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Adventures in CAMTyland: The Partnership 'Distributive Share Only' Rule in the Corporate Alternative Minimum Tax

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The Inflation Reduction Act,[1] signed into law on August 16, 2022, added a new corporate alternative minimum tax ("the CAMT") to the Code primarily by amending §53, §55, and §59, as well as introducing §56A.[2] At a high level, the CAMT is a minimum tax based on financial statement income on certain, generally large, corporations.

Under one view, the CAMT's impact is, and should be, cabined. After all, the CAMT only applies to corporations (other than REITs, RICs and S corporations) and uses a $*1 billion* threshold to determine if a corporation is in-scope. The Joint Committee on Taxation estimated that approximately 150 corporations were subject to a prior proposed version of the CAMT.[3] The economist, Martin Sullivan, has identified only 90 corporations that are subject to the CAMT.[4] Thus, there is a view that very few entities need to be concerned about the CAMT and understanding the stations of CAMTyland.

However, this view may provide false comfort to certain entities, including partnerships,[5] and their advisors. As a threshold matter, it is possible, and perhaps likely, that many more than 150 corporations are in-scope and subject to the CAMT. Determining whether a corporation is in-scope as an "applicable corporation" (the "Scope Determination") — along with the potential CAMT tax liability of an applicable corporation (the "Liability Determination") — both require the use of adjusted financial statement income (AFSI). Determining AFSI for purposes of the CAMT is not nearly as simple as pulling a number from a financial statement, and there are instances where AFSI may far exceed any number on the financial statement.[6] Instead, calculating AFSI is a long and arduous process — not dissimilar from traversing through the Candy Cane Forest in Candyland, a winding path that often requires players to go backwards on the gameboard before making it to King Kandy.

When a corporation has investments in partnership or is otherwise related to a partnership, the CAMT determinations are particularly challenging — players may feel they are mired in Candyland's Chocolate Swamp. At base, this is because the AFSI of a partnership can both cause a corporation who is determin-

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[1] To provide for reconciliation pursuant to title II of S. Con. Res. 14, Pub. L. No. 117-169 (Aug. 16, 2022) (commonly called the "Inflation Reduction Act").

[2] Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended ("the Code") or the applicable Treasury regulations promulgated pursuant to the Code.

[3] Jt. Comm. on Tax'n, *Memorandum: Proposed Book Minimum Tax Analysis by Industry* (July 28, 2022), at https://www.finance.senate.gov/imo/media/doc/CAMT%20JCT%20Data.pdf.

[4] Martin A. Sullivan, *Tax Credits and Depreciation Relief Slash Burden of New Corporate AMT*, Tax Notes Fed. (Aug. 22, 2022).

[5] A "partnership," as used herein, means any entity classified as partnership for U.S. federal income tax ("USFIT") purposes

[6] *See* n.66, below.

ing whether it is in-scope (a ''tested corporation'') to be an applicable corporation and increase an applicable corporation's CAMT liability. Said differently, while only corporations (other than REITs, RICs and S corps) are subject to the CAMT, income earned from partnerships, as well as other entities excluded from direct application of the CAMT, may be included for both Scope Determination and Liability Determination purposes. Furthermore, determining how much AFSI with respect to a partnership to include raises numerous technical and practical questions. Additionally, and importantly, this regime appears to require partnerships to find, calculate and communicate extensive information to partners and certain other related parties. Thus, while a partnership itself cannot have a CAMT liability, partnerships and their advisors will need to worry about the CAMT.

The CAMT contains five rules addressing partnerships, each outlined below, and each rule raises interpretative and practical questions. This article does not include a comprehensive discussion of these five rules or the myriad other partnership-specific issues raised by the CAMT.[7] It instead focuses on §56A(c)(2)(D)'s ''distributive share only'' rule, which provides the framework for determining how much AFSI with respect to a partnership is included by a partner, and §59(k)(1)(D)'s rule that turns off the ''distributive share only'' rule in certain circumstances.

This article is organized into six parts: (1) brief overview of the CAMT; (2) partnership-specific rules in the CAMT; (3) background regarding the financial accounting treatment of partnership investments; (4) analysis of §56A(c)(2)(D)'s ''distributive share only'' rule and this discussion indicates that using the statutory language to determine a partner's distributive share of AFSI in CAMTyland is far, far harder than asking Lord Liquorice to find King Kandy in Candyland; (5) discussion of when the ''distributive share only'' rule is turned off; and (6) final observations.

