ACT Alliance for Competitive Taxation

January 16, 2025

The Honorable Margie Rollinson
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20220

Re: Corporate Alternative Minimum Tax Applicable After 2022 [REG–112129–23]

Dear Margie:

The [Alliance for Competitive Taxation](#) ("ACT") is a coalition of leading American companies from a wide range of industries that supports a globally competitive U.S. corporate tax system.

This submission responds to the request for comments on the proposed corporate alternative minimum tax ("CAMT") regulations (REG-11129-23).

We appreciate your consideration of these comments. ACT representatives would be pleased to discuss the issues addressed in this submission with the staffs of the Treasury and IRS. Please contact Pat Brown (pat.brown@pwc.com or 203-550-5783) if you have any questions regarding this submission."

Yours sincerely,

Alliance for Competitive Taxation

cc: Aviva Aron-Dine, Acting Assistant Secretary for Tax Policy, U.S. Department of the Treasury
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Alliance For Competitive Taxation Comments on
Proposed Corporate Alternative Minimum Tax Regulations (REG-11129-23)

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II. Specific Comments

A. Adjustments to AFSI

i. Tax Capitalization Method Change AFSI Adjustment

Issue: A taxpayer's tax capitalization method change AFSI adjustment (the "Adjustment"), as defined in proposed Treas. Reg. §1.56A-15(b)(11), is limited to include only amounts with respect to taxable years beginning after December 31, 2019, and before the tax year of change.

Recommendation(s): Taxpayers should be required to apply the Adjustment in a manner similar to the section 481(a) adjustment to which it relates. Specifically, the Adjustment should not be limited to only amounts with respect to taxable years beginning after December 31, 2019, but rather also include the impact of the tax capitalization method change (the "Method Change"), as defined in proposed Treas. Reg. §1.56A-15(b)(10), prior to that date.

Rationale: Section XV.B. of the preamble to the proposed Treasury regulations notes the cutoff date was provided "because generally AFSI adjustments are not made for earlier periods." However, limiting the Adjustment in this way precludes taxpayers from taking into account the full impact of their Method Changes, especially because the information is readily available as part of the section 481(a) adjustment that was computed for the change in method of accounting. Specifically, taxpayers with significant fixed asset footprints who routinely assess their fixed assets ledgers to account for various business activities (e.g., merger and acquisition activities and enterprise resource planning ("ERP") system changes) or more generally to comply with tax law changes, would be adversely impacted by such a rule. The recommendation would further increase the parity between the regular tax and CAMT regimes.

ii. Transition Rules

Issue: Section XXXIII.A. of the preamble to the proposed Treasury regulations outlines three transition approaches being considered to address AFSI and CAMT attribute adjustments necessary to implement the rules in the final Treasury regulations if a taxpayer accounted for and reported the AFSI adjustment or CAMT attribute in a manner inconsistent with the final Treasury regulations in prior taxable years. In some instances, the outlined approaches would require taxpayers to retroactively adopt the final Treasury regulations before they are applicable.

Recommendation(s): Taxpayers should not be required to make a transition year adjustment under one specified methodology, but rather be provided flexibility in adopting the final regulations. Specifically, in the first taxable year in which a taxpayer is an applicable corporation and the final regulations are applicable, the taxpayer should generally be required to apply the final regulations prospectively, unless it elects to adopt such regulations on a retroactive basis. All members of the taxpayer's affiliated group as determined under section 59(k)(1)(D) or, if applicable, the members of the foreign-parented group as defined in section 59(k)(2), should be consistent in their application of the final regulations.

Rationale: Generally, when Treasury and the IRS finalize Treasury regulations, taxpayers may rely upon the statute, notices, proposed Treasury regulations or final Treasury regulations until the applicability date outlined in the final Treasury regulations. Specifically, taxpayers usually may elect to early adopt the final Treasury regulations but are not mandated to retroactively adopt those final Treasury regulations for earlier periods. As such, the final Treasury regulations should provide taxpayers with similar options as it relates to CAMT. Specifically, if a taxpayer does not elect to retroactively adopt the final Treasury regulations, it should have the option to utilize a transition approach similar to those outlined in sections XXXIII.A.2 (i.e., the cut-off basis transition approach) and XXXIII.A.3. (i.e., the fresh start transition approach) of the preamble of the proposed Treasury regulations in the first taxable year in which it is an applicable corporation and the final Treasury regulations are applicable. If, however, a taxpayer elects to retroactively adopt the final Treasury regulations in the first taxable year in which it is an applicable corporation and the final Treasury regulations are applicable, then it should be permitted to either apply an approach similar to the one described in section XXXIII.A.1. (i.e., the transition year adjustment approach) of the preamble of the proposed Treasury regulations or amend all prior tax years ending after December 31, 2022. Providing optionality for taxpayers to transition to the final regulations will minimize compliance burdens that taxpayers may have if otherwise required to apply one mandated transition rule.

