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CAMTyland Adventures

A Guide to the Corporate Alternative Minimum Tax

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CAMTyland Adventures, Part I: How to Play the Game — Corporate Alternative Minimum Tax Basics

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In this article, the first in a series, the authors reference the familiar game Candy Land as a guide to help taxpayers navigate the corporate alternative minimum tax system. This installment focuses on the basics and initial steps.

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The CAMTyland Adventures series is intended to assist taxpayers in better understanding the requirements of the corporate alternative minimum tax (CAMT).

As high-level background, the CAMT is a minimum tax based on financial statement net income (colloquially referred to as "book income") that applies to "applicable corporations." The CAMT, enacted in 2022, appears intended to tax large corporations on their publicly reported book profits.[1] However,

[1] *See, e.g.*, U.S. Department of the Treasury, "The Made in America Tax Plan," at 13-14 (Apr. 2021) ("Corporations are simultaneously able to signal large profits to shareholders and reward executives with these returns, while claiming to the IRS that income is at such a low level that they should be freed from any federal tax obligation. The President's minimum book tax proposal would work to eliminate this disparity."); Treasury, "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals," at 21 (2021); Jane G. Gravelle, "The Corporate Minimum Tax Proposal," CRS Report IF12179, at 2 (Aug. 10, 2022) ("The objective of a minimum tax is to ensure that firms pay some tax when they are making a profit.").

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the CAMT has many mysteries and uncertainties.[2] A taxpayer's CAMTyland adventure may be a long and arduous process, which we have previously likened to traversing the Candy Cane Forest in Candy Land[3] — a winding path that often requires players to go backward on the game board before ultimately reaching the goal of King Kandy's Castle.

In this first article of a series, we provide an overview of certain concepts and definitions fundamental to understanding and applying the CAMT. We then traverse the preliminary steps a taxpayer must take to play the game of CAMTyland.

Setup: Applicable Corporation Overview

The CAMT only applies to taxpayers that meet the definition of an applicable corporation. This determination may not be child's play; for example, the CAMT can apply to a "small" corporation that is part of a "large" group. Further, even if a corporation determines it is not an applicable corporation, its CAMTyland adventure begins anew the next year — when the corporation must retest its status.

Statutory Rules

Under the statutory rules, an applicable corporation is defined as a corporation (other than a real estate investment trust, regulated investment company, or S corporation) whose three-year average adjusted financial statement income (AFSI) exceeds $1 billion. Under this three-year average AFSI test, a corporation is an applicable corporation if the average AFSI of the corporation (together with certain related entities) in the three-tax-year period ending with any tested tax year[4] exceeds $1 billion. Aggregation rules apply to determine whether the $1 billion threshold is satisfied. The AFSI of any person that is treated as a member of a "single employer group" with that corporation under section 52(a) or 52(b) is included.[5]

While the requirements of applicable corporation status are easy to understand at a high level, the determination, at least under the statutory rules, is often hard to make in practice. This is because determining AFSI — as computed under the statutory rules — requires information that a taxpayer may not have at hand, and is complicated even with all necessary information, with many open technical questions. Thus, a taxpayer may not be able to ascertain if it is an applicable corporation under the statutory rules (that is, determine its status under the "statutory scope determination").

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[2]On December 27, 2022, Treasury and the IRS (together, "Treasury") released an advance version of Notice 2023-7, 2023-3 IRB 390 (the "first notice"), the first piece of guidance addressing the CAMT and its many uncertainties. On February 13, 2023, Treasury released Notice 2023-20, 2023-10 IRB 523 (the "second notice"), addressing CAMT issues of consequence to the insurance industry. Additional interim guidance, followed by a notice of proposed rulemaking (proposed regulations), is expected. Final regulations are not expected in 2023.

[3]*See* Monisha Santamaria and Sarah Staudenraus, "Adventures in CAMTyland: The Partnership 'Distributive Share Only' Rule in the Corporate Alternative Minimum Tax," 63 *Tax Mgmt. Memorandum* 26 (Dec. 19, 2022).

