KPMG report: Tea leaves from CAMT Draft Form

Background

The corporate alternative minimum tax (CAMT) is a minimum tax based on financial statement net income that applies to applicable corporations (ACs). Understanding the CAMT is complicated and previous publications by KPMG LLP provide both a primer and detailed information regarding the CAMT.

While there appears to exist a congressional intent to cabin the impact of the CAMT to a small pool of corporate taxpayers,[1] the CAMT exacts an annual compliance burden on a larger universe of taxpayers. Specifically, in every year, a corporation will need to determine (1) whether it is subject to the CAMT (that is, whether it is an AC) and (2) if it is an AC, the amount of its CAMT liability, if any. In a corporation's first year as an AC, both determinations will need to be made.

2023 Forms

The newly released 2023 Draft Form 1120, *U.S. Corporation Income Tax Return*, and 2023 Draft Form 4626, *Alternative Minimum Tax – Corporations*,[2] which were released without accompanying instructions, provide clues as to the extent of compliance burden on corporations.[3] Specifically, all Form 1120 filers will either have to represent that they are eligible for Notice 2023-7's safe harbor (which is not available for *many* corporations who are not ACs and is only available for one year) or complete Form 4626.[4] The anticipated large universe of corporations who will be required to complete Form 4626, and their tax preparers, need to understand the extensive work likely necessary to complete Form 4626, which must be attached to the corporation's tax return.

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[1] The Joint Committee on Taxation estimated that approximately 150 corporations were subject to a prior proposed version of the CAMT. Jt. Comm. on Tax'n, *Memorandum: Proposed Book Minimum Tax Analysis by Industry* (July 28, 2022), https://www.finance.senate.gov/imo/media/doc/CAMT%20JCT%20Data.pdf.

[2] The draft versions of Forms 1120 and 4626 reflect a "watermark" date of June 2, 2023 and May 30, 2023, respectively.

[3] Note that non-corporate filers, such as partnerships, may face an increased compliance burden but, to date, the IRS has not released anything providing clues as to what that burden looks like. While non-corporate taxpayers do not have to complete Form 4626, Form 4626 appears to require financial statement data of partnerships in certain cases and thus it is likely that partnerships may be required to provide information to Form 4626 filers in order for those Form 4626 filers to report partnership financial statement data to the IRS. *See* 2023 Draft Form 4626, Part V.

[4] 2023 Draft Form 1120, Schedule K, question 29.

Draft Form 4626

The form is organized into five parts and requires the following data and computational results be provided:

- Information regarding group memberships and the members of such groups (Lines A and B on page 1, and Part V);
- If the filer has not previously determined it is an AC, information necessary to determine whether the entity is an AC (Part I); and
- If the filer is an AC, information to determine:
  - The amount of CAMT liability, if any (Part II),
  - The section 56A(c)(5) adjustment for certain taxes (Part III), and
  - The corporation's CAMT foreign tax credits (CAMT FTCs) (Part IV).

KPMG observation

There is extensive information gathering and computational work that corporations, and their tax return preparers, must do in order to complete the form. This may pose an extensive compliance burden on many corporations that are not ACs and on ACs that do not have a CAMT liability.

As a preliminary matter, all Form 4626 filers (i.e., all corporate filers not eligible for Notice 2023-7's safe harbor) must indicate whether they are a member of a "controlled group treated as a single employer under sections 59(k)(1)(D) and 52" and/or a member of a "foreign-parented multinational group (FPMG) within the meaning of section 59(k)(2)(B)."[5]

KPMG observation

The requirement indicates that a filer's single employer group and FPMG may not overlap, and, for a single filer, both may matter for determining whether a corporation is an AC.

