Part III – Administrative, Procedural, and Miscellaneous

Additional Interim Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code

Notice 2023-64

SECTION 1. OVERVIEW

This notice provides additional interim guidance to further clarify the application of the new corporate alternative minimum tax (CAMT). The CAMT was added to the Internal Revenue Code (Code)[1] by the enactment of § 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA), effective for taxable years beginning after December 31, 2022. Notice 2023-7, 2023-3 I.R.B. 390, announced that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue proposed regulations (forthcoming proposed regulations) addressing the application of the CAMT, and sections 3 through 7 of that notice provided interim guidance regarding time-sensitive CAMT issues that taxpayers may rely on until the issuance of forthcoming proposed regulations. Sections 3 through 5 of Notice 2023-20, 2023-10 I.R.B. 523, provided additional interim guidance that taxpayers may rely on until the issuance of forthcoming proposed regulations, including interim guidance

[1] Unless otherwise specified, all “section” or “§” references are to sections of the Code or the Income Tax Regulations (26 CFR part 1).

intended to help avoid substantial unintended adverse consequences to the insurance industry arising from the application of the CAMT. Notice 2023-42, 2023-26 I.R.B. 1085, provided relief from the addition to tax under § 6655 in connection with the application of the CAMT.

Section 2 of this notice provides a summary of relevant law and other information underlying the interim guidance described in sections 3 through 14 of this notice, which the Treasury Department and the IRS intend to include in forthcoming proposed regulations. Section 15 of this notice describes the intended applicability dates of forthcoming proposed regulations and requirements for relying on the interim guidance set forth in sections 3 through 14 of this notice until the issuance of forthcoming proposed regulations. Section 16 of this notice requests comments on the issues addressed in this notice and on certain additional issues. Section 17 of this notice describes the effect this notice has on other documents. Section 18 of this notice provides drafting and contact information.

SECTION 2. BACKGROUND

.01 Overview of the CAMT. Section 10101 of the IRA amended § 55 to impose the CAMT based on the "adjusted financial statement income" (AFSI) of an applicable corporation for taxable years beginning after December 31, 2022. As described in greater detail in section 2.01 of Notice 2023-7, a corporation is an applicable corporation subject to the CAMT for a taxable year if it meets the average annual AFSI test described in section 2.04 of this notice for one or more taxable years that (i) are before that taxable year, and (ii) end after December 31, 2021. Section 55(a) provides that, for the taxable year of an applicable corporation, the amount of CAMT imposed by § 55 equals the excess (if any) of (i) the tentative minimum tax for the taxable year, over (ii) the sum of the regular tax imposed by chapter 1 of the Code (chapter 1), within the meaning of § 55(c), for the taxable year plus the tax imposed under § 59A. Section 55(b)(2)(A) provides that, in the case of an applicable corporation, the tentative minimum tax for the taxable year is the excess of (i) 15 percent of AFSI for the taxable year (as determined under § 56A), over (ii) the CAMT foreign tax credit (CAMT FTC) for the taxable year (as determined under § 59(l)). In the case of any corporation that is not an applicable corporation, § 55(b)(2)(B) provides that the tentative minimum tax for the taxable year is zero.

.02 AFSI under § 56A.

(1) General definition of AFSI. Section 56A(a) provides that, for purposes of §§ 55 through 59, the term AFSI means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement (AFS) for that taxable year, adjusted as provided in § 56A. See section 3 of this notice for a definition of the term Taxpayer as used in sections 4 through 16 of this notice and section 5 of this notice for rules addressing the determination of AFSI generally.

(2) General definition of AFS. For purposes of § 56A, the term AFS means, with respect to any taxable year, an AFS, as defined in § 451(b)(3) or as specified by the Secretary of the Treasury or her delegate (Secretary) in regulations or other guidance, that covers that taxable year. See § 56A(b). See section 4 of this notice for rules addressing the determination of a taxpayer's AFS.

(3) General authority of the Secretary. Section 56A(e) authorizes the Secretary

to provide such regulations and other guidance as necessary to carry out the purposes of § 56A, including regulations and other guidance relating to the effect of the rules of § 56A on partnerships with income taken into account by an applicable corporation.

.03 Adjustments to AFSI. Section 56A(c)(1) through (14) provide general adjustments to be made to AFSI, several of which are described in section 2.01 of Notice 2023-7 and in section 2.03(1) through (11) of this notice.[2] In addition, § 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as the Secretary determines necessary to carry out the purposes of § 56A, including adjustments to AFSI to prevent the omission or duplication of any item and adjustments to carry out the principles of part II of subchapter C of chapter 1 (relating to corporate liquidations), part III of subchapter C of chapter 1 (relating to corporate organizations and reorganizations), and part II of subchapter K of chapter 1 (relating to partnership contributions and distributions). See section 11 of this notice for rules addressing AFSI adjustments to prevent certain duplications and omissions.

(1) Special rule regarding consolidated financial statements. Section 56A(c)(2)(A) provides that, if the financial results of a taxpayer are reported on the AFS for a group of entities (AFS Group), rules similar to the rules of § 451(b)(5)

[2] These include adjustments that take into account the relationship between entities (§ 56A(c)(2)) and certain items of foreign income (§ 56A(c)(3)); effectively connected income (§ 56A(c)(4)); certain taxes (§ 56A(c)(5)); AFSI of disregarded entities (§ 56A(c)(6)); cooperatives (§ 56A(c)(7)); certain amounts with respect to Alaska native corporations (§ 56A(c)(8)); payments against tax under §§ 48D(d) or 6417 (§ 56A(c)(9)); and certain amounts with respect to certain mortgage servicing contracts (§ 56A(c)(10)), defined benefit pensions (§ 56A(c)(11)), tax-exempt entities (§ 56A(c)(12)), certain depreciation (§ 56A(c)(13)) and qualified wireless spectrum (§ 56A(c)(14)).

apply. Section 451(b)(5) provides that in such a situation, the AFS for the AFS Group (Consolidated AFS) is treated as the AFS of the taxpayer. However, for purposes of § 451(b)(5), if the taxpayer's financial results also are reported on a separate AFS that is of equal or higher priority to the Consolidated AFS, then the taxpayer's AFS is the separate AFS. See § 1.451-3(h)(1)(i). Section 1.451-3(h)(2) and (3) provide rules under § 451(b)(5) for determining the extent to which income reflected on the Consolidated AFS and the underlying source documents is allocable to the taxpayer for purposes of applying the rules under § 451(b).

(2) Special rule regarding Tax Consolidated Groups. Section 56A(c)(2)(B) provides a general rule applicable to a taxpayer that is part of an affiliated group of corporations that join in filing (or that are required to join in filing) a consolidated return for Federal income tax purposes (Tax Consolidated Group). Under § 56A(c)(2)(B), if a taxpayer is part of a Tax Consolidated Group for any taxable year, AFSI for that Tax Consolidated Group for that taxable year must take into account items on the Tax Consolidated Group's AFS that are properly allocable to members of that Tax Consolidated Group. However, § 56A(c)(2)(B) provides the Secretary with authority to prescribe by regulation exceptions to that general rule. See section 6 of this notice for rules applicable to a Tax Consolidated Group.

(3) Special rule regarding corporations not included on a consolidated return. Section 56A(c)(2)(C) provides that, in the case of any corporation that is not included on a consolidated return with the taxpayer, AFSI of the taxpayer with respect to that other corporation is determined by only taking into account dividends received from that other corporation (reduced to the extent provided by the Secretary in regulations

or other guidance) and other amounts that are includible in gross income or deductible as a loss under chapter 1 (other than amounts required to be included under §§ 951 and 951A of the Code or such other amounts as provided by the Secretary) with respect to that other corporation.

(4) AFSI of partners and partnerships. Section 56A(c)(2)(D)(i) provides that, except as provided by the Secretary, if the taxpayer is a partner in a partnership, the taxpayer's AFSI with respect to such partnership is adjusted to take into account only the taxpayer's distributive share of such partnership's AFSI. Section 56A(c)(2)(D)(ii) provides that, for purposes of §§ 55 through 59, the AFSI of a partnership is the partnership's net income or loss set forth on that partnership's AFS (adjusted under rules similar to the rules set forth in § 56A).

(5) AFSI of United States shareholder of a controlled foreign corporation. Section 56A(c)(3)(A) provides an adjustment to the AFSI of a taxpayer for any taxable year in which the taxpayer is a United States shareholder (within the meaning of § 951(b) or, if applicable, § 953(c)(1)(A)) (each shareholder, a U.S. Shareholder) of one or more controlled foreign corporations (each within the meaning of § 957 or, if applicable, § 953(c)(1)(B)) (CFC). Under this rule, the AFSI of the taxpayer with respect to the CFC (as determined under § 56A(c)(2)(C)) is adjusted to also take into account the 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 (as adjusted under rules similar to those that apply in determining AFSI) of each CFC with respect to which the taxpayer is a U.S. Shareholder. 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) is referred to in this notice as Adjusted Net Income or Loss. Section 56A(c)(3)(B) provides that, if the adjustment determined under § 56A(c)(3)(A) would result in a negative adjustment for such year, (i) no adjustment is made to the taxpayer's AFSI for the taxable year, and (ii) the amount of the adjustment determined under § 56A(c)(3)(A) for the succeeding taxable year is reduced by an amount equal to the negative adjustment for the taxable year. See section 7 of this notice for rules addressing the application of § 56A(c) to certain foreign corporations.

(6) Effectively connected income. Section 56A(c)(4) provides that, in determining the AFSI of a foreign corporation, the principles of § 882 (which subjects a foreign corporation to Federal income tax on its taxable income that is effectively connected with the conduct of a trade or business within the United States) apply.

(7) Adjustments for certain taxes. Section 56A(c)(5) provides the general rule that AFSI is appropriately adjusted to disregard any Federal income taxes, or income, war profits, or excess profits taxes (within the meaning of § 901) with respect to a foreign country or possession of the United States (Foreign Income Taxes), which are taken into account on the taxpayer's AFS. To the extent provided by the Secretary, the general rule does not apply to Foreign Income Taxes taken into account on the taxpayer's AFS if the taxpayer does not choose to claim a foreign tax credit under § 27 (Regular FTC). Authority is also provided to prescribe regulations or other guidance on the proper treatment of current and deferred taxes for purposes of § 56A(c)(5), including the time at which such taxes are properly taken into account. See section 8 of this notice for rules addressing the AFSI adjustment for

certain income taxes.

(8) Adjustments with respect to disregarded entities. Section 56A(c)(6) requires AFSI to be adjusted to take into account any AFSI of a disregarded entity owned by the taxpayer.

(9) Adjustments with regard to depreciation. Section 56A(c)(13)(A) requires AFSI to be reduced by depreciation deductions allowed under § 167 with respect to property to which § 168 applies, to the extent of the amount allowed as deductions in computing taxable income for the taxable year. In addition, § 56A(c)(13)(B)(i) requires appropriate adjustments to AFSI to disregard any amount of depreciation expense that is taken into account on the taxpayer's AFS with respect to property to which § 168 applies. Lastly, § 56A(c)(13)(B)(ii) provides that AFSI is appropriately adjusted to take into account any other item specified by the Secretary in order to provide that the property to which § 168 applies is accounted for in the same manner as that property is accounted for under chapter 1. See section 9 of this notice for rules addressing certain AFSI adjustments with respect to property to which § 168 applies.

(10) Adjustments with regard to qualified wireless spectrum. Section 56A(c)(14)(A)(i) requires AFSI to be reduced by amortization deductions allowed under § 197 with respect to qualified wireless spectrum, to the extent of the amount allowed as deductions in computing taxable income for the taxable year. In addition, § 56A(c)(14)(A)(ii)(I) requires appropriate adjustments to AFSI to disregard any amount of amortization expense that is taken into account on the taxpayer's AFS with respect to such qualified wireless spectrum. Further, § 56A(c)(14)(A)(ii)(II) provides that AFSI is

appropriately adjusted to take into account any other item specified by the Secretary in order to provide that such qualified wireless spectrum is accounted for in the same manner as that property is accounted for under chapter 1. Lastly, § 56A(c)(14)(B) defines qualified wireless spectrum as wireless spectrum that is used in the trade or business of a wireless telecommunications carrier, and was acquired after December 31, 2007, and before August 16, 2022. See section 10 of this notice for rules addressing AFSI adjustments with respect to qualified wireless spectrum.

(11) Adjustment for financial statement net operating losses. Section 56A(d)(1) provides that AFSI (determined after the application of § 56A(c), but without regard to § 56A(d)) is reduced by an amount equal to the lesser of the aggregate amount of financial statement net operating loss (FSNOL) carryovers to the taxable year or 80 percent of AFSI (determined after the application of § 56A(c), but without regard to § 56A(d)). Section 56A(d)(2) provides that the amount of an FSNOL that can be carried forward to a taxable year is the FSNOL remaining (if any) after reducing AFSI in prior taxable years under § 56A(d)(1). An FSNOL is the net loss set forth on a taxpayer's AFS, adjusted as provided by § 56A(c), but without regard to § 56A(d), for taxable years ending after December 31, 2019. See section 12 of this notice for rules addressing FSNOL carryovers.