[4]A tested tax year is any tax year ending after December 31, 2021. Thus, for a calendar-year taxpayer with no short tax years, the first tested tax year is 2022, and the relevant years for the scope determination for 2022 are 2020, 2021, and 2022. For a fiscal-year taxpayer with no short years, however, the relevant years are: (1) for its tested tax year that ends in 2022, the fiscal years ending in 2020, 2021, and 2022; and (2) for its tested tax year ending in 2023, the fiscal years ending in 2021, 2022, and 2023. If a calendar-year taxpayer meets the scope determination AFSI threshold for its tested tax year that ends on December 31, 2022, or if a fiscal-year taxpayer meets the scope determination AFSI threshold for its tested tax year that ends in either 2022 or 2023, it is an applicable corporation starting in the following tax year. However, even if a fiscal-year corporation is an applicable corporation for its first tax year that begins in 2022 (because of its average annual AFSI for its fiscal years ending in 2020, 2021, and 2022), the corporation would not become subject to the CAMT until its first tax year that begins after December 31, 2022, because of the general effective date rule.

[5]Special aggregation rules apply if the corporation is a member of a "foreign-parented multinational group." Section 59(k)(1)(B)(ii) provides that to be an applicable corporation, a foreign-parented multinational group must satisfy two tests. First, a foreign-parented multinational group meets the $1 billion test if, aggregating the AFSI of all the members of its book consolidated group, its average annual AFSI over the three-year testing period exceeds $1 billion. For purposes of this rule, and only this rule, paragraph 56A(c)(4), which limits AFSI of a foreign corporation to its effectively connected income, does not apply. Second, the rule requires the average annual AFSI over the three-year period to equal or exceed $100 million. For this purpose, the rule limiting AFSI to ECI applies. For purposes of the first test (the "$1 billion test"), section 59(k)(2)(B) defines a foreign-parented multinational group as including entities that "are included in the same applicable financial statement." It appears that this aggregation rule for the $1 billion test in section 59(k)(2)(B)(ii) differs from the rule in section 59(k)(1)(D) that aggregates all AFSI of persons included in the corporation's single-employer group. In any case, this rule applies only for purposes of the $1 billion test. Clearly, this statement in section 59(k)(2)(B)(ii) does not affect the application of the $100 million test for foreign-parented multinational groups, and therefore the section 52(a) and (b) aggregation rules apply for purposes of this $100 million test.

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Safe Harbor Rules

Treasury has provided *some* taxpayers that find statutory scope determination too arduous interim relief. The first notice introduced a safe harbor method for determining whether a corporation is an applicable corporation for the first tax year beginning after December 31, 2022. This "safe harbor scope determination," which is an optional method for taxpayers, is intended to simplify the determination of AFSI by "turning off" certain adjustments (found in section 56A(c)) used to compute AFSI under the statutory rules. These adjustments are, in many cases, taxpayer favorable. Further, the safe harbor method also lowers the threshold of average annual AFSI from $1 billion to $500 million. Therefore, if a taxpayer elects to use the safe harbor method in its first tax year beginning after December 31, 2022, and its average annual AFSI is less than $500 million, it will not be considered an applicable corporation, ending its CAMTyland adventure for the year. If a taxpayer elects to apply the safe harbor method and its AFSI (that is, safe harbor AFSI) exceeds $500 million under this method, it must then perform the statutory scope determination to determine if it is an applicable corporation.

It is worth highlighting that many corporations that likely are not applicable corporations may be unable to use the safe harbor based on both the lowered threshold and the general inapplicability of the section 56A(c) modifications. Further, the safe harbor method, under current guidance, is unavailable for tax years beginning after December 31, 2023.

Effect of Status Determination

Once a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-year average AFSI falls below $1 billion.[6] Thus, attaining applicable corporation status can be analogized to a cherry pitfall — or, if no children are playing, Hotel California.

Conversely, if a taxpayer does not meet the definition of an applicable corporation in a given year, it must repeat the scope determination in each future year to determine whether it has become an applicable corporation.[7] Thus, avoiding CAMTyland's cherry pitfall may only land a player in the Molasses Swamp.

CAMT Liability of Applicable Corporations

An applicable corporation must compute its CAMT liability (the "liability determination"). An applicable corporation's maximum potential CAMT liability is 15 percent of AFSI. An applicable corporation will only be required to pay the CAMT to the extent that its potential CAMT liability exceeds its regular tax, plus the base erosion and antiabuse tax.[8] Also, CAMT-specific foreign tax credits are available, and general business credits may be used to offset up to (approximately) 75 percent of the combined regular tax and CAMT liability. Thus, the CAMT exacts a cash tax toll *only* in situations in which the applicable corporation does not pay "enough" tax under the "regular" tax rules.

