

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 2024-10

SECTION 1. OVERVIEW

This notice provides additional interim guidance regarding 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. Notice 2023-7, Notice 2023-20, 2023-10 I.R.B. 523, and Notice 2023-64, 2023-40 I.R.B. 974, each provided interim guidance regarding the application of the CAMT and indicated that the Treasury Department and the IRS intend to issue forthcoming proposed regulations that would include proposed rules consistent with such interim guidance. Each of the notices further provided that taxpayers may rely on such interim guidance for taxable years ending on or before the date forthcoming proposed regulations are published in the Federal Register

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

and, in any event, for any taxable year that begins before January 1, 2024. 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 relevant to this notice. Section 3 of this notice provides additional interim guidance regarding the application of the CAMT to shareholders of controlled foreign corporations that taxpayers may rely on for Covered CFC Distributions received on or before the date forthcoming proposed regulations are published in the Federal Register and, regardless of when forthcoming proposed regulations are published in the Federal Register, for Covered CFC Distributions received before January 1, 2024. Section 4 of this notice modifies and clarifies the interim guidance provided in Notice 2023-64 regarding the application of the CAMT to an affiliated group of corporations filing a consolidated return for any taxable year (tax consolidated group). The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in, and modified and clarified by, sections 3 and 4 of this notice. Section 5 of this notice provides applicability dates and requirements for relying on the interim guidance provided in, and modified and clarified by, this notice until the issuance of forthcoming proposed regulations. Section 6 of this notice requests comments on the interim guidance provided in this notice. Section 7 of this notice describes the effect this notice has on other documents. Section 8 of this notices 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. A corporation is an applicable corporation subject to the CAMT for a taxable year if it meets the average annual AFSI test 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 for the taxable year. 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. For additional background on the CAMT, see section 2 of Notice 2023-7 and section 2 of Notice 2023-64.

.02 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.

.03 AFSI adjustments with respect to shareholders of foreign corporations.

(1) 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 of the Treasury or her delegate (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 or such other amounts as provided by the Secretary) with respect to that other corporation.

(2) 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 such 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.

(3) In addition to the authority provided in § 56A(c)(2)(C) to reduce the amounts

of dividends received by a corporation taken into account under § 56A(c)(2)(C), § 56A(c)(15) authorizes the Secretary to issue regulations or other guidance to provide for such adjustments to AFSI as necessary to carry out the purposes of § 56A, including adjustments to prevent the omission or duplication of any item.

(4) Taxpayers have expressed concern that, in certain cases, distributions by CFCs may result in earnings of CFCs being included in the AFSI of a U.S. Shareholder of the CFC more than once, and that this result may cause CFCs to defer making distributions until guidance is issued. Specifically, a duplication of items may result if the U.S. Shareholder includes in AFSI, under § 56A(c)(2)(C), the amount of a dividend received from earnings associated with Adjusted Net Income or Loss that the U.S. Shareholder includes in AFSI under § 56A(c)(3). Under § 56A(c)(3), a U.S. Shareholder includes in its AFSI items of an upper-tier CFC and a lower-tier CFC. A duplication of items may also result if the upper-tier CFC includes in Adjusted Net Income or Loss the amount of a dividend received from the lower-tier CFC from earnings associated with Adjusted Net Income or Loss that the U.S. Shareholder includes in AFSI under § 56A(c)(3) with respect to the lower-tier CFC. The guidance contained in section 3 of this notice is intended to address such potential duplication of items.

.04 AFSI adjustments for tax consolidated groups. Section 56A(c)(2)(B) provides that except as provided in regulations prescribed by the Secretary, if the taxpayer is part of a tax consolidated group, AFSI for such group for such taxable year takes into account items on the group's AFS that are properly allocable to members of such group. Section 6 of Notice 2023-64 provides guidance for determining the net income or loss and AFSI of a tax consolidated group when the financial results of all

members of the tax consolidated group are included on a single consolidated AFS.

.05 Determining an AFS.

(1) 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 in regulations or other guidance, that covers that taxable year. See § 56A(b).

(2) 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) apply. Section 451(b)(5) provides that in such a situation, the AFS for the AFS Group is treated as the AFS of the taxpayer.