.04 Qualification as an Applicable Corporation under § 59(k). Section 59(k)(1)(A) provides that, for purposes of §§ 55 through 59, the term Applicable Corporation means, with respect to any taxable year, any corporation (other than an S corporation, as defined in § 1361(a)(1), a regulated investment company, as defined in § 851 (RIC), or a real estate investment trust, as defined in § 856 (REIT)), that meets the average annual AFSI test under § 59(k)(1)(B) (AFSI Test) for one or more taxable years that (i) are prior to that taxable year and (ii) end after December 31, 2021.

(1) AFSI Test. There are two versions of the AFSI Test under § 59(k)(1)(B): one version that applies to corporations that are members of a foreign-parented multinational group, as defined in § 59(k)(2)(B) (FPMG), and one version that applies to all other corporations. Under § 59(k)(1)(B)(i), a corporation that is not a member of a FPMG meets the AFSI Test for a taxable year if the average annual AFSI of that corporation (determined without regard to the adjustment under § 56A(d) for FSNOLs) for the three-taxable-year period ending with that taxable year (Three-Taxable-Year Period) exceeds $1,000,000,000 (General AFSI Test). Under § 59(k)(1)(B)(ii), a corporation that is a member of a FPMG for any taxable year meets the AFSI Test for that taxable year if (i) that corporation meets the General AFSI Test (determined after applying the rule in § 59(k)(2)) (FPMG $1 Billion Test), and (ii) the average annual AFSI of that corporation (determined without regard to the rule in § 59(k)(2) and without regard to the adjustment described in § 56A(d) for FSNOLs) for the Three-Taxable-Year Period is at least $100,000,000.

(2) Special aggregation rules and AFSI rules for determining Applicable Corporation status. Solely for purposes of determining whether a corporation is an Applicable Corporation under § 59(k)(1), § 59(k)(1)(D) requires that all AFSI of persons treated as a single employer with that corporation under § 52(a) or (b) is treated as AFSI of that corporation. Section 59(k)(1)(D) also provides that, solely for purposes of determining whether a corporation is an Applicable Corporation, the

AFSI of such corporation must be determined without regard to the partnership distributive share adjustment under § 56A(c)(2)(D)(i) and the adjustments pertaining to covered benefit plans (as defined in § 56A(c)(11)(B)) under § 56A(c)(11). In addition, § 59(k)(2)(A) provides that, solely for purposes of determining whether a corporation that is a member of a FPMG meets the FPMG $1 Billion Test, (i) the AFSI of such corporation must include the AFSI of all members of the FPMG, and (ii) AFSI is determined without regard to the partnership distributive share adjustment under § 56A(c)(2)(D)(i), the foreign income pro rata share adjustment under § 56A(c)(3), the effectively connected income adjustment under § 56A(c)(4), and the adjustments under § 56A(c)(11) pertaining to covered benefit plans.

(3) <u>Determination of a FPMG</u>. For purposes of applying § 59(k)(2)(A), § 59(k)(2)(B) defines a FPMG, with respect to a taxable year, 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 § 59(k)(2)(D) (the common parent or the entity treated as the common parent, the FPMG Common Parent). For purposes of applying § 59(k)(2), if a foreign corporation is engaged in a trade or business in the United States, that trade or business is treated as a separate domestic corporation that is wholly owned by the foreign corporation. <u>See</u> § 59(k)(2)(C).

(4) <u>Authority of the Secretary to provide regulations or other guidance</u>. Section

59(k)(2)(D) authorizes the Secretary to provide regulations or other guidance applying the principles of § 59(k)(2), including rules to determine the entities treated as having a FPMG Common Parent, the entities included in a FPMG, and the FPMG Common Parent. In addition, § 59(k)(3) authorizes the Secretary to provide regulations or other guidance for the purposes of applying § 59(k), including providing a simplified method for determining whether a corporation meets the requirements of § 59(k)(1), and addressing the application of § 59(k) to a corporation that experiences an ownership change. See section 13 of this notice for rules addressing the determination of whether a corporation is an applicable corporation subject to the CAMT, including rules that address aggregation under § 52, FPMGs, and the treatment of investments in partnerships.

.05 CAMT FTC.

(1) Determining the CAMT FTC. Section 59(l)(1) provides the rules for determining the amount of the CAMT FTC for a taxable year if an Applicable Corporation chooses to claim the Regular FTC for the taxable year. The CAMT FTC of the Applicable Corporation for a taxable year is the sum of two amounts. The first amount (CFC Taxes) is equal to the lesser of: (i) the aggregate of the Applicable Corporation's pro rata share (as determined under § 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 adjustment under § 56A(c)(3)(A) (CFC FTC Limitation). See § 59(l)(1)(A). The second amount is equal to the amount of Foreign Income

Taxes that are (1) taken into account on the AFS of the Applicable Corporation, and (2) paid or accrued (for Federal income tax purposes) by the Applicable Corporation. See § 59(l)(1)(B).

(2) Carryover of excess CFC Taxes. Section 59(l)(2) provides that, for any taxable year for which an Applicable Corporation chooses to claim the Regular FTC, the amount of CFC Taxes for the taxable year in excess of the CFC FTC Limitation for the taxable year is carried forward for up to the 5 succeeding taxable years and increases the amount of CFC Taxes in any of those succeeding taxable years to the extent not taken into account in a prior taxable year.

(3) Grant of authority for regulations or other guidance. Section 59(l)(3) provides the Secretary authority to provide regulations or other guidance as is necessary to carry out the purposes of the CAMT FTC rules in § 59(l). See section 14 of this notice for rules addressing the CAMT FTC.

.06 Consolidated return regulations. Section 1502 authorizes the Secretary to prescribe regulations to clearly reflect the Federal income tax liability of a Tax Consolidated Group and to prevent avoidance of such tax liability. See § 1.1502-1(h) (defining the term consolidated group for Federal income tax purposes). For purposes of carrying out those objectives, § 1502 explicitly permits the Secretary to prescribe rules that may be different from the provisions of chapter 1 that would apply if the corporations composing the Tax Consolidated Group filed separate returns.

SECTION 3. DEFINITION OF TAXPAYER

Unless otherwise provided in this notice, for purposes of sections 4 through 16 of this notice, the term Taxpayer means any entity identified in § 7701 and the regulations thereunder (including an entity that is disregarded as an entity separate from its owner under § 301.7701-3 of the Procedure and Administration Regulations (that is, a disregarded entity)), regardless of whether the entity meets the definition of a taxpayer under § 7701(a)(14).

SECTION 4. DETERMINING A TAXPAYER'S AFS

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 4, which provides Taxpayers with additional clarity in determining their AFS prior to forthcoming proposed regulations.

.02 Definition of Applicable Financial Statement (AFS). Subject to the additional rules in section 4.02(2) through (5) of this notice, for purposes of §§ 56A and 59, the terms Applicable Financial Statement and AFS mean the Taxpayer's financial statement listed in section 4.02(1) of this notice that has the highest priority, including priority within sections 4.02(1)(a), (a)(ii), (b), (b)(ii), and (d) of this notice.

(1) General financial statement priority. The financial statements are, in order of descending priority:

(a) GAAP statements. A financial statement that is certified, within the meaning of section 4.02(2) of this notice, as being prepared in accordance with United States generally accepted accounting principles (GAAP) and is:

(i) A Form 10-K (or successor form), or annual statement to shareholders, filed with the United States Securities and Exchange Commission (SEC);

(ii) An audited financial statement of the Taxpayer that is used for:

(A) Credit purposes;

(B) Reporting to shareholders, partners, or other proprietors, or to beneficiaries; or

(C) Any other substantial non-tax purpose; or

(iii) A financial statement, other than a tax return, filed with the Federal Government or any Federal agency, other than the SEC or the IRS;

(b) IFRS statements. A financial statement that is certified, within the meaning of section 4.02(2) of this notice, as being prepared in accordance with international financial reporting standards (IFRS) and is:

(i) Filed by the Taxpayer with an agency of a foreign government that is equivalent to the SEC, and has financial reporting standards not less stringent than the standards required by the SEC;

(ii) An audited financial statement of the Taxpayer that is used for:

(A) Credit purposes;

(B) Reporting to shareholders, partners, or other proprietors, or to beneficiaries; or

(C) Any other substantial non-tax purpose; or

(iii) A financial statement, other than a tax return, filed with the Federal Government, a Federal agency, a foreign government, or an agency of a foreign government, other than the SEC, the IRS, or an agency that is equivalent to the SEC or the IRS; or

(c) Other government and regulatory statements. A financial statement, other than a tax return, filed with the Federal Government or any Federal agency, a state government or state agency, a foreign government or foreign agency, or a self-regulatory organization including, for example, a financial statement filed with a state agency that regulates insurance companies, or the Financial Industry Regulatory Authority, or a comparable foreign self-regulatory organization.

(d) Unaudited external statements. A financial statement, other than a tax return or a financial statement described in section 4.02(1)(a)-(c) of this notice, that is unaudited (or audited but not certified, within the meaning of section 4.02(2) of this notice), prepared for an external non-tax purpose, and prepared using:

(i) GAAP;

(ii) IFRS; or

(iii) any other accepted accounting standards that are issued by an accounting standards board charged with developing accounting standards for one or more jurisdictions;

or

(e) The Taxpayer's Federal income tax return or information return filed with the IRS.

(2) Certified financial statement. A financial statement is a certified financial statement for purposes of section 4.02(1) of this notice if it is:

(a) Certified by an independent financial statement auditor to present fairly the financial position and results of operations of a Taxpayer (or group of Taxpayers) in conformity with the relevant financial accounting standards (an unqualified or unmodified "clean" opinion);

(b) Subject to a qualified or modified opinion by an independent financial statement auditor that such financial statement presents fairly the financial position and results of operations of a Taxpayer (or group of Taxpayers) in conformity with the relevant financial accounting standards, except for the effects of the matter to which the qualification or modification relates (a qualified or modified “except for” opinion); or

(c) Subject to an adverse opinion by an independent financial statement auditor, but only if the auditor discloses the amount of the disagreement with the statement.

(3) Restatements. If a Taxpayer restates its FSI (as defined in section 5.02(2) of this notice) for a taxable year prior to the date that the Taxpayer files its original Federal income tax return for such taxable year, the AFS that reflects the restated FSI (Restated AFS) must be prioritized over the first AFS that is issued for that specific accounting period (Original AFS). If a Taxpayer restates its FSI for a taxable year after the date that the Taxpayer files its original Federal income tax return for such taxable year, see section 11.02(3) of this notice. For purposes of this notice, a Restated AFS is a revised AFS for a specific accounting period that is reissued to correct the Original AFS for that accounting period. Adjustments to the financial results of a prior accounting period that are disclosed in the notes to an Original AFS for comparison purposes (for example, in the case of a change in accounting principle) do not constitute a Restated AFS for that prior accounting period for purposes of this notice.

(4) Annual and periodic financial statements. If a Taxpayer with different financial accounting and taxable years is required to file both annual financial statements and periodic financial statements covering less than a 12-month period with a government or government agency, the Taxpayer must prioritize the annual financial statements over the periodic financial statements in accordance with section 4.02 of this notice.

(5) AFS covering group of entities.

(a) In general. If a Taxpayer's financial results are consolidated with the financial results of one or more other Taxpayers on a Consolidated AFS (as defined in section 2.03(1) of this notice), the Taxpayer's AFS is the Consolidated AFS. However, except as provided in section 4.02(5)(b) of this notice, if the Taxpayer's financial results are also separately reported on an AFS that is of equal or higher priority to the Consolidated AFS under section 4.02(1) of this notice (Separate AFS), then the Taxpayer's AFS is the Separate AFS.

(b) Exceptions to use of Separate AFS.

(i) Corporation that is a member of a Tax Consolidated Group. 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 also are reported on a Separate AFS that is of equal or higher priority to the Consolidated AFS.

(ii) Members of a FPMG. If a Taxpayer is a member of a FPMG and if the FPMG Common Parent (as defined in section 2.04(3) of this notice) prepares a Consolidated AFS (FPMG Consolidated AFS) that includes the Taxpayer, the Taxpayer must use the FPMG Consolidated AFS, regardless of whether the Taxpayer's financial results also are reported on a Separate AFS that is of equal or higher priority to the FPMG Consolidated AFS.

SECTION 5. GENERAL RULES FOR DETERMINING AFSI

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 5, which provides Taxpayers with additional clarity in determining AFSI prior to forthcoming proposed regulations.

.02 Definition of AFSI and FSI.

(1) Definition of AFSI.

(a) General definition of AFSI. Except as provided in section 5.02(1)(b) of this notice, AFSI means, with respect to any Taxpayer for any taxable year, the Taxpayer's financial statement income (FSI) (as defined in section 5.02(2) of this notice) for such taxable year, adjusted as provided in § 56A or regulations or other guidance issued under § 56A. A Taxpayer otherwise may not make any adjustments to FSI in determining AFSI. For purposes of § 59(k), certain modifications to AFSI, including aggregation modifications, apply as provided in § 59(k) or regulations or other guidance issued under § 59(k), including in section 13 of this notice.