I. THE CAMT

As noted above, the CAMT is a minimum tax based on financial statement income that applies to applicable corporations and both the CAMT's Scope Determination and Liability Determination are based on AFSI. The CAMT contains 17 delegations to the ''Secretary'' (of the Treasury) which provide the Secretary with significant discretion. The following discussion provides a high-level overview of the CAMT but does not, and is not intended to, provide a comprehensive overview of the CAMT.

A. Scope Determination

The CAMT applies to an applicable corporation which is (1) a corporation (other than a REIT, RIC or S Corporation) that (2) satisfies the average annual AFSI test.

Under the average annual AFSI test, a corporation generally meets the Scope Determination if the average AFSI of the corporation (together with certain related entities) in the three taxable year period ending with any tested tax year exceeds $1 billion. A tested tax year is any tax year ending after December 31, 2021.[8]

The Scope Determination, importantly, includes two aggregation rules. First, the AFSI of a corporation generally includes the AFSI of any person that is treated as a single employer with that corporation under §52(a) or §52(b). Second, a special aggregation rule applies if the corporation is a member of a ''foreign-parented multinational group.''

Applicable corporation status generally persists in subsequent tax years, even if the corporation's average AFSI falls below the relevant threshold. Exceptions exist but each exception appears to require some form of affirmative determination from Treasury.

B. Liability Determination

An applicable corporation's maximum CAMT liability is 15% of its AFSI. Specifically, the CAMT tax liability of an applicable corporation is 15% of AFSI, less the allowed CAMT foreign tax credits over the regular tax, plus the base erosion and anti-abuse tax

[7] Other issues include the treatment of tax depreciation, including §743 adjustments, and financial statement depreciation with respect to property held by a partnership; the treatment of foreign taxes paid by a partnership; the application of effectively connected income principles in the partnership context; the treatment of contributions to and distributions from a partnership; the treatment of sales of partnership interests; and general compliance and reporting considerations. This list is not, and not intended to be, exhaustive.

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

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(''BEAT'').[9] General business credits may be used to offset up to approximately 75% of the combined regular tax and CAMT liability. Applicable corporations receive a credit for any CAMT paid, which may be carried forward to offset future regular tax liability. The use of the CAMT credit is subject to a limitation based on the applicable corporation's potential pre-credit CAMT liability in the carry-forward year.

C. AFSI

The AFSI calculation generally starts with the net income or loss reported on an applicable financial statement (''AFS'').[10] AFS is generally defined by reference to §451(b)(3) and generally includes GAAP, IFRS, or other financial statements used for reporting to a governmental agency such as the SEC or a foreign equivalent.[11] Section 451(b)(3) and the regulations the reunder provide a hierarchy of such statements.[12] For example, the annual financial statements included in a Form 10-K prepared in accordance with GAAP are of higher priority than GAAP financial statements used for credit purposes. Further, any audited GAAP financial statement statements are of higher priority than any IFRS financial statements. The Secretary has authority to deviate from these rules and deem a financial statement an AFS.[13]

The CAMT provides for numerous adjustments to financial statement net income or loss (''FSI'') to arrive at AFSI. Specifically, §56A(c) enumerates a series of adjustments that draw on both financial accounting and tax concepts and many of these can be viewed as ''remove-book-and-replace-with-tax'' adjustments. For example, §56A(c)(13) provides certain adjustments for depreciation, generally meant to have AFSI reflect tax, rather than financial statement, depreciation. This remove-book-and-replace-with-tax rule is generally limited to depreciation with respect to tangible property. Furthermore, the Secretary is given broad authority to issue regulations to adjust AFSI, including adjustments to prevent omissions and duplications, and to carry out the principles of parts of subchapters C (corporations) and K (partnerships).[14]

It is worth highlighting that AFSI for Scope Determination purposes and Liability Determination purposes may (and often will) differ. This is because the single-employer rules in §52(a) and §52(b) apply for Scope Determination purposes[15] but not for Liability Determination purposes; financial statement net operating losses (''FS NOLs'') are not taken into account for Scope Determination purposes;[16] and certain adjustments to AFSI (involving partnerships and certain pension plans) operate differently for Scope Determination and Liability Determination purposes.[17]

II. PARTNERSHIP RULES IN THE CAMT

The CAMT provisions, despite only directly impacting the tax liability of C corporations, contain five rules for partnerships. Three of these rules contain specific rules, rather than mere regulatory directives:

(1) Under §56A(c)(2)(D)(i), if the taxpayer is a partner in a partnership, the taxpayer generally is required to adjust its AFSI to ''only'' take into account the taxpayer's distributive share of AFSI of the partnership (the ''distributive share only'' rule). The Secretary has the authority to provide otherwise.