Further, if an applicable corporation is required to pay the CAMT in a given tax year, it will receive a credit equal to the full amount of any CAMT paid (the "CAMT credit"). The CAMT credit (1) may be carried forward indefinitely to offset regular tax liability in a future year and (2) is subject to a limitation based on the applicable corporation's potential pre-credit CAMT liability in the carryforward year. Thus, CAMTyland's path may be viewed as an adventure in delayed gratification — for licorice haters and gumdrop lovers, the licorice transmutes into gumdrops. However, it is worth noting that the CAMT credit, despite the lack of a discount and its indefinite carryforward period, may be of limited use in certain fact patterns.[9]

[6] Exceptions to this rule exist, but each exception appears to require some form of affirmative rule or determination from Treasury. *See* section 59(k)(1)(C). Section 4.04 of the first notice provides very limited relief.

[7] Special rules apply if a corporation is a member of a foreign-parented multinational group regarding the statutory scope determination and the safe harbor scope determination. Our discussion in this series of articles for each scope determination does not address corporations that are members of a foreign-parented multinational group.

[8] *See* section 59(a).

[9] Some taxpayers may be perpetual CAMT payers. Also, the CAMT credit is allowable only to the extent that regular tax liability reduced by available nonrefundable credits exceeds tentative minimum tax liability as determined under the CAMT rules. Section 53(c). For this reason, a taxpayer with low tax liability because of business tax credits may never be able to use its CAMT credit.

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Gameplay: AFS and AFSI Overview

As noted above, whether a taxpayer is an applicable corporation subject to the CAMT under either the first notice's safe harbor (the safe harbor scope determination) or under the statutory rules, as interpreted by the first notice (the statutory scope determination), and the potential CAMT liability of an applicable corporation (the liability determination), are each based on AFSI.[10] AFSI is derived from "net income" (book income) on the "correct" financial statement — the taxpayer's applicable financial statement (AFS).

Of key importance is that while AFSI has a single definition, based on significant modifications to AFSI for safe harbor scope determination purposes and certain modifications to AFSI for statutory scope determination purposes, a taxpayer's AFSI generally will differ for the safe harbor scope determination ("safe harbor AFSI"), for the statutory scope determination ("statutory scope AFSI"), and for the liability determination ("liability AFSI"). As we explore these concepts, it is critical for taxpayers to remember that the determination of AFSI — particularly the "right-sizing" and section 56A(c) adjustments — will differ depending on whether a taxpayer is performing the safe harbor scope determination, the statutory scope determination (together with the safe harbor scope determination, the "scope determination"), or the liability determination.

The path to determining AFSI is not simple for each of the safe harbor AFSI, statutory scope AFSI, and liability AFSI; also, the determination is particularly complex for the latter two. In general, the winding path through forests and lagoons for determining AFSI involves four steps: (1) identifying the taxpayer's AFS; (2) identifying the correct starting number on the AFS; (3) right-sizing that number; and (4) making adjustments, under section 56A, to arrive at AFSI. The third and fourth steps differ depending on whether the calculation is of safe harbor AFSI, statutory scope AFSI, or liability AFSI.

Identifying the AFS requires an understanding of tax concepts and the use of financial statements. Both identifying the starting book number on the AFS and making the adjustments (for each determination method) require an understanding of the financial accounting rules (for example, U.S. generally accepted accounting principles). Further, the specific adjustments made to "convert" starting book income to AFSI (for each method) require an understanding of both the financial accounting and tax rules. Thus, compliance with the rules of the CAMT requires taxpayers to have a thorough understanding of several fundamental financial accounting and CAMT concepts, and then to apply a series of rules of increasing complexity.

The Peppermint Forest: Finding the AFS

The starting point for determining AFSI is the "net income or loss" on the AFS. Thus, a taxpayer must traverse a Peppermint Forest to find its AFS, as defined for CAMT purposes.

The term "AFS" is defined, for CAMT purposes, in section 451(b)(3), *or* as specified by Treasury in regulations or other guidance.[11] Section 451(b)(3) provides a hierarchy of financial statements.[12] These rules generally prioritize U.S. GAAP statements over international financial reporting standards statements (but provide for using the IFRS statements in certain situations); prioritize statements filed with the SEC over other audited U.S. GAAP statements; and require a nontax purpose. Importantly, the statute affords Treasury significant discretion (for example, to

[10] It is worth highlighting that AFSI for scope determination purposes and liability determination purposes generally will differ.

[11] Section 56A(b).