(b) AFSI exception for certain Taxpayers. If, pursuant to section 4.02(1)(e) of this notice, a Taxpayer determines that its AFS for a taxable year is a Federal income tax return or information return filed with the IRS, the AFSI of such Taxpayer for such taxable year is the Taxpayer's taxable income for such taxable year.

(2) Definition of FSI. FSI means, with respect to any Taxpayer for any taxable year, the net income or loss of the Taxpayer set forth on the income statement (sometimes referred to as the statement of earnings, the statement of operations, or the statement of profit and loss) included in the Taxpayer's AFS (as defined in section 4.02 of this notice) for such taxable year. FSI includes all of the Taxpayer's items of income, expense, gain, and loss reflected in the net income or loss set forth on such income statement for the taxable year, including nonrecurring items and net income or loss from

discontinued operations. FSI does not include amounts reflected elsewhere in the Taxpayer's AFS, including in equity accounts such as retained earnings and other comprehensive income.

(3) General rules for determining FSI and AFSI.

(a) Federal income tax treatment not relevant for FSI. FSI includes all items of income, expense, gain, and loss reflected in the net income or loss of the Taxpayer set forth on the income statement included in a Taxpayer's AFS regardless of whether such amounts are realized, recognized, or otherwise taken into account for purposes of determining the Taxpayer's regular tax liability, as defined in § 26(b) (Regular Tax). For example, FSI includes income reported on the income statement included in a Taxpayer's AFS for a taxable year even if such income would not be taken into account as AFS revenue for that taxable year under § 1.451-3(b)(2). Similarly, FSI includes gain or loss reported on the income statement included in a Taxpayer's AFS for a taxable year even if such gain or loss is deferred or not recognized for Regular Tax purposes (for example, gain on a like-kind exchange that qualifies for nonrecognition treatment under § 1031).

(b) Federal income tax treatment not relevant for AFSI except as otherwise provided in the statute or other guidance. Except as otherwise provided in § 56A or § 59(k) (as applicable), regulations, or other guidance, AFSI includes all items of income, expense, gain, and loss reflected in the Taxpayer's FSI regardless of whether such amounts are realized, recognized, or otherwise taken into account for Regular Tax purposes. Accordingly, if FSI reflects gain or loss from a transaction that qualifies for nonrecognition treatment for Regular Tax purposes, and no provision of § 56A or

§ 59(k) (as applicable), regulations, or other guidance provides for an adjustment to apply nonrecognition treatment for AFSI purposes, then such gain or loss is recognized in AFSI.

(c) Determining FSI from a Consolidated AFS. If a Taxpayer's AFS is a Consolidated AFS (as determined under section 4.02(5) of this notice), the Taxpayer must determine the amount of the portion of the net income or loss of the AFS Group (as defined in section 2.03(1) of this notice) set forth on the income statement included in the Consolidated AFS (Consolidated FSI) that is the Taxpayer's FSI. Except as provided in section 6 of this notice, the Taxpayer's FSI is determined in accordance with this section 5.02(3)(c).

(i) In general. The portion of Consolidated FSI that is the Taxpayer's FSI must be supported by the Taxpayer's separate books and records (including trial balances) used to create the Consolidated AFS and generally would equal the FSI that the Taxpayer would have reported had the Taxpayer prepared a Separate AFS.

(ii) No netting losses against income within the Consolidated AFS. The portion of Consolidated FSI that is the Taxpayer's FSI is determined without regard to the financial results of other Taxpayers that are members of the same AFS Group. Accordingly, if two or more Taxpayers are members of the same AFS Group, the loss of one such Taxpayer may not be netted against the income of another such Taxpayer for purposes of determining the FSI of either Taxpayer, notwithstanding that such amounts are reflected in Consolidated FSI on a net basis.

(iii) Elimination journal entries. The portion of Consolidated FSI that is the Taxpayer's FSI is determined without regard to any AFS Consolidation Entries (as defined in section 5.02(3)(c)(vi) of this notice) that--

(A) eliminate the effect of transactions between the Taxpayer and another Taxpayer that is a member of the same AFS Group unless such transactions are between a disregarded entity and its owner or between disregarded entities that have the same owner; or

(B) eliminate FSI of the Taxpayer with respect to its investment in another Taxpayer that is a member of the AFS Group unless the investment is in a disregarded entity.

In the case of a Taxpayer that has an investment in a partnership, the FSI of the Taxpayer with respect to such investment must be determined as though the Taxpayer prepared a Separate AFS in which such investment was properly accounted for under the relevant accounting standards for investments in other entities (for example, under the equity method described in Accounting Standards Codification (ASC) 323), when the Taxpayer does not so account for the investment in its separate books and records used to prepare the Consolidated AFS.

(iv) Consolidation entries other than elimination entries. AFS Consolidation Entries, other than elimination entries described in section 5.02(3)(c)(iii)(A) and (B) of this notice, that relate to one or more Taxpayers that are members of the AFS Group and that are not reflected in the separate books and records of such Taxpayers, such as for shared expenses, must be allocated to each Taxpayer to which the AFS Consolidation Entries relate and taken into account in each Taxpayer's FSI.

(v) Reconciliation requirement. The Taxpayer must maintain books and records sufficient to demonstrate how its FSI (as determined under this section

5.02(3)(c)) reconciles to Consolidated FSI.

(vi) Definition of AFS Consolidation Entries. For purposes of this section 5.02(3)(c), the term AFS Consolidation Entries means the financial accounting journal entries that are made for AFS purposes in order to present the financial results of an AFS Group as though all members of the AFS Group were a single company, including journal entries to eliminate the effect of transactions between members of the AFS Group, to report amounts that are not recorded in the separate books and records of one or more members of the AFS Group, and to correct or otherwise adjust amounts that are reported in the separate books and records of one or more members of the AFS Group.

(vii) Example.

(A) Facts. The financial results of Taxpayer X are consolidated with the financial results of Taxpayer Y on a Consolidated AFS (XY Consolidated AFS) for the financial reporting period beginning January 1, 2023, and ending December 31, 2023. X and Y are the only Taxpayers whose financial results are reflected in the XY Consolidated AFS. X and Y are both calendar year Taxpayers. Under section 4.02(5) of this notice, X's AFS and Y's AFS is the XY Consolidated AFS. X is a domestic corporation. Y is a domestic partnership, and X has a 40 percent interest in Y. The XY Consolidated AFS reflects Consolidated FSI of $1.65 billion. The books and records used to prepare the XY Consolidated AFS disclose that X had separate net income of $2 billion and that Y had a separate net loss of $500 million. Further, the $2 billion net income of X includes $1 million of income for services rendered to Y and a loss of $200 million reflecting X's share of Y's net loss, determined under the equity method of accounting. These two amounts were eliminated from Consolidated FSI through AFS Consolidation Entries made in preparing the XY Consolidated AFS. Y's loss of $500 million includes $1 million of expense that Y incurred for services provided by X. The $1 million expense was also eliminated from Consolidated FSI through AFS Consolidation Entries made in preparing the Consolidated AFS. An AFS Consolidation Entry was also made to take into account in Consolidated FSI $50 million of expenses incurred by X to a third party and not reflected in its separate books and records. Accordingly, the information from X's and Y's source documents, the AFS Consolidation Entries, and Consolidated FSI for the XY Consolidated AFS are summarized as follows (all amounts are stated in U.S. dollars):

	X	Y	AFS Consolidation Entries	Consolidated FSI
Net income or loss from transactions outside AFS Group	2,199,000,000	(499,000,000)		1,700,000,000
Income from transactions between X and Y (services)	1,000,000	-	(1,000,000)	-
Expenses from transactions between X and Y (services)	-	(1,000,000)	1,000,000	-
Investment in Y (X's 40% share of Y's 500,000,000 loss)	(200,000,000)	-	200,000,000	-
Expense of X recorded in consolidation	-	-	(50,000,000)	(50,000,000)
Net Income or Loss	2,000,000,000	(500,000,000)	150,000,000	1,650,000,000

(B) Analysis. X and Y must determine their portion of the Consolidated FSI set forth on the XY Consolidated AFS by applying the principles set forth in section 5.02(3)(c) of this notice. Accordingly, the portion of Consolidated FSI that is X's FSI is based upon X's separate books and records used in preparing the XY Consolidated

AFS. These disclose net income of $2 billion. In determining X's FSI, this amount is not reduced by the net loss reflected in Y's separate books and records (even though Consolidated FSI is reduced by such net loss). Further, pursuant to section 5.02(3)(c)(iii) of this notice, the AFS Consolidation Entries eliminating the $1 million of income from services rendered to Y and the $200 million loss from X's investment in Y determined under the equity method are both disregarded. That is, X's FSI includes these two amounts. Finally, pursuant to section 5.02(3)(c)(iv) of this notice, X must reduce its FSI by $50 million, the AFS Consolidation Entry for administrative costs of X that were not reflected in its separate books and records. Accordingly, the portion of Consolidated FSI that is X's FSI is $1.950 billion ($2 billion - $50 million).

The portion of Consolidated FSI that is Y's FSI is similarly determined. Y's separate books and records disclose a net loss of $500 million. In determining Y's FSI, this amount is not offset by any portion of X's separate net income of $2 billion (even though the amounts are netted in Consolidated FSI). Further, pursuant to section 5.02(3)(c)(iii) of this notice, the AFS Consolidation Entry eliminating $1 million of expense for services provided by X is disregarded. That is, such expense is included in Y's FSI. Accordingly, the portion of Consolidated FSI that is Y's FSI is a net loss of $500 million.

Pursuant to section 5.02(3)(c) of this notice, the portions of Consolidated FSI that are X's FSI and Y's FSI are determined as follows:

	FSI of X	FSI of Y
Separate net income or Loss	2,000,000,000	(500,000,000)
Expenses of X recorded in consolidation	(50,000,000)	-

FSI[3]	1,950,000,000	(500,000,000)

SECTION 6. DETERMINING FSI, AFSI, AND TAX IMPOSED FOR TAX CONSOLIDATED GROUPS

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 6, which provides Taxpayers with additional clarity in determining, prior to forthcoming proposed regulations—

(1) the FSI and AFSI of a Tax Consolidated Group (see section 6.03 of this notice), and

(2) the amount of tax imposed by § 55 on a Tax Consolidated Group (see section 6.04 of this notice).

.02 Priority of Consolidated AFS. For rules regarding the priority of the Consolidated AFS of a Tax Consolidated Group, see section 4.02(5)(b)(i) of this notice.

.03 Calculation of FSI of a Tax Consolidated Group. The FSI of a Tax Consolidated Group for a taxable year is determined based on the Consolidated AFS of the Tax Consolidated Group as follows:

(1) Consolidated AFS comprising solely Tax Consolidated Group members. If the Consolidated AFS of the Tax Consolidated Group comprises solely the members (as defined in § 1.1502-1(b)) of the Tax Consolidated Group and any disregarded entities owned by such members (each, a Tax Consolidated AFS Member), the FSI of the Tax

[3] Given the application of section 5.02(3)(c)(iii)(B) to disregard the AFS Consolidation Entry eliminating the $200,000,000 loss from X's investment in Y, the sum of the separate portions of Consolidated FSI that are X's FSI and Y's FSI [$1,950,000,000 + (500,000,000) = $1,450,000,000] is $200,000,000 less than the Consolidated FSI for the XY Consolidated AFS [$1,650,000,000].

Consolidated Group for the taxable year equals the Consolidated FSI set forth in the Consolidated AFS of the Tax Consolidated Group (that is, the FSI of all Tax Consolidated AFS Members) for the taxable year under section 5.02 of this notice.

(2) Consolidated AFS comprising Tax Consolidated AFS Members and other Taxpayers. If a Consolidated AFS comprises all of the Tax Consolidated AFS Members of a single Tax Consolidated Group, as well as one or more Taxpayers that are not Tax Consolidated AFS Members of the Tax Consolidated Group, the FSI of the Tax Consolidated Group for the taxable year must be determined from the Consolidated AFS under section 5.02(3)(c) of this notice by treating the Tax Consolidated Group as the Taxpayer. Treating a Tax Consolidated Group as a Taxpayer does not change the Federal tax classification of an entity classified as a partnership owned only by Tax Consolidated AFS Members of the Tax Consolidated Group. Accordingly, for example, the FSI of the Tax Consolidated Group must--

(a) disregard each AFS Consolidation Entry regarding--

(i) a transaction between a Tax Consolidated AFS Member and another Taxpayer,

(ii) a Tax Consolidated AFS Member’s investment in another Taxpayer, or

(iii) another Taxpayer’s investment in a Tax Consolidated AFS Member, and

(b) take into account each AFS Consolidation Entry regarding--

(i) a transaction between Tax Consolidated AFS Members, or

(ii) a Tax Consolidated AFS Member’s investment in another Tax Consolidated AFS Member.

.04 Calculation of Tax Imposed by § 55. The tax imposed by § 55(a) on a Tax

Consolidated Group is calculated based on the Tax Consolidated Group's--

(1) tentative minimum tax,

(2) regular consolidated tax liability, and

(3) tax imposed by § 59A (under § 1.1502-59A).

.05 Example. The following example illustrates the rules set forth in section 6.03 of this section.