(2) Under §56A(c)(2)(D)(ii), the AFSI of a partnership is the partnership's net income or loss (i.e., FSI) as reported on the partnership's AFS, adjusted under rules similar to the rules applicable to the determination of a corporation's AFSI.

(3) Under §59(k)(1)(D), solely for purposes of the Scope Determination, a corporation's AFSI includes the AFSI of all persons treated as a single employer with the corporation under §52(a) or §52(b). Additionally, §59(k)(1)(D) ''turns off'' the §56A(c)(2)(D)(i) ''distributive share only'' rule in certain cases.

In addition, two of the 17 regulatory directives in the CAMT specifically address partnerships:

(4) Section 56A(c)(15) provides the Secretary authority to adjust AFSI with respect to a partnership to carry out the principles of part II of subchapter K (including §721 contributions,[18] §731

[9] §59A.

[10] §56A(a).

[11] §56A(b).

[12] Additionally, rules similar to the rules of §451(b)(5) apply. §56A(c)(2)(A).

[13] §56A(b).

[14] §56A(c)(15).

[15] §59(k)(1)(D).

[16] §59(k)(1)(B)(i) (''determined without regard to section 56A(d)''). Section 56A(d)(3) defines FS NOLs.

[17] §59(k)(1)(D) (''determined without regard to paragraphs (2)(D)(i) and (11) of section 56A(c)'').

[18] Contributions to partnerships may be viewed as generally tax-free by virtue of §721(a). However, there are many exceptions to such non-recognition found within (and outside of) part II of subchapter K. The following rules in part II of subchapter K may result in recognition upon a contribution to a partnership: §721(b) (the investment company exception); §721(c) (transfers by U.S. persons to certain controlled partnerships with foreign related

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distributions,[19] and §741 sales of partnership interest[20]) if the Secretary determines such adjustment to AFSI is necessary to carry out the purposes of the CAMT.[21]

(5) Section 56A(e) provides a directive to the Secretary with respect to the effect of the CAMT on partnerships with income taken into account by an applicable corporation.[22] Under this directive, the Secretary, under regulations or other guidance, may adjust items other than AFSI with respect to a partnership and modify other rules (presumably including those within both part I and part II of subchapter K) if (i) the partnership's income[23] is taken into account by an applicable corporation and (ii) the Secretary determines an adjustment or modification (presumably, for example, to tax basis) is necessary to carry out the purposes of the CAMT.

III. NECESSARY BACKGROUND: FINANCIAL STATEMENT TREATMENT OF PARTNERSHIP INVESTMENTS

Under financial accounting rules — specifically U.S. GAAP — an investor (for example, a corporate partner) may account for an investment (for example, a partnership interest) using different methods. There exist four main methods to account for an equity investment in another entity: (1) consolidation; (2) the equity method; (3) the fair value method; and (4) the measurement alternative method. U.S. GAAP provides specific guidance to determine which method is applied, and the financial information required to be included in the partner's (investor's) consolidated financial statements.[24]

Note that other financial accounting standards, such as IFRS, may provide for different methods, or different ways of applying a certain method. It is equally important to note that U.S. GAAP and IFRS may differ significantly in certain regards — including whether an investment is treated as debt or equity and whether amounts from investments to which the fair value method applies are included in net income or other comprehensive income and such differences could impact, and impact significantly, the application of the CAMT.[25] However, this article's discussion of financial accounting rules is specifically focused on U.S. GAAP and the article as a whole generally assumes, for simplicity, all relevant entities have an audited U.S. GAAP statement.

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partners); and §731(a) and §752 (liability shifts in excess of basis).

