Corporate AMT – Dealing with Complexity, Uncertainty and Pillar 2

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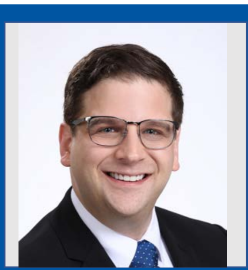
With you today



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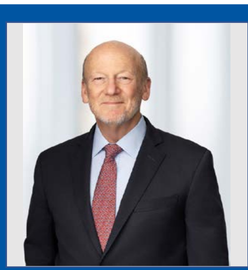

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Agenda

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

Basics

- **New IRC §56A** – 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

Process

- 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

Determination of CAMT liability

Start with:	Adjusted Financial Statement Income (“AFSI”)
Multiplied by:	15% CAMT tax rate
Less:	Alternative minimum tax foreign tax credit (“AMT FTC”)
Equals:	**Tentative CAMT**
Compared to:	Regular tax liability + BEAT liability
If excess:	**CAMT liability**

Need to Know

- 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.

CAMT Liability drivers

Differences Between AFSI and Taxable Income

Permanent Book-Tax Differences

FDII and GILTI deductions

Dividends-received deduction

Equity-based compensation

Purchase accounting and impairments

Mark-to-Market

Derivatives and hedging transactions recorded outside of other comprehensive income (OCI)

MTM amounts with respect to certain subsidiaries

Favorable Timing Differences

(regular tax liability deferred)

Expensing for tax but not for book

Like-kind exchanges, installment method, and similar deferral

Unfavorable Timing Differences

(regular tax liability accelerated)

Interest expense limitation (§163(j)) or amortization of R&D (§174)

Deferred or contingent liabilities

Adjusted Financial Statement Income (AFSI)

- CAMT starts with financial statement income and then makes adjustments
  - AFSI - pre-tax net income or loss of the taxpayer reported on its applicable financial statement for said taxable year, subject to adjustments
  - Opposite of former AMT – started with taxable income and added back preferences
- Starting point is Form 10-K financial statement
  - Income is not reduced by NOL carryovers (there is consideration for financial statement NOL)
- Incorporates §451 definition of applicable financial statement (e.g., GAAP, IFRS)

AFSI – Computation

Computation of CAMT liability

Start with:	**Financial Statement Income (FSI)**
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
Equals:	**Adjusted Financial Statement Income (AFSI)**

Guidance to date

Notice 2023-7

- Provides a safe harbor for status determination

Notice 2023-20

- Provides relief to insurance industry

Notice 2023-42

- Provides estimated tax payment relief

Draft Form 4626 (see next slide)

- Indicates extensive reporting will be required, including by corporations who are not applicable corporations and applicable corporations that do not have a CAMT liability

Notice 2023-64

- Clearly excludes OCI from CAMT base
- CAMT FTC: partnership foreign taxes, foreign tax redetermination
- Tax depreciation AFSI rule expanded to include broader array of capitalization provisions

Guidance to date – Draft Form 4626

Part I – Applicable Corporation Determination

- Three-year average AFSI test and Y/N continue to Part II

Part II – Corporate Alternative Minimum Tax

- Computation of AFSI and comparison to Regular tax liability

Part III – Adjustment for Certain Taxes Under Section 56A(c)(5)

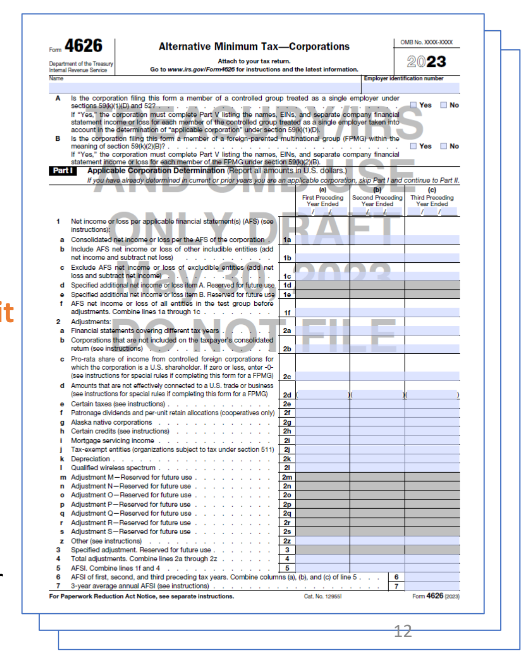
- Reporting of current and deferred Federal and Foreign income tax provision for Part II calculation

Part IV – Alternative Minimum Tax – Corporations Foreign Tax Credit

- 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

Part V – Members of a Controlled Group…Taken into Account in "Applicable Corporation" Determination

- 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 consolidated group
  - Income or loss of flow-through entities
  - Pro rata share of CFC income or loss
  - ECI of foreign corporations
  - US federal income takes and foreign income taxes
  - Depreciation deductions
- Not every difference between financial statement income is addressed
  - §163(j) limitation on interest expense deduction
  - §162(m) limitation on deductions for certain employee remuneration exceeding $1 million
  - Section 382 limitations on loss carryforwards

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.

Double Inclusion Issue with CFCs

- CAMT includes regulatory authority to reduce dividend inclusion:
  - §56A(c)(2)(C) – "…reduced to the extent provided by the Secretary in regulations or other guidance"
  - §56A(c)(15)(A) – "The Secretary shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section, including adjustments … to prevent the omission or duplication of any item."
  - ➢However, no guidance yet.

- Is there other support in the absence of regulations?

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
- Indirect CAMT FTC for creditable taxes at the CFC level
  - 15% limitation for Indirect CAMT FTC
  - 5 year carryforward
- Other rules and limitations:
  - "within the meaning of section 901" – presumably pulls in all the other FTC rules and limitations
  - NYSBA – make this clear in regulations

CAMT FTCs – "Taken into Account"

- CAMT FTC available for taxes that are:
- Paid or accrued, AND
- "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:

	Year 1	Year 2
AFS Income	0	100
Foreign Income	100	0
Foreign Tax	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:
  - Partner includes distributive share of partnership AFSI but no guidance on whether partnership taxes flow up in same ratio
  - What is the AFS of a partnership?

CAMT FTCs – Other Issues

- CFC Aggregation
  - CFC taxes and CFC limitation determined on an aggregate basis for all CFC's
- Redeterminations
  - General rules of Section 905 apply
  - HOWEVER, FTC only available if taxpayer is an applicable corporation in the taxable year to which the redetermination relates (relation-back year)
  - FTC only available in the relation-back year (even if journal entry is not reflected in the relation back year)
- Contested taxes – no guidance but general rules allow provisional credit for regular tax purposes
  - NFTC – allow provisional CAMT FTC in same manner

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

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
  - C/F rules for regular FTC apply a FIFO approach
  - NYSBA recommends similar rules for CAMT FTC

CAMT and Pillar Two

CAMT and Pillar Two

- Pillar Two and US – stalemate and temporary reprieve
- CAMT is a minimum tax but not a QDMTT
  - EU Commissioner – [CAMT] is a "positive and interesting decision" but "not fulfilling and implementing what we need for Pillar Two"
- Issues are same as for GILTI
  - CFC blending
  - Accelerated depreciation
  - Credits
  - But – CAMT has no substance based carve-out
- Impact of 2024 election
- Potential for a "Grand Bargain"
- Structure alternatives