iii. CAMT Basis Adjustments

Issue: The requirement to adjust the CAMT basis of an item for taxable years ending after December 31, 2019, effectively makes the regulations retroactive and places a significant administrative burden on taxpayers.

Recommendation(s): Taxpayers should only be required to compute the CAMT basis of an item as of the first day of the first taxable year in which they are an applicable corporation, i.e., January 1, 2023, or later, as applicable. Alternatively, if the rule in the proposed regulations is maintained, then we request that our recommendation be permitted on an elective basis.

Rationale: While it is anticipated that taxpayers will need to track the prescribed CAMT attributes prospectively, the requirement to determine the CAMT basis of items for years in which CAMT was not in effect or in which taxpayers were not applicable corporations will create an undue burden on such taxpayers. Of note, taxpayers who independently determined their applicable corporation status were not required to compute their AFSI for the three preceding tax years on Part I of the Form 4626 for the 2023 tax year. The recommendation will relieve taxpayers of numerous retroactive CAMT basis computations, e.g., in covered nonrecognition transactions, in partnership contexts, and in gain or loss contexts.

iv. Repairs AFSI Depreciation Adjustment

Issue: Proposed Treas. Reg. §1.56A-15(c)(3) provides that "an expenditure to repair property to which section 168 applies that is deducted for regular tax purposes but capitalized and depreciated as an improvement for FSI purposes is not property to which section 168 applies." As such, taxpayers must exclude these costs from the computation of their AFSI depreciation adjustments. Pursuant to section XV.A.2. of the preamble to the proposed regulations, Treasury and the IRS requested further comments on whether "the AFSI adjustments with respect to section 168 property should take into account or otherwise reflect the repair expenditures with respect to section 168 property that are deducted for regular tax purposes but capitalized and depreciated for AFS purposes."

Recommendation(s): Taxpayers should be permitted to determine their AFSI depreciation adjustments by including in the adjustments the amount of tax-deductible repairs expenditures with respect to section 168 property incurred during the tax year if those costs are capitalized and depreciated for FSI purposes.

Rationale: As previously noted in the ACT Comment Letter on Notice 2023-7, unless a simplified rule is provided, it will be necessary for taxpayers to determine the amount of depreciation expense in their AFS that is attributable to tax-deductible repairs expenditures incurred with respect to section 168 property in order to compute their AFSI depreciation adjustments. A revised rule should allow taxpayers to include the tax-deductible repairs expenditures in the computation of deductible tax depreciation, as defined by proposed Treas. Reg. §1.56A-15(b)(5) and in the adjustment to covered book depreciation expense, as defined by Treas. Reg. §1.56A-15(b)(3) and provided for in Treas. Reg. §1.56A-15(d)(1)(iii), in the tax year those costs are incurred if the repair relates to property that otherwise would meet the definition of section 168 property. Under the recommended approach, there would not be any omission of basis recovery, because the amount of repairs expenditures deducted in the tax year would reduce AFSI and would increase the depreciation allowance on the property that is recognized for AFS purposes. As Section XV.A.2. of the preamble to the proposed Treasury regulations notes, this recommendation would both reduce the compliance burden on taxpayers and the disparity between repairs expenditures expensed for AFS purposes compared to deductible repairs expenditures for regular tax purposes for certain capital-intensive industries. In addition, this recommended approach drives an appropriate economic result that does not penalize taxpayers for making necessary repairs to conduct their businesses in a safe and efficient manner.

v. Bonus-Eligible Section 168 Property Placed into Service Prior to CAMT

Issue: As provided by section 56A(c)(13), AFSI shall be reduced by depreciation deductions allowed under section 167 with respect to property to which section 168 applies and adjusted to disregard depreciation expense taken into account on a taxpayer's AFS with respect to such property. Proposed Treas. Reg. §1.56A-15(e)(2)(ii), in alignment with section 9.02 of Notice 2023-64, provides these adjustments include amounts attributable to all taxable years beginning before January 1, 2023, but does not provide any relief for assets fully depreciated or subject to full expensing under section 168(k) before that date. As such, upon disposition of these assets, taxpayers are adversely affected.

