

Notice 2025-28: A New Elective Regime for CAMT Reporting

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The Department of Treasury and the IRS recently released Notice 2025-28 (the “Notice”), signaling an attempt to reduce some of the administrative complexities of the corporate alternative minimum tax (“CAMT”) regulations that were proposed last September (the “2024 Proposed Regulations”) relating to partnerships and their partners. Our discussion of the 2024 Proposed Regulations can be accessed via this [link](#).

CAMT is designed as a minimum tax for certain large U.S. corporations (and U.S. subsidiaries of large multinational groups) based on financial statement income (“FSI”) as reflected on their financial statements. The CAMT applies to the extent taxes paid by such a corporation represent less than a 15% rate on their FSI, as adjusted for certain specified items (“AFSI”). Making good on the Trump administration’s promise to reduce regulatory burden, the Notice offers a number of alternative approaches to CAMT compliance for CAMT entity partners and partnerships and in certain cases could reduce certain compliance challenges for partnerships.

Background on CAMT and Partnerships

The CAMT legislation provides that the FSI of a partner in a partnership is adjusted so that it takes into account only the partner’s distributive share of the partnership’s AFSI. The 2024 Proposed Regulations take a “bottom-up” approach in implementing this rule, which generally requires a CAMT entity partner to first remove from its AFSI any amount on its applicable financial statement attributable to its interest in the partnership. The partner then includes its distributive share of the partnership’s AFSI. However, the proposed methodology for calculating each partner’s distributive share of the partnership’s AFSI was heavily criticized for yielding unexpected results. The 2024 Proposed Regulations will be effective only when finalized (however, taxpayers are permitted to rely on them before that time if they consistently apply all of the proposed regulations, as now adjusted by the Notice).

The “bottom-up” approach helps avoid AFSI arising from mark-to-market appreciation in the partnership interest held by the CAMT entity partner. For example, appreciation

from market fluctuations in the value of a partnership's stock investments is excluded from the calculation of a corporation's AFSI. The "bottom-up" approach would similarly exclude such appreciation from stock investments held through a partnership in the CAMT entity partner's AFSI. It will generally only be taken into account under the "bottom-up" approach if there is a realization event at the partnership level. However, the "bottom-up" approach would also introduce considerable operational complexity, as it would require every partnership with a direct or indirect corporate partner to maintain a new set of CAMT books. The Notice defaults to the 2024 Proposed Regulations' "bottom-up" approach but permits taxpayers to reduce their operational burdens by making a Top-Down Election or a Taxable-Income Election, as discussed below.

Additionally, under regular tax principles, partners can generally contribute property with a built-in gain or loss to partnerships without recognizing gain or loss. Similarly, partnerships can generally distribute property to their partners without recognizing gain or loss. Such transfers generally result in FSI to the partner or partnership, as the case may be, under general financial accounting rules. In lieu of triggering AFSI on such transfers, the 2024 Proposed Regulations in Section 1.56A-20 create a new "deferred sale" regime for CAMT purposes for contributions to and distributions from partnerships (the "Deferred Sale Method"). Under this regime, partners and partnerships would be required to take into account any FSI from their contributions and distributions in determining their AFSI ratably over a recovery period of 15 years (or a shorter period time if the contributed or distributed asset has a shorter life). This recovery period would apply even for assets that are otherwise non-depreciable for financial statement purposes, like corporate stock, goodwill or land ("Non-Depreciable Property").

The Top-Down Election

The Notice provides that CAMT entity partners may opt out of the default "bottom-up" approach to determining their AFSI by allowing such partners to make a "Top-Down Election." Such an election would allow CAMT entity partners to treat 80% of their "top-down amount" as AFSI. The "top-down amount" is generally the FSI reflected on the CAMT entity partner's financial statements attributable to the partnership for the given tax year. One notable exception is that FSI resulting from a taxable sale of the partnership interest is not subject to the 20% haircut and is fully included in AFSI.

Debevoise Comment: The option of a Top-Down Election could simplify the administration of CAMT obligations for CAMT entity partners who make such an election as electing partners could refer to the FSI attributable to the partnership

without a significant adjustment or additional information from the partnership. The price for simplicity means that FSI attributable to mark-to-market appreciation in the partnership's assets that would be excluded from AFSI under the "bottom-up" approach will now be included, subject to the 20% haircut. Similarly, 80% of any built-in gain (or loss) with respect to property contributed to the partnership in the applicable tax year would be recognized as AFSI and would not be taken into account ratably over a recovery period.

Any direct CAMT entity partner, other than a partnership, would be eligible to make a top-down election (and could do so on a partnership-by-partnership basis), which would remain in effect for all subsequent taxable years beginning before the issuance of the forthcoming proposed regulations. A partnership would not have to report its AFSI with respect to CAMT entity partners who make a top-down election with respect to the partnership.

Debevoise Comment: Because a Top-Down Election does not alleviate the partnership's burden of reporting AFSI amounts to non-electing partners, partnerships would only benefit from the election if they required all partners to make a Top-Down Election (and, with respect to partners who are partnerships, require such upper-tier partnerships to impose the same top-down election requirements on their own partners). For partners who benefit from the "bottom-up" approach across their investments, it may be difficult as a practical matter to impose such a requirement across all partners.

The Taxable Income Election

The Notice provides that, in addition to the default "bottom-up" approach and elective "top-down" approach, certain CAMT entity partners may determine their AFSI from a partnership investment based on taxable income allocated to them from the partnership pursuant to a "Taxable-Income Election."