Furthermore, Draft Form 4626 indicates that a filer must compute its AFSI for scope purposes ("Scope AFSI")[6] or AFSI for liability purposes (Liability AFSI)[7] or both.[8] Filers complete Part I—the applicable corporation determination section—and determine Scope AFSI unless the filer has already determined in a current or prior year that they are an AC.[9]

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[5] *See* Lines A and B on page 1 of 2023 Draft Form 4626.
[6] *See* generally Part I, line 7 of 2023 Draft Form 4626.
[7] *See generally* Part II, lines 5 and 7 of 2023 Draft Form 4626. Liability AFSI is computed both prior to and after taking into account financial statement net operating losses.
[8] *See* Monisha C. Santamaria, Sarah Staudenraus, Nick Tricarichi, Daniel Winnick, and Jessica Teng, "CAMTyland Adventures, Part 1: How to Play the Game – Corporate Alternative Minimum Tax Basics," Tax Notes, July 24, 2023, https://www.taxnotes.com/tax-notes-federal/corporate-alternative-minimum-tax/camtyland-adventures-part-i-how-play-game-corporate-alternative-minimum-tax-basics/2023/07/24/7gzqf#7gzqf-0000021 ("CAMTyland, Part I") for a description of Scope AFSI (referred to as Statutory AFSI in the article) and Liability AFSI and the differences between the two.
[9] *See* instructions included in Part I of 2023 Draft Form 4626 ("If you have already determined in current or prior years you are an applicable corporation, skip Part I and continue to Part II."). As of the publication of this news flash, there are no separate instructions to 2023 Draft Form 4626.

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KPMG observation

The instructions in the draft form[10] regarding when to complete Part I appear to assume that once a corporation is an AC, it retains such status. This is in line with the statutory scheme: once a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-year average AFSI falls below $1 billion. Limited exceptions to this rule exist, but each exception appears to require some form of affirmative rule or determination from Treasury.[11]

Furthermore, these instructions seem to suggest that a filer can determine in the current year that it is an AC without showing its work. Said differently, there appears to be no requirement that a filer complete the Scope AFSI calculations such that a filer who does not want to compute its Scope AFSI appears allowed to assume it is an AC. However, that determination appears binding in future years.

Part I delineates a process to compute Scope AFSI and Part II delineates a process to compute Liability AFSI. Many of the lines in Part I and Part II are identical. Specifically, lines 1a to 1f in each of Part I and Part II arrive at "right-sized" financial statement income for statutory scope purposes (Scope FSI) and for liability purposes (Liability FSI) and by starting with the consolidated net income or loss (FSI) per the applicable financial statement (AFS) and making adjustments with respect to "includible entities" (not defined) and "excludible entities" (not defined). Lines 2a to 2l in Part I and lines 2a to 2o in Part II reflect certain CAMT specific modifications to FSI found in section 56A(c).

KPMG observation

The form indicates a "top-down" (i.e., start with consolidated FSI) approach to determining AFSI.[12]

The concept of right-sizing seems to be adopted as there are instructions to include the FSI of includible entities and exclude FSI of excludible entities.[13] Neither includible entities nor excludible entities is defined in the draft form and the definitions will be important. Because the entities relevant to Scope AFSI and Liability AFSI may differ,[14] it appears that the definition of includible entities and excludible entities should differ for Part I and Part II of Form 4626.

The adjustments to AFSI found in section 56A(c) are made to the right-sized numbers and separately listing the amount of each AFSI adjustment (in both Part I and Part II) is required. Significant work may be required to calculate the amount of many of the AFSI adjustments (i.e., to complete a single line). For example, the adjustment for depreciation is currently reflected on a single line.[15] Notice 2023-7 breaks down the adjustment for depreciation into five component parts and requires additional adjustments if an asset is disposed of. Furthermore, since the adjustments are made to the right-sized numbers, a single line may be based on multiple financial statements (if there exists one or more includible entities).

The presentation of information with respect to non-tax-consolidated corporations appears unclear. Specifically, the interaction of line 1c and line 2b in each of Part I and Part II is unclear. Each line 1c

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[10] *Id*.
[11] *See* section 59(k)(1)(C). Section 4.04 of Notice 2023-7 provides very limited relief.
[12] *See* Part 1, line 1a and Part II, line 1a of 2023 Draft Form 4626. Note, however, that the form also requires separate company FSI for each member of a taxpayer's single employer and/or FPMG. *See* Part V of 2023 Draft Form 4626.
[13] *See* Part I, lines 1b and 1c and Part II, lines 1b and 1c of 2023 Draft Form 4626. *See* Monisha C. Santamaria, Sarah Staudenraus, Nick Tricarichi, Daniel Winnick, and Jessica Teng, "CAMTyland Adventures, Part II: 'Right-Sizing' in the Licorice Lagoon," Tax Notes, July 31, 2023, https://www.taxnotes.com/tax-notes-federal/corporate-alternative-minimum-tax/camtyland-adventures-part-ii-right-sizing-licorice-lagoon/2023/07/31/7h0nq#7h0nq-0000073 ("CAMTyland, Part II") for a description of right-sizing process.
[14] CAMTyland, Part II, Table 1.
[15] Part I, line 2k and Part II, line 2n of 2023 Draft Form 4626.