[19] Distributions by partnerships may be viewed as generally tax-free by virtue of §731(a). However, there are many exceptions to such non-recognition found within (and outside of) part II of subchapter K, including the rules in: §731(a) (certain distributions of cash); §731(c) (distribution of marketable securities); §737 (mixing bowl rules); §752 (deemed distributions of cash); and §751(b) (''hot assets'').

[20] Under §741, a sale of a partnership interest is a recognition event.

[21] Section 56A(c)(15) states:

> SECRETARIAL AUTHORITY TO ADJUST ITEMS. — The Secretary shall issue regulations or other guidance to provide for such *adjustments to adjusted financial statement income* as the Secretary determines necessary to carry out the *purposes of this section*, including adjustments—
>
> (A) to prevent the omission or duplication of any item, and
>
> (B) to carry out the principles of part II of subchapter C of this chapter (relating to corporate liquidations), part III of subchapter C of this chapter (relating to corporate organizations and reorganizations), and *part II of subchapter K of this chapter (relating to partnership contributions and distributions).*

(emphasis added).

[22] Section 56A(e) states:

> REGULATIONS AND OTHER GUIDANCE. — The Secretary shall provide for such regulations and other guidance as necessary to carry out the purposes of this section, including regulations and other guidance relating to the effect of the rules of this section on partnerships with income taken into account by an applicable corporation.

[23] It is unclear whether ''income'' as used in §56A(e) means financial statement income, taxable income, or both.

[24] The chart below is presented as a high-level general summary of the indicated methods and is not, and is not intended to be, comprehensive.

[25] *See generally* KPMG Financial Reporting View, *IFRS Compared to US GAAP* (Dec. 2021), at https://frv.kpmg.us/reference-library/2021/ifrs-compared-to-us-gaap.html.

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Method	When applied	What is presented in the investor's financial statements
1. Consolidation [26]	Investor has a controlling financial interest in the investee.	The assets, liabilities, operations, and cash flows of the investee are consolidated with those of the investor. If the investee is less than wholly owned, the investor is required to separately present the portion of the investee's net assets, net income and comprehensive income that is attributable to the non-controlling interest (NCI) holders. This amount is presented as a single line in the equity section of the investor's balance sheet and on the investor's income statement and statement of comprehensive income.
2. Equity method [27]	An investor that does not consolidate the partnership or partnership-like entity applies the equity method unless its interest is so minor that it has virtually no influence. If the investee is not a partnership or partnership-like entity, the investor must have the ability to exercise significant influence over the operating and financial decisions of the partnership. Note that when the investment qualifies for the equity method, the investor may instead elect the "fair value option" (see below).	The investment is presented as a single line on the balance sheet, and the investor's share of the investee's earnings or losses is presented as a single line in the income statement (which is included in the investor's net income) and statement of comprehensive income. If the investor determines that the fair value of an equity method investment is less than its carrying amount at the reporting date and the impairment is other-than-temporary, it reduces the carrying amount of the investment to its fair value. The impairment charge is recognized in the income in the same line that includes the investor's share of the investee's earnings and losses (which is included in the investor's net income).
3. Fair value method [28]	Investor makes an election to account for an equity method investment at fair value (referred to as the "fair value option" under U.S. GAAP),[29] OR Investor neither consolidates nor applies the equity method and the investment has a readily determinable fair value.	The investment is presented on the balance sheet as a single amount and the investor recognizes in net income the changes in fair value of the investment.
4. Measurement alternative method [30]	Investor makes an election to apply the "measurement alternative" to an investment that it neither is required to consolidate nor apply the equity method. In order to make this election, the investment must not (1) have a readily determinable fair value[31] and (2) qualify for the net asset value practical expedient.	The investment is presented on the balance sheet as a single amount. The investment is measured at cost, adjusted for impairments (if any). If there is a change in the "observable price" from "orderly transactions" for the identical or "similar" instrument of the same issuer, the investment is adjusted to fair value through net income.

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[26] *See generally* KPMG Financial Reporting View, *Consolidation* (May 2022), at https://frv.kpmg.us/reference-library/2022/handbook-consolidation.html.

[27] *See generally* KPMG Financial Reporting View, *Equity Method of Accounting* (Aug. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-equity-method-of-accounting.html.

[28] *See generally* KPMG Financial Reporting View, *Fair Value Measurement* (Nov. 2021), at https://frv.kpmg.us/reference-library/2021/handbook-fair-value-measurement.html.