(1) Facts. X, Y, and Z are domestic corporations that each have only one class of stock outstanding. X owns 90 percent of the stock of Y and 60 percent of the stock of Z. The remaining Y and Z stock is held by unrelated persons. X and Y form an affiliated group (XY Tax Consolidated Group) and file a consolidated tax return (XY Consolidated Return), with X as the common parent. The financial results of domestic corporations X, Y, and Z are consolidated on a Consolidated AFS (XYZ Consolidated AFS) for all relevant financial reporting periods. X, Y, and Z are the only taxpayers the financial results of which are reflected in the XYZ Consolidated AFS. X, Y, and Z are all calendar year taxpayers. Under section 4.02(5) of this notice, the XYZ Consolidated AFS is the AFS of X, Y, and Z. In 2023, X sold Asset N to Y for $10 million. Books and records used to prepare the XYZ Consolidated AFS, including trial balances, show that X had gain of $2 million on the sale of Asset N. The gain was eliminated from Consolidated FSI through AFS Consolidation Entries made in preparing the XYZ Consolidated AFS. In 2024, Y sold Asset N to Z for $13 million. Books and records used to prepare the XYZ Consolidated AFS, including trial balances, show that Y had gain of $3 million on the sale of Asset N. As in 2023, the gain was eliminated from Consolidated FSI through AFS Consolidation Entries made in preparing the XYZ Consolidated AFS.

(2) Analysis--(a) In general. The FSI of the XY Tax Consolidated Group is determined under section 6.03 of this notice. The XYZ Consolidated Group includes an entity (Z) that is not a Member of the XY Tax Consolidated Group. Therefore, section 6.03(2) of this notice applies. As a result, the XY Consolidated Group's FSI is determined from the XYZ Consolidated AFS by applying section 5.02(3)(c) of this notice, treating the XY Tax Consolidated Group as a single taxpayer. Accordingly, the XY Tax Consolidated Group's FSI is based upon X's and Y's books and records used in preparing the XYZ Consolidated AFS. AFS Consolidation Entries eliminating transactions between Z and a Member of the XY Tax Consolidated Group are disregarded in determining the FSI of the XY Tax Consolidated Group, but AFS Consolidation Entries eliminating transactions between X and Y are taken into account.

(b) Analysis for 2023. In 2023, because the AFS Consolidation Entries eliminate a transaction between X and Y, the AFS Consolidation Entries are taken into account. Therefore, X's $2 million gain on the sale of Asset N is not included in the XY Tax Consolidated Group's FSI in 2023.

(c) Analysis for 2024. In 2024, because the AFS Consolidation Entries eliminate a transaction between Y (a Member of the XY Tax Consolidated Group) and Z (a Non-member), these AFS Consolidation Entries are disregarded. However, the effect of the 2023 AFS Consolidation Entries on the basis of Asset N is taken into account. Therefore, the XY Tax Consolidated Group's FSI in 2024 includes $5 million of gain on the sale of Asset N.

SECTION 7. DETERMINING AFSI WITH RESPECT TO CERTAIN FOREIGN CORPORATIONS

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 7, which provides Taxpayers with additional clarity in determining AFSI with respect to certain foreign corporations prior to forthcoming proposed regulations.

.02 Application of § 56A(c) in respect of certain foreign corporations.

(1) Interaction of section 56A(c)(2)(C) and (c)(3). A Taxpayer that is a U.S. Shareholder (as defined in section 2.03(5) of this notice) of a CFC (as defined in section 2.03(5) of this notice) must apply both § 56A(c)(2)(C) and (c)(3) to determine its AFSI with respect to such CFC.

(2) Section 56A(c)(3) adjustment determined on aggregate basis. A Taxpayer that is a U.S. Shareholder of multiple CFCs makes a single adjustment under § 56A(c)(3)(A) that is equal to the sum of its pro rata share of the Adjusted Net Income or Loss (as defined in section 2.03(5) of this notice) of each CFC of which the Taxpayer is a U.S. Shareholder. If the amount of such single adjustment would be negative, no amount is taken into account under § 56A(c)(3) for such taxable year. See § 56A(c)(3)(B)(i).

(3) Financial statement income or loss of a CFC that is a partner in any partnership or the owner of any disregarded entity. If a CFC is a partner in any partnership or the owner of any disregarded entity, the items taken into account in computing the CFC's Adjusted Net Income or Loss must include the CFC's distributive share of AFSI of any such partnership (as determined under § 56A(c)(2)(D), regulations, or other guidance) and the FSI of any such disregarded entity, as adjusted under rules similar to those that apply in determining AFSI.

(4) Application of income tax treaties. For purposes of applying § 56A(c)(4), in the

case of a foreign corporation that qualifies for and claims the benefits of the business profits provisions of an applicable income tax treaty, the principles of those provisions apply in determining the foreign corporation's AFSI.

(5) Interaction of §§ 56A(c)(3) and (c)(4). A CFC's Adjusted Net Income or Loss is not limited to the amount of AFSI of the CFC that would be determined if only § 56A(c)(4) and application of section 7.02(4) of this notice were taken into account. Additionally, if a CFC is an Applicable Corporation, the CFC's Adjusted Net Income or Loss is reduced by the amount of AFSI of the CFC (determined by taking into account § 56A(c)(4) as applied by taking into account section 7.02(4) of this notice).

SECTION 8. AFSI ADJUSTMENT FOR CERTAIN TAXES

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 8, which provides Taxpayers with additional clarity in determining the AFSI adjustment for certain taxes under § 56A(c)(5) prior to forthcoming proposed regulations.

.02 Adjustments for certain taxes under § 56A(c)(5).

(1) Timing of appropriate adjustment. An appropriate adjustment to AFSI described in § 56A(c)(5) with respect to any Federal income taxes or Foreign Income Taxes (as defined in section 2.03(7) of this notice) that are taken into account on the Taxpayer's AFS, including Federal income taxes or Foreign Income Taxes accounted for as deferred tax expense (benefit), as current tax expense (benefit), or through increases or decreases to other AFS accounts (such as those that are used to account for FSI from investments in other entities under the equity method), is made in the

taxable year or years in which such taxes increase or decrease the Taxpayer's FSI or are included as a component of an adjustment to AFSI described in section 11.02 of this notice.

(2) Taxes treated as taken into account on an AFS. For purposes of sections 8.02 and 14.02 of this notice, a Federal income tax or Foreign Income Tax is considered taken into account on an AFS of a Taxpayer if any journal entry has been recorded in the journal used to determine the amounts on the AFS of the Taxpayer for any year, or another AFS that includes the Taxpayer, to reflect the income tax, even if the income tax does not increase or decrease the Taxpayer's FSI at the time of the journal entry. An income tax that is taken into account on a partnership's AFS is also considered taken into account on any AFS of its partners.

SECTION 9. AFSI ADJUSTMENTS FOR SECTION 168 PROPERTY

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 9, which provides Taxpayers with additional clarity in determining AFSI adjustments for Section 168 Property (as defined in section 4.02(5) of Notice 2023-7) prior to forthcoming proposed regulations.

.02 Modifications and clarifications to Notice 2023-7. This section 9.02 modifies and clarifies certain provisions in section 4 of Notice 2023-7. Taxpayers that choose to rely on the interim guidance in section 4 of Notice 2023-7 on or after September 12, must apply the guidance in section 4 of Notice 2023-7, as modified and clarified by this notice.

(1) Adjustments for accounting method changes. If a Taxpayer changes its

method of accounting for depreciation for any item of Section 168 Property for Regular Tax purposes, the Taxpayer must adjust AFSI to reflect the adjustment required under § 481(a) for such change to prevent depreciation from being duplicated or omitted under § 56A(c)(13). Section 9.02(5) and (6) of this notice modifies and clarifies sections 4.02 and 4.03 of Notice 2023-7 to take into account this § 481(a) adjustment. Section 9.02(8) of this notice modifies and clarifies section 4.08 of Notice 2023-7 to provide an example of this rule.

(2) <u>Adjustments for Tax Depreciation capitalized and subsequently deducted</u>. If a Taxpayer capitalizes Tax Depreciation, as defined in section 4.02(7) of Notice 2023-7, and recovers the amount capitalized through one or more deductions allowed in computing taxable income, AFSI is reduced by such deductions, even if such deductions are allowed under a provision of the Code other than § 167. For example, if a Taxpayer capitalizes and amortizes Tax Depreciation under § 174(a)(2), AFSI is reduced by the amortization deductions allowed under § 174 in computing taxable income. Section 9.02(5) and (6) of this notice modifies and clarifies sections 4.02 and 4.03 of Notice 2023-7 to take into account the deductions described in this section 9.02(2).

(3) <u>Adjustments for Tax Depreciation capitalized to non-inventory property held for sale</u>. If a Taxpayer capitalizes Tax Depreciation to property described in § 1221(a)(1) that is not inventory and recovers the amount capitalized as part of the computation of gain or loss from the sale or exchange of such property in computing taxable income, AFSI is reduced by such amount. Section 9.02(5) and (6) of this notice modifies and clarifies sections 4.02 and 4.03 of Notice 2023-7 to take into

account the amounts described in this section 9.02(3).

(4) Adjustments related to dispositions of Section 168 Property that occur for AFS purposes before they occur for Regular Tax purposes. If a Taxpayer takes a disposition loss, including an abandonment loss, into account in its FSI with respect to Section 168 Property for a taxable year that is earlier than the taxable year in which the disposition event occurs for Regular Tax purposes, the Taxpayer must adjust AFSI for such earlier taxable year to disregard the disposition loss included in its FSI for that taxable year. The Taxpayer must wait until the taxable year in which the disposition event occurs for Regular Tax purposes to take the disposition loss (as redetermined under section 4.07 of Notice 2023-7, as modified by this notice) into account for AFSI purposes. Section 9.02(5) and (6) of this notice modifies and clarifies sections 4.02 and 4.03 of Notice 2023-7 to reflect this adjustment. Additionally, section 9.02(7) of this notice modifies section 4.07 of Notice 2023-7 to clarify that the rules in such section apply in the taxable year in which Section 168 Property is disposed of for Regular Tax purposes. Section 9.02(7) of this notice also modifies and clarifies section 4.07 of Notice 2023-7 to provide additional rules regarding adjustments to the AFS basis of Section 168 Property for purposes of redetermining the FSI gain or loss from the disposition of such property. Finally, section 9.02(8) of this notice modifies and clarifies the example in section 4.08 of Notice 2023-7 to illustrate these rules.

(5) Modifications to section 4.02 of Notice 2023-7. In accordance with sections 9.02(1) through (4) of this notice, section 4.02 of Notice 2023-7 is modified and clarified to read as follows:

.02 Defined Terms. For purposes of this section 4:

(1) Covered Book COGS Depreciation. The term Covered Book COGS Depreciation means depreciation expense, disposition loss (including from an abandonment) that occurs prior to the taxable year in which the disposition occurs for regular tax purposes, impairment loss, or impairment loss reversal that is taken into account as cost of goods sold (or as part of the computation of gain or loss from the sale or exchange of other property held for sale) in the net income or loss set forth on the taxpayer's AFS with respect to Section 168 Property (as defined in section 4.02(5) of this notice).

(2) Covered Book Depreciation Expense. The term Covered Book Depreciation Expense means depreciation expense, disposition loss (including from an abandonment) that occurs prior to the taxable year in which the disposition occurs for regular tax purposes, impairment loss, or impairment loss reversal other than Covered Book COGS Depreciation that is taken into account in the net income or loss set forth on the taxpayer's AFS with respect to Section 168 Property.

(3) Covered Book Expense. The term Covered Book Expense means an amount, other than Covered Book COGS Depreciation and Covered Book Depreciation Expense, that is--

(a) recognized as an expense or loss in the net income or loss set forth on the taxpayer's AFS, and

(b) reflected in the unadjusted depreciable basis, as defined in § 1.168(b)-1(a)(3), of Section 168 Property for purposes of the regular tax liability, as defined in § 26(b) (Regular Tax).

(4) Deductible Tax Depreciation. The term Deductible Tax

Depreciation means Tax Depreciation (as defined in section 4.02(7) of this notice) that is allowed as a deduction in computing taxable income, including Tax Depreciation that is capitalized and subsequently allowed as a deduction in computing taxable income (even if such deduction is allowed under a provision of the Code other than § 167).

(5) Section 168 Property. The term Section 168 Property means property to which § 168 applies, as described in section 4.04 of this notice.

(6) Tax COGS Depreciation. The term Tax COGS Depreciation means Tax Depreciation that is capitalized to inventory under § 263A and recovered as part of cost of goods sold in computing gross income, and Tax Depreciation that is capitalized to property described in § 1221(a)(1) that is not inventory and recovered as part of the computation of gain or loss from the sale or exchange of such property in computing taxable income.

(7) Tax Depreciation. The term Tax Depreciation means depreciation deductions allowed under § 167, with respect to Section 168 Property.

(8) Tax Depreciation Section 481(a) Adjustment. The term Tax Depreciation Section 481(a) Adjustment means those adjustments that are required under § 481(a) for a change in method of accounting for depreciation for any item of Section 168 Property.