If a CAMT entity partner has a Taxable-Income Election in effect with respect to a partnership, the CAMT entity partner's AFSI from that partnership for the taxable year will generally be its distributive share of income, gain, loss and deduction from the partnership for regular tax purposes, including any income, gain, loss or deduction resulting from partnership contributions and distributions as computed for regular tax purposes.

A CAMT entity partner that is not itself a partnership may make a Taxable-Income Election if, as of the last day of the taxable year, (1) its "test group" does not own more than 20% of the interests in capital or profits of the partnership, and (2) the fair market

value of the test group's partnership interests does not exceed \$200M in the aggregate. A CAMT entity partner's test group is determined as of the last day of the taxable year and includes the CAMT partner, plus other entities treated as a single employer under the rules of Sections 52(a) and (b) of the Code.

Debevoise Comment: By limiting an electing CAMT entity partner's AFSI to amounts included in taxable income from the partnership for regular tax purposes, the Taxable-Income Election largely eliminates FSI vs. taxable income disparities from partnerships for validly electing CAMT entity partners, including as a result of partnership contributions or distributions. This result, while more generous than either the default bottom-up approach or electable top-down approach, may be out of reach for many corporate partners due to the eligibility requirements.

Like the Top-Down Election, the Taxable-Income Election may be made by CAMT entity partners on a partnership-by-partnership basis and will remain in force for all subsequent taxable years beginning before the issuance of the forthcoming proposed regulations. The partnership will not be required to report its modified FSI to the electing CAMT entity partner. If an electing CAMT entity partner no longer meets the requirements for the election, as determined at the end of the taxable year, the election will be terminated for that taxable year and any subsequent taxable year, and the CAMT entity partner will not be allowed to make a subsequent Taxable-Income Election.

Partnership Contributions and Distributions

In addition to the default Deferred Sale Method, the Notice provides two additional methods to determine AFSI adjustments for partnership contributions and distributions—the “Modified -20 Method” and the “Full Subchapter K Method.”

Modified -20 Method

The Modified -20 Method makes several changes to the Deferred Sale Method. Notably, for Non-Depreciable Property, there is no applicable recovery period in the event of a partnership contribution or distribution (as compared to the default 15-year period that applies under the Deferred Sale Method). For all other property (“Depreciable Property”), the applicable recovery period is a flat 15 years (as opposed to the Deferred Sale Method, which generally looked to the recovery period being used for tax or FSI purposes).

Acceleration Events—Contributions

Unlike the Deferred Sale Method, deferred gain from a contribution generally would not be accelerated in the event of a reduction in the contributing partner's ownership of the

partnership (except in the case of a full exit by the contributing partner). Additionally, if the partnership disposed of contributed property in a non-recognition transaction, the gain or loss would not be accelerated (in the Deferred Sale Method, gain or loss is accelerated on disposition of the property by the partnership, whether or not it is a recognition transaction).

Acceleration Events—Distributions

With respect to partnership distributions of property, the distributing partnership's deferred gain or loss is accelerated in the event of a termination or merger of the partnership but not upon a sale by the partnership of all or substantially all of its assets (under the Deferred Sale Method, such an asset sale would also be an acceleration event).

Full Subchapter K Method

The Full Subchapter K Method essentially would apply all Subchapter K concepts (including Section 721 and 731 tax-free contributions and distributions and Section 704(c)) while using CAMT inputs (such as CAMT basis). Additionally, any methods and elections made by the partnership for general Subchapter K purposes (e.g., the applicable 704(c) method or a 754 election) will be applied for CAMT purposes. The partnership must maintain its books and records to substantiate compliance with the Full Subchapter K Method.

Making Alternative Contribution and Distribution Adjustment Elections

Electing the Modified -20 Method and the Full Subchapter K Method

The Modified -20 Method is an election made by a CAMT entity partner on its tax return for an applicable tax year. The Full Subchapter K Method, however, is made by the partnership on its tax return for an applicable tax year but requires written consent from all CAMT entity partners (other than such partners that made the Top-Down Election or the Taxable-Income Election) that were partners at any time during such tax year.

Once selected, the Modified -20 Method must be utilized for all subsequent tax years with respect to all contributions and distributions. Similarly, the Full Subchapter K Method applies to all subsequent tax years, even if a new partner who did not consent to the Full Subchapter K Method is admitted. Note that the Modified -20 Method and the Full Subchapter K Method are not applicable to a CAMT entity partner that has in place a Top-Down Election or a Taxable-Income Election, the former because such partner computes AFSI entirely through their FSI in respect of the partnership and the latter because AFSI is entirely measured by the partnership's taxable income.

Debevoise Comment: Unlike the Full Subchapter K Method, the Modified -20 Method is elected at the partner level. With respect to contributions, electing partners would then track the deferred gain (or loss) without an impact on the partnership or the other partners. With respect to distributions, however, it is possible that the Modified -20 Method would require separate tracking by the partnership and possible additional inclusions for other partners, which may not be intended.

Debevoise Comment: Given the benefits of the Full Subchapter K Method, all partnerships and CAMT entity partners would seem to be incentivized, in most cases, to elect this method as a general matter. While the Full Subchapter K Method is less burdensome than the full compliance regime under the 2024 Proposed Regulations, partnerships may still prefer to try to contractually require all CAMT entity partners to make the Top-Down Election or Taxable Income Election (if a partner is eligible) in an effort to avoid any CAMT compliance burden, but as noted above, in any particular case, it may not be possible to obtain agreement from all partners.

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