[29] Under ASC 825-10-25-4, an investor may elect to apply the fair value option when an investment becomes subject to the equity method of accounting for the first time.

[30] *See generally* KPMG Financial Reporting View, *Investments* (Sept. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-investments.html.

[31] KPMG Financial Reporting View, *Fair Value Measurement* at n.5 (Nov. 2021), at https://frv.kpmg.us/reference-library/2021/handbook-fair-value-measurement.html (citing ASC 321-10-35-2) ("Entities are required to measure equity securities with a readily determinable fair value at fair value. Entities may measure equity securities without a readily determinable fair value either (1) at fair value or (2) using a measurement alternative — cost adjusted to fair value when there are observable transactions, less impairment.").

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IV. A CORPORATE PARTNER'S AFSI FROM A PARTNERSHIP: 'DISTRIBUTIVE SHARE ONLY' RULE

For purposes of determining a corporate partner's AFSI from a partnership, the CAMT provides the ''distributive share only'' rule, which reads:[32]

> Except as provided by the Secretary, if the taxpayer is a partner in a partnership, adjusted financial statement income of the taxpayer with respect to such partnership shall be adjusted to only take into account the taxpayer's distributive share of adjusted financial statement income of such partnership.

This language suggests, except where the Secretary provides otherwise, a ''subtract-then-add'' process to determine a corporate partner's AFSI with respect to a partnership. Specifically, the language suggests a process where (1) certain FSI items are removed and (2) a distributive share of partnership AFSI is added. This subtract-then-add process raises a certain fundamental question — with respect to both what is subtracted and what is added.

A. 'Distributive Share Only' Rule: Subtraction

As a threshold method, a process where a partner removes FSI items ''with respect to [a] partnership'' requires a partner to determine which FSI item or items to subtract. The statutory language raises a question as to whether FSI items potentially subtracted under §56A(c)(2)(D)(i) are (1) all FSI items related to the partnership (including, for example, amounts from the sale or exchange of a partnership interest) or (2) only partnership-level FSI items (for example, if the partner uses the equity method with respect to its partnership investment, the one-line pickup amount, and if the partner uses the fair value method, a mark-to-market amount). If FSI items subtracted under §56A(c)(2)(D)(i) are all FSI items related to the partnership (i.e., under interpretation (1)), any item not reflected (or without an analogue) on the partnership's financial statements would appear to be excluded from the corporate partner's AFSI.[33] Such amounts would appear to include:[34]

- *FSI from a sale or exchange of a partnership interest.* FSI from the sale or exchange of a partnership interest is reflected in the investor-level (i.e., partner-level) financial statements. This aligns with the USFIT location of such gain or loss. As a simple example, consider the following:

Example: Corp A (''A'') owns an interest in a partnership ('' PRS''). A sells its interest in PRS to ''C'' and both includes FSI on A's AFS and recognizes gain for USFIT purposes.

If the subtract-then-add process is applied literally, there is an argument that no amount (for example, the FSI on A's AFS or the gain A recognized for USFIT purposes) is included in A's AFSI because this transaction does not produce partnership-level FSI and thus does not produce a distributive share of partnership AFSI. However, §56A(c)(2)(D)(i)'s ''except as provided by the Secretary'' language, along with both regulatory directives in §56A(c)(15), would appear to allow the Secretary to include FSI from the taxable sale or exchange of a partnership interest in AFSI as otherwise an item would be omitted and the principles of §741 would be frustrated.[35] It appears unclear how taxpayers should treat such amounts in the absence of guid-

[32] Section 56A(c)(2)(D)(i)'s ''distributive share only'' rule does not apply for Scope Determination purposes if the partnership is treated as a single employer with the corporate partner under §52(b). There is a reading where the rule does not apply for Scope Determination purposes, period. However, this reading, per Senate Finance Committee staff, was not intended. *See* n.68, below.

[33] Note, however, that the Secretary has broad discretion to prevent duplications and omissions and to carry out the principles of part II of subchapter K. *See* §56A(c)(15).

[34] The following list is not, and is not meant to be, exhaustive.