[12] Section 451(b)(3) states that an AFS is: (A) a financial statement is certified as being prepared in accordance with GAAP and that is (1) a Form 10-K (or successor form), or annual statement to shareholders, required to be filed by the taxpayer with the SEC; (2) an audited financial statement of the taxpayer which is used for (i) credit purposes; (ii) reporting to shareholders, partners, or other proprietors, or to beneficiaries; or (iii) any other substantial nontax purpose, but only if there is no statement of the taxpayer described in clause (1); or (3) filed by the taxpayer with any other federal agency for purposes other than federal tax purposes, but only if there is no statement of the taxpayer described in clause (1) or (2); (B) a financial statement that is made on the basis of international financial reporting standards and is filed by the taxpayer with an agency of a foreign government which is equivalent to the U.S. SEC and that has reporting standards not less stringent than the standards required by the SEC, but only if there is no statement of the taxpayer described in clause (A); or (C) a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the secretary, but only if there is no statement of the taxpayer described in clause (A) or (B). Section 56A(c)(2)(A) provides that if the financial results for an entity are reported on the financial statement for a group of entities, rules "similar to" those if section 451(b)(5) applies. Section 451(b)(5) provides that if the financial results of a taxpayer are reported on a consolidated financial statement for a group of entities, the consolidated financial statement is the AFS for the taxpayer.

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modify the definition of an AFS provided in section 451(b)(3) as appropriate for purposes of the CAMT, or to deem any financial statement the AFS).

Determining which financial statement is the AFS under the section 451 hierarchy can be simple or complex, depending on the situation. If, for example, a taxpayer files a Form 10-K with the SEC prepared in accordance with U.S. GAAP, that form will be the AFS for all entities that are included in the book consolidated group (meaning the entities included in the consolidated group for financial reporting purposes).[13] However, for entities that are not included in a book consolidated group with a Form 10-K filer (because, for example, they are subsidiaries of a public company accounted for under the equity method or are private companies), the determination may be far less clear. For example, if an entity has an IFRS statement but its results are included, under the equity method, on its parent's U.S. GAAP financial statement, it is not clear what the AFS would, or should, be regarding that entity.

Further, given the significant authority afforded to Treasury, future guidance seems likely to affect the AFS determination. Thus, even if a taxpayer decides today regarding which of its financial statements is its AFS, there is a risk that future guidance will require the taxpayer to return to the Peppermint Forest.

Nana Nutt's House: Net Income or Loss on AFS

Once a taxpayer determines its AFS, it must locate the starting number. The statute directs that the starting number is the "net income or loss" on the AFS. This simple instruction belies a potentially hard nut(t) to crack.

Depending on a taxpayer's facts and circumstances, it may report more than one caption on its AFS titled "net income or loss." This situation arises when a taxpayer includes less-than-wholly-owned entities in its book consolidated group (for example, the taxpayer may consolidate another entity of which it owns 75 percent of the economic interests). In these instances, (1) the taxpayer is considered the parent, as it has a "controlling financial interest" in the other entity; and (2) the other investors are referred to as the "noncontrolling interest holders."

Under U.S. GAAP, the consolidated financial statements are required to separately present on the face of the financial statements (1) consolidated net income of the book consolidated group (including the amounts attributable to both the owners of the parent and the owners of the noncontrolling interests), (2) net income of the book consolidated group that is specifically attributable to the owners of the noncontrolling interests, and (3) net income of the book consolidated group that is specifically attributable to the owners of the parent (excluding the amount attributable to the owners of the noncontrolling interests).[14] The objective of presenting net income in this way in the consolidated financial statements is to distinguish the parent's equity in a subsidiary from the equity of the subsidiary held by other investors.

For example, assume Corporation A owned 75 percent of Subsidiary B and determined that it should consolidate Subsidiary B in its financial statements. Further assume that Subsidiary B generated net income of $100 during the year and Corporation A, not considering any income from Subsidiary B, generated $150 of net income during the year. In Corporation A's consolidated financial statements, it would present both total net income of $250 and net income attributable to the owners of the parent of $225 ($150 of Corporation A's net income plus 75 percent of Subsidiary B's net income). Users of Corporation A's consolidated financial statement may need to know the economics of the consolidated group (Corporation A and Subsidiary B) or the economics attributable to the owners of Corporation A (Corporation A plus 75 percent of Subsidiary B).