(3) Section 4 of Notice 2023-64 provides guidance for determining a taxpayer's AFS. Section 4.02 of Notice 2023-64 generally provides that the term AFS means the taxpayer's financial statement listed in section 4.02(1) of the notice that has the highest priority, including the priority within certain sections. Section 4.02(1) of the notice generally provides that the financial statements are, in order of descending priority: U.S. GAAP statements, IFRS statements, other government and regulatory statements, unaudited external statements, and lastly, the taxpayer's Federal income tax return or information return filed with the IRS.

(4) Section 4.02(5) of Notice 2023-64 provides guidance for determining a taxpayer's AFS when the financial results of the taxpayer are included in a financial statement, including a Federal income tax return, covering a group of entities (consolidated financial statement). Section 4.02(5)(a) generally provides that if a taxpayer's financial results are consolidated with the financial results of one or more other taxpayers on a consolidated financial statement, the taxpayer's AFS is the

consolidated financial statement. However, if the taxpayer's financial results are also separately reported on a separate financial statement that is of equal or higher priority to the consolidated financial statement, then the taxpayer's AFS is the separate financial statement.

(5) Section 4.02(5)(b) of Notice 2023-64 provides two exceptions to the guidance in section 4.05(a) that would prioritize the use of the taxpayer's separate financial statement over a consolidated financial statement. Relevant to this notice is the first exception in section 4.02(5)(b)(i) of Notice 2023-64, which provides that a corporation that is a member of a tax consolidated group must use as its AFS the consolidated financial statement that contains the financial results of all members of the tax consolidated group, regardless of whether the corporation's financial results are also reported on a separate financial statement that is of equal or higher priority to the consolidated financial statement.

(6) The exception in section 4.02(5)(b)(i) of Notice 2023-64 was premised on the understanding that the financial results of all of the members of a tax consolidated group would be included in a single consolidated financial statement that is not a Federal income tax return. The Treasury Department and the IRS have become aware of circumstances in which not all members of a tax consolidated group are included in a single consolidated financial statement that is not a Federal income tax return. In this situation, section 4.02(5)(b)(i) of Notice 2023-64 could be read to permit the tax consolidated group to use its consolidated Federal income tax return as its AFS because there is no higher priority consolidated financial statement that includes all members of the group. The Treasury Department and the IRS have determined that

this result would frustrate the purpose of the CAMT. The definition of an AFS was broadened to include a Federal income tax return for those entities that do not have a financial statement that meets the criteria in sections 4.02(1)(a) through (d) of Notice 2023-64 but that are relevant to determine the AFSI of a corporation for purposes of determining whether that corporation is an applicable corporation or has a CAMT liability. This AFS category was not intended to be used by a corporation that otherwise has a financial statement that meets the criteria in sections 4.02(1)(a) through (d) of Notice 2023-64. The modifications and clarifications contained in section 4 of this notice are intended to prevent this result and are consistent with the original intent of the exception.

(7) In addition, the guidance in section 4.02(5)(b)(i) of Notice 2023-64 is not entirely clear concerning which consolidated financial statement is the AFS of a member of a tax consolidated group when the member has more than one consolidated financial statement. The modifications and clarifications to Notice 2023-64 contained in section 4 of this notice also provide guidance for determining the AFS of a member of a tax consolidated group in such a situation.

SECTION 3. COVERED CFC DISTRIBUTIONS RECEIVED FROM CONTROLLED FOREIGN CORPORATIONS

.01 Purpose. This section 3 provides interim guidance regarding Covered CFC Distributions (as defined in section 3.02 of this notice) that may result in earnings of CFCs being included in AFSI of a U.S. Shareholder more than once. This section 3 does not provide guidance regarding the treatment of distributions received from a CFC that are not Covered CFC Distributions, dispositions of stock of a CFC (including the

treatment of dividends under § 1248), or any other amounts that may relate to ownership of stock of a CFC. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 3.

.02 Covered CFC Distributions. For purposes of this section 3, a Covered CFC Distribution means a distribution received with respect to stock of a CFC to the extent it is a dividend (within the meaning of § 316), determined without taking into account § 959(d).

