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Treasury and IRS release initial corporate AMT guidance

Tax Alert

Overview

The Inflation Reduction Act (IRA), (P.L. 117-169), signed into law by President Biden on August 16, 2022, included a 15-percent corporate alternative minimum tax (CAMT) on "adjusted financial statement income" (AFSI) of applicable corporations. The CAMT is effective for taxable years beginning after December 31, 2022.

On December 27, 2022, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) released Notice 2023-7 (the "Notice") which announces their intention to issue proposed regulations that will be consistent with the Notice and address application of the CAMT. Sections 3 through 7 of the Notice provide interim clarifying guidance which covers time-sensitive issues concerning application of the CAMT as follows:

- Section 3: Addresses AFSI and applicable corporation issues under CAMT regarding certain transactions under subchapters C and K; adjustments to AFSI for troubled corporations related to the discharge of indebtedness and emergence from bankruptcy, including adjustments to CAMT attributes; and adjustments to the basis of property for purposes of determining AFSI in future years.
- Section 4: Addresses certain CAMT issues with respect to the depreciation of property to which section 168 applies, including defining Section 168 Property to include only property for which a depreciation deduction is allowed under section 168; providing that AFSI is reduced for depreciation with respect to Section 168 Property that is reflected in cost of goods sold (COGS); and requiring AFSI to be adjusted for gains or losses on the disposition of Section 168 Property.
- Section 5: Provides a safe harbor method for purposes of determining applicable corporation status for domestic and foreign-parented multinational groups.
- Section 6: Provides rules addressing certain issues regarding the treatment of certain federal income tax credits under CAMT.
- Section 7: Describes rules addressing the determination of the applicable corporation status in circumstances involving partnerships.

Taxpayers may rely on the interim guidance provided in the Notice prior to the issuance of the proposed regulations, which are anticipated to include rules consistent with those provided in sections 3 through 7 of the Notice and to be applicable for tax years beginning after December 31, 2022. The Notice invites comments to be submitted on questions arising from the interim guidance, as well as comments on the CAMT generally.

From a financial reporting perspective, the Notice represents new information that should be considered in the reporting period the Notice was issued (December 27, 2022).

Prior to issuing the proposed regulations, Treasury and the IRS intend to issue further interim guidance to help avoid substantial unintended adverse consequences under the CAMT to the insurance and other industries. That additional guidance is expected to address, among other issues, the treatment of:

- Items that are marked-to-market for financial statement purposes;
- Items reported in other comprehensive income (OCI); and
- Embedded derivatives arising from certain reinsurance contracts.

Section 3: AFSI and Applicable Corporation Status Resulting From Certain Transactions; Consolidated Groups

Section 3 of the Notice provides rules relating to AFSI and Applicable Corporation status resulting from certain acquisitions and dispositions as well as rules related to U.S. federal consolidated groups, excluded "cancellation of debt" (COD) income (*see* section 108), and bankruptcies. Treasury and IRS anticipate that the Proposed Regulations will be consistent with section 3 of the Notice and are providing this interim guidance to facilitate the ability for taxpayers to apply the CAMT for transactions occurring prior to the issuance of the Proposed Regulations. As described below, some of these rules are intended to create parity where a transaction may be tax-free for U.S. federal income tax purposes but result in financial accounting gain or loss for AFSI purposes.

