



Notice 2024-10 provides additional corporate AMT guidance

Tax Alert

Overview

The Inflation Reduction Act of 2022 ([P.L. 117-169](#)) included a 15-percent corporate alternative minimum tax (CAMT) on "adjusted financial statement income" (AFSI) of Applicable Corporations.¹ The CAMT is effective for taxable years beginning after December 31, 2022.

Treasury and the IRS released interim CAMT guidance in four previous notices, [Notice 2023-7](#), [Notice 2023-20](#), [Notice 2023-42](#), and [Notice 2023-64](#) (collectively, the "CAMT Notices"). For background on the CAMT Notices, review our prior Tax Alerts dated [December 30, 2022](#), [February 20, 2023](#), [June 8, 2023](#), and [September 19, 2023](#), respectively.

On December 15, 2023, Treasury and the IRS released [Notice 2024-10](#), (the "Notice") which provides additional interim guidance to further clarify the application of the CAMT and is discussed in further detail below. Generally, the Notice provides:

- Additional interim guidance for determining the AFSI of a US Shareholder when a controlled foreign corporation (CFC) pays a dividend (within the meaning of section 316 but without taking into account section 959(d)) to the US Shareholder or another CFC ("Covered CFC Distribution").
- Modifications and clarifications to prior guidance provided in Notice 2023-64 regarding the applicable financial statement (AFS) of members of a tax consolidated group.

Applicability Dates and Reliance

Taxpayers may rely on the interim guidance described in section 3 of the Notice (discussed in more detail below) for Covered CFC Distributions received on or before the date forthcoming proposed regulations are published in the Federal Register or received before January 1, 2024.

Taxpayers may rely on the interim guidance described in sections 4.02(5)(b) and 6.02 of Notice 2023-64, as modified by section 4 of Notice 2024-10, and section 4.04 of Notice 2024-10 (discussed in more detail below) for taxable years ending before the date forthcoming proposed regulations are published in the Federal Register. A taxpayer may rely on the modified text of sections 4.02(5)(b) and 6.02 of Notice 2023-64 and section 4.04 of Notice 2024-10 for any taxable year beginning before January 1, 2024. A taxpayer may not rely on

Section 3: Covered CFC Distributions Received from CFCs

The Notice provides interim guidance regarding certain distributions received from CFCs. Specifically, the Notice provides guidance regarding Covered CFC Distributions, which is defined as a distribution received with respect to stock of a CFC to the extent it is a dividend (within the meaning of section 316), determined without taking into account section 959(d).²

Importantly, the Notice does not provide guidance regarding the treatment of distributions received from a CFC that are not Covered CFC Distributions, dividends from foreign corporations that are not CFCs, dispositions of stock of a CFC (including treatment of dividends under section 1248), or any other amounts that may relate to ownership of stock of a CFC.

Observation: It appears that the Notice would not apply to certain dispositions of stock that give rise to deemed dividends (*e.g.*, section 1248 amounts or “boot” dividends under section 356).

Treatment of Covered CFC Distributions Received by a US Shareholder of the Distributing CFC

The Notice provides that in determining the amount included in AFSI under section 56(c)(2)(C)³ of a US Shareholder of a CFC resulting from a Covered CFC Distribution received with respect to stock of the CFC, AFSI of the US Shareholder is determined by (i) disregarding any items reported on the US Shareholder’s AFS resulting from the receipt of a Covered CFC Distribution and (ii) including the US Shareholder’s items of income and deduction under chapter 1 (for this purpose, taking into account section 959(d) and excluding sections 56A and 78) resulting from the receipt of the Covered CFC Distribution.

Observation: It appears that this rule would allow the US Shareholder to take into account the impact of the section 245A dividends received deduction for purposes of computing AFSI. Further, the Notice would also appear to exclude from AFSI amounts distributed that are attributable to PTEP. Finally, the Notice would appear to apply to distributions regardless of when the distributed earnings and profit (E&P) was earned, including E&P earned before CAMT became effective.