.03 Treatment of Covered CFC Distributions received by a U.S. Shareholder of the distributing CFC. In determining the amount included in AFSI under § 56A(c)(2)(C) of a U.S. Shareholder of a CFC resulting from a Covered CFC Distribution received with respect to stock of the CFC, AFSI of the U.S. Shareholder is determined by—

(1) Disregarding any items reported on the U.S. Shareholder's AFS resulting from the receipt of the Covered CFC Distribution; and

(2) Including the U.S. Shareholder's items of income and deduction under chapter 1 (for this purpose, taking into account § 959(d) and excluding §§ 56A and 78) resulting from the receipt of the Covered CFC Distribution.

.04 Treatment of Covered CFC Distributions received by a CFC from another CFC. In determining the Adjusted Net Income or Loss of a CFC for purposes of § 56A(c)(3) resulting from a Covered CFC Distribution received with respect to stock of another CFC, Adjusted Net Income or Loss of the recipient CFC is determined by—

(1) Disregarding any items reported on the recipient CFC's AFS resulting from the receipt of the Covered CFC Distribution; and

(2) Including the recipient CFC's items of income under chapter 1 (excluding § 56A) resulting from the receipt of the Covered CFC Distribution, determined without regard to any exclusion under chapter 1 (for example, § 954(b)(4)), and then reduced to the extent the Covered CFC Distribution is excluded from—

(a) Both—

(i) The recipient CFC's foreign personal holding company income under § 954(c)(3) (relating to certain income received from related persons) or § 954(c)(6) (relating to certain amounts received from related CFCs); and

(ii) The recipient CFC's gross tested income under § 1.951A-2(c)(1)(iv) (relating to dividends received from related persons); or

(b) The recipient CFC's gross income under § 959(b).

SECTION 4. MODIFICATIONS AND CLARIFICATIONS TO AFS GUIDANCE IN SECTIONS 4 AND 6 OF NOTICE 2023-64

.01 Purpose. This section 4 modifies and clarifies interim guidance provided in sections 4.02(5)(b) and 6.02 of Notice 2023-64 and provides additional interim guidance regarding the application of sections 5 and 6 of Notice 2023-64 in light of such modifications and clarifications. The Treasury Department and the IRS intend to propose rules in forthcoming proposed regulations consistent with the interim guidance provided in this section 4. Solely for formatting purposes, section 4.02 of this notice also redesignates section 4.02(5)(b)(ii) of Notice 2023-64 as section 4.02(5)(b)(v) of Notice 2023-64 and restates it for completeness. Unless otherwise provided, the definitions in Notice 2023-64 apply for purposes of this section 4.

.02 Modifications and clarifications to section 4.02(5)(b) of Notice 2023-64. Section

4.02(5)(b) of Notice 2023-64 is modified and clarified to read as follows:

(b) Exceptions to use of Separate AFS.

(i) Tax Consolidated AFS Member has only one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, has only one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains the financial results of all the Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member's financial results also are reported on—

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(ii) Tax Consolidated AFS Member has more than one Consolidated AFS that contains the financial results of all Tax Consolidated AFS Members. Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, has more than one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains the financial results of all Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS with the highest priority under section 4.02(1)(a) through (d) of this notice that contains the financial results of all Tax Consolidated AFS Members,

regardless of whether the Tax Consolidated AFS Member's financial results also are reported on—

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of some, but not all, Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(iii) Tax Consolidated AFS Member has only one Consolidated AFS that contains its results but does not contain results of all Tax Consolidated AFS Members.

Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, is not described in section 4.02(5)(b)(i) or (ii) of this notice and has only one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains its financial results and the financial results of some, but not all, Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use that Consolidated AFS as its AFS, regardless of whether the Tax Consolidated AFS Member's financial results also are reported on a Separate AFS that is of equal or higher priority to that Consolidated AFS.

(iv) Tax Consolidated AFS Member has more than one Consolidated AFS that contains its results but does not contain results of all Tax Consolidated AFS Members.

