TaxNewsFlash

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Notice 2023-64: Additional interim guidance on new corporate alternative minimum tax (CAMT)

The IRS today released an advance version of Notice 2023-64 [PDF 332 KB] (72 pages) providing additional interim guidance on application of the new corporate alternative minimum tax (CAMT) created by Pub. L. No. 117-169 (commonly called the “Inflation Reduction Act of 2022” (IRA)), which is effective for tax years beginning after December 31, 2022.

As explained in the related IRS release—IR-2023-167 (September 12, 2023)—the guidance is designed to help corporations determine whether CAMT, which imposes a 15% minimum tax on the adjusted financial statement income (AFSI) of large corporations with average annual AFSI in excess of $1 billion, applies to them and how to compute the tax.

Notice 2023-64 clarifies and supplements Notice 2023-7 [PDF 248 KB] (read *TaxNewsFlash*) and Notice 2023-20 [PDF 112 KB] (read *TaxNewsFlash*), issued earlier this year.

The notice includes:

- A list of financial statements that meet the definition of an applicable financial statement (AFS), as well as priority rules for identifying a taxpayer’s AFS. In the tax consolidated group context and foreign parented multinational context, these rules generally prioritize the AFS of the parent of a group. This is relevant for multinational groups that may have members that use differing accounting standards in different jurisdictions.
- General rules for determining a taxpayer’s financial statement income and AFSI, including when the taxpayer’s financial results are reported on a consolidated financial statement. Notably, the notice indicates that gain or loss need not be recognized or realized to be included in AFSI. As a result, amounts included in financial statement income (FSI) because a taxpayer uses a fair value or mark-to-market method of accounting may include gain or loss in AFSI before inclusion in income for regular tax purposes (unless the statute or guidance provides otherwise).
- Guidance on the treatment of certain taxes. Notably, the guidance makes clear that the adjustment for taxes may take into account deferred taxes and taxes with respect to equity method investee.
- Guidance on foreign corporations and CAMT foreign tax credits. Notably, a partner in a partnership can generation CAMT foreign tax credits when the partnership pays foreign taxes.
- Guidance on section 168 depreciable property, and wireless spectrum.
- Guidance on duplications and omissions of certain items.

- Guidance financial statement net operating losses.
- Guidance on applicable status. The guidance indicates that for scope purposes, “a Taxpayer that is a partner in a partnership includes in its AFSI the FSI amount it reports with respect to its partnership investment (for example, under the fair value method or equity method), rather than its ‘distributive share’ of the AFSI of the partnership.” Notably, this indicates that mark-to-market amounts with respect to partnership investments may be included for scope AFSI purposes. Furthermore, the language suggests that the adjustments (e.g., with respect to depreciation) do not apply with respect to partnership income for scope AFSI purposes.

The notice states that Treasury and the IRS intend to publish proposed regulations consistent with the interim guidance in the notice that would be proposed to apply for tax years beginning on or after January 1, 2024. Taxpayers may rely on the interim guidance for (1) tax years ending on or before the date the proposed regulations are published or (2) tax years beginning before January 1, 2024, whichever is later.

Comments on the notice are generally requested, along with comments on specific issues.

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