Defined Terms

Section 3 of the Notice contains several new definitions for purposes of applying the CAMT, which are set forth below:

- **Accounting Standards Codification**. The term Accounting Standards Codification means the single source of authoritative nongovernmental U.S. generally accepted accounting principles (that is, U.S. GAAP).
- **Common Parent Corporation**. The term Common Parent Corporation means the parent corporation of a group of entities whose activities are consolidated for financial accounting purposes.
- **Acquirer AFS Group**. The term Acquirer AFS Group means a corporation or one or more chains of entities connected through ownership with a Common Parent Corporation that (a) composes or compose an AFS Group, (b) is or are a Party to a Covered Transaction, and (c) is or are treated on its AFS as acquiring a Target or Target AFS Group (or the assets thereof).
- **Controlled**. The term Controlled means one corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that (a) composes or compose a portion of a Distributing AFS Group, (b) is or are a Party to a Covered Transaction, and (c) is or are treated as the corporation the stock of which is distributed by a Distributing AFS Group on the AFS of the Distributing AFS Group (for example, a spinnee under the Accounting Standards Codification).
- **Covered Nonrecognition Transaction**.
  - The term Covered Nonrecognition Transaction means a transaction that, solely with regard to a corporation or a partnership (as appropriate), qualifies for nonrecognition treatment for U.S. federal income tax purposes, respectively, under sections 332, 337, 351, 354, 355, 357, 361,

368, 721, 731, or 1032, or a combination thereof, and is not treated as resulting in any amount of gain or loss for U.S. federal income tax purposes (that is, solely with regard to the corporation or partnership, as appropriate).
  - Each component transaction of a larger transaction is examined separately for qualification as a Covered Nonrecognition Transaction (for example, nonrecognition treatment of a liability assumption component under section 357 and a transfer component under section 361(c)(3) are evaluated separately for determining qualification of each component as a Covered Nonrecognition Transaction, notwithstanding that each component could be a component transaction of a larger transaction that includes Covered Nonrecognition Transactions under sections 368(a)(1)(D) and 355).
  - Because Covered Nonrecognition Transaction status requires nonrecognition treatment for U.S. federal income tax purposes, the treatment of a component transaction as a Covered Nonrecognition Transaction may be affected by the U.S. federal income tax consequences of any other component transaction of the larger transaction as well as all other component transactions of the larger transaction (for example, taking into account all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine).
- **Covered Recognition Transaction**.
  - The term Covered Recognition Transaction means a transfer, sale, contribution, distribution, or other disposition of property treated as resulting in gain or loss for U.S. federal income tax purposes (that is, a transfer, sale, contribution, distribution, or other disposition of property that does not qualify as a Covered Nonrecognition Transaction).
  - Each component transaction of a larger transaction is examined separately for qualification as a Covered Recognition Transaction (for example, recognition treatment of a liability assumption component under section 357 and a transfer component under section 361(c)(3) are evaluated separately for determining qualification of each component as a Covered Recognition Transaction, notwithstanding that each component could be a component transaction of a larger transaction that includes Covered Nonrecognition Transactions under sections 368(a)(1)(D) and 355).
  - Because Covered Recognition Transaction status requires recognition treatment for U.S. federal income tax purposes, the treatment of a component transaction as a Covered Recognition Transaction may be affected by the U.S. federal income tax consequences of any other component transaction of the larger transaction as well as all other component transactions of the larger transaction (for example, taking into account all relevant provisions of the Code and general principles of tax law, including the step transaction doctrine).
- **Covered Transaction**. The term Covered Transaction means a Covered Recognition Transaction or a Covered Nonrecognition Transaction (as appropriate).
- **Distributing AFS Group**. The term Distributing AFS Group means one or more chains of entities connected through ownership with a Common Parent Corporation that (a) composes or compose an AFS Group, (b) is or are a Party to a Covered Transaction, and (c) is or are treated on its AFS as the distributor of the stock of Controlled (for example, a spinnor under the Accounting Standards Codification).
- **Party.** The term Party means, with regard to a Covered Transaction (a) a Controlled, (b) a Distributing AFS Group, (c) a partnership, (d) a corporate partner transferring to, or receiving property from, a partnership in a Covered Transaction, (e) a Target, (f) a Target AFS Group, or (g) an Acquirer AFS Group.
- **Section 108(b) Reduction Amount.** The term Section 108(b) Reduction Amount means the amount of excluded COD income that results in a

reduction of tax attributes under section 108(b) or Treas. Reg. § 1.1502-28 (that is, the total amount of excluded COD income, minus the "black hole excluded COD income" described in section 2.02(3) of the Notice).

