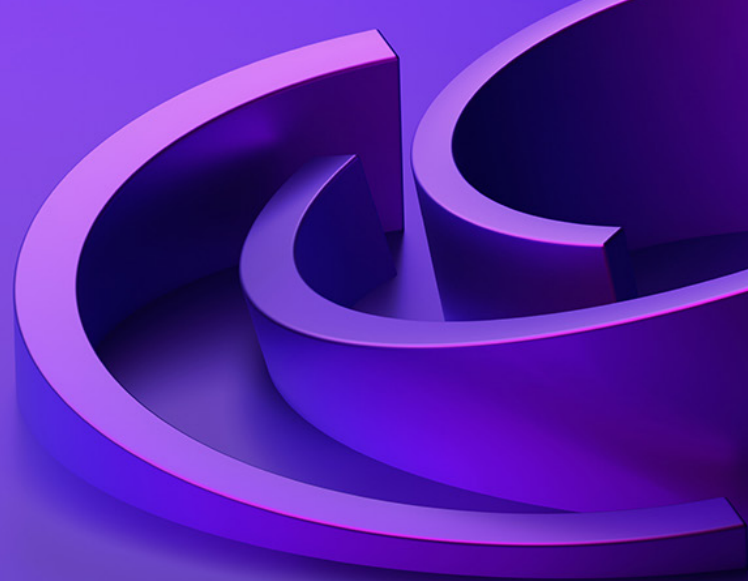




What should CFOs, the C-suite, and tax execs know about the CAMT?

Corporate Alternative Minimum Tax Considerations and FAQs

November 2022



A new Corporate Alternative Minimum Tax (CAMT) was added to the Internal Revenue Code when the Inflation Reduction Act (H.R. 5376) was signed into law on August 16, 2022. While guidance from Treasury and the IRS on the implementation of the CAMT is much anticipated, businesses should be considering the impact now.

The following outlines five things you should know as well as answers to frequently asked questions (FAQs) to help you understand how the CAMT may affect your company.

Five Things to Know About CAMT

1 A new minimum tax based on financial statement income was added to the Code and will apply to tax years beginning after December 31, 2022.

H.R. 5376 (commonly called the Inflation Reduction Act) was signed into law on August 16, 2022. The Inflation Reduction Act added to the Code a new CAMT primarily by amending sections 53, 55, and 59 as well as introducing section 56A. The CAMT is a minimum tax based on financial statement income that applies to “applicable corporations.” Whether a taxpayer is an “applicable corporation,” and thus subject to the CAMT (the Scope Determination), and the potential CAMT tax liability of an applicable corporation (the Liability Determination) are based on adjusted financial statement income (AFSI).¹

The CAMT applies to tax years beginning in 2023. However, the Scope Determination is made by looking at AFSI from the prior three years. To determine whether a calendar year taxpayer is subject to the CAMT for 2023, the relevant years for the Scope Determination are 2020, 2021, and 2022. For a fiscal year taxpayer, however, there are two initial testing periods for the Scope Determination: (1) the fiscal years ending in 2020, 2021, and 2022 and (2) the fiscal years ending in 2021, 2022, and 2023.

If the fiscal year taxpayer meets the three-year test for either period, it is an applicable corporation.

2 Many companies may fall within the crosshairs of the CAMT.

The CAMT is based on AFSI, not taxable income. Because AFSI diverges in significant ways from taxable income, corporations with a higher than 15 percent effective tax rate cannot assume they have no CAMT liability.

Corporations with far less than \$1 billion of income (book or tax) also need to be aware that they can be in scope for the CAMT based, for example, on their owners or their ownership of other entities.

Moreover, while only corporations are subject to the CAMT, the income of noncorporate entities (e.g., partnerships) can increase the CAMT liability of a direct or indirect corporate owner.

