayer’s AFS**: The Notice expands the definition of “applicable financial statement” (“AFS”) and provides priority rules for determining a taxpayer’s AFS for CAMT purposes. Financial statements prepared in accordance with GAAP or IFRS are generally prioritized over other government and regulatory statements or unaudited statements. In the context of consolidated groups and foreign parented multinational groups, all members must use the parent’s consolidated AFS for the group, even if a member prepares its own separate AFS that would otherwise have higher priority under the AFS determination rules.
- **General Rules for Determining AFSI**: The Notice provides general rules for determining financial statement income (“FSI”) and AFSI, including when a taxpayer’s financial results are reported on a consolidated AFS. The Notice clarifies that FSI does not include amounts reflected elsewhere in the taxpayer’s AFS (including in equity accounts such as retained earnings and other comprehensive income). The Notice further clarifies that FSI includes all items of income, expense, gain and loss reflected in the net income or loss of the taxpayer set forth on its AFS, regardless of whether such amounts are realized or recognized for tax

purposes. As a result, deferred gain or loss (such as gain from a transaction qualifying for nonrecognition treatment under the Code), and amounts included book income under a fair value or mark-to market method of accounting, would be included in FSI.

- **Determining FSI, AFSI and Tax Imposed for Consolidated Groups**: The Notice clarifies the determination of FSI and AFSI, as well as the amount of CAMT imposed, for taxpayers that are part of a consolidated group (including groups with a consolidated AFS that also includes taxpayers outside the consolidated group). Specifically, the FSI of a consolidated group must disregard AFS entries that would otherwise eliminate transactions between members of the consolidated group, on the one hand, and taxpayers outside the consolidated group, on the other hand.
- **Determining AFSI with Respect to Certain Foreign Corporations**: The Notice provides additional clarity in determining AFSI with respect to controlled foreign corporations (“CFCs”) and US shareholders of CFCs. A US shareholder of a CFC must apply adjustments set forth in both Code Section 56A(c)(2)(C) (relating to certain dividends) and Code Section 56A(c)(3) (relating to certain items of foreign income) to determine its AFSI with respect to the CFC. If a CFC is a partner in any partnership or the owner of a disregarded entity, the CFC’s distributive share of such partnership’s AFSI (or 100% of such disregarded entity’s FSI) must be taken into account as part of the CFC’s net income or loss for purposes of determining a US shareholder’s AFSI with respect to such CFC.
- **AFSI Adjustments for Certain Taxes**: The Notice provides clarity with respect to the timing of adjustments to AFSI for any federal income taxes or foreign income taxes taken into account on the taxpayer’s AFS (including current and deferred tax expenses). The adjustment to AFSI should be made in the tax year or years in which such taxes increase or decrease the taxpayer’s FSI or are included as a component of an adjustment to AFSI.
- **AFSI Adjustments for Section 168 Property**: The Notice modifies and clarifies prior guidance set forth in Notice 2023-7 for determining AFSI adjustments for certain property depreciated under Code Section 168 (“Section 168 Property”). If a taxpayer changes its tax accounting method for depreciation of any Section 168 Property, the taxpayer must adjust its AFSI to reflect the adjustment required under Code Section 481(a) to prevent depreciation from being duplicated or omitted for CAMT purposes. Additionally, the Notice clarifies that a taxpayer must reduce its AFSI by the amount of any tax depreciation capitalized and later deducted and by the amount of any tax depreciation capitalized to non-inventory property held for sale and later recovered on sale of the property. The Notice also requires a taxpayer to adjust its AFSI if it takes a disposition loss into account in its FSI for Section 168 Property in a tax year earlier than the year in which the disposition occurs for regular income tax purposes.
- **AFSI Adjustments for Qualified Wireless Spectrum**: The Notice provides certain definitions and AFSI adjustments relating to the requirement that a taxpayer must reduce its AFSI by amortization deductions allowed under Code Section 197 for qualified wireless spectrum and disregard any amount of amortization expense taken into account on the taxpayer’s AFS for the qualified wireless spectrum. The Notice clarifies that a taxpayer’s AFSI is not adjusted for wireless spectrum property that is not subject to amortization under Code Section 197 for regular tax purposes.

- **AFSI Adjustments to Prevent Certain Duplications and Omissions**: To prevent duplications and omissions of AFSI, the Notice requires a taxpayer to adjust its AFSI to account for changes in financial accounting principle, restatement of a prior year's AFS, and adjustments for amounts disclosed in an auditor's opinion. The Notice clarifies that timing differences do not give rise to duplications or omissions, even if the timing difference originated before the effective date of the CAMT and reversed after such effective date.
- **Financial Statement NOLs**: The Notice provides that the amount of a financial statement NOL carried forward to the first tax year a corporation is an applicable corporation for CAMT purposes (and subsequent tax years) is determined without regard to whether the taxpayer was an applicable corporation for any prior tax year.
- **Determining Applicable Corporation Status**: The Notice provides additional guidance on the rules requiring aggregation of AFSI for corporations that are members of a controlled group or treated as a single employer for purposes of determining whether a corporation is an applicable corporation with AFSI exceeding \$1 billion. The Notice reiterates that S corporations, RICs and REITs are excluded from the definition of applicable corporation. However, these entities are taken into account for aggregation purposes, so that a corporate member of a controlled group including S corporations, RICs and/or REITs may have to include the AFSI of these entities in determining whether such corporate member exceeds the \$1 billion threshold to be treated as an applicable corporation. The Notice also clarifies that a taxpayer that is a partner in a partnership includes the FSI amount it reports for its partnership investment in its AFSI, instead of its distributive share of the partnership's AFSI.
- **CAMT FTC**: The Notice provides additional guidance on foreign income taxes eligible to be claimed as a credit to reduce the CAMT ("CAMT FTC"). A foreign tax is eligible to be claimed as a CAMT FTC in the tax year in which it is paid or accrued for federal income tax purposes by the applicable corporation or a CFC, provided the foreign income tax has been taken into account on the AFS of such applicable corporation or CFC (which occurs when a journal entry has been recorded in the journal used to determine the amounts on the taxpayer's AFS to reflect the tax). The Notice also clarifies that both CFC taxes and the CFC FTC limitation are determined on an aggregate basis, based on all CFCs of which the taxpayer is a US shareholder. If an applicable corporation of a CFC is a partner in a partnership, the partner is treated as having paid or accrued its share of the foreign income taxes paid or accrued by the partnership for purposes of the CAMT FTC.

Applicability Dates; Future Guidance

The Notice states that Treasury and the IRS intend to publish proposed regulations consistent with the interim guidance in the Notice. Proposed regulations would also include rules consistent with prior interim guidance and cover new issues not yet addressed. The forthcoming proposed regulations would be proposed to apply to tax years beginning on or after January 1, 2024. Prior to publication of the proposed regulations, taxpayers may rely on the guidance provided in the Notice. Taxpayers may also rely on the guidance in the Notice for any tax year that begins before January 1, 2024.