- **Target**. The term Target means one corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that (a) composes or compose a portion of a Target AFS Group (as defined in section 3.02(12) of the Notice), and (b) is or are treated as the Party that is acquired on the AFS of the Target AFS Group (for example, an acquiree under the Accounting Standards Codification).
- **Target AFS Group**. The term Target AFS Group means a corporation, or one or more chains of entities connected through ownership with a Common Parent Corporation, that (a) composes or compose an AFS Group, and (b) is or are treated as (i) the Party that is acquired on the AFS of the Target AFS Group (for example, an acquiree under the Accounting Standards Codification), or (ii) the AFS Group from which a Target is acquired on the AFS of the Target AFS Group.
- **Test Group**. The term Test Group means, as appropriate (a) all persons treated as a single employer under section 52(a) (as defined, with certain modifications, by section 1563(a)) or section 52(b) or the Treasury regulations under section 52(b), or (b) all entities included in a foreign-parented multinational group, as defined in section 59(k)(2)(B).
- **Three-Taxable-Year Period**. The term Three-Taxable-Year Period means the three-taxable-year period ending with the current taxable year.

AFSI Consequences of Covered Nonrecognition Transactions

The Notice contains rules that generally are intended to create parity between the regular U.S. federal income tax and the CAMT consequences of transactions that qualify for non-recognition treatment for U.S. federal income tax purposes but may result in gain or loss for financial accounting purposes.

Calculation of AFSI. For purposes of calculating AFSI, if there is a Covered Nonrecognition Transaction:

- Any financial accounting gain or loss of a Party to the Covered Nonrecognition Transaction is not taken into account for purposes of calculating the AFSI of such Party. This rule applies solely to the AFSI consequences that result directly from the Covered Nonrecognition Transaction for the Party's taxable year in which the AFS of such Party takes into account such transaction. As discussed below, other rules relating to the Three-Taxable-Year Period apply with respect to the AFSI of a Party to a Covered Transaction; and
- Any resulting increase or decrease to the financial accounting basis of property transferred to a Party in the Covered Nonrecognition Transaction is not taken into account solely for purposes of computing the AFSI of the Party receiving the transferred property.

Observation: As a result of the foregoing rules, Covered Nonrecognition Transactions are also treated as tax-free for AFSI purposes and, to such extent, should not impact the determination of whether a corporation is an Applicable Corporation and the CAMT liability of an Applicable Corporation.

Examples

The Examples (*see* sections 3.03(3)(a)-(d) (Examples 1-4) of the Notice) illustrating the Covered Nonrecognition Transaction rules set forth above illustrate, among other things, that (i) the financial accounting basis of property transferred pursuant to a Covered Nonrecognition Transaction, which was not adjusted pursuant to such transaction, must continue to be used for subsequent transactions (e.g., a sale of such property) for purposes of computing AFSI, and (ii) a section 355 split-off is a Covered Nonrecognition Transaction and deleveraging transactions undertaken in connection therewith (e.g., a "debt-for-debt exchange") may separately qualify or not qualify as a Covered Nonrecognition Transaction and not impact the Covered Nonrecognition transaction status of the section 355 split-off.

Example 5 of the Notice provides that a Covered Recognition Transaction includes a transaction even if only part of the transaction results in gain or loss for federal income tax purposes. Specifically, the example provides that where a partner transfers property to a partnership and receives cash from the partnership in a transaction that is part sale under section 707(a)(2)(B) and part contribution under section 721, the contribution and the distribution is treated as a Covered Recognition Transaction. In addition, the Notice requests comments regarding Covered Transactions in which, for federal income tax purposes, gain or loss is recognized in part, and what, if any, other adjustments to AFSI should be made to carry out the principles of part II of subchapter K of chapter 1 of the Code, including whether any exceptions should apply to the Covered Nonrecognition Transaction rule for partnership transactions.