Estimates regarding the number of companies that will be subject to the CAMT (i.e., those that will owe CAMT) vary widely. Economist Martin Sullivan has identified 90 corporations that are likely subject to CAMT,² whereas the Joint Committee on Taxation estimates that approximately 150 corporations will

¹ AFSI for Scope Determination purposes and Liability Determination purposes may (and often will) differ.

² Martin A. Sullivan, “Tax Credits and Depreciation Relief Slash Burden of New Corporate AMT,” Tax Notes Federal (August 22, 2022).

be subject to the CAMT.³ Meanwhile, KPMG has determined that more than 300 companies appear to be in scope and more than 1,000 appear to be within striking distance of the \$1 billion mark based on public financials from the prior three years.

3

In-scope status is hard to shake, even if income falls below the \$1 billion threshold in future years.

Once a corporation meets the threshold statutory definition of “applicable corporation” for purposes of the CAMT, it remains an applicable corporation subject to relatively narrow exceptions that require a “determination” by the Secretary to change applicable corporation status. This can be thought of as a once an applicable corporation, (almost) always an applicable corporation rule.

Note that this almost always an applicable corporation rule has particular significance for mergers and acquisition transactions: if a target is an applicable corporation (based, for example, on the status of its former owner), it appears that the target will remain an applicable corporation for all future years—unless and until guidance provides otherwise.

4

Determining AFSI isn’t as simple as finding a financial statement and pulling a number.

AFSI is not simply financial statement income. Numerous modifications need to be calculated to arrive at AFSI from any number that appears on the face of a financial statement, and such modifications are based both on financial statement rules and tax rules.

It’s also important to bear in mind that AFSI for purposes of determining whether a corporation qualifies as an applicable corporation (i.e., the Scope Determination) and AFSI for purposes of the Liability Determination may (and often will) differ. Multiple differences exist between AFSI for purposes of the Scope Determination and AFSI for purposes of the Liability Determination. For example, AFSI for purposes of Scope Determination can include amounts from lower-tier entities, upper-tier entities, and brother-sister entities, whereas AFSI for Liability Determination generally only includes the taxpayer’s AFSI (along with certain specified items from other entities). This is because the tax aggregation rules found in section 52(a) and section 52(b) apply for Scope Determination purposes but not Liability Determination purposes.

As a result, the AFSI of all persons treated as a single employer under such rules with the tested corporation is included for the Scope Determination. Additionally, AFSI can differ because financial statement net operating losses (NOLs) and certain enumerated adjustments to AFSI are not considered for Scope Determination purposes but are considered for Liability Determination purposes.

5

The CAMT and Pillar Two are two new and different book-based taxes.

Despite the CAMT’s adoption of a 15 percent threshold, and its reliance on financial statement income as a starting point for the tax base, the interaction between the CAMT and any forthcoming Pillar Two rules is not clear and remains subject to the politics of the Inclusive Framework. The CAMT likely would not be considered a qualified income inclusion rule (IIR), nor would it likely be a qualified domestic minimum top up tax (QDMTT), although it may be considered a “Covered Tax” for Pillar Two purposes. In any event, the CAMT and Pillar Two represent two new and different book-based tax rules, and many large U.S. companies will have to deal with both regimes.

Frequently Asked Questions About the CAMT

My company is not a Fortune 200 company. There is no reason to worry, correct?

Incorrect.

The Joint Committee on Taxation’s estimate that approximately 150 corporations will be in scope for the CAMT is not determinative and may diverge significantly from the actual number of in-scope corporations.

My company’s effective tax rate is above 15 percent. There is no reason to worry, correct?

Incorrect.

The CAMT is a *minimum* tax based on AFSI, not taxable income. Because AFSI diverges in significant ways from taxable income, corporations with a higher than 15 percent effective tax rate cannot assume that they have no CAMT liability.

³ Proposed Book Minimum Tax Analysis by Industry, Joint Committee on Taxation memorandum (July 28, 2022).



My company reported far less than \$1 billion on its last three financial statement. There is no reason to worry, correct?

Incorrect.