Recommendations(s): The final Treasury regulations should provide transition relief to taxpayers by only requiring the adjustments provided under section 56A(c)(13) and the Regulations thereunder to be applied on a prospective basis (i.e., only to section 168 property placed in service on or after January 1, 2023, the effective date of CAMT).

Rationale: The enactment of the TCJA in September 2017 incentivized taxpayers involved in capital-intensive industries to increase their investment in the U.S. economy and infrastructure by providing full expensing of qualified capital expenditures under section 168(k). In most cases, however, the cost basis of such property fully expensed pursuant to section 168(k) continued to be depreciated for AFS purposes. While the difference between book and tax depreciation is a matter of timing, upon disposition in the CAMT regime, as currently written, taxpayers must make the adjustments provided under section 56(c)(13) cumulatively, starting from the date the property was placed in service (i.e., even if it was prior to January 1, 2023). As such, the lack of a transition rule generates a permanent difference for taxpayers (as illustrated in Proposed Treas. Reg. §1.56A-15(e)(8)(i)), and retroactively penalizes capital-intensive companies that invested in the U.S. economy as Congress intended. The final Treasury regulations should provide that adjustments under section 56A(c)(13) and the Regulations thereunder apply only to section 168 property placed into service on or after January 1, 2023 (i.e., the effective date of CAMT). This will prevent taxpayers, who were incentivized to invest in specific capital expenditures, from being required to recapture more than 100% of book depreciation.

vi. Hedging Transactions

a. Examples

Issue: The proposed regulations require adjustments to FSI to arrive at AFSI for certain hedging transactions in which there is a "mismatch" between the timing of inclusion of the hedge or hedged item between FSI and regular tax. Examples within the proposed regulations are intended to illustrate these adjustments but may not properly illustrate application of the proposed rules as drafted.

Recommendation: Treasury and the IRS should update certain examples, as outlined below, to fully reflect the intended application of the proposed hedging regulation. Specifically:

- *Example 2 (futures contract hedging purchased debt):* This example states that the futures contract is an AFSI hedge of the purchased debt. Because the example does not state (and the FSI described does not reflect) the purchased debt representing a hedge under applicable financial accounting guidance, the example implies that the futures contract is an AFSI hedge because it is a tax "hedge" under section 1221 (but for the character of gain or loss not being determined under section 1221). We agree with the result of the example (no adjustment to FSI), but suggest the example may benefit from clarifying that there is no adjustment to FSI either because the transaction is not an AFSI hedge or because there is no mismatch between the hedge and hedged item.

- *Example 4 (net investment hedge mark to market):* Example 4 demonstrates a situation in which the total amount of mark to market loss ($10) is different from the amount of such loss included in OCI ($8). The example concludes that the adjustment to FSI under the hedging rules should be $10 (the mark to market loss considered for regular tax purposes), not the $8 unrealized loss included in OCI. The concern is that the difference ($2) may correspond to the items already included in FSI, such as "forward points" (the portion of a futures or forward contract representing the cost of carry and often treated as interest for financial statement purposes) or from the "ineffective" portion of the hedge which is left in FSI because it is not eligible to be presented in OCI. ACT recommends adjusting FSI by the amount of the hedging mark to market loss by the amount included in OCI ($8) to avoid duplication or omission of amounts already included in FSI.

Rationale: ACT applauds Treasury and the IRS for incorporating an adjustment to FSI for hedging transactions to avoid non-economic results that would occur otherwise. The recommended updates to the examples are intended to ensure that the examples reflect the regulations proposed.

b. Taxable Years for which AFSI Fair Value Measurement Adjustments Required

Issue: The fair value measurement adjustment for hedges or hedged items with FSI "mismatches" requires the taxpayer to make such adjustments for all taxable years prior to the taxable year in which the AFSI hedge or hedged item matures or is sold, disposed of, or otherwise terminated, including taxable years that end on or before December 31, 2019.

Recommendation: With respect to the fair value measurement adjustments for transactions that are part of an AFSI hedging transaction with a financial statement mismatch taxpayers should be permitted to elect to make the adjustments prospectively only.