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[13] Under U.S. GAAP, a parent consolidates a subsidiary (that is, includes it in its book consolidated group) if the parent has a "controlling financial interest" in that subsidiary. U.S. GAAP contains two primary models for determining whether a company has a controlling financial interest in another entity — the "voting interest model" and the "variable interest model." When companies are required to prepare consolidated financial statements for their book consolidated group under U.S. GAAP, the objective is to present the financial position of a parent and its subsidiaries (including all types of legal entities) as if the consolidated group were a single economic entity.

[14] Amounts attributable to the noncontrolling interest holders are generally presented on single lines in the income statement (under consolidated net income) and the balance sheet (in the equity section).

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The CAMT statute refers to "net income or loss" and does not seem to explicitly address the treatment of noncontrolling interests. In the absence of guidance, it appears that "net income or loss," as that term is used in the statutory text, refers to consolidated net income (that is, net income attributable to both the owners of the parent and the owners of the noncontrolling interests). It, however, is worth noting that amounts attributable to the noncontrolling interests, or equivalent amounts, may be "backed out" under the section 56A(c) modifications. It is further worth noting that future Treasury guidance could clarify if, and when, net income or loss, as used for CAMT purposes, excludes income attributable to noncontrolling interests.

Licorice Lagoon: The Different AFSIs

Once a taxpayer has identified the net income or loss on its AFS, the taxpayer must enter Licorice Lagoon and wrestle with one or more twisted vines. Specifically, the taxpayer must compute either safe harbor AFSI or statutory scope AFSI to make the scope determination. If the taxpayer starts with safe harbor AFSI and does not satisfy the safe harbor scope determination, it must compute statutory scope AFSI. If the taxpayer determines that it is an applicable corporation, it must compute its liability AFSI. Thus, a taxpayer may find itself twisted in three different AFSI calculations.

While a taxpayer must apply a series of rules to compute each AFSI, and certain aspects of this exercise are mechanical, understanding the reasons why safe harbor AFSI, statutory scope AFSI, and liability AFSI may differ will help a taxpayer avoid becoming stuck on a licorice space. The table summarizes how each of four categories of adjustments affects safe harbor AFSI, statutory scope AFSI, and liability AFSI.[15]

Conclusion

Today's CAMTyland adventure provides the setup for a taxpayer's journey toward King Kandy's Castle. A taxpayer's CAMTyland path starts with locating its AFS; identifying the correct starting number on that AFS; and comprehending that safe harbor AFSI, statutory scope AFSI, and liability AFSI may, and often will, differ. This is a path that *must* be traversed before a player begins computing AFSI — there exists no Rainbow Trail or Gumdrop Pass.

The next CAMTyland Adventures article will focus on one reason why safe harbor AFSI, statutory scope AFSI, and liability AFSI can be thought of as different flavors of licorice vines: While each may include AFSI of persons other than the taxpayer, the persons included may differ. The rules for whether the AFSI of another person is included and the amount of the inclusion for such person depend on whether the person is a member of the taxpayer's book consolidated group, tax consolidated group, and section 52 single employer group. Notably, these groups may not overlap, as the relevant rules are not coextensive. Thus, as part of its CAMT analysis, a taxpayer will need to identify its book consolidated group, tax consolidated group, and single-employer group. The identification of these groups requires knowledge of both book and tax rules, and the CAMT effect of non-overlapping groups is like drawing a picture card in Candy Land — the effect could be good or bad. We hope our players will return to wade deeper into the Licorice Lagoon in our next CAMTyland adventure.[16]

[15] As noted above, the special rules for determining whether a member of a foreign-parented multinational group is in scope are not considered herein. For a discussion of these rules, see Santamaria et al., "CAMTyland Adventures, Part II," *Tax Notes Int'l* (forthcoming July 2023).

[16] The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the author(s) only, and does not necessarily represent the views or professional advice of KPMG LLP.