The CAMT is a *minimum* tax based on AFSI, not financial statement income, per se. Because AFSI diverges in significant ways from financial statement income, it may be necessary to compute AFSI to determine whether your client is in scope for the CAMT.

Furthermore, and perhaps more importantly, corporations with far less than \$1 billion of income (book or tax) also need to be aware that they can be subject to the CAMT based on the AFSI of other entities, including, for example, either the AFSI of their direct and indirect owners and/or the AFSI of entities they own directly or indirectly.

My company is headquartered outside the United States. Are there special rules for inbound companies?

Yes.

Special rules apply to foreign-parented multinational groups (FP MNGs), defined as groups with two or more entities included in the same “applicable financial statement” (AFS) with respect to the same tax year if (1) either (i) at least one entity is a foreign corporation with U.S. effectively connected income (ECI)⁴ or (ii) one entity is a domestic corporation and another entity is a foreign corporation, and, generally, (2) the common parent of such entities is a foreign corporation. There is broad regulatory authority for Treasury to determine the members of a FP MNG.

For such FP MNGs, the \$1 billion AFSI threshold is modified to also include non-U.S. related financial statement profits of foreign corporations. There is

also a special \$100 million AFSI test for FP MNGs that takes into account only the group’s U.S.-related AFSI of foreign corporations and AFSI of domestic corporations, including CFC income. The additional \$100 million test applies based on the same average three-year period as applies to the \$1 billion test.

The CAMT is a minimum tax. How does that work?

Applicable corporations are allowed to claim a credit for CAMT paid against regular tax in future years, but the credit cannot reduce that future year’s tax liability below the computed CAMT for that year.

I heard there was a favorable last-minute change with respect to depreciation. What is it?

As a general rule, the statute follows tax (not book) treatment for depreciation with respect to certain tangible property and qualified wireless spectrum (but not other property). Thus, AFSI decreases for tax depreciation claimed with respect to tangible property (and qualified wireless spectrum) in the tax year and increases for financial statement depreciation taken into account on the AFS. Similarly, for a corporate partner, section 743(b) adjustments with respect to tangible property would appear to reduce AFSI.

This generally (but not always) favorable treatment of depreciation, however, is limited to tax depreciation deductions with respect to tangible property and qualified wireless spectrum. In the absence of a change in law, tax depreciation with respect to intangible assets, such as amortization with respect to goodwill, would not be substituted for the book treatment.

⁴ For this purpose, a U.S. ECI branch is treated as a separate entity.

How should a company account for the CAMT? Are there particular accounting assertions I need to consider?

Like the legacy alternative minimum tax (AMT) regime, we believe companies should account for the incremental tax owed under the CAMT as it is incurred and continue to measure their deferred taxes at regular tax rates—at enactment and going forward. An entity would recognize a deferred tax asset for any AMT credit carryforwards.

For deferred tax assets related to AMT credit carryforwards, Topic 740 requires that a company’s expectation of its AMT status be considered when evaluating its valuation allowance for those carryforwards. This is necessary because a company, depending on its facts and circumstances, could be subject to the AMT in perpetuity. In that case, it is often difficult for a company to conclude that all or some of the

benefits of the AMT credit carryforwards are more likely than not to be realized when it is relying on future taxable income exclusive of reversing temporary differences.

For deferred tax assets other than AMT credit carryforwards, we believe a company may elect to either consider or disregard its CAMT status when evaluating its deferred tax assets under the regular tax system. For example, a company that forecasts reducing its regular tax with an existing net operating loss carryforward in a year that it is subject to the CAMT may not benefit at all from that deferred tax asset if it anticipates always being an AMT taxpayer. If that company elects to consider its CAMT status, it would recognize a valuation allowance on the deferred tax asset.

Accordingly, determining whether a company expects to be subject to the AMT in perpetuity is an important assertion in accounting for the new CAMT.

For more insights on the CAMT, visit our [Inflation Reduction Act website.](#)

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