Rationale: Identifying fair value measurement adjustments may create administrative burden for certain taxpayers. Requiring fair value measurement adjustments for years prior to the application of the AFSI hedging rules is not necessary to avoid duplication or omission of items of income in AFSI or in CAMT basis. The subsequent adjustment provisions in Prop. Treas. Reg. §1.56A-24(e)(1) prevent duplication or omission by making the adjustments in the year of termination or subsequent adjustment dates based on AFSI adjustment previously made by the taxpayer. Where no adjustment was made for a pre-effective date fair value adjustment, no subsequent adjustment is required, and no basis or income/loss is duplicated.

B. International Rules

i. CAMT FTC Determination

Issue: In addition to the regular tax accrual standard for a foreign income tax, the CAMT FTC makes only one reference to the rules governing the regular tax foreign tax credit: to be creditable under the CAMT FTC regime, a tax must be an income, war profits or excess profits tax "within the meaning of section 901." However, the proposed regulations would additionally apply certain limitations on the creditability of FTCs from the regular tax rules to CAMT FTCs.

Recommendation: While ACT fully supports not importing the section 904 limitations that apply to the regular tax FTC to the CAMT FTC, ACT recommends changing the definition of "eligible taxes" set forth in the Proposed CAMT Regulations as the proposed adoption of the regular tax FTC disallowance and suspension rules to the CAMT FTC appears contrary to the statutory framework and, in certain cases, may inappropriately increase a taxpayer's CAMT liability.

Rationale: To alleviate double taxation on the applicable corporation's AFSI, including its pro rata share of CFC AFSI and distributive share of partnership AFSI), the applicable corporation may credit foreign income taxes. More specifically, section 55(b)(2)(A) provides that the tentative minimum tax of an applicable corporation is the excess of 15 percent of AFSI over the CAMT FTC for the taxable year. Section 59(l) further provides that if an applicable corporation chooses to have the benefits of the foreign tax credit (rather than deduct foreign taxes) for regular tax purposes, it may also claim a CAMT FTC.

The CAMT FTC of an applicable corporation for a taxable year is the sum of two amounts. The first amount ("Indirect CFC Taxes") is equal to the lesser of: (i) the aggregate of the applicable corporation's pro rata share (as determined under section 56A(c)(3)) of the amount of foreign income taxes that are (1) taken into account on the AFS of each CFC with respect to which the applicable corporation is a U.S. shareholder, and (2) paid or accrued for federal income tax purposes by each such CFC, or (ii) 15 percent of the applicable corporation's CFC AFSI adjustment under section 56A(c)(3)(A) ("CFC FTC Limitation"). The second amount includes the amount of foreign income taxes incurred by the applicable corporation itself ("Direct Foreign Taxes"). The CAMT statutory framework further provides that foreign taxes may be included in the CAMT FTC only if they are foreign income taxes "within the meaning of section 901," as opposed to applying the financial accounting rules and standards for foreign taxes.

Additionally, the foreign taxes included in the CAMT FTC must be: (1) taken into account on the applicable financial statement" of the applicable corporation or CFC (as applicable), and (2) "paid or accrued (for Federal income tax purposes)" by the applicable corporation or CFC. Lastly, section 59(l)(3) directs Treasury to provide for "such regulations or other guidance as is necessary to carry out the purposes" of the CAMT FTC.

Under Prop. Treas. Reg. §1.59-4, a CAMT FTC would be available only with respect to an "eligible tax." Under Prop. Treas. Reg. §1.59-4(b)(1), an "eligible tax" includes a foreign income tax other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under sections 245A(d) and (e)(3), 901(e) and (f), 901(i) through (m), 907, 908, 909, 965(g), 999, and 6038(c) of the Code.

The Preamble provides that the Treasury Department and the IRS are of the view that the policies underlying these disallowances and suspensions for regular tax purposes apply equally in the context of the CAMT FTC. For instance, the Treasury Department and the IRS are of the view that CAMT FTCs should not be available with respect to taxes paid or accrued to specified foreign countries under section 901(j) based on the same foreign policy grounds that justify the disallowance for regular tax purposes. Accordingly, the Treasury Department and the IRS exercised the authority provided under section 59(l)(3) to incorporate the specified disallowances and suspensions into CAMT to carry out the purposes of section 59(l). The Preamble further provides that incorporating the same amount of disallowances or suspensions for regular tax purposes, instead of creating a separate, parallel set of CAMT FTC rules, is intended to reduce taxpayers' compliance burden and the IRS's administrative burden.