Treatment of Covered CFC Distributions Received by a CFC from Another CFC

The Notice provides that in determining the Adjusted Net Income or Loss of a CFC⁴ for purposes of section 56A(c)(3)⁵ resulting from a Covered CFC Distribution received with respect to stock of another CFC, Adjusted Net Income or Loss of a recipient CFC is determined by (i) disregarding any items reported on the recipient CFC’s AFS resulting from the receipt of the Covered CFC Distribution and (ii) including the recipient CFC’s items of income under chapter 1 (excluding section 56A) resulting from the receipt of the Covered CFC Distribution, determined without regard to any exclusion under chapter 1 (for example, section 954(b)(4)) (*i.e.*, the “high-tax” exception),⁶ reduced to the extent the Covered CFC Distribution is excluded from:

- a. the recipient CFC’s foreign personal holding company income under section 954(c)(3) (relating to certain income received from related persons) (*i.e.*, the “same country” exception) or section 954(c)(6) (relating to certain

- amounts received from related persons) (*i.e.*, the related-party “look-through” exception); **and** the recipient CFC’s gross tested income under Treas. Reg. § 1.951A-2(c)(1)(iv) (relating to dividends received from related persons); **or**
- b. the recipient CFC’s gross income under section 959(b) (*i.e.*, a distribution of PTEP from a lower-tier CFC to the upper-tier CFC).

Observation: Generally, it appears that if Covered CFC Distributions would not be included for purposes of determining foreign personal holding company income or global intangible low-taxed income, then Covered CFC Distributions are not included in the Adjusted Net Income or Loss of a CFC recipient.

Section 4: Modifications and Clarifications to AFS Guidance in Sections 4 and 6 of Notice 2023-64

Notice 2023-64 proposes if the Consolidated AFS of the Tax Consolidated Group comprises solely the members of the Tax Consolidated Group and any disregarded entities owned by such members, the FSI of the Tax Consolidated Group for the taxable year equals the Consolidated FSI set forth in the Consolidated AFS of the Tax Consolidated Group (*i.e.*, the FSI of all Tax consolidated AFS Members) for the taxable year.⁷

Section 4 of the Notice modifies Notice 2023-64 to clarify what constitutes an AFS for a Tax Consolidated Group. Section 4.02(5)(b)(i) of Notice 2023-64 proposes that a corporation that is a member of a Tax Consolidated Group must use the Consolidated AFS that contains the financial results of the Tax Consolidated Group, regardless of whether the corporation’s financial results are also reported on a separate AFS that is of equal or higher priority to the Consolidated AFS. The Notice proposes additional clarification with respect to use of a Consolidated AFS in four instances (none of which applies to a taxpayer that is a member of a Foreign Parented Multinational Group (FPMG)⁸ for which the FPMG Common Parent prepares a Consolidated AFS that includes the taxpayer), notwithstanding a separate AFS or a different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members.

First, if the Tax Consolidated AFS Member has only one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member’s financial results are also reported on a Separate AFS or a different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members.

Second, if the Tax Consolidated AFS Member has more than one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS with the highest priority that contains the financial results of all Tax Consolidated AFS Members, regardless of whether the Tax Consolidated AFS Member’s financial results are also reported on a Separate AFS or a different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members.

Third, if the Tax Consolidated AFS Member has only one Consolidated AFS (that is not a Separate AFS or a different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members), which contains the Tax Consolidated AFS Member’s results but does not contain results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member’s financial results also are reported on a Separate AFS.

Finally, if the Tax Consolidated AFS Member has more than one Consolidated AFS that contains its results but does not contain results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS that contains its financial results and the financial results of the greatest number of Tax Consolidated AFS Members (if there is more than one such Consolidated AFS, the Tax Consolidated AFS Member must use the Consolidated AFS from among them with the highest priority). This provision requires that the Tax Consolidated AFS Member's financial results not be reported on a Separate AFS or a different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members.

The Notice also clarifies that certain members in a Tax Consolidated Group may be required to "combine" the financial results of other members of the Tax Consolidated Group to form a single consolidated AFS. If the AFS of each Tax Consolidated AFS Member is not the same Consolidated AFS, then for purposes of determining FSI and AFSI, the Tax Consolidated Group must combine the financial results reflected on the different AFSs of the Tax Consolidated AFS Members to form one Consolidated AFS that is treated as the AFS of the Tax Consolidated Group. For purposes of the preceding sentence, the financial results of each Tax Consolidated AFS Member may not be included in the Tax Consolidated Group AFS more than once, and the Tax Consolidated Group must make any AFS Consolidation Entries described in section 5 of Notice 2023-64 not otherwise reflected in the AFS of any member that would have been made if such a Tax Consolidated Group AFS had otherwise been prepared.