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Right-Sizing Adjustments to Safe Harbor AFSI, Statutory Scope AFSI, and Liability AFSI

	Safe Harbor AFSI	Statutory Scope AFSI	Liability AFSI
Section 52(a) and (b) single-employer rules[a]	100% of AFSI of members of the tested corporation's section 52 single-employer group appear to be included.	100% of AFSI of members of the tested corporation's section 52 single-employer group generally included.	Section 52 single-employer rules do *not* apply.
Tax consolidation rules for domestic subsidiaries[b]	No adjustment to book income is required for corporations that are not included in the taxpayer's consolidated group.	If a corporate entity is included in the book consolidated group but not included in a consolidated tax return with the taxpayer, then its book income must be removed and replaced with dividends received from that corporation and other amounts that are includible in gross income or deductible as a loss under tax rules.	If a corporate entity is included in the book consolidated group but not included in a consolidated tax return with the taxpayer, then its book income must be removed and replaced with dividends received from that corporation and other amounts that are includible in gross income or deductible as a loss under tax rules.
Other section 56A(c) adjustments[c]	Generally do not apply. *Exceptions*: Generally, retains adjustment for federal income taxes and section 901 creditable foreign taxes and retains a rule limiting a foreign corporation's AFSI to effectively connected income.	Generally apply. *Exceptions*: The section 56A(c) adjustments involving partnerships and certain pension plans do not apply.	All section 56A(c) adjustments apply.
Financial statement net operating losses (FS NOLs)[d]	Are *not* taken into account.	Are *not* taken into account.	Are taken into account.
Elimination entries[e]	Must reverse eliminations for transactions between entities that are not part of the section 52 single-employer group.	Treatment of elimination entries generally unclear.	Treatment of elimination entries generally unclear.

[a] Section 52(a) and (b) apply for scope determination purposes but not for liability determination purposes. *See* section 59(k)(1)(D). At a high level, section 52(a) aggregates corporate entities connected through more than 50 percent ownership. Section 52(b) provides that employees of trades or businesses (whether or not incorporated) that are under common control are treated as employed by a single employer. For further discussion of these rules, see Santamaria et al., "CAMTyland Adventures, Part II," *Tax Notes Int'l* (forthcoming July 2023).

[b] A corporation is a member of a "tax consolidated group" if it is (1) a member of an affiliated group of corporations that (2) files a consolidated tax return. Affiliated groups are required to meet stringent stock ownership requirements, and these requirements, at a high level, incorporate an 75 percent vote and value test. For further discussion of these rules, see Santamaria et al., "CAMTyland Adventures, Part II," *Tax Notes Int'l* (forthcoming July 2023).

[c] The statutory CAMT rules provide for numerous adjustments to book income to arrive at AFSI. Section 56A(c) enumerates a series of adjustments that draw on both financial accounting and tax concepts, many of which can be viewed as "remove book and replace with tax" adjustments. These adjustments include adjustments regarding related entities, depreciation and disposal of section 168 property, and certain pension plans. The related-entity adjustments have separate rules for tax-consolidated corporations, non-tax-consolidated corporations, partnerships, and controlled foreign corporations. Note that certain section 56A(c) adjustments to AFSI (specifically those involving partnerships and certain pension plans) do not apply for scope determination purposes. *See* section 59(k)(1)(D) ("determined without regard to paragraphs (2)(D)(i) and (11) of section 56A(c)"). Further, the first notice, under the regulatory authority in section 56A(c)(15), introduced additional adjustments relating to certain nonrecognition transactions.

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Right-Sizing Adjustments to Safe Harbor AFSI, Statutory Scope AFSI, and Liability AFSI *(Continued)*

[d] Financial statement (FS) net operating losses are not considered for scope determination purposes. Section 59(k)(1)(B)(i) ("determined without regard to section 56A(d)"). Section 56A(d)(3) defines FS NOLs, and it is important to note that a taxpayer's FS NOL generally will not equal their "regular" NOLs.

[e] Because consolidated financial statements are presented under a single economic entity concept, any profit or loss that is generated from transactions occurring between entities in the book consolidated group must be fully eliminated from book income. This is accomplished by recording elimination journal entries to remove the effects of intercompany gains and losses from the consolidated financial statements. For example, assume Corporation A sells inventory with a cost of $75 to Corporation B for $100 and that the inventory was still owned by Corporation B at the end of the year (that is, it had not been resold to a third party). If corporations A and B are both included in the book consolidated group, then the $25 of profit from the sale of inventory would be fully eliminated from book income. To the extent that there are intercompany transactions between corporations that were eliminated in the consolidated financial statements (because the corporations were included in the book consolidated group), those elimination entries may need to be reversed in certain fact patterns. Similarly, if there were transactions between corporations that were not eliminated in the consolidated financial statements (because the corporations were not included in the book consolidated group), the taxpayer may need to adjust its book income to eliminate any income or loss resulting from those transactions to the extent that the transactions involved corporations that were part of a tax consolidated group.

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