The regular tax FTC rules include many restrictions and limitations set forth in section 901 and other areas of the Code such as section 904. ACT believes that the requirement in section 59(l) that a foreign tax must be a foreign income tax "within the meaning of section 901" should be applied narrowly to the definition of foreign income tax without the application of the restrictions and limitations for regular tax purposes on the credibility of those taxes for CAMT purposes. This would be consistent with the plain text of the statute and the approach taken by Congress not to import the section 904 limitations that apply to the regular tax FTC to the CAMT FTC as many of the disallowance or suspension rules in the proposed definition of eligible taxes set forth in Prop. Treas. Reg. §1.59-4 are intended to restrict the cross-crediting of foreign taxes against U.S. source income in a different category than the taxes, or otherwise unrelated income, which does not appear to be a policy underlying the CAMT FTC. Stated differently, unlike the regular tax base, the CAMT base looks to AFSI of the applicable corporation and its foreign subsidiaries and the CAMT does not provide for an exemption for any amount of net foreign book income. Accordingly, the CAMT FTC should apply more broadly than the regular tax FTC because the CAMT was enacted to ensure a minimum level of tax on AFSI of applicable corporations, without regard to whether that tax is a domestic or foreign tax.

For example, policy strongly favors not excluding foreign taxes that are disallowed under section 901(m) from the CAMT FTC, particularly when a section 338(g) election cannot be made. Section 901(m) generally disallows foreign tax credits to the extent they are attributable to the portion of the foreign income tax base that is offset for U.S. tax purposes by increased amortization or depreciation deductions from a "covered asset acquisition." The tax base under CAMT, however, is AFSI and AFSI is based on financial statement income which is calculated without adjustment for section 197 amortization deductions that are often the primary regular tax benefit of a basis step-up resulting from a covered asset acquisition. Accordingly, as section 197 amortization does not reduce AFSI, there appears to be no policy rationale for excluding from the CAMT FTC foreign taxes that are disallowed under section 901(m) since those foreign taxes are generally associated with income tax that is taxed under the CAMT. Similarly, the policy rationale for disallowing a regular tax FTC under section 245A(d) for withholding taxes on dividends from CFCs does not apply in the CAMT context. This is because the regular tax base never includes foreign earnings eligible for a section 245A dividends-received deduction. In contrast, the CAMT system includes these distributed CFCs earnings in AFSI.

Furthermore, while the Preamble provides that the incorporation of the same amount of disallowances or suspensions for regular tax purposes is intended to reduce taxpayers' compliance burden and the IRS's administrative burden, ACT believes that the importation of the limitations on the creditability of foreign taxes *increases* the administrative burden with respect to the CAMT FTC regime enacted by Congress. As discussed above, the CAMT FTC statutory framework contains a straightforward CFC CAMT limitation and provides that the foreign taxes included in the CAMT FTC must be: (1) taken into account on the applicable financial statement" of the applicable corporation or CFC (as applicable), and (2) "paid or accrued (for Federal income tax purposes)" by the applicable corporation or CFC. Consistent with Notice 2023-64, the Proposed CAMT Regulations provide a broad definition for when a foreign income tax is considered "taken into account" on an AFS for purposes of the CAMT FTC. Moreover, the straightforward CAMT FTC limitation and CFC AFSI adjustment look to the taxpayer's pro rata share of CFC AFSI, not just amounts included as subpart F and GILTI for regular tax purposes. The CAMT FTC should similarly look to the foreign taxes reported on the applicable financial statement of the taxpayer to reduce the compliance and administrative burden. This more equitable and administrable approach would also be more consistent with reading the "within the meaning of section 901" language in section 59(l) as applying narrowly to the definition of foreign income tax without the application of the restrictions and limitations for regular tax purposes.