(6) Modifications to section 4.03 of Notice 2023-7. In accordance with section 9.02(1) through (4) of this notice, section 4.03 of Notice 2023-7 is modified and clarified to read as follows:

.03 Adjustments for Depreciation (Including Depreciation Capitalized to

Inventory). For purposes of § 56A(c)(13), AFSI is--

(1) reduced by Tax COGS Depreciation, but only to the extent of the amount recovered: (a) as part of cost of goods sold in computing taxable income for the taxable year, or (b) as part of the computation of gain or loss from the sale or exchange of non-inventory property described in § 1221(a)(1) that is included in taxable income, or deducted in computing taxable income, respectively, for the taxable year, as applicable,

(2) reduced by Deductible Tax Depreciation, but only to the extent of the amount allowed as a deduction in computing taxable income for the taxable year,

(3) adjusted to disregard Covered Book COGS Depreciation, Covered Book Depreciation Expense, and Covered Book Expense,

(4) reduced by any Tax Depreciation Section 481(a) Adjustment that is negative, but only to the extent of the amount of such Tax Depreciation Section 481(a) Adjustment that is taken into account in computing taxable income for the taxable year,

(5) increased by any Tax Depreciation Section 481(a) Adjustment that is positive, but only to the extent of the amount of such Tax Depreciation Section 481(a) Adjustment that is taken into account in computing taxable income for the taxable year, and

(6) adjusted for other items as provided in regulations or other guidance.

(7) Modifications to section 4.07 of Notice 2023-7. In accordance with section 9.02(1) and (4) through (6) of this notice, section 4.07 of Notice 2023-7 is modified and clarified to read as follows:

.07 AFSI adjustments for dispositions. If a taxpayer disposes of Section 168 Property for Regular Tax purposes, the taxpayer must adjust AFSI for the taxable year in which such disposition occurs to redetermine any gain or loss taken into account in the net income or loss set forth on the taxpayer's AFS with respect to such disposition for such year (including a gain or loss of zero) by adjusting the remaining AFS basis of such property by the amounts described in sections 4.07(1) through (4) of this notice with respect to such property, including those amounts attributable to taxable years prior to the effective date of the CAMT. Pursuant to this section 4.07, the remaining AFS basis of such property is--

(1) decreased by the full amount of Tax Depreciation with respect to such property (regardless of whether any amount of such Tax Depreciation was capitalized and not yet taken into account as a reduction to AFSI through an adjustment described in sections 4.03(1) or (2) of this notice),

(2) increased by the cumulative adjustments described in section 4.03(3) of this notice with respect to such property,

(3) increased by the full amount of any Tax Depreciation Section 481(a) Adjustment with respect to such property that is positive and decreased by the full amount of any Tax Depreciation Section 481(a) Adjustment with respect to such property that is negative (regardless of whether any portion of such Tax Depreciation Section 481(a) Adjustment has yet to be taken into account in AFSI through an

adjustment described in sections 4.03(4) or (5) of this notice), and

(4) increased or decreased, as appropriate, by any other adjustments to AFS basis required under § 56A, regulations, or other guidance with respect to such property (for example, AFS basis adjustments required under section 3.03(2) of this notice).

(8) Modifications to section 4.08 of Notice 2023-7. In accordance with section 9.02(1) and (4) through (6) of this notice, section 4.08 of Notice 2023-7 is modified and clarified to read as follows:

.08 Examples. The following examples illustrate certain rules set forth in section 4 of this notice.

(1) Example 1 – Section 481(a) adjustment.

(a) Facts. X is an Applicable Corporation for the calendar year ending December 31, 2023. X timely files a Form 3115, Application for Change in Accounting Method, under Rev. Proc. 2015-13, 2015-5 I.R.B. 419, for the calendar year ending December 31, 2023, to change its method of accounting for depreciation for an item of Section 168 Property, and the Secretary consents to the change. The adjustment required under § 481(a) to implement such change is positive because the total amount of depreciation taken by X with respect to the Section 168 Property under its present method was $1,000x greater than the total amount of depreciation allowable under the new method of accounting. X takes the $1,000x net positive § 481(a) adjustment into account in computing taxable income ratably over the § 481(a) adjustment period of 4 taxable years, beginning with the year of change (2023 through 2026).

(b) <u>Analysis for taxable years 2023 through 2026</u>. Pursuant to section 9.02(1) of this notice, X must take the $1,000x net positive Tax Depreciation Section 481(a) Adjustment into account in determining AFSI under § 56A(c)(13) for taxable years 2023 through 2026. Because the adjustment is positive, X would increase AFSI by $250x each year.

(2) <u>Example 2 – Property place in service prior to 2023 and disposition adjustments</u>.

(a) <u>Facts</u>. Taxpayer is an Applicable Corporation for the calendar year ending December 31, 2023. On January 1, 2018, Taxpayer purchased and placed in service Property A, which is Section 168 Property, at a cost of $1,000x. Property A qualified for, and Taxpayer claimed, the 100-percent additional first year depreciation deduction allowable under § 168(k) for its taxable year ending December 31, 2018. For AFS purposes, Taxpayer depreciates Property A over 40 years on a straight-line method and recognizes $25x ($1,000x cost / 40 years) of Covered Book Depreciation Expense in 2018 and each year thereafter until it sells Property A (a disposition for Regular Tax and AFS purposes) on January 1, 2024, for $900x. For 2024, Taxpayer takes into account $50x of net gain for the sale of Property A in the net income or loss set forth on its AFS ($900x proceeds - $850x of AFS basis ($1,000x cost - $150x accumulated Covered Book Depreciation Expense as of January 1, 2024)).

(b) <u>Analysis for taxable year 2023</u>. In determining AFSI for the taxable year ending December 31, 2023, Taxpayer does not have any Deductible Tax Depreciation or Tax COGS Depreciation in computing taxable income with respect to Property A, and thus, the adjustments under section 4.03(1) and (2) of this notice would be zero. In addition, Taxpayer would adjust AFSI under section 4.03(3) of this notice to disregard the $25x of Covered Book Depreciation Expense with respect to Property A.

(c) Analysis for taxable year 2024. To determine the AFSI adjustment for the gain or loss from the sale of Property A under section 4.07 of this notice, Taxpayer must adjust the remaining AFS basis of such property by the amounts described in section 4.07(1) through (4) of this notice with respect to such property, including those amounts attributable to taxable years prior to the effective date of the CAMT. Accordingly, the redetermined basis of Property A for AFSI purposes is zero ($850x remaining AFS basis + $150x accumulated Covered Book Depreciation Expense - $1,000x of accumulated Tax Depreciation). Thus, the redetermined gain on the sale of Property A for AFSI purposes is $900x ($900x proceeds - $0 redetermined AFSI basis), and a positive adjustment to AFSI of $850x ($900x redetermined gain - $50x net gain set forth on the AFS) is made to reflect the redetermined gain.

.03 Other AFSI rules for Section 168 Property.

(1) Section 56A(c)(13) does not apply to property not depreciated under §§ 167 and 168. If a Taxpayer owns property that is not subject to depreciation under §§ 167 and 168 for Regular Tax purposes (for example, because the Taxpayer is not subject to U.S. taxation), then AFSI of that Taxpayer is not adjusted under § 56A(c)(13) with respect to such property. Further, the rules for determining Applicable Corporation status of members of a FPMG in § 59(k)(2)(A), including the rule that disregards the AFSI adjustment described in § 56A(c)(4), do not change this result.

(2) Amounts recognized in FSI for the disposition of Section 168 Property. Section 5.02(3)(b) of this notice provides that except as otherwise provided in § 56A or § 59(k)

(as applicable), regulations, or other guidance, AFSI includes all items of income, expense, gain, and loss reflected in the Taxpayer's FSI regardless of whether such amounts are realized, recognized, or otherwise taken into account for Regular Tax purposes. Section 56A(c)(13) does not provide for an adjustment to AFSI to apply nonrecognition or gain deferral provisions that apply to certain dispositions of Section 168 Property for Regular Tax purposes (for example, like-kind exchanges under § 1031 or installment sales under § 453). However, other provisions under § 56A or guidance issued by the Treasury Department and the IRS may provide for such an adjustment in certain situations (for example, see section 3 of Notice 2023-7, which provides an adjustment to AFSI if Section 168 Property was disposed of in a Covered Nonrecognition Transaction). Accordingly, except as otherwise provided in other provisions under § 56A, regulations, or other guidance, if a Taxpayer disposes of Section 168 Property for Regular Tax purposes and recognizes gain or loss from the disposition in its FSI, such gain or loss (as redetermined under section 4.07 of Notice 2023-7, as modified and clarified by this notice) is recognized for AFSI purposes, regardless of whether any gain or loss with respect to such disposition is realized, recognized, or otherwise taken into account for Regular Tax purposes.

(3) Examples. The following examples illustrate the rules set forth in sections 5.02(3)(b) and 9.03(2) of this notice and the application of § 56A(c)(13) in taxable years following a transaction described in section 9.03(2) of this notice.

(a) Example of installment sale under § 453.

(i) Facts. X is a calendar year Taxpayer and also issues its AFS on a calendar year basis. On January 1, 2018, X purchased for $550x and placed in service residential rental property (Real Property A), which is Section 168 Property. For Regular Tax purposes, X depreciates Real Property A under the general depreciation system by using the straight-line method and a 27.5-year recovery period. X becomes an Applicable Corporation for the calendar year ending December 31, 2024. On January 1, 2024, X sells Real Property A to Y, an unrelated Taxpayer, for $1,000x with the following payment structure: $100x payable at closing and the remainder payable in equal annual installments over the next 9 years, together with adequate stated interest. As of the date of the installment sale, X's adjusted basis for Regular Tax purposes, remaining AFS basis, and redetermined basis for AFSI purposes (as determined under section 4.07 of Notice 2023-7, as modified and clarified by this notice) for Real Property A is $430x. X does not elect out of the installment method under § 453. The gross profit to be realized on the sale is $570x ($1,000x selling price - $430x basis). The gross profit percentage is 57% (gross profit of $570x / $1,000x contract price). No provision in § 56A, regulations, or other guidance provides for an adjustment to AFSI to apply the gain deferral rules under § 453.

(ii) Analysis. For taxable year 2024, X realizes $570x ($1,000x selling price - $430x basis) of gain for both Regular Tax and FSI purposes from the disposition of Real Property A in the installment sale. X recognizes $570x of the gain in FSI, but for Regular Tax purposes, X recognizes only $57x (57% of $100x) of the gain and the remaining $513x of gain will be recognized as payments are received under the installment method. Pursuant to section 9.03(2) of this notice, the gain deferral provisions in § 453 do not apply for purposes of determining the AFSI gain or loss on the disposition of Real Property A. Accordingly, X must recognize the entire $570x gain in AFSI, notwithstanding that $513x was deferred under § 453 for Regular Tax purposes.

(b) Example of like-kind exchange under § 1031.

(i) Facts. The facts are the same as section 9.03(3)(a)(i) of this notice, except that on January 1, 2024, X transfers Real Property A to Y in exchange for Real Property B with a fair market value of $440x and $20x in cash. The exchange qualifies as an exchange of real property held for productive use or investment under § 1031. As of the date of the exchange, X's adjusted basis for Regular Tax purposes, remaining AFS basis, and redetermined basis for AFSI purposes (as determined under section 4.07 of Notice 2023-7, as modified and clarified by this notice) for Real Property A is $430x. No provision in § 56A, regulations, or other guidance provides for an adjustment to AFSI to apply the nonrecognition rules under § 1031.

(ii) Analysis. For taxable year 2024, X realizes $30x of gain under § 1001(a) (amount realized of $460x [$440x fair market value of replacement Real Property B plus $20x cash], less $430x adjusted Regular Tax basis of relinquished property). Of the realized gain, only $20x is recognized by X under § 1031(b) for Regular Tax purposes, as this is the amount of non-like-kind consideration (cash of $20x). For AFS purposes, X recognizes $30x of gain in its FSI (amount realized of $460x [$440x fair market value of Real Property B plus $20x cash], less $430x remaining AFS basis of Real Property A). Pursuant to section 9.03(2) of this notice, the nonrecognition rules in § 1031 do not apply for purposes of determining the AFSI gain or loss on the disposition of Real Property A. Accordingly, for AFSI purposes, X must recognize the entire redetermined gain of $30x ($460x amount realized less $430x of redetermined AFSI basis under section 4.07 of Notice 2023-7, as modified and clarified by this notice) for purposes of computing AFSI, notwithstanding that X recognized only $20x of the $30x gain realized for Regular Tax purposes.

(c) Example illustrating the treatment of replacement property received in a like-kind exchange.