Consequences of All Covered Transactions

The Notice contains rules for determining the AFSI of a Party for purposes of the Three-Taxable-Year Period (i.e., Applicable Corporation status) in the context of Covered Transactions (i.e., both taxable and tax-free transactions).

Covered Transactions Involving Solely an Acquirer AFS Group and a Target AFS Group

If an Acquirer AFS Group acquires a Target AFS Group through a Covered Transaction that creates a Test Group (e.g., a section 52(a) controlled group of corporations), then

- Any Applicable Corporation status of the Target AFS Group terminates; and
- The AFSI of each of the Acquirer AFS Group and the Target AFS Group are combined for each year of Three-Taxable-Year Period.

Covered Transactions Involving Solely an Acquirer AFS Group and a Target

If an Acquirer AFS Group acquires a Target in a Covered Transaction that creates a Test Group (including a group that includes the assets of Target), then

- Any the Applicable Corporation status of the Target terminates;
- If Target was part of a Target AFS Group, then Target will be allocated AFSI for each year of the Three-Taxable-Year Period (determined based on any reasonable allocation method of the Target AFS Group until the issuance of the Proposed Regulations, which will provide a required allocation method);
- The AFSI of each of the Acquirer AFS Group and the Target are combined for each year of the Three-Taxable-Year Period; and
- If Target was part of a Target AFS Group, then the allocation of AFSI to Target does not reduce the AFSI of the Target AFS Group for the Three-Taxable-Year Period (and such AFSI is not otherwise affected by the Covered Transaction).

Covered Transactions Involving Distributing AFS Group and Controlled

If a Distributing AFS Group distributes the stock of Controlled to the shareholders of the Distributing AFS Group's parent corporation in a Covered Transaction, then

- Any Applicable Corporation status of Controlled terminates,
- Controlled will be allocated AFSI for each year of the Three-Taxable-Year Period (determined based on any reasonable allocation method of the Target AFS Group until the issuance of the Proposed Regulations, which will provide a required allocation method); and

- The allocation of AFSI to Controlled does not reduce the AFSI of the Distributing AFS Group for the Three-Taxable-Year Period (and such AFSI is not otherwise affected by the Covered Transaction).

Observation: The foregoing rules could result in Applicable Corporation status for the taxable year of an acquisition because, for example, the AFSI of Target will be combined with the AFSI of an Acquirer AFS Group for such current taxable year as well as the two prior taxable years (even though Target and the Acquirer AFS Group were not related). *See* section 3.04(4)(a) (Example 6) of the Notice.

The Notice provides some relief with respect to Applicable Corporation status. In this regard, under section 59(k)(1), Applicable Corporation status is not eliminated unless certain events occur (e.g., a change in ownership) and the Secretary determines that continuing Applicable Corporation status would not be appropriate. Under the Notice, however, any existing Applicable Corporation status of a Target, Target AFS Group, or Controlled is eliminated. Thus, for example, if a Target is acquired out of a large Target AFS Group by a smaller Acquirer AFS Group, the combined Target/Acquirer AFS Group may not be subject to the CAMT.

Treatment of Tax Consolidated Groups for Purposes of the CAMT

The Notice provides that an affiliated group of corporations that file a U.S. federal consolidated tax return under section 1502 is treated as a single entity for purposes of calculating AFSI for determining Applicable Corporation status and for purposes of calculating AFSI for CAMT liability.