ii. Mismatched CFC Book and Tax Years

Issue: The definition of "CAMT entity" in proposed Treas. Reg. §1.56A-1(b)(8) includes any entity identified in section 7701 of the Code and the regulations under section 7701 other than a disregarded entity. The Preamble further provides that not all CAMT entities are applicable corporations, nor are all relevant to the determination of CAMT liability for an applicable corporation or to the determination of CAMT status. Proposed Treas. Reg. §1.56A-6(b) provides that a CAMT entity's pro rata share of a CFC's adjusted net income or loss would be determined for the CFC's tax year that ends with or within the CAMT entity's tax year. The pro rata share(s) would be determined under the principles of IRC section 951(a)(2) (including the aggregation rules in Treas. Reg. §1.958–1(d)). If a CAMT entity's AFS is prepared on the basis of a financial accounting period that differs from the CAMT entity's taxable year, proposed Treas. Reg. §1.56A-3(b) would require the CAMT entity to compute FSI and AFSI as if the financial reporting period were the same as the taxable year by conducting an interim closing of the books using the accounting standards the CAMT entity uses to prepare the AFS.

Recommendation: In the event a CFC that is treated as a CAMT entity has an AFS financial accounting period different from its tax year, we recommend allowing the CFC to use any reasonable method to compute its FSI and AFSI for the accounting period.

Rationale: Allowing for an interim closing of the books or any other reasonable method to compute FSI and AFSI when a CFC's taxable year does not coincide with a clear financial statement would provide flexibility and minimize compliance burdens that taxpayers may have if otherwise required to apply a single specified method for dealing with mismatched tax years.

C. Corporate Rules

i. Treatment of Remeasurement Gains and Losses on Domestic Stock

Issue: Proposed Treas. Reg. §1.56A-18(c)(2)(ii)(B) provides that gains or losses reflected in a CAMT entity's FSI resulting from the remeasurement (to fair value) of the CAMT entity's existing or remaining stock in a domestic corporation when the CAMT entity acquires or disposes of some (but not all) stock in the domestic corporation in a covered recognition transaction are not disregarded in computing the CAMT entity's AFSI. However, a similar rule does not apply to a CAMT entity's investment in a foreign corporation.

Recommendation: Treasury and the IRS should remove Proposed Treas. Reg. §1.56A-18(c)(2)(ii)(B) as an exception to the general rule that a CAMT entity disregards any FSI that results from holding stock in a domestic corporation under Proposed Treas. Reg. §1.56A-18(c)(2)(i)(A).

Rationale: Instituting the proposed recommendation would put a CAMT entity's investment in a domestic corporation in closer parity with its investment in a foreign corporation and alleviate some of the complexity in the Proposed Regulations. A subset of transactions caught by the exception in Proposed Treas. Reg. §1.56A-18(c)(2)(ii)(B) are section 355 spin-off transactions for which the IRS has through its private letter ruling practice blessed for many taxpayers the retention of a minority stake (20% or less) of the spun-off company that must be disposed of within 5-years of the spin date as not adversely impacting the tax-free nature of the spin. These permitted transfers tend to further support the recommendation to remove the exception in Proposed Treas. Reg. §1.56A-18(c)(2)(ii)(B).

ii. Cliff Effect – Corporate Transactions

Issue: Under the Proposed Regulations a wholly tax-free transaction for regular income tax purposes generally does not result in the CAMT entity recognizing any AFSI (i.e., the relevant FSI is not included in AFSI). However, the Proposed Regulations create a "cliff effect" pursuant to which an entire transaction can gives rise to AFSI if any gain or loss is recognized by the transferor corporation.

Recommendation: Treasury and the IRS should eliminate the "cliff effect" in applying the covered nonrecognition transaction exception to determining a CAMT entity's AFSI. If Treasury and the IRS are not amenable to such a request, consider whether a de minimis "boot" rule should be added to the Proposed Regulation. For example, if the "boot" issued in a transaction represents less than or equal to 10 percent of the overall consideration issued in the transaction, then such "boot" received will not cause the transaction to fail to qualify as a "covered nonrecognition transaction" within the meaning of Proposed Treas. Reg. §1.56A-18(b)(9).

Rationale: The "cliff effect" can be extremely punitive to corporations that recognize a small amount of gain in an otherwise tax-free transaction.

iii. Regular Tax Earnings and Profits ("E&P") and CAMT Earnings

Issue: Proposed Treas. Reg. §1.56A-18(c)(2)(iii)(A) provides that the shareholder of a distributing corporation or a target corporation determines the character of any distribution resulting from a transaction described in Proposed Treas. Reg. §1.56A-18(d)-(h) (e.g., non-liquidating distributions, liquidating distributions, stock sales, asset sales and 336(e) type transactions) or Proposed Treas. Reg. §1.56A-19 (e.g., section 355 transactions, recapitalizations, F reorganizations, 351 exchanges, etc.) using the distributing corporation's or target corporation's regular tax E&P. However, if certain requirements are satisfied, then Proposed Treas. Reg. §1.56A-18(c)(2)(iii)(B) provides that the determination is made with respect to CAMT earnings. For example, if a CAMT entity holds 30% of the stock of a corporation that does not qualify for the simplified method and receives a distribution from such corporation, the CAMT entity must determine its AFSI with respect to the distribution based on the distributing corporation's CAMT E&P.

