

Gold and Coal Found in Corporate Alternative Minimum Tax Guidance

By **Monisha Santamaria**

New guidance addressing the corporate alternative minimum tax suggests that Treasury will build out an extensive and complicated CAMT regime. Whether taxpayers and the IRS will be able to handle this complexity is an open question, says Monisha Santamaria of KPMG in Washington, D.C.

The corporate alternative minimum tax is, at a high level, a minimum tax based on financial statement income from "applicable corporations," which may affect large corporations and corporations that are part of large groups. The CAMT statute has many gaps that affect 1) whether a taxpayer is subject to the regime, and 2) how much potential tax liability a corporation could face. This is, in part, because Congress delegated numerous issues to the Treasury Department.

On Dec. 27—perhaps as a belated holiday present—Treasury released an advance version of Notice 2023-7, its first guidance addressing CAMT and its many uncertainties. While the notice contains interim guidance that will be welcomed by taxpayers, it may be best viewed as containing both gold and coal.

A Few Bags of Gold

The notice provides a safe harbor method for determining whether CAMT applies to a corporation for its first taxable year. The

safe harbor likely will provide relief to mid-sized businesses that are clearly not applicable corporations.

The notice has generally taxpayer favorable nonrecognition conformance rules, which import tax non-recognition principles into the CAMT in certain circumstances.

Financial statement income from certain non-recognition transactions, such as corporate reorganizations and tax-free contributions to partnerships, is excluded from adjusted financial statement income; the measure generally is used to determine both whether a corporation is subject to CAMT and the amount of CAMT liability.

The notice contains other favorable rules that generally would decrease AFSI. These rules ameliorate some of the otherwise significant CAMT consequences of many debt restructuring transactions.

The notice also contains a generally favorable rule with respect to inventory sales. It foreshadows additional interim guidance, including that which "would be

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intended to help avoid substantial unintended adverse consequences to the insurance industry and certain other industries.”

Not All Gold Glitters

Upon closer inspection, taxpayers may discover that gold doesn't always glitter.

The favorable rules usually are limited in their application. The safe harbor won't cover many corporations that aren't applicable corporations under CAMT. Furthermore, the safe harbor is a “gating” one. A taxpayer who doesn't qualify must apply the complex statutory rules, many of which still require guidance.

A single dollar of tax gain as part of “the” transaction turns off favorable nonrecognition conformance rules. This means that many transactions that commonly would be considered non-recognition transactions will result in AFSI.

The notice's rule adversely treating taxpayers that claimed “bonus depreciation” in pre-2023 years may be viewed as a whipsaw.

The notice leaves certain gating issues unaddressed, including ones necessary to facilitate 2023 compliance. For example, it contains no guidance regarding what information should be reported between taxpayers for purposes of applying the CAMT regime.

Some Lumps of Coal

The notice may leave taxpayers feeling like they must have been naughty, as there are lumps of coal scattered throughout it.

Any taxpayer seeking to apply the applicable corporation safe harbor will need to identify the members of its Section 52 single employer group and eliminate book consolidation entries between persons not treated as a single employer under Section 52(a) or (b). The efforts needed to obtain this information may be significant, and some taxpayers may be unable to obtain the information in a timely manner.

The nonrecognition conformance rules come with an AFSI cost. These basis rules could be read to require taxpayers to recompute AFSI basis with respect to certain transactions occurring prior to the effective date of the legislation (for example, throughout the taxpayer's and any predecessor's history), and to then use this (probably lower) AFSI basis to compute AFSI prospectively.

This likely means that disposition of these assets subsequent to the effective date will increase AFSI. In addition, the tracking and determination of AFSI basis (such as AFSI basis depreciation or amortization recovery) on a go-forward basis also appears to be challenging. The depreciation rules in the notice likewise require the computation of AFSI basis. These computations may be viewed to be equally difficult.

The notice suggests that Treasury will build out an extensive and complicated CAMT

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regime—with parallel AFSI basis systems and CAMT specific attributes. Whether taxpayers and the IRS will be able to handle this complexity is an open question. Taxpayers would be well served to examine the notice to see if it contains gold, or worse, for them. As Treasury has requested

comments on 16 specific questions regarding the guidance provided in the notice, comments on 20 specific CAMT issues not addressed by the notice, and general comments, there are certainly more gifts to come.

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