AFSI Consequences of Excluded COD Income

The Notice provides rules that are intended to create parity between the regular U.S. federal income tax and the CAMT consequences of transactions relating to indebtedness that result in excluded COD income for U.S. federal income tax purposes (*see* section 108) but may result in gain for financial accounting purposes. In particular, to the extent that an AFS Group has excluded COD income for U.S. federal income tax purposes but gain on the AFS of the AFS Group:

- Adjustment of financial accounting gain. The amount of financial accounting gain of the AFS Group, up to the amount of the excluded COD income, is not taken into account for purposes of calculating the AFSI of that AFS Group.
- Corresponding adjustments to CAMT attributes of AFS Group. If there is any excluded financial accounting gain, then the AFS Group's CAMT attributes must be reduced to the extent of the attribute reduction amount required under section 108(b) under the principles of, including taking account the ordering provided by, sections 108(b) and 1017.

Observation: The foregoing rules do not appear to require that the U.S. federal income tax attributes and the CAMT attributes be reduced in the same manner. For example, if an election is made under section 108(b)(5) to first reduce depreciable property, it is not clear that such election must also be made for purposes of reducing CAMT attributes.

AFSI Consequences of Emergence from Bankruptcy

The Notice contains rules that are intended to create parity between the regular U.S. federal income tax and the CAMT consequences of transactions to a corporation or group of corporations that undergo a bankruptcy restructuring. In particular, if the emergence from bankruptcy of an AFS Group results in gain or loss to the AFS Group on its AFS:

- Adjustment of financial accounting gain or loss. Any financial accounting gain or loss of the AFS Group resulting from the emergence from bankruptcy is not taken into account for purposes of calculating AFSI.
- Corresponding adjustments to basis of transferred property on an AFS. With regard to any property of a Party emerging from the bankruptcy, any increase or decrease in the financial accounting basis of that property on the AFS of the Party resulting from that emergence from bankruptcy (other than any reductions required under the excluded COD income rule discussed above) is not taken into account for purposes of computing AFSI.

Section 4: Depreciation Adjustments

Section 4 of the Notice provides guidance with respect to the depreciation adjustments to AFSI under section 56A(c)(13). Under section 56A(c)(13), AFSI is reduced by depreciation deductions allowed under section 167 with respect to property to which section 168 applies ("Section 168 Property"), to the extent allowed as a deduction in computing taxable income for the taxable year and is adjusted to disregard book depreciation with respect to Section 168 Property and ensure Section 168 Property is accounted for in the same manner as it is accounted for under Chapter 1 of the Code.

The Notice provides that Section 168 Property includes property that is depreciated under section 168 and is either MACRS property or bonus depreciation eligible computer software, qualified film productions, qualified theatrical productions, or section 743(b) adjustments. The Notice clarifies that adjustments under section 56A(c)(13) apply only to the portion of property cost that is depreciated under sections 167 and 168. Any portion of a cost that a taxpayer does not depreciate under section 168 is not subject to the adjustment under section 56A(c)(13). Thus, if a taxpayer elects to forgo bonus depreciation for qualified computer software, the depreciation on the qualified computer software is not an adjustment under section 56A(c)(13) because section 168 does not apply to such software. Similarly, property expensed under section 181 is not Section 168 Property.

Under the Notice, because section 56A(c)(13) applies only to Section 168 Property, section 56A(c)(13) does not apply to an expenditure that is deducted as a repair for tax purposes but is capitalized as an improvement for AFS purposes. In determining whether an asset is Section 168 Property, taxpayers are directed to the section 168 regulations, and the not the rules for determining unit of property under Treas. Reg. § 1.263(a)-3(e).

The Notice provides that AFSI is adjusted for depreciation with respect to Section 168 Property that is capitalized to inventory under section 263A to the extent the depreciation is recovered as part of COGS in computing taxable income for the year.

The Notice further provides that AFSI is adjusted to disregard:

- Covered Book COGS Depreciation, which is defined as depreciation expense, impairment loss, or impairment loss reversal taken into account as COGS in net income (loss) on the taxpayer's AFS with respect to Section 168 Property,
- Covered Book Depreciation Expense, which is defined as depreciation expense, impairment loss, or impairment loss reversal other than Covered Book COGS Depreciation taken into account in net income (loss) on the taxpayer's AFS with respect to Section 168 Property, and
- Covered Book Expense, which is defined as an amount other than Covered Book COGS Depreciation or Covered Book Depreciation Expense (a) recognized as an expense or loss in net income (loss) on the taxpayer's AFS, and (b) reflected in the unadjusted depreciable basis of Section 168 Property.

