Corporate AMT – Dealing with Complexity, Uncertainty and Pillar 2

TEI-SJSU High Tech Tax Institute

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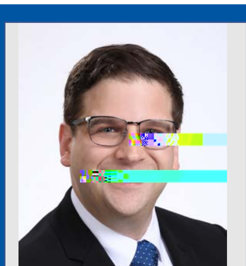
With you today



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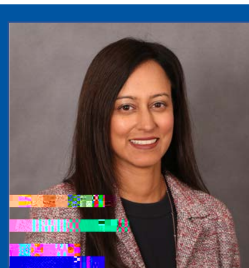

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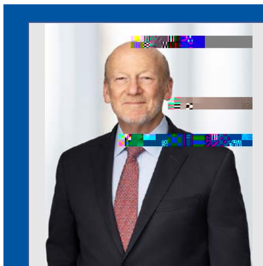

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Agenda

1. CAMT Overview
2. AFSI
3. Guidance to date
4. AFSI and Application to CFCs
5. CAMT Foreign Tax Credits
6. CAMT and Pillar Two

Corporate Alternative Minimum Tax (CAMT) Overview

CAMT – Overview

- – Corporate Alternative Minimum Tax (CAMT) enacted in 2022 as part of the Inflation Reduction Act (H.R. 5376)
- Minimum tax that applies to "applicable corporations"
- Based on Adjusted Financial Statement income (AFSI)
- Similar to old AMT, any CAMT liability due creates credit carryforward against future Regular tax liability

- Whether a taxpayer is an applicable corporation (Scope Determination) and the calculation of potential CAMT tax liability (Liability Determination) are both based on AFSI; AFSI is calculated differently for both.
- Determining AFSI for purposes of the CAMT isn't as simple as finding a financial statement and pulling a number; this is even true under the safe harbor promulgated in Notice 2023-7.
- Corporations not subject to the CAMT will face an increased tax compliance burden and may need to prove their out-of-scope status to their auditors or the IRS.

CAMT – Overview

Multiplied by:	15% CAMT tax rate
Less:	Alternative minimum tax foreign tax credit (“AMT FTC”)
Compared to:	Regular tax liability + BEAT liability

- General business credits able to be used against resulting CAMT liability (e.g., R&D credit)
- Many companies may not realize they potentially fall within the crosshairs of the CAMT. For example, a 21% effective tax rate does NOT shield a company from paying the CAMT.
- In-scope status once attained is hard to shake, even if income falls below the >$1b threshold in future years.
- Enormous uncertainty exists prior to regulations; Treasury released four Notices and a draft form to date.

AFSI – Computation

Plus/minus:	Adjustments provided under §56A(c)
	• Modifications to FSI base (e.g., different taxable years, related entities, foreign income) • Certain taxes • Depreciation • Other adjustments (e.g., special rules for Cooperatives, defined benefit pensions, qualified wireless spectrum, etc.)
Less:	Financial statement net operating loss

Guidance to date

- Provides a safe harbor for status determination
- Provides relief to insurance industry
- Provides estimated tax payment relief
- Indicates extensive reporting will be required, including by corporations who are not applicable corporations and applicable corporations that do not have a CAMT liability
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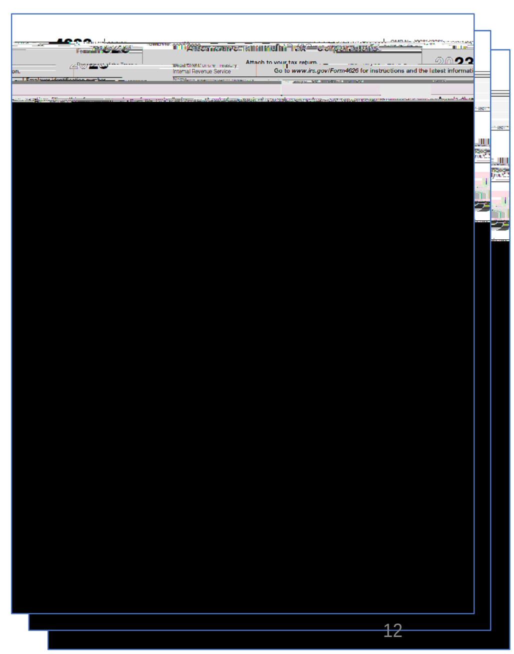
Guidance to date – Draft Form 4626