[35] FSI from the sale or exchange of a partnership interest can occur both when the transaction is taxable and tax deferred under USFIT rules. To the extent the regulatory directives in §56A(c)(15) are read to import non-recognition principles in part II of subchapter K to the CAMT, the following examples illustrate policy considerations that may be relevant if and when Treasury addresses the issue, and such examples may indicate that a one-size-fits-all rule is inappropriate:

> *Example 1*: Corp A (''A'') owns an interest in a partnership ('' PS1'') and contributes its PS1 interest and a building to second partnership (''PS2'') in a §721 transaction where no exceptions to nonrecognition apply and where neither partnership is consolidated with A. A may include FSI on A's AFS but recognizes no gain for USFIT purposes.
>
> *Example 2*: Same as Example 1 but the transaction is treated, in part, as a disguised sale of property under §707. A may include FSI on A's AFS and recognizes gain for USFIT purposes.
>
> *Example 3:* Same as Example 2 but the amount of gain recognized for USFIT is decreased under Reg.

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ance and there appears to exist a position that such items are excluded from the partner's AFSI.

- *Dilution gains/losses.* With respect to a partner who accounts for a partnership investment using the equity method, dilution gains/losses, which are included in FSI, are generally reflected on partner-level financial statements. The general concept of dilution gains/losses is illustrated by the following example:

Example: Corp A (''A'') and Corp B (''B'') each own a 50% interest in a partnership (''PRS''). ''C'' contributes cash to PRS in exchange for PRS interests, decreasing A and B's interests in PRS from 50% to 40% each. A and B may each recognize FSI as a result of the dilution to their ownership interest of PRS.[36]

In the absence of contrary guidance, there appears to exist a position that dilution gain/loss is excluded from such corporate partner's AFSI.

- *Deconsolidation FSI.* With respect to a partner who consolidates a partnership investment and then deconsolidates the investment, deconsolidation FSI is reflected at the partner-level.[37] The general concept of deconsolidation FSI is illustrated by the following example:

Example: Corp A (''A'') and ''B'' are partners in a partnership ('' PRS''). A owns 51% of the PRS interests and consolidates the PRS investment, and B owns the remaining 49%. A sells 20% of its PRS interests to B and will no longer consolidate the PRS investment after the transaction (i.e., the transaction is a ''deconsolidation event''). A may recognize FSI because the transaction is a deconsolidation event.[38]

In the absence of contrary guidance, there appears to exist a position that deconsolidation FSI is excluded from AFSI.

- *Amortization and depreciation of equity method basis differences.* Under U.S. GAAP rules, in certain circumstances, amortization and depreciation with respect to partnership property may be recognized at the partner level, in addition to the amortization and depreciation recognized at the partnership level. This occurs when there are differences between (1) the investor's share of the fair value of the investee's assets and liabilities and (2) the investor's share of the carrying amount of those same assets and liabilities as reported in the investee's financial statements.[39] The following example illustrates the U.S. GAAP treatment of basis differences.

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§1.707-4(d)'s exception for reimbursements of capital expenditures.

Example 4: Same as Example 3 but the expense allowing for the application of the Reg. §1.707-4(d) exception for reimbursements of capital expenditures is not treated as a capital expenditure under U.S. GAAP.

Example 5: Corp A (''A'') owns an interest in a partnership ('' PRS'') and sells the interest to ''C.'' A includes FSI on A's AFS and reinvests an amount equal to capital gain recognized for USFIT purposes in an opportunity zone.

[36] ASC 323-10-40-1 (''An equity method investor shall account for a share issuance by an investee as if the investor had sold a proportionate share of its investment. Any gain or loss to the investor resulting from an investee's share issuance shall be recognized in earnings.''). *See generally* KPMG Financial Reporting View, *Equity Method of Accounting*, Question 6.3.30 (Aug. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-equity-method-of-accounting.html.

[37] KPMG Financial Reporting View, *Consolidation*, Question 7.6.20 (May 2022), at https://frv.kpmg.us/reference-library/2022/handbook-consolidation.html (''How does a parent deconsolidate a subsidiary or a group of assets that is a business or nonprofit activity? Interpretive response: The loss by a parent of a controlling financial interest in a subsidiary is a significant economic event that causes the parent-subsidiary relationship to cease and an investor-investee relationship to begin. When a deconsolidation is of a subsidiary or a group of assets that is a business or a nonprofit activity, it is accounted for under Subtopic 810-10 unless a scope exception applies. . . . That guidance requires that the parent deconsolidate the subsidiary by: [810-10-40-3A – 4A] removing the assets, liabilities and equity components (including NCI and AOCI) related to the subsidiary; and recognizing a gain or loss in net income.'').