The Notice provides that section 56A(c)(13) applies to Section 168 Property placed in service in any taxable year, including taxable years beginning before January 1, 2023. Thus, under the Notice, in the case of a disposition of Section 168 Property, a taxpayer must adjust its AFSI to redetermine gain (loss) taken into account in net income (loss) on the taxpayer's AFS by adjusting the AFS basis of the disposed property to account for all current and prior section 56A(c)(13) adjustments, including those that would have been made in taxable years prior to the CAMT effective date if the CAMT had applied in those years. For example, if a taxpayer that placed an asset with a cost basis of $1,000 in service in 2018 and claimed 100% bonus depreciation for tax purposes and depreciated the asset straight-line over 20 years in its AFS, and sold that asset on January 1, 2024, for $900, AFSI for 2024 would be increased by $700 for the gain adjustment ($900 tax gain less $200 AFS gain ($900 sales proceeds - $700 financial accounting basis [$1,000 cost basis - $300 accumulated depreciation based on $50 depreciation expense per year for six years]).

Section 5: Safe Harbor for Method for Determining Applicable Corporation Status

Section 5 of the Notice provides a safe harbor method for determining a taxpayer's applicable corporation status for the first taxable year beginning after December 31, 2022. The CAMT applies only to applicable corporations.

CAMT background: An applicable corporation is, with respect to any taxable year, any corporation other than an S corporation, a regulated investment company, or a REIT, that meets one of the average annual AFSI tests under section 59(k)(1)(B) for one or more taxable years that are (i) prior to that taxable year and (ii) end after December 31, 2021. A taxpayer generally meets the general AFSI test if its average annual AFSI for the three-taxable-year period ending with that taxable year exceeds $1,000,000,000. A taxpayer generally meets the foreign-parented multinational group AFSI test if it meets the general AFSI test after applying the special foreign-parented multinational group rule in section 59(k)(2) and its average annual AFSI for the three-taxable-year period ending with that taxable year is at least $100,000,000.

For purposes of determining whether a corporation is an applicable corporation, section 59(k)(1)(D) requires all AFSI of persons treated as a single employer under section 52(a) or (b) is treated as AFSI of that corporation. Section 59(k)(2)(A) provides that for purposes of determining whether a corporation that is a member of a foreign-parented multinational group meets the general AFSI test, the corporation's AFSI must include the AFSI of all members of the group and the AFSI is determined without regard to certain adjustments under section 56A.

The Notice provides a simplified method for determining whether a corporation is an applicable corporation for its first taxable year beginning after December 31, 2022, in lieu of the rules under section 59(k)(1) and (2). Generally, under the simplified method:

- The general AFSI test is applied by substituting $500,000,000 for $1,000,000,000.
- The additional foreign-parented multinational AFSI test is applied by substituting $50,000,000 for $100,000,000.
- For purposes of this safe harbor method, AFSI is determined
  - Without regard to certain adjustments under section 56A(c) and (d) (*see* Notice for special rules and exceptions to this rule) and
  - After taking into account AFS Consolidation Entries, except those that eliminate transactions between persons not treated as a single employer under section 52(a) or (b).
  - The term AFS Consolidation Entries is defined as the financial accounting journal entries that are made for AFS purposes in order to present the financial results of an AFS Group as though all members of the AFS

Group were a single company, including journal entries to eliminate transactions between members of such group.
  - As referenced in the Notice (section 2), section 56A(c)(2)(A) provides that, if the financial results of a taxpayer are reported on the AFS for a group of entities (AFS Group), rules similar to the rules of section 451(b)(5) apply. *See* section 451(b)(5) and Treas. Reg. § 1.451-3(h)(1) through (3) including source document rules.
  - For purposes of the Notice, the term AFS Group also includes a single entity with an AFS that does not consolidate the financial results of such entity with the financial results of any other entity.
- A corporation whose AFS covers a period (AFS year) that differs from its taxable year determines its average annual AFSI by using the three-AFS-year period ending during such taxable year.