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instructs the filer to “exclude AFS net income or loss of excludible entities” and each line 2b asks for an adjustment for “corporations that are not included on the taxpayer’s consolidated return.” It is unclear whether book amounts with respect to non-tax-consolidated corporations are removed in line 1c or line 2b. Resolution may depend on whether a non-tax-consolidated corporation on a taxpayer’s AFS is an excludible entity or an includible entity. Either approach appears viable and we look forward to accompanying instructions to Form 4626 which would presumably address the reporting.

The draft form suggests that amounts not akin to ECI are generally removed.[16] Presumably, this adjustment only applies to foreign corporations. As discussed below, the scope section in Part I notes special rules for FPMGs. The exclusion of non-ECI can be viewed as the inverse of the statutory instruction to only include amounts that are akin to ECI in certain situations.

The draft form does not make reference to the special rules for certain non-recognition transactions or intercompany eliminations between persons not treated as a single employer under section 52(a) or (b) put forth in Notice 2023-7 or the need to track CAMT basis in assets. However, there are many lines “reserved for future use” on the draft form which potentially could be purposed for these adjustments.

As noted above, Part I delineates a process to compute Scope AFSI. Of note, Part I contains many references to the FPMG rules[17] and Scope AFSI in Part I (unlike Liability AFSI in Part II) is computed without any adjustment to FSI for partnership investments.

KPMG observation

Scope AFSI is computed without any adjustment for partnership investments. This indicates that the treatment of a partnership investment for financial accounting purposes controls for purposes of Scope AFSI. For example, if a corporation owns a 15% interest in a partnership and book-consolidates such partnership, 100% of the partnership’s FSI will be included in Scope FSI. A handful of commentators have requested a different approach regarding this (i.e., regarding the correct amount of inclusion for a partnership investment for Scope FSI purposes).[18] This may be significant in certain fact patterns (e.g., so-called UP-C structures where the public partner of the corporation may hold less than 50% of the profits or capital of the partnership but consolidates the entity for financial statement purposes due to control factors).

There are several references to the special rules for members of FPMGs. Of note, the form indicates that the entities aggregated for purposes of determining whether a FPMG member meets the $1 billion and $100 million thresholds for scope purposes are different. This seems to reflect the statutory rules and Notice 2023-7.[19]

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[16] *See* Part I, line 2d and Part II, line 2f of 2023 Draft Form 4626.
[17] *See* CAMTyland, Part 1 and CAMTYland, Part II for a discussion of the rules for FPMGs. The FPMG rules are relevant to the scope determination but not relevant to the liability determination.
[18] *See* American Bar Association Section of Taxation, “Comments on the Corporate Alternative Minimum Tax” (Mar. 20, 2023) (available at https://www.taxnotes.com/tax-notes-today-federal/corporate-alternative-minimum-tax/aba-tax-section-prioritizes-needs-corporate-amt-guidance/2023/03/22/7g7ww); *but see* New York State Bar Association, “Report No. 1473: Report on Selected Issues Relating to the Corporate Alternative Minimum Tax” (Mar. 20, 2023) (available at NYSBA-Tax-Section-Report-No.-1473-on-Selected-Issues-Relating-to-the-Corporate-Alternative-Minimum-Tax.pdf).
[19] There are two prongs to the scope rules for FPMGs, and both must be satisfied to be considered an applicable corporation. The first prong uses a $1 billion threshold (or $500 million under the safe harbor scope determination rule). At a high level, this first prong looks to the worldwide income of the FPMG’s book consolidated group. The second prong uses a $100 million threshold (or $50 million under the safe harbor scope determination rule). Broadly, this second prong looks to the U.S. nexus income of the FPMG member’s section 52 single-employer group.

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As noted above, Part II delineates a process to compute Liability AFSI and the amount, if any, of CAMT liability. Part II, line 2d provides for an adjustment for the "corporation's distributive share of adjusted financial statement income of partnerships" and has no analogue in Part I.