[38] ASC 810-10-40-5 (providing for the measurement of the gain or loss on deconsolidation). *See generally* KPMG Financial Reporting View, *Consolidation*, Question 7.6.20 (May 2022), at https://frv.kpmg.us/reference-library/2022/handbook-consolidation.html. Note that if the transaction was not a deconsolidation event, there would be no FSI to A.

[39] KPMG Financial Reporting View, *Equity Method of Accounting*, §5.3 (Aug. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-equity-method-of-accounting.html (''[A]fter the investor allocates its cost, it determines whether differences exist between the amount allocated to its share of each of the investee's assets and liabilities and its share of the carrying amount of each of the investee's underlying assets and liabilities as reported under US GAAP. Those differences are referred to as the investor's basis differences. The total difference between the investor's carrying amount and its share of the investee's net asset is sometimes referred to as the 'aggregate' or 'overall' basis difference. The investor subsequently accounts for basis differences as if the investee were a consolidated subsidiary. As a result, the investor recognizes in its equity in earnings of the investee adjustments to those basis differences in the same periods that the investee makes adjustments to depreciate, deplete, impair,

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Example: Corp C ("C") purchases a 25% interest in a partnership (" PRS") from an existing partner for $10 million in cash and uses the equity method of accounting with respect to its PRS investment. PRS only has one asset, a manufacturing plant, which has a carrying amount of $28 million and a fair value of $40 million. In this case, the C's share of the carrying amount of PRS's net assets is $7 million ($28 million × 25%) while its share of the fair value of those net assets is $10 million ($40 million × 25%) creating an equity method basis difference, which is entirely attributable to the manufacturing plant. As a result, each reporting period C will recognize (i) its share of the depreciation expense recognized in PRS's financial statements plus (ii) amortization of its $3 million ($10 million – $7 million) equity method basis difference (taken over the manufacturing plant's remaining useful life).

The amortization of equity method basis differences is not part of the partnership's FSI and seems somewhat analogous to a §743 adjustment.[40] If the amortization of equity method basis differences (with respect to non-section 168 property) does not impact a corporate partner's AFSI due to the add-then-subtract "distributive share only" rule, a corporate partner's AFSI could be viewed to be inappropriately high and the principles of both the applicable financial accounting rules and part II of subchapter K (specifically, §743(b) would appear to be frustrated.[41] This would seem to be a clear situation where the Secretary's authority in §56A(c)(15)(B) (to adjust AFSI with respect to the partnership to carry out the principles of part II of subchapter K (e.g., §743) if the Secretary determines such adjustment to AFSI is necessary to the purposes of the CAMT) should be invoked.[42]

- *Certain impairment.* With respect to a partner that uses the equity method of accounting with respect to its partnership investment, the partner may be required to adjust the carrying amount of its investment because an impairment is other-than-temporary and this may impact the partner's net income.[43] Likewise, with respect to a partner that uses the measurement alternative method of accounting with respect to its partnership investment, the partner may record a loss in net income if such asset (the partnership investment) is impaired.

Example: Corp A ("A") owns a 2% interest in a partnership ("PRS") and uses the measurement alternative method of accounting with respect to its partnership investment. PRS suffers a series of operating losses and A determines that the fair value of the PRS interest is less than its carrying amount as reported in A's U.S. GAAP statement. A would be required to recognize an impairment expense related to its investment in PRS, which would reduce A's FSI.

In the absence of guidance, it would appear that a taxpayer would likely need to treat dilution FSI, deconsolidation FSI, the amortization and depreciation of equity method basis differences, and impairment as either all impacting AFSI or all having no impact on AFSI.[44]

These examples illustrate that FSI items that relate to a partner's equity interest in a partnership may not

amortize or accrete the related underlying assets or liabilities. [323-10-35-5, 35-13]"). *See also id.* at §3.1.

[40] A §743(b) adjustment is determined if a partnership interest is transferred, and the partnership has a §754 election in place for the year of the transfer or there exists a substantial built-in loss. Section 743(b) adjustments are unique to the transferee partner and the partnership is required to calculate the adjustment, assign it to the transferee partner's share of assets as proscribed in §755, compute recovery of the adjustment, and report the impacts to the transferee partner annually on its Schedule K-1.