Section 6: AFSI Adjustments with respect to Certain Credits

Section 56A(c)(9) provides that AFSI shall be appropriately adjusted to disregard any amount treated as a payment against the tax pursuant to an election under section 48D(d) or 6417, to the extent such amount was not otherwise taken into account under section 56A(c)(5). Section 56A(c)(5) provides that AFSI shall be appropriately adjusted to disregard certain taxes. The Notice expands the scope of the statutory AFSI adjustment to disregard any amount received from the transfer of an eligible credit, as defined under section 6418(f)(1), that is excluded from gross income under section 6418(b) or treated as tax-exempt income under section 6418(c) (applicable to amounts received by partnerships and S corporations), to the extent such amount is not otherwise taken into account under section 56A(c)(5). The Notice further provides that the AFSI adjustments are made to include any amount treated as a payment against tax and any amount received by partnerships and S corporations treated as tax-exempt income pursuant to section 48D(d) or 6417(c).

While the Notice clarifies the scope of the AFSI adjustments with respect to certain credits, there are still a number of unanswered questions such as the treatment for an amount received pursuant to one of the monetization elections that is subsequently recaptured or whether the section 56A(c)(9) adjustment only applies to certain credits for which an election is made pursuant to sections 48D(d), 6417 and 6418.

Section 7: Application of Distributive Share Adjustment Rule for Purposes of Determining Applicable Corporation Status

Section 7 of the Notice acknowledges that there is uncertainty among taxpayers as to whether the adjustment to AFSI in section 56A(c)(2)(D)(i) (providing that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, AFSI of the taxpayer with respect to that partnership is adjusted to only take into account the taxpayer's distributive share of AFSI of the partnership (the "Distributive Share Adjustment Rule")) applies for purposes of determining whether a corporation, that is a partner in a partnership (whether directly or indirectly), is an applicable corporation if that corporation and that partnership are not treated as a single employer under section 52(a) or (b).

The Notice clarifies that the Distributive Share Adjustment Rule is inapplicable in all circumstances in determining applicable corporation status (i.e., regardless of whether a corporate partner and a partnership are treated as a single employer under section 52(b)). The Notice requests comments on what, if any, additional guidance is needed regarding the scope of the exception in section 59(k)(1)(D) to the Distributive Share Adjustment Rule which applies for purposes of determining applicable corporation status. In addition, the Notice requests comments on potential situations in which AFSI may be duplicated or omitted as a result of the application of section 52(a) and (b) under section 59(k)(1)(D) and additional guidance that may be needed for making the applicable corporation determination in these circumstances.

ASC 740 Considerations

The issuance of the Notice represents new information which should be considered in the reporting period that the Notice was issued. Generally, the tax effects of the CAMT (i.e., increase in tax payable and related credit) would only be reflected in an entity's financial statements after the law is actually effective (i.e., beginning in an entity's first reporting period and tax year that begins after December 31, 2022). There are, however, limited circumstances in which the CAMT can interact with an entity's valuation allowance assessment, *see* Tax Alert dated August 16, 2022 (Last updated November 8, 2022), *Emerging ASC 740 Issues – Recent Tax Legislation* for a more detailed discussion. In these situations, entities should consider the impact of the Notice, if any, on their valuation allowance assessment in their reporting period which includes December 27, 2022. Also included in the Tax Alert is a detailed discussion related to the accounting for eligible credits subject to direct pay and transferable elections.