KPMG observation

It is clear that the treatment of partnership interests for purposes of Scope AFSI and Liability AFSI differs—even when section 59(k)(1)(D), and thus section 52, are not implicated. This has been Treasury's clear position since Notice 2023-7. However, the amount to include with respect to partnership interests for Liability AFSI remains unclear and the draft form does not provide any indication as to whether Treasury will adopt a "top-down" approach, "bottom-up" approach or another approach with respect to partnerships.[20]

Part III requires the computation of the adjustment for certain taxes under section 56A(c)(5). The draft form breaks down this adjustment into the current foreign income tax provision, current federal income tax provision, deferred foreign income tax provision, deferred federal income tax provision, income taxes included in equity method investment income and "income tax in other places." Part III only appears required if the filer is an AC.

KPMG observation

There exists confusion as to whether deferred taxes (foreign and federal) are added back to AFSI. The draft form suggests that absent guidance to the contrary, such taxes are added back to AFSI.

The draft form makes clear that state and local taxes are treated differently than foreign and federal taxes.

The form appears to leave open the possibility that taxes are treated differently for purposes of the scope determination and liability determination.

Part IV of the draft form provides for the computation of CAMT FTCs. It provides for separate computation of taxes paid directly and for taxes deemed paid by a controlled foreign corporation (CFC). For direct foreign income taxes (including taxes paid or incurred by a partnership), the form does not make any adjustments from the amount of creditable foreign income tax reported for regular tax purposes. For the foreign tax credit for foreign taxes paid by a CFC, the form allocates foreign taxes based on the AC's pro rata share of income shown on the AFS.[21] Line 1g of section I in Part IV provides for a limitation on the CAMT FTCs of CFCs. The draft form determines this limitation based solely on income from CFCs multiplied by the CAMT tax rate of 15%. There are a number of unspecified adjustments in the form. It is not clear if those blank fields will be used to make further adjustments after regulations are proposed.

KPMG observation

The draft form does not provide any special rules for taxes incurred by partnerships, and for direct taxes appears to use the amount of the FTC allocated to a partner for tax purposes, even if AFSI is allocated differently from taxable income. By contrast, for CFCs, FTCs are allocated among US

[20] *See* Monisha Santamaria and Sarah Staudenraus, "Adventures in CAMTyland: The Partnership 'Distributive Share Only' Rule in the Corporate Alternative Minimum Tax," 63 *Tax Mgmt. Memorandum* 26 (Dec. 19, 2022).
[21] *See* Part I, line 11b and Part IV, section I, line 3e of 2023 Draft Form 4626 (requiring a worksheet supporting the determination of the AC's pro rata share of income to be attached).

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shareholders on the basis of the AC's share of income on the AFS, not on the basis of taxable income for regular tax purposes.

The CFC CAMT FTC limitation does not appear to account for foreign tax credits that are allowable but not used (for example, if an AC had a loss on its direct income, the loss may reduce income from CFCs so that foreign tax credits exceed the minimum tax attributable to CFC income). If there is a domestic corporation loss, a portion of the tax paid may not be needed to reduce taxable income in the current year and will not carry forward to future years.

Part V requires the filer to provide a list of all members of its controlled group treated as a single employer and its FPMG. Certain information by member, including separate company FSI, is required.

KPMG observation

The draft form indicates a need to list all members of a "controlled group treated as a single employer." While this language is consistent with section 52(a), presumably the intent is to cover both section 52(a) and (b) groups as referenced in section 59(k)(1)(D)(i).

The requirement to disclose a taxpayer's single employer group members appears new and may pose a significant burden on certain taxpayers. Furthermore, given the state of the law and varying interpretations of section 52(b), the fact that corporate taxpayers and their tax advisors will be required to take a tax filing position on the membership of their single employer group is noteworthy.

Conclusion

The newly released 2023 Draft Form 1120 and 2023 Draft Form 4626 suggests an extensive compliance burden on corporations as a result of the CAMT. These burdens will attach to many taxpayers who are not ACs and ACs that do not have a CAMT liability. Much of the information gathering, and portions of the calculations, can be done prior to the release of proposed regulations and in advance of the 2023 tax compliance season. Taxpayers, and their advisors, may need to consider the time, resources, and processes necessary to gather information and perform the necessary calculations for the 2023 tax compliance season.

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