Recommendation: Treasury and the IRS should determine the character of any distribution resulting from a transaction described in Proposed Treas. Reg. §1.56A-18(d)-(h) or Proposed Treas. Reg. §1.56A-19 <u>solely</u> with respect to regular tax E&P.

Rationale: By implementing this recommendation, Treasury and the IRS will reduce the administrative burden associated with having to compute and track annually CAMT earnings, a "new" item created under the Proposed Regulations, which does not appear to be supported by the CAMT statute and is inconsistent with the treatment of investments in foreign corporations. Further, a corporation that is not an applicable corporation would need to calculate its AFSI, including requesting information from any partnership investments, that otherwise would not be required.

iv. Purchase Accounting and Push Down Accounting

Issue: Proposed Treas. Reg. §1.56A-4(d)(4) disregards any purchase accounting and/or push down accounting adjustments, as applicable, arising from a CAMT entity's acquisition of the stock of a foreign corporation in determination of the foreign corporation's CAMT basis in its assets. Similarly, Proposed Treas. Reg. §1.56A-18(c)(3) provides a similar rule with respect to an acquisition of the stock of a domestic corporation (together with Proposed Treas. Reg. §1.56A-4(d)(4), the "Purchase / Push Down Accounting Rule")

Recommendation: Treasury and the IRS should eliminate the Purchase / Push Down Accounting Rule.

Rationale: CAMT is intended to be computed based on financial statement income with minimal adjustments. The Purchase / Push Down Accounting Rule is a significant departure from general financial accounting rules and gives rise to significant administrative and compliance burdens.

v. Section 482 Principles Applied to CAMT

Issue: Proposed Treas. Reg. §1.56A-26(d) provides that, for purposes of determining AFSI, if any item of income, expense, gain, or loss reflected in the FSI of the CAMT entity with respect to a controlled transaction or controlled transfer (as defined in Prop. Treas. Reg. §1.482–1(i)(8)) between two or more CAMT entities does not reflect the principles of section 482 and the regulations under section 482, then the CAMT entity must make appropriate adjustments to CAMT basis to reflect these principles (the "482 Rule"). For example, if one CAMT entity sold to another CAMT entity an asset in a controlled transaction in a non-arm's length transaction, the AFSI implications from the sale would be determined under arm's length standards, a tax concept and not a financial accounting concept.

Recommendation: Treasury and the IRS should eliminate the 482 Rule.

Rationale: Given that CAMT is intended to be computed based on financial statement income with minimal adjustments, we believe it is not necessary to impose upon the financial accounting rules the tax concepts under section 482.

D. Partnership Rules

i. Partnership Reporting

Issue: For purposes of determining CAMT liability, an applicable corporation must request from any partnership in which it is a partner any information necessary to determine its distributive share of the partnership's AFSI. *See* Prop. Treas. Reg. §1.56A-5(h)(1). This information request may then require the recipient partnership to make additional requests of partnerships in which it owns an interest. *See* Prop. Treas. Reg. §1.56A-5(h)(2).

Recommendation: Because this reporting can be expensive and time consuming, IRS and Treasury should consider a de minimis rule that would allow an applicable corporation that owns a relatively small interest in a partnership to treat its FSI with respect to a partnership investment (a readily determinable amount) as its distributive share of the partnership's AFSI.