- Three-year average AFSI test and Y/N continue to Part II
- Computation of AFSI and comparison to Regular tax liability
- Reporting of current and deferred Federal and Foreign income tax provision for Part II calculation
- Section I – AMT Foreign Tax Credit
- Section II – Allowable CFC AMT Foreign Income Taxes
- Section III – AMT Foreign Tax Credit Carryover for Controlled Foreign Corporations
- Details on controlled group members treated as a separate employer
- Foreign-Parented Multinational Group (FPMG) members



AFSI and Application to CFCs

Impact of Accounting and CAMT Positions on ETR

- If the timing of a book items is not adjusted to match the timing of a tax item, the item could be taxed twice – 1st for CAMT purposes and 2nd for tax purposes.
- Common timing differences:
  - Expenses
  - Capital costs
  - Bad debts and worthless stocks
  - Stock-based compensation
  - Advance payments
  - Non recognition transactions
- Creating a contingency reserve impacts CAMT and ETR. With a reserve, book income and CAMT are reduced in year of reserve, but both are increased in year reserve released.

Adjusted Financial Statement Income

- Adjustments are aimed at eliminating mismatches between book and tax income
- §56A includes 14 adjustments to financial statement income, plus rule in 55(d) for NOLs
- Key adjustments include:
  - Members of a consoliBT(r 0.004 Tw through entities Tf001 TcTf-0 r)14.7(o)-4.1(u)-0.6(p)]TJEMC /Lbl <</MCID 70
  - Pro rta share of CFC income or loss
  - E Tf00CI of foreign corportions
  -

Controlled Foreign Corporations (CFCs)

- AFSI of U.S. shareholder excludes income of non-consolidated corporations (whether US or foreign) <u>for CAMT liability purposes</u>, other than:
  - Dividends received by a U.S. shareholder (the “dividend Inclusion rule”)
  - “Other amounts” included in U.S. shareholder’s gross income (other than GILTI/Subpart F)
  - Pro rata share of CFC’s items net income or loss items on CFC’s financial statement (the CFC adjustment rule”
    - How would loss carryforward apply? Aggregated basis of CFC-by-CFC?
- Pro rata share is determined under rules similar to § 951(a)(2), but
  - Unlike GILTI, no carve-out for QBAI and, unlike Subpart F income, no E&P limitation
  - 15% tax, compared to GILTI at 10.5% (13.125% after 2025) and Subpart F at 21%
  - CAMT applies after GILTI/Subpart F, since it applies only if > than regular tax & BEAT
- “Other amounts” is presumably interest and royalties.
- Including both pro rata share of CFC’s income and actual dividends paid raises possibility of double counting.

CAMT Foreign Tax Credits

CAMT Foreign Tax Credits

- General rules
- “Taken into account”
- Redeterminations
- Impact of temporary differences
- CFC aggregation
- Partnership issues
- Net of tax items
- Intercompany transactions
- Carryforwards – transition rules

CAMT Foreign Tax Credits – General Rules

- Direct CAMT FTC for creditable taxes paid by taxpayer
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CAMT FTCs – “Taken into Account”

- CAMT FTC available for taxes that are:
- Paid or accrued, <u>AND</u>
- “Taken into account” on the AFS of the taxpayer or the CFC
- “Taken into account” – new concept
  - “…if any journal entry is recorded with respect to income taxes on the AFS even if the income tax does not increase or decrease financial statement income at the time of the journal entry.”
- Impact of reserves and opinion thresholds

CAMT FTCs – “Taken into Account”

- When must the two tests be met? Same year?
  - Notice 2023-64 - OK if different years but can only be taken when paid or accrued test has been met but in what year? Statute and Notice unclear.
- Impact of timing differences:

	0	100
	100	0
	15 (paid and DTA set up)	0

- NYSBA – later in time approach – later of journal entry or paid/accrued

CAMT FTCs – Partnerships

- Notice 2023-64 – foreign taxes paid or accrued at partnership level pass-through to partners for CAMT FTC purposes
- Numerous open questions:
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CAMT FTCs – Other Issues

- CFC Aggregation
  - CFC taxes and CFC limitation determined on an aggregate basis for all CFC's
- Redeterminations
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CAMT FTCs – Other Issues

- Net of tax items
  - Discontinued operations
  - Extraordinary items
  - NYSBA – disaggregate into gross and net to capture relevant AFSI and FTC's
- Intercompany transactions
  - Notice 2023-64 – disregard consolidation entries
  - Complexities will arise
  - More guidance needed in regulations

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CAMT FTCs – Carryforwards

- Five-year carryforward of excess CAMT FTC
  - Pre-effective date years?
  - Pre-applicable corporation years?
  - Statute and Notice unclear
- Carryforward ordering rules
  - No guidance•

CAMT and Pillar Two