(i) Facts. The facts are the same as section 9.03(3)(b)(i) of this notice. In addition, X's Regular Tax exchanged basis in the replacement Real Property B as of the date of the exchange is $430x ($430x adjusted Regular Tax basis of relinquished Real Property A, less $20x cash, plus $20x gain realized). X's AFS basis of Real Property B as of the date of the exchange is $440x, which is the fair market value of Real Property B as of the date of the exchange. The recovery period, depreciation method, and convention prescribed under § 168 for Real Property B are the same as Real Property A. Under § 1.168(i)-6(c)(3)(ii) and (c)(4)(v)(A), X depreciates Real Property B over the remaining recovery period of, and using the same depreciation method and convention as that of, Real Property A for Regular Tax purposes. Except for taxable year 2024 and the taxable year in which Real Property B is disposed of, Tax Depreciation with respect to Real Property B is $20x ($430x / 21.5) for each year, which X deducts in computing taxable income. Under the mid-month convention, Real Property B is deemed placed in service on January 15, 2024. Therefore, in 2024, Tax Depreciation for Real Property B is $19x ($20x multiplied by [11.5 / 12]), which X deducts in computing taxable income. For AFS purposes, X depreciates Real Property B using the straight-line method and a 27.5-year recovery period and recognizes $16x ($440x / 27.5) of Covered Book Depreciation Expense each year. On January 1, 2032, X sold Real Property B with a

Regular Tax adjusted exchanged basis of $270x ($430x exchange basis - $160x accumulated Tax Depreciation [8 years multiplied by ($430x cost / 21.5 recovery period), which includes $20x multiplied by (11.5 / 12) of depreciation for 2024 or $19x and (0.5 / 12) of depreciation for 2032 or $1x]) and a remaining AFS basis of $312x ($440x cost - $128x accumulated book depreciation [8 years multiplied by ($440x cost / 27.5 recovery period)]) to Z for $500x in cash.

(ii) Analysis for taxable year 2032. For Regular Tax purposes, X recognizes a gain on the sale of Real Property B of $230x (amount realized of $500x - $270x Regular Tax adjusted exchanged basis). For AFS purposes, X recognizes a gain of $188x in its FSI (amount realized of $500x - $312x remaining AFS basis). Pursuant to section 4.07 of Notice 2023-7 (as modified and clarified by this notice), X must adjust AFSI for taxable year 2032 to redetermine the AFS gain or loss of $188x from the disposition of Real Property B by adjusting the remaining AFS basis of Real Property B to take into account the amounts described in section 4.07(1) through (4) of Notice 2023-7 (as modified and clarified by this notice) with respect to such property, including those amounts attributable to taxable years prior to the effective date of the CAMT. Accordingly, the redetermined basis of Real Property B for AFSI purposes is $280x ($312x AFS basis + $128x accumulated Covered Book Depreciation Expense - $160x of accumulated Tax Depreciation). Thus, the redetermined gain on the sale of Real Property B for AFSI purposes is $220x ($500x proceeds - $280x redetermined AFSI basis).

SECTION 10. AFSI ADJUSTMENTS FOR QUALIFIED WIRELESS SPECTRUM

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 10, which provides interim guidance to facilitate the application of the qualified wireless spectrum adjustment rules in § 56A(c)(14) prior to forthcoming proposed regulations.

.02 Defined Terms. For purposes of this section 10:

(1) Covered Book Amortization Expense. The term Covered Book Amortization Expense means amortization expense, disposition loss (including from an abandonment) that occurs prior to the taxable year in which the disposition occurs for Regular Tax purposes, impairment loss, or impairment loss reversal that is taken into account in the Taxpayer's FSI with respect to Qualified Wireless Spectrum (as defined in section 10.02(4) of this notice).

(2) Covered Book Wireless Spectrum Expense. The term Covered Book Wireless Spectrum Expense means an amount, other than Covered Book Amortization Expense, that is--

(a) recognized as an expense or loss in the Taxpayer's FSI, and

(b) reflected in the basis for depreciation, as defined in §§ 1.167(g)-1 and 1.197-2(f)(1)(ii) (without regard to any adjustments described in § 1016(a)(2) and (3)), of Qualified Wireless Spectrum for Regular Tax purposes.

(3) Deductible Tax Amortization. The term Deductible Tax Amortization means Tax Amortization (as defined in section 10.02(6) of this notice) that is allowed as a deduction in computing taxable income.

(4) Qualified Wireless Spectrum. The term Qualified Wireless Spectrum means wireless spectrum which is used in the trade or business of a wireless

telecommunications carrier, is an amortizable section 197 intangible under § 197(c)(1) and (d)(1)(D), and was acquired after December 31, 2007, and before August 16, 2022.

(5) Section 481(a) Adjustment for Amortization. The term Section 481(a) Adjustment for Amortization means those adjustments that are required under § 481(a) for a change in method of accounting for amortization of any item of Qualified Wireless Spectrum.

(6) Tax Amortization. The term Tax Amortization means amortization deductions allowed under § 197, with respect to Qualified Wireless Spectrum.

.03 Adjustments for Qualified Wireless Spectrum. For purposes of § 56A(c)(14), AFSI is--

(1) reduced by Deductible Tax Amortization, but only to the extent of the amount allowed as a deduction in computing taxable income for the taxable year,

(2) adjusted to disregard Covered Book Amortization Expense and Covered Book Wireless Spectrum Expense,

(3) reduced by any Section 481(a) Adjustment for Amortization that is negative, but only to the extent of the amount of such Section 481(a) Adjustment for Amortization that is taken into account in computing taxable income for the taxable year,

(4) increased by any Section 481(a) Adjustment for Amortization that is positive, but only to the extent of the amount of such Section 481(a) Adjustment for Amortization that is taken into account in computing taxable income for the taxable year, and

(5) adjusted for other items as provided in regulations or in other guidance.

.04 Section 56A(c)(14) does not apply to property not depreciated under § 197. If a Taxpayer has wireless spectrum property that is not subject to amortization under § 197 for Regular Tax purposes (for example, because the Taxpayer is not subject to U.S. taxation), then AFSI of that Taxpayer is not adjusted under § 56A(c)(14) with respect to such property. Further, the special rules for determining Applicable Corporation status of members of a FPMG in § 59(k)(2)(A), including the rule that disregards the AFSI adjustment described in § 56A(c)(4), do not change this result.

.05 AFSI adjustments for dispositions. If a Taxpayer disposes of Qualified Wireless Spectrum for Regular Tax purposes, the Taxpayer must adjust AFSI for the taxable year in which such disposition occurs to redetermine any gain or loss taken into account in the Taxpayer's FSI with respect to such disposition for such year (including a gain or loss of zero) by adjusting the remaining AFS basis of such property by the amounts described in section 10.05(1) through (4) of this notice with respect to such property, including those amounts attributable to taxable years prior to the effective date of the CAMT. Pursuant to this section 10.05, the remaining AFS basis of such property is--

(1) decreased by the cumulative adjustments described in section 10.03(1) of this notice with respect to such property,

(2) increased by the cumulative adjustments described in section 10.03(2) of this notice with respect to such property,

(3) increased by the full amount of any Section 481(a) Adjustment for Amortization with respect to such property that is positive and decreased by the full amount of any Section 481(a) Adjustment for Amortization with respect to such

property that is negative (regardless of whether any portion of such Section 481(a) Adjustment for Amortization has yet to be taken into account in AFSI through an adjustment described in section 10.03(3) or (4) of this notice), and

(4) increased or decreased, as appropriate, by any other adjustments to AFS basis required under § 56A, regulations, or other guidance (for example, basis adjustments required under section 3.03(2) of Notice 2023-7) with respect to such property.

.06 Example. The following example illustrates the rules set forth in sections 10.03 and 10.05 of this notice.

(1) Facts. X is an Applicable Corporation for the calendar year ending December 31, 2023. On January 1, 2018, X acquired Wireless Spectrum A, which is Qualified Wireless Spectrum, at a cost of $1,000x. For AFS purposes, X does not amortize Wireless Spectrum A. For Regular Tax purposes, X amortizes Wireless Spectrum A ratably over 15 years and recognizes $67x ($1,000x cost / 15 years) of Deductible Tax Amortization in 2018 and each year thereafter until it sells Wireless Spectrum A (a disposition for Regular Tax and AFS purposes) on January 1, 2024, for $900x. For 2024, X takes into account $100x of net loss from the sale of Wireless Spectrum A in its FSI ($900x proceeds - $1,000x of AFS basis ($1,000x cost - $0 accumulated Covered Book Amortization Expense as of January 1, 2024)).

(2) Analysis for taxable year 2023. In determining AFSI for the taxable year ending December 31, 2023, X does not have any Covered Book Amortization Expense or Covered Book Wireless Spectrum Expense in computing the Taxpayer's FSI with respect to Wireless Spectrum A, and thus, the adjustment to disregard such

amounts under section 10.03(2) of this notice would be zero. In addition, X would reduce AFSI under section 10.03(1) of this notice for the $67x of Deductible Tax Amortization with respect to Wireless Spectrum A.

(3) Analysis for taxable year 2024. To redetermine the FSI gain or loss from the sale of Wireless Spectrum A for AFSI purposes under section 10.05 of this notice, X must adjust the remaining AFS basis of such property by the amounts described in section 10.05(1) through (4) of this notice with respect to such property, including those amounts attributable to taxable years prior to the effective date of the CAMT. Accordingly, the redetermined basis of Wireless Spectrum A for AFSI purposes is $598x ($1,000x remaining AFS basis + $0 accumulated Covered Book Amortization Expense - $402x of accumulated Deductible Tax Amortization). Thus, the redetermined gain on the sale of Wireless Spectrum A for AFSI purposes is $302x ($900x proceeds - $598x redetermined AFSI basis) and a positive adjustment to AFSI of $402x ($100x net loss in FSI + $302x redetermined gain) is made to reflect the redetermined gain.

SECTION 11. AFSI ADJUSTMENTS TO PREVENT CERTAIN DUPLICATIONS AND OMISSIONS.

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 11, which provides Taxpayers with additional clarity in determining adjustments to prevent certain duplications and omissions of AFSI prior to forthcoming proposed regulations.

.02 Adjustments to prevent certain duplications and omissions.

(1) In general. In order to prevent duplications or omissions, AFSI must be adjusted for the items described in this section 11.02 and for such other items as required or permitted in regulations or in other guidance. See section 13.04(2) of this notice for modifications to AFSI to prevent duplications that apply solely for purposes of § 59(k).

(2) Change in financial accounting principle.

(a) In general. AFSI must be adjusted to take into account any cumulative adjustment to the retained earnings of the Taxpayer on its AFS if such adjustment results from a change in financial accounting principle (Accounting Principle Change Adjustment). Except as otherwise provided in regulations or in other guidance, such adjustment must be taken into account in the Taxpayer's AFSI during the period provided in section 11.02(2)(b) of this notice (Adjustment Spread Period Rule). An Accounting Principle Change Adjustment may be subject to further adjustment if it relates to FSI items for which other AFSI adjustments under § 56A, regulations, or other guidance apply (Net Accounting Principle Change Adjustment). For example, to the extent the Accounting Principle Change Adjustment includes a Federal income tax component, § 56A(c)(5) may apply. In such case, the Adjustment Spread Period Rule applies to the Net Accounting Principle Change Adjustment.

(b) Adjustment Spread Period Rule.

(i) Duplications. In the case of an Accounting Principle Change Adjustment or Net Accounting Principle Change Adjustment, as applicable, that is necessary to prevent the duplication of an item of income, expense, gain, or loss for AFSI purposes, such adjustment must be taken into account in AFSI ratably over the four-taxable-year period beginning with the taxable year for which the change in financial accounting principle is implemented in the Taxpayer's AFS. However, if the Taxpayer is able to demonstrate that the duplication is reasonably anticipated to occur over a different period, then the corresponding Accounting Principle Change Adjustment or Net Accounting Principle Change Adjustment, as applicable, may be taken into account in AFSI ratably over such period (not to exceed fifteen years) beginning with the taxable year for which the change in financial accounting principle is implemented in the Taxpayer's AFS.

(ii) Omissions. In the case of an Accounting Principle Change Adjustment or Net Accounting Principle Change Adjustment, as applicable, that is (A) necessary to prevent the omission of an item of income, expense, gain or loss for AFSI purposes, and (B) results in an increase to AFSI, such adjustment must be taken into account in AFSI ratably over the four-taxable-year period beginning with the taxable year for which the change in financial accounting principle is implemented in the Taxpayer's AFS. In the case of an Accounting Principle Change Adjustment or Net Accounting Principle Change Adjustment, as applicable, that is (A) necessary to prevent the omission of an item of income, expense, gain, or loss for AFSI purposes, and (B) results in a decrease to AFSI, such adjustment must be taken into account in AFSI in full in the taxable year for which the change in financial accounting principle is implemented in the Taxpayer's AFS.

(c) Acceleration of financial accounting principle adjustment. If, in any taxable year, a Taxpayer ceases to engage in the trade or business that is the subject of an Accounting Principle Change Adjustment or Net Accounting Principle Change

Adjustment, as applicable, the Taxpayer must take into account in AFSI for such taxable year any portion of the adjustment not taken into account in AFSI for a previous taxable year.

(d) Use of different priority AFSs in consecutive taxable years. If the priority of a Taxpayer's AFS (as determined under the rules of section 4.02 of this notice) for the current taxable year is different than the priority of the Taxpayer's AFS for the preceding taxable year, the Taxpayer will be treated as having implemented a change in financial accounting principle and must adjust AFSI to the extent required under the rules of section 11.02(2) of this notice.

(3) Restatement of a prior year's AFS.