Rationale: Final regulations could include an election for an applicable corporation with a less-than-[ten]-percent interest in a partnership's profits and capital to use its FSI with respect to such partnership (i.e., the FSI that the partner disregards under Prop. Treas. Reg. §1.56A-5(c)(1)) in lieu of using distributive share of partnership AFSI for purposes of determining the applicable corporation's CAMT liability. The rule could require an applicable corporation to make an irrevocable election at the later of (a) the first taxable year that the corporation is an applicable corporation to which final CAMT regulations apply and (b) the first taxable year in which the applicable corporation owns the [less-than-ten-percent] interest in a partnership. Such election would cease to apply in the first taxable year that the applicable corporation's interest in profits or capital of the partnership exceeded [ten] percent. For these small interests, using the partner's FSI with respect to the partnership rather than a distributive share of partnership AFSI could significantly reduce the reporting and record-keeping burden for partners and partnerships without significantly altering tax liability as well as reduce the examination burdens the proposed regulations would impose on the IRS. In addition, a cap on the value of qualifying partnership interests could be set at [e.g., $50M] and the de minimis rule could require interests in the same partnership held by related entities to be aggregated for purposes of calculating the value and ownership percentage.

ii. Alternative to distributive share determination for partners using HLBV or PAM

Issue: The distributive share percentage as determined under the proposed regulations for partners that account for their investments in a partnership using the hypothetical liquidation at book value ("HLBV") method or the proportional amortization method ("PAM") when the partnership determines its FSI using a more typical GAAP method will not be reflective of the proportionate amount of the partnership's FSI that the partner includes in income.

Recommendation: Final regulations should provide an alternative mechanism for the determination of the partner's distributive share of AFSI if the partner accounts for its partnership interest using the hypothetical liquidation at book value (HLBV) or the proportional amortization method (PAM).

Rationale: The rules in Prop. Reg. § 1.56A-5 defining a partner's distributive share of partnership AFSI generally determine the distributive share percentage by dividing the partner's FSI with respect to the partnership by the partnership FSI. Special rules are provided in certain cases, e.g., if the partner uses the fair value method to account for its investment, then the denominator changes from partnership FSI to "the total change in the fair value of the partnership during the partnership's taxable year, as determined by the CAMT entity." For CAMT entities using methods other than the equity method or fair value method, Prop. Reg. § 1.56A-5 provides that the denominator for the distributive share determination is "an amount determined under the principles of paragraphs (e)(2)(i) [equity method] and (ii) [fair value method] of this section that is reasonable under the facts and circumstances and reflective of the proportionate amount of the partnership's FSI the CAMT entity is reporting for AFS purposes." Prop. Reg. § 1.56A-5(e)(2)(v).

As this catchall rule in Prop. Reg. § 1.56A-5(e)(2)(v) implicitly acknowledges, the distributive share determination is most logical if the partner and partnership are determining FSI on the same basis such that the partner's distributive share of partnership AFSI is "reflective of the proportionate amount of the partnership's FSI that the CAMT entity is reporting for AFS purposes." The rules break down, however, if the amount included in the partner's AFS with respect to the partnership and the partnership's FSI have no real relationship to each other. This is often the case if the partner is using one of the methods commonly employed to account for an investment in a tax equity partnership, such as hypothetical liquidation at book value (HLBV) or the proportional amortization method (PAM), while the partnership is using another method.

Under PAM, the investor amortizes the cost of the investment as the tax benefits are recognized; the portion of the cost amortized in a given year is equal to the tax benefits recognized by the investor in a given year over the total tax benefits anticipated to be received by the investor over the life of the investment. Both the cost and the tax benefits are recorded to the income tax accounts. Under HLBV, the investor's inclusion in a given year is the amount it would receive if the partnership were liquidated at book value at year-end, and these impacts are recorded pretax. The partnership, by contrast, is often using a typical GAAP calculation to determine its FSI (the denominator in the distributive share determination). Since the numerator and denominator bear no relationship to each other, the partner's distributive share percentage is distorted. In a typical example, the distributive share percentage over the life of the investment ranged from 2708% to -6%. These distorted percentages make tax equity investing less predictable and attractive to CAMT taxpayers.

To avoid creating a disincentive to invest in tax equity partnerships, final regulations should provide an alternative mechanism for the determination of the investor partner's distributive share of AFSI if the partner accounts for its partnership interest using the HLBV method or the PAM. Such a method would need to recognize the distortion resulting from using the partner's FSI as the numerator and the partnership's FSI as the denominator for purposes of determining the partner's distributive share and might include a modified top-down approach that starts with the partner's FSI with respect to the partnership.[1]

[1] As noted, the starting point would be the partner's FSI. It would likely be appropriate to then adjust that starting point amount in light of the purposes of CAMT. For example, with respect to investments accounted for under PAM, it may be appropriate to add to pre-tax income those items (such as depreciation) that PAM records in the income tax line.