Except as provided in section 4.02(5)(b)(v) of this notice, if a Tax Consolidated AFS Member, as defined in section 6.03(1) of this notice, is not described in section 4.02(5)(b)(i) or (ii) of this notice and has more than one Consolidated AFS described in section 4.02(1)(a) through (d) of this notice that contains its financial results and the

financial results of some, but not all, Tax Consolidated AFS Members, the Tax Consolidated AFS Member must use as its AFS the Consolidated AFS that contains its financial results and the financial results of the greatest number of Tax Consolidated AFS Members (if there is more than one such Consolidated AFS, the Tax Consolidated AFS Member must use the Consolidated AFS from among them with the highest priority under section 4.02(1)(a) through (d) of this notice), regardless of whether the Tax Consolidated AFS Member's financial results also are reported on--

(A) A Separate AFS that is of equal or higher priority to that Consolidated AFS; or

(B) A different Consolidated AFS that contains the financial results of fewer Tax Consolidated AFS Members, and that is of equal or higher priority to that Consolidated AFS.

(v) 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.

.03 Modification to section 6.02 of Notice 2023-64. The cross-reference provided in section 6.02 of Notice 2023-64 is modified and clarified to read as follows:

.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) through (iv) of this notice.

.04 Application of Sections 5 and 6 of Notice 2023-64. If after the application of

section 4.02(5)(b)(i) through (iv) of Notice 2023-64, as modified and clarified by this notice, the AFS of each Tax Consolidated AFS Member is not the same Consolidated AFS, then for purposes of applying sections 5 and 6 of Notice 2023-64, the Tax Consolidated Group must combine the financial results reflected on the different AFSs of the Tax Consolidated AFS Members to form one Consolidated AFS that is treated as the AFS of the Tax Consolidated Group (Tax Consolidated Group AFS). For purposes of the preceding sentence, the financial results of each Tax Consolidated AFS Member may not be included in the Tax Consolidated Group AFS more than once, and the Tax Consolidated Group must make any AFS Consolidation Entries described in section 5.02(3)(c)(iii) of Notice 2023-64 not otherwise reflected in the AFS of any member that would have been made if such a Tax Consolidated Group AFS had otherwise been prepared.

SECTION 5. APPLICABILITY DATES AND RELIANCE

.01 Section 3 of this notice. Taxpayers may rely on the interim guidance described in section 3 of this notice for Covered CFC Distributions received on or before the date forthcoming proposed regulations are published in the Federal Register. However, regardless of when forthcoming proposed regulations are published in the Federal Register, a taxpayer may rely on the interim guidance described in section 3 of this notice for Covered CFC Distributions received before January 1, 2024.

.02 Section 4 of this notice. Taxpayers may rely on the interim guidance described in section 4.02(5)(b) of Notice 2023-64, as modified by section 4.02 of this notice, section 6.02 of Notice 2023-64, as modified by section 4.03 of this notice, and section 4.04 of this notice for taxable years ending before the date forthcoming proposed

regulations are published in the Federal Register. However, regardless of when forthcoming proposed regulations are published in the Federal Register, a taxpayer may rely on the interim guidance described in section 4.02(5)(b) of Notice 2023-64, as modified by section 4.02 of this notice, section 6.02 of Notice 2023-64, as modified by section 4.03 of this notice, and section 4.04 of this notice for any taxable year beginning before January 1, 2024. A taxpayer may not rely on the unmodified text of sections 4.02(5)(b)(i) or 6.02 of Notice 2023-64 for any tax return filed on or after December 15, 2023.

SECTION 6. 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.

.02 Procedures for Submitting Comments.

(1) Deadline. Written comments should be submitted by January 15, 2024. Consideration will be given, however, to any written comment submitted after January 15, 2024, 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 2024-10. 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 <https://www.regulations.gov> (type IRS-2023-64 in the search field on the www.regulations.gov homepage to find this notice and submit comments); or

(b) By mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2024-10), 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 the IRS's public docket on www.regulations.gov.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Sections 4 and 6 of Notice 2023-64 are modified and clarified.

SECTION 8. DRAFTING AND CONTACT INFORMATION

The principal authors of this notice are Madeline Padner of the Office of the Associate Chief Counsel (Income Tax and Accounting) and Dylan Steiner of the Office of the Associate Chief Counsel (International). Other personnel from the Treasury Department and the IRS participated in its development. For further information regarding section 3 of this notice, contact Mr. Steiner at (202) 317-5477 (not a toll-free number). For further information regarding all other aspects of this notice, contact Ms. Padner at (202) 317-6313 (not a toll-free number).