(a) In general. Except as provided in section 11.02(3)(b) of this notice, if a Taxpayer restates an AFS and, as a result, the Taxpayer's FSI for a taxable year is restated after the Taxpayer filed its original Federal income tax return for such taxable year, the Taxpayer must account for the restatement by adjusting its AFSI for the first taxable year after such taxable year for which the Taxpayer has not filed an original return as of the restatement date. The restatement adjustment must take into account the cumulative effect of the restatement on FSI, including any restatement of the beginning balance of retained earnings for the period being restated. The restatement adjustment described in the preceding sentence may be subject to further adjustment if an FSI item being restated is subject to adjustment under § 56A, regulations, or other guidance. For example, to the extent such restatement adjustment includes a Federal tax component, § 56A(c)(5) may apply. See section 4.02(3) of this notice for what constitutes a restatement and for rules relating to the restatement of an AFS prior to the date the Taxpayer's return for the taxable year is filed.

(b) Exception for amended return. If, after restating an AFS for a taxable year, a Taxpayer files an amended return or an administrative adjustment request under § 6227 (AAR), as applicable, for such taxable year to adjust regular taxable income as a result of the restatement, the Taxpayer must use the Restated AFS for purposes of determining AFSI on the amended return or AAR, as applicable, rather than make the adjustment set forth in section 11.02(3)(a) of this notice.

(c) Reconciliation of retained earnings in AFS. The Taxpayer will be deemed to have restated its AFS for the preceding taxable year described in section 11.02(3)(c)(i) of this notice and section 11.02(3)(a) or (b) of this notice, as applicable, will apply, if—

(i) The beginning balance of retained earnings on the Taxpayer's AFS for the current taxable year is adjusted to be different than the ending balance of retained earnings on the Taxpayer's AFS for the preceding taxable year (for example, as a result of a prior period adjustment),

(ii) Such difference is attributable to items that would otherwise be reflected in the Taxpayer's FSI under the relevant accounting standards, and

(iii) The Taxpayer is not otherwise subject to the adjustment rules in sections 11.02(2) or (3)(a) or (b) of this notice.

(d) Example. The following example illustrates the rule set forth in section 11.02(3)(a) of this notice.

(i) Facts. X is a calendar year Taxpayer and issues its AFS on a calendar year basis. On September 15, 2024, X files its Federal income tax return for taxable year 2023 and reports FSI of $1.580 billion, which is the FSI set forth on the X's Original AFS for 2023, and AFSI of $2 billion (FSI of $1.580 billion adjusted to add back $420 million of Federal income tax expense under § 56A(c)(5)). On November 1, 2024, X issues a Restated AFS for 2023 that reflects an FSI of $2.370 billion (which includes a reduction for Federal income tax expense of $630 million). The Restated AFS also includes an adjustment to increase the 2023 beginning balance of retained earnings by $70 million ($100 million of income less $30 million of Federal income tax expense) related to income from a prior period that was underreported. X is not amending its taxable year 2023 Federal income tax return. X is not subject to any AFSI adjustments other than the AFSI adjustment under § 56A(c)(5).

(ii) Analysis. X has restated its AFS and FSI for 2023 after having filed its original 2023 Federal income tax return. Pursuant to section 11.02(3)(a) of this notice, X must account for the restatement by adjusting its AFSI for taxable year 2024. On X's 2024 Federal income tax return, X will increase AFSI by $1.1 billion for taxable year 2024, which is the first taxable year for which X has not filed an original return as of the November 1, 2024, restatement date. The $1.1 billion adjustment represents the cumulative effect of the restatement on FSI, including any restatement of the beginning balance of retained earnings for the period being restated (2023). The $1.1 billion is comprised of $790 million (the difference between FSI reported on the Restated AFS of $2.370 billion and the FSI reported on the Original AFS of $1.580 billion), plus $210 million (the difference between Federal income tax expense reported on the Restated AFS of $630 million and the Federal income tax expense reported on the Original AFS of $420 million, which is required to be added back under § 56A(c)(5) in determining AFSI), plus $100 million (the adjustment to the 2023 beginning balance of retained earnings reported on the Restated AFS for 2023 of $70 million increased under § 56A(c)(5) by the $30 million of related Federal income tax expense).

(4) Adjustment for amounts disclosed in an auditor's opinion. AFSI must be adjusted to take into account amounts disclosed in an auditor's opinion described in section 4.02(2)(b) or (c) of this notice to the extent such amounts would have increased FSI had they been reported in the Taxpayer's AFS. No AFSI adjustment is required to the extent the disclosed amounts were included in FSI for a prior year. Moreover, if FSI for a subsequent year includes amounts included in AFSI pursuant to an adjustment made under this paragraph, AFSI for the subsequent year must be adjusted to prevent any duplication of income.

(5) No adjustment for timing differences. Differences between when an item is taken into account in FSI and when that item is taken into account for Regular Tax purposes do not give rise to duplications or omissions within the meaning of § 56A(c)(15)(A) or section 11.02 of this notice, even if the timing difference originated before the effective date of the CAMT and reversed after such effective date. Thus, for example, the inclusion of an item in FSI prior to the effective date of the CAMT and the inclusion of the item in regular taxable income after the effective date of the CAMT does not result in a duplication or omission.

SECTION 12. FINANCIAL STATEMENT NET OPERATING LOSSES.

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 12, which provides corporations with additional clarity in determining use of FSNOL carryovers prior to forthcoming proposed regulations.

.02 FSNOL carryover. The amount of an FSNOL described in § 56A(d)(3) carried forward to the first taxable year a corporation is an Applicable Corporation (and subsequent taxable years) is determined under § 56A(d)(2) without regard to whether the Taxpayer was an Applicable Corporation for any prior taxable year.

.03 Example. The following example illustrates the rule set forth in section 12.02 of this notice.

(1) Facts. X is a calendar year Taxpayer. For taxable year 2020, X generated an FSNOL of $3 billion. For taxable years 2021, 2022, and 2023, X's AFSI (without taking into account the adjustment under § 56A(d)(1)) was $900 million, $1.1 billion, and $1.2 billion, respectively. X first becomes an Applicable Corporation in taxable year 2024.

(2) Analysis. X will calculate its FSNOL carryover to taxable year 2024 by first determining how much of the 2020 FSNOL is absorbed in taxable years 2021 through 2023. In taxable year 2021, $720 million (80% of $900 million) of the FSNOL carryover is absorbed, resulting in an FSNOL carryover to taxable year 2022 of $2.280 billion ($3 billion - $720 million). In taxable year 2022, $880 million (80% of $1.1 billion) of the FSNOL carryover is absorbed, resulting in an FSNOL carryover to taxable year 2023 of $1.4 billion ($2.280 billion - $880 million). In taxable year 2023, $960 million (80% of $1.2 billion) of the FSNOL carryover is absorbed resulting in an FSNOL carryover to taxable year 2024 of $440 million ($1.4 billion - $960 million).

SECTION 13. DETERMINING APPLICABLE CORPORATION STATUS

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 13, which provides corporations with additional clarity in determining whether they are an Applicable Corporation under § 59(k) prior to forthcoming proposed regulations.

.02 Aggregation rules under § 59(k)(1)(D).

(1) In general. Section 59(k)(1)(D) provides that, solely for purposes of determining whether a corporation is an Applicable Corporation, all AFSI of persons treated as a single employer with the corporation under § 52(a) or (b) is treated as AFSI of that corporation (Section 52 Aggregation).

(2) Application of § 52(a) to aggregation of corporations.

(a) In general. Section 52(a) generally provides that corporations that are members of a controlled group of corporations are treated as a single employer. Section 52(a) provides that a controlled group of corporations is defined with reference to § 1563(a), with certain modifications.[4] Section 1563(a)(1), (2), and (3) provide that a controlled group of corporations may be a parent-subsidiary controlled group, a brother-sister controlled group, or a combined group of corporations.

(b) Section 1563(d) sets forth the rules for determining stock ownership under § 1563(a) and provides that stock owned directly or indirectly by application of the constructive ownership rules under § 1563(e) is taken into account in determining whether an organization is a member of a controlled group. Section 1563(d)(1) provides that in the case of a parent-subsidiary group, the constructive ownership rules under § 1563(e)(1), (2), and (3), relating to options, partnerships, and estates or trusts,

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[4] The clause "more than 50 percent" is substituted for the clause "at least 80 percent" each place "at least 80 percent" appears in § 1563(a)(1). In addition, § 1563(a)(4) (relating to certain insurance companies) and (e)(3)(C) (relating to certain estate or trust attribution rules) are disregarded.

respectively, are taken into account.[5] Under § 1563(e)(2), stock owned, directly or indirectly, by or for a partnership is considered to be owned by any partner having an interest of five percent or more in either the capital or profits of the partnership in proportion to the partner's interest in capital or profits, whichever such proportion is the greater. Thus, under § 52(a), a corporate partner with an interest of five percent or more in the capital or profits of a partnership is considered to own stock owned by the partnership based on the application of the constructive ownership rules under § 1563(d)(1) and (e)(2). For example, if Corporation A owns an interest of five percent or more in the profits of a partnership and the partnership owns stock in Corporation B, then Corporation A would be deemed to own the stock of Corporation B, in proportion to Corporation A's profits interest in the partnership, in determining whether Corporation A and Corporation B are treated as a single employer for purposes of applying § 59(k)(1)(D).

(c) Section 52(a) applies to the members of a controlled group, and not to the component members of a controlled group defined in § 1563(b). In particular, § 1563(b)(1)(A) and (b)(2) do not apply to exclude certain corporate members from the controlled group, including foreign corporations subject to Federal income tax under § 881. See § 1563(b)(2)(C). Under § 1.1563-1(a)(1)(ii), in determining whether a corporation is included in a controlled group of corporations, § 1563(b) and § 1.1563-1(b), relating to component members of a controlled group of corporations, are not taken into account. Thus, under § 52(a), a foreign corporation may be a member of a

[5] Section 1563(d)(2)(B) and (e) provide that, for brother-sister groups, in addition to attribution from options, partnerships, estates, or trusts, attribution from corporations, spouses, and children, grandchildren, parents, and grandparents also applies.

controlled group that is treated as a single employer for purposes of applying § 59(k)(1)(D).

(3) Application of § 52(b) to partnerships and other noncorporate organizations.

(a) Section 52(b) generally provides that trades or businesses that are partnerships, trusts, estates, corporations, or sole proprietorships under common control are members of a controlled group and are treated as a single employer. See § 1.52-1(b). Section 52(b) also requires the regulations under § 52(b) to be based on principles similar to the principles that apply for purposes of § 52(a). Section 52(b) and § 1.52-1 provide rules similar to those under § 52(a), but with certain modifications to account for different types of ownership interests.

(b) The constructive ownership rules under § 1563(d) and (e) described in section 13.02(2) of this notice also apply for purposes of § 52(b) in determining members of the controlled group. In addition, just as § 52(a) does not exclude foreign corporations, an organization that is a foreign entity (such as a foreign partnership or foreign trust) may be aggregated under § 52(b) in determining whether it is a member of a controlled group that is treated as single employer under § 52(b) for purposes of applying § 59(k)(1)(D).

(4) Application of § 52 to S corporations, RICs, and REITs. As described in section 2.01(4)(a) of Notice 2023-7, S corporations, RICs, and REITs are excluded from the definition of an Applicable Corporation for purposes of §§ 55 through 59. However, § 52(a), the regulations under § 1563, and the regulations under § 52(b) do not exclude

S corporations, RICs, or REITs from being members of a controlled group.[6] Because § 52 and the regulations thereunder do not exclude S corporations, RICs, or REITs, these organizations are taken into account in determining whether members of a controlled group are treated as a single employer under § 52 for purposes of applying § 59(k)(1)(D).

.03 Determining Applicable Corporation status of members of a FPMG.

(1) Aggregation rule for corporations that are members of a FPMG. For purposes of applying the FPMG $1 Billion Test (as defined in section 2.04(1) of this notice), the AFSI of a Taxpayer being evaluated for Applicable Corporation status (Tested Corporation) that is a member of a FPMG includes both (i) the AFSI of all other members of the FPMG (FPMG Aggregation), and (ii) the AFSI of all persons treated as a single employer with the Tested Corporation by reason of Section 52 Aggregation to the extent such AFSI is not AFSI of a member of the FPMG.

(2) Calculation of AFSI for purposes of applying the FPMG $1 Billion Test. Under § 59(k)(2)(A), for purposes of applying the FPMG $1 Billion Test, the AFSI of a Taxpayer that is a member of a FPMG is calculated without regard to § 56A(c)(2)(D)(i), (c)(3), (c)(4), and (c)(11). As a result, in applying both Section 52 Aggregation and FPMG Aggregation for purposes of determining whether a Tested Corporation meets the FPMG $1 Billion Test, AFSI of all relevant persons, including persons that are not members of the Tested Corporation's FPMG but that are treated as a single employer

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[6] Section 1.1563-1(b)(2)(ii)(C) provides that S corporations are not component members of a controlled group in certain limited circumstances (regarding the accumulated earnings credit under § 1561). However, as noted in section 13.02(2)(c) of this notice, § 1.1563-1(b) is not taken into account in determining whether an S corporation is included in a controlled group of corporations.

with the Tested Corporation under § 52(a) or (b), is determined without regard to § 56A(c)(2)(D)(i), (c)(3), (c)(4), and (c)(11).