Observation: A taxpayer may not rely on the unmodified text in the prior interim guidance provided in section 4.02(5)(b)(i) or section 6.02 of Notice 2023-64 for any tax returns filed on or after December 15, 2023. The clarification made in Notice 2024-10 will assist taxpayers in ascertaining which AFS should be utilized for determining applicable corporation status, or calculating AFSI or FSI. While these provisions are not binding, the government has indicated within the notices that it intends to issue proposed regulations consistent with this interim guidance.

Accounting Considerations

For financial reporting purposes, the Notice represents new information that generally should be considered in the reporting period that includes the issuance date (*i.e.*, December 15, 2023). In determining the financial statement implications, an entity should consider, in the reporting period the Notice was issued, whether or not it intends to follow the proposed rules described in the Notice. If an entity intends to follow the proposed rules described in the Notice, and is permitted to rely on the Notice, it should account for the impact of the notice in the interim and annual financial statements that include December 15, 2023.



Footnotes

¹ An "Applicable Corporation" is any corporation (other than an S corporation, regulated investment company, or a real estate investment trust) that meets the \$1 billion average annual AFSI test for one or more taxable years that (i) are before that taxable year, and (ii) end after December 31, 2021.

² Section 959(d) provides that any distribution that is excluded from gross income under section 959(a) is treated for US federal income tax purposes as a distribution which is not a dividend. Section 959(a) provides that the E&P of a foreign corporation attributable to amounts which are, or have been, included in the gross income of a US Shareholder under section 951(a) (*i.e.*, PTEP) will not again be included in gross income of the

US Shareholder when distributed to the US Shareholder directly or indirectly through a chain of ownership described under section 958(a).

³ Section 56A(c)(2)(C) provides, “[i]n the case of any corporation which is not included on a consolidated return with the taxpayer, AFSI of the taxpayer with respect to such other corporation shall be determined by only taking into account the dividends received from such other corporation (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts which are includible in gross income or deductible as a loss under chapter 1 (other than amounts required to be included under sections 951 and 951A or such other amounts as provided by the Secretary) with respect to such other corporation.”

⁴ The term “Adjusted Net Income or Loss of a CFC” is the net income or loss of a CFC set forth on its AFS (as adjusted under rules similar to those that apply in determining AFSI).

⁵ Generally, section 56A(c)(3) provides that the AFSI of a taxpayer that is a US Shareholder with respect to a CFC, shall take into account such taxpayer’s pro rata share (determined under rules similar to the rules under 951(a)(2)) of items taken into account in computing the net income or loss set forth on the AFS of each such CFC with respect to which such taxpayer is a US Shareholder.

⁶ Generally, section 954(b)(4) provides that a US Shareholder of a CFC may exclude from income any particular item that would otherwise be foreign base company income if it can demonstrate that the foreign country’s effective rate of income tax imposed on that item is greater than 90 percent of the maximum rate of tax prescribed in section 11.

⁷ See section 2.03(1) of Notice 2023-64 and cross-reference to Treas. Reg. § 1.1502-1(b) definition of members of the Tax Consolidated Group.

⁸ FPMG, with respect to a taxable year, is defined as two or more entities if (i) at least one entity is a domestic corporation and another entity is a foreign corporation, (ii) the entities are included in the same AFS for the year, and (iii) either the common parent of the entities is a foreign corporation or, if there is no common parent, the entities are treated as having a common parent that is a foreign corporation under rules provided by the Secretary under the authority granted by section 59(k)(2)(D) (the common parent or the entity treated as the common parent, the FPMG Common Parent).

[Deloitte.com](#) | [Unsubscribe](#) | [Manage email preferences](#) | [Legal](#) | [Privacy](#)

30 Rockefeller Plaza
New York, NY 10112-0015
United States

As used in this document, “Deloitte” means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see <http://www.deloitte.com/us/about> for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.

This alert contains general information only and Deloitte is not, by means of this alert, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This alert is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this alert.

The services described herein are illustrative in nature and are intended to demonstrate our experience and capabilities in these areas; however, due to independence restrictions that may apply to audit clients (including affiliates) of Deloitte & Touche LLP, we may be unable to provide certain services based on individual facts and circumstances.

Copyright © 2023 Deloitte Development LLC. All rights reserved.