.04 Disregarding the distributive share adjustment.

(1) In general. Section 7 of Notice 2023-7 provides that the adjustment to AFSI in § 56A(c)(2)(D)(i) is inapplicable in all circumstances in determining whether a corporation that is a partner in a partnership (whether directly or indirectly) is an Applicable Corporation. Accordingly, solely for purposes of § 59(k), a Taxpayer that is a partner in a partnership includes in its AFSI the FSI amount it reports with respect to its partnership investment (for example, under the fair value method or equity method), rather than its "distributive share" of the AFSI of the partnership under § 56A(c)(2)(D)(i). See sections 5.02(3)(c)(iii)(B) and (vii) of this notice for the determination of a partner's FSI with respect to its partnership investment when the partner and the partnership are members of the same AFS Group and the partner's AFS is the Consolidated AFS of that AFS Group.

(2) Duplication of income or loss. If a Taxpayer is a partner in a partnership and all the AFSI of the partnership is treated as the AFSI of the Taxpayer under § 59(k)(1)(D) or § 59(k)(2)(A), as applicable, then solely for purposes of § 59(k), and in order to prevent duplication of income or loss from the partnership investment, the Taxpayer does not include in its AFSI the FSI amount it reports with respect to the partnership investment.

SECTION 14. CAMT FTC

.01 Purpose. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 14, which provides corporations with additional clarity in determining their CAMT FTC.

.02 CAMT FTC.

(1) Definition of Eligible Tax. A Foreign Income Tax is eligible to be claimed as a CAMT FTC (Eligible Tax) in the taxable year in which it is paid or accrued for Federal income tax purposes by either an Applicable Corporation or a CFC with respect to which the Applicable Corporation is a U.S. Shareholder, provided the Foreign Income Tax has been taken into account on the AFS of such Applicable Corporation or CFC.

(2) When a tax is treated as taken into account on an AFS. For purposes of the CAMT FTC, a Foreign Income Tax is considered taken into account on an AFS of an Applicable Corporation or CFC as provided in section 8.02(2) of this notice.

(3) Foreign tax redetermination. A Foreign Income Tax paid or accrued as a result of a foreign tax redetermination (as defined in § 1.905-3(a)) is an Eligible Tax only if the Taxpayer is an Applicable Corporation in the taxable year to which the foreign tax redetermination relates (Relation-Back Year). An Eligible Tax in this instance may be claimed as a CAMT FTC only in the Relation-Back Year, even if the tax is reflected in a journal entry on an AFS within a taxable year that is later than the Relation-Back Year.

(4) CFC Taxes and CFC FTC Limitation determined on an aggregate basis. For purposes of the CAMT FTC, a Taxpayer determines the amount of CFC Taxes (as defined in section 2.05(a) of this notice) and the CFC FTC Limitation (as defined in section 2.05(a) of this notice) for a taxable year on an aggregate basis with respect to all CFCs in which it is a U.S. Shareholder.

(5) Treatment of partnership taxes. For purposes of the CAMT FTC, if an

Applicable Corporation or a CFC is a partner in a partnership (or an indirect partner in the partnership through another partnership or pass-through entity), Foreign Income Taxes paid or accrued by such partner include its share of any Foreign Income Taxes paid or accrued by the partnership.

SECTION 15. APPLICABILITY DATES

.01 The Treasury Department and the IRS intend to publish forthcoming proposed regulations in the Federal Register regarding the application of the CAMT that would include proposed rules consistent with the interim guidance provided in—

(a) Sections 3 through 7 of Notice 2023-7, as modified and clarified by this notice,

(b) Sections 3 through 5 of Notice 2023-20, and

(c) Sections 3 through 14 of this notice.

It is anticipated that forthcoming proposed regulations would apply for taxable years beginning on or after January 1, 2024.

.02 A Taxpayer may rely on the interim guidance described in section 15.01 of this notice for taxable years ending on or before the date forthcoming proposed regulations are published in the Federal Register. However, in any event, a Taxpayer may rely on the interim guidance described in section 15.01 of this notice for any taxable year that begins before January 1, 2024.

SECTION 16. REQUEST FOR COMMENTS

.01 Comments Regarding Interim Guidance Provided in this Notice. The Treasury Department and the IRS request comments on any questions arising from the interim guidance provided in this notice. Commenters are encouraged to specify the issues on which additional guidance (including additional interim guidance) is needed most quickly, as well as the most important issues on which guidance is needed. In addition to general comments regarding the provisions of this notice, the Treasury Department and the IRS request comments to address the following specific questions.

(1) Depreciation Adjustments (section 9 of this notice). The Treasury Department and the IRS have received helpful comments and continue to study whether simplified methods or safe harbors should be provided for applying the depreciation adjustment rules under § 56A(c)(13). The Treasury Department and the IRS continue to welcome comments on such simplified methods and safe harbors for consideration in forthcoming proposed regulations. In addition to comments regarding the use of simplified methods or safe harbors, the Treasury Department and the IRS request comments on the following issues:

(a) How should a change in the treatment of an item that involves the proper time for taking such item into account for AFSI purposes be treated for AFSI purposes when such change is not otherwise treated as a change in method of accounting for Regular Tax purposes because it does not affect taxable income (AFSI only change)? For example, what if a Taxpayer consistently does not make a required AFSI adjustment under § 56A(c)(13) or makes a change in financial accounting principle? Should rules similar to those in §§ 446 and 481, and the method change procedures in Rev. Proc. 2015-13, 2015-5 I.R.B. 419, apply? Should the result depend on whether the AFSI only change was discretionary or mandated by financial accounting standards? Should Taxpayers be required to file a Form 3115, Application for Change in Accounting Method, to obtain consent for AFSI only changes?

(b) If a Taxpayer changes its method of accounting for Regular Tax purposes from deducting amounts paid or incurred to capitalizing and depreciating such amounts under §§ 167 or 168, or vice versa, how should such change be taken into account for AFSI purposes? For example, what if a Taxpayer deducted an amount paid or incurred as a repair under its present method of accounting but later changed its accounting method to capitalize the amount paid or incurred as an improvement that is Section 168 Property? How, if at all, should the Taxpayer account for the adjustments that would have been made under § 56A(c)(13) in prior years had the proposed method been used instead? Or what if a Taxpayer capitalized an amount paid or incurred as an improvement that is Section 168 Property under its present method of accounting but later changed its method to deduct the amount paid or incurred as a repair? How should the Taxpayer take into account the adjustments that were made under section 56A(c)(13) in prior years, but that would not have been made had the proposed method been used instead?

(2) Qualified Wireless Spectrum Adjustments (section 10 of this notice).

Should the term "wireless telecommunication carrier" in § 56(c)(14)(B)(i) be defined? If so, should the classification in the North American Industry Classification System (NAICS) for Wireless Telecommunication Carriers (except Satellite) 517112 be used? (That NAICS classification describes a wireless telecommunications carrier as an establishment primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves that has spectrum licenses and provides services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.)

(3) AFSI Adjustments to Prevent Duplications and Omissions (section 11 of this notice).

(a) Can Accounting Principle Change Adjustments or Net Accounting Principle Change Adjustments be traced to a separate trade or business (within the meaning of § 1.446-1(d))?

(b) What events should be considered a cessation of a trade or business for purposes of accelerating inclusion of an Accounting Principle Change Adjustment or Net Accounting Principle Change Adjustment? Should rules similar to those in section 7.03(4) of Rev. Proc. 2015-13, 2015-5 I.R.B. 419, apply?

.02 Comments Regarding Rules Not Included in this Notice. The Treasury Department and the IRS continue to study CAMT issues that are not addressed in this notice, including, but not limited to, the scope of § 56A(c)(2)(C), the extent to which any unrealized marked-to-market gains and losses that are recognized in the Taxpayer's FSI should be adjusted in determining the Taxpayer's AFSI, and the manner in which a partner in a partnership determines its distributive share of partnership AFSI. The Treasury Department and the IRS intend to address these issues in forthcoming proposed regulations. In addition to comments on these issues, the Treasury Department and the IRS request comments on the following specific CAMT issues not addressed by this notice:

(1) Whether there are circumstances in which adjustments to AFSI are required to clearly reflect income; for example, in a situation in which under the relevant accounting standard, a transaction between related entities is accounted for at the

selling entity's cost instead of at an arm's-length value, such that no income, gain, loss, or deduction is recognized in the financial accounts of the seller, and the buying entity records the transaction in its financial accounts at the seller's cost.

(2) Section 56A(c)(11) provides that AFSI may be adjusted in connection with a defined benefit plan that is a covered benefit plan, as defined in § 56A(c)(11)(B). The Treasury Department and the IRS are considering the scope of the portion of the definition of Covered Benefit Plan set forth in § 56A(c)(11)(B)(iii) (any other defined benefit plan which provides post-employment benefits other than pension benefits). Comments are requested regarding § 56A(c)(11)(B)(iii), including (i) whether an account-based group health plan, as defined in § 54.9815-2711(d)(6) of the Pension Excise Tax Regulations (such as a health reimbursement arrangement) that is treated as a retiree-only plan under § 9831(a)(2) that makes payments for retirees from an aggregated account, rather than from assets that have been allocated to individual retirees' accounts, meets the definition of a defined benefit plan, as required for the plan to be a Covered Benefit Plan under § 56A(c)(11)(B)(iii); and (ii) whether a plan that provides post-employment benefits in a lump sum or over a short period of time (for example, 24 months) is a plan that provides benefits other than pension benefits, as required for the plan to be a Covered Benefit Plan under § 56A(c)(11)(B)(iii).

(3) The Treasury Department and the IRS are considering the treatment of dividends received from, and gains or losses from dispositions of stock of, foreign corporations for purposes of computing a Taxpayer's AFSI. The Treasury Department and the IRS request comments on the treatment of those items, including comments

that address the following questions: What approach(es) should be considered to address the potential duplication of income with respect to a CFC by reason of the application of § 56A(c)(2)(C) and (c)(3)? How would each approach address the potential duplication or omission of items from a Taxpayer's AFSI? What would be the relative administrative and compliance burden of each approach, and how could those burdens be minimized?

(4) Section 5.02(3)(c)(iii)(A) provides that the portion of Consolidated FSI that is the Taxpayer's FSI is determined without regard to any AFS Consolidation Entries that eliminate the effect of transactions between the Taxpayer and another Taxpayer that is a member of the same AFS Group unless such transactions are between a disregarded entity and its owner or between disregarded entities that have the same owner. Further, section 5.02(3)(c)(iii)(B) provides that the portion of Consolidated FSI that is the Taxpayer's FSI is determined without regard to any AFS Consolidation Entries that eliminate FSI of the Taxpayer with respect to its investment in another Taxpayer that is a member of the AFS Group unless the investment is in a disregarded entity.

(a) Comments are requested on whether a branch that is not a disregarded entity should be treated the same as a disregarded entity when applying the rules in section 5.02(3)(c)(iii). Specific comments are requested on whether a branch can be treated as a member of the AFS Group separate from its owner for financial accounting purposes and, if so, the ways in which a financial accounting branch differs from, or compares to, a branch for U.S. tax purposes.

(b) Comments are requested on whether the rule in section 5.02(3)(c)(iii) to eliminate transactions with a disregarded entity and investments in a disregarded entity is appropriate in the cross-border context. For example, if the disregarded entity is organized or incorporated in a foreign country and its owner is organized or incorporated in a different country, to what extent should transactions between such disregarded entity and its owner be taken into account for purposes of determining the owner's or the disregarded entity's FSI or AFSI?

.03 Procedures for Submitting Comments.

(1) Deadline. Written comments should be submitted by October 12, 2023. Consideration will be given, however, to any written comment submitted after October 12, if such consideration will not delay the issuance of forthcoming proposed regulations.

(2) Form and manner. The subject line for the comments should include a reference to Notice 2023-64. All commenters are strongly encouraged to submit comments electronically. However, comments may be submitted in one of two ways:

(a) Electronically via the Federal eRulemaking Portal at www.regulations.gov (type IRS-2023-0043 in the search field on the regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2023-64), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C., 20044.

(3) Publication of comments. The Treasury Department and the IRS will publish for public availability any comment submitted electronically and on paper to its public docket on regulations.gov.

SECTION 17. EFFECT ON OTHER DOCUMENTS

Sections 3, 4, and 7 of Notice 2023-7 are modified and clarified.

SECTION 18. DRAFTING AND CONTACT INFORMATION

The principal author of this notice is James Yu of the Office of the Associate Chief Counsel (Income Tax and Accounting). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding section 7 of this notice, please contact Alfred H. Bae at (202) 317-6934 (not a toll-free number). For further information regarding section 13.03 of this notice, please contact Karen Walny at (202) 317-6938 (not a toll-free number). For further information regarding section 14 of this notice, please contact John J. Lee at (202) 317-6936 (not a toll-free number). For further information regarding all other aspects of this notice, please contact Mr. Yu at (202) 317-4718 (not a toll-free number).