[41] Query whether this view is, or should be, dependent on the partnership having a §754 election in effect for the year of the transfer.

[42] Note that the Secretary's authority under §56A(c)(15)(A) vis-a-vis omissions and duplications also may be relevant but is not clearly relevant since no AFSI item has been omitted or duplicated under the CAMT's statutory rules. Also note that if regulations allow investor-level amortization and depreciation of basis differences to decrease AFSI, it would appear that such a rule should be cabined to non-§168 property. This is because, in general terms, tax, rather than financial accounting rules, apply with respect to the amortization of §168 property. Specifically, §56A(c)(13)(A) provides that AFSI is 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 from the year. Section 56A(c)(13)(B)(i) provides that AFSI is appropriated adjusted to disregard any amount of depreciation expense that is taken into account on the taxpayers AFS with respect to such property. The Secretary is given authority to make further appropriate adjustments with respect to such property. §56A(c)(13)(B)(ii). Note that the §56A(c)(13) adjustment raises a number of non-partnership questions. For example, it is unclear what the term "such property" means in several contexts, including when items are capitalized under U.S. GAAP but not for tax, and vice versa.

[43] It is our understanding that this situation is relatively uncommon.

[44] *See, e.g., State Farm Mut. Auto. Ins. Co. v. Commissioner*, 130 T.C. 263 (2008), *aff'd in part, rev'd in part*, 698 F.3d 257 (7th Cir. 2012) (finding that "[in] the absence of any clear guidance on exactly how to calculate [adjusted current earnings], [the taxpayer's] method is reasonable" but "[the taxpayer] must use a consistent pre adjustment [alternative minimum taxable income] "); *Gottesman & Co. v. Commissioner*, 77 T.C. 1149 (1977) (respecting the taxpayer's computation of the accumulated earnings tax using a separate company computation, rather than a consolidated group computation, since there was no guidance and the

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be reflected in the partnership's financial statements. If positive, such items are seemingly subtracted and under the ''distributive share only'' rule such items would appear to escape the CAMT base unless and until the Secretary promulgates rules providing otherwise. One can query if there is a policy justification for such a result in many cases.[45] If negative, such items — notably, the amortization and depreciation of equity method basis differences (with respect to non-section 168 property) — are not included. As a result, a corporation AFSI's could be considered to be inappropriately high and, at least in some instances, the principles of both the CAMT and part II of subchapter K (specifically, §743) would appear to be frustrated.[46] Note, however, that the Secretary could, and is arguably directed to, provide otherwise to address some or all of these situations.

B. 'Distributive Share Only' Rule: Addition

As a threshold method, a process where a corporate partner includes a distributive share of partnership AFSI requires a calculation of the amount to add. The statutory language may infer a multi-step approach, which would require a determination of:

(1) the AFS of the partnership;

(2) the FSI (i.e., the §56A(a) amount prior to §56A(c) adjustments) of the partnership;

(3) the §56A(c) adjustments (i.e., the enumerated and often ''remove-book-and-replace-with-tax'' adjustments to AFSI); and

(4) the distributive share of partnership AFSI.

With respect to the determination of a corporate partner's distributive share of AFSI, assuming Treasury adopts a subtract-then-add approach, it is unclear whether the process requires the determination of (i) a single distributive share (to be multiplied by the total partnership AFSI), (ii) separate distributive shares for FSI (i.e., the §56(A) amount prior to §56A(c) adjustments) and the §56A(c) adjustments of the partnership or (iii) multiple distributive shares using some other approach.

1. The AFS and FSI of the Partnership With Respect to a Corporate Partner

Before parsing the words of the statute, it is helpful to examine what options may exist regarding the AFS and FSI of a partnership with respect to a corporate partner. Consider the following example:

> *Example*: Corp A (''A'') owns an interest in a partnership (an upper-tier partnership, or ''UTP'') and UTP owns an interest in another partnership (a lower-tier partnership, or ''LTP''). Assume that each of A, UTP and LTP have U.S. GAAP statements of equal priority.[47]

To determine A's distributive share of UTP's AFSI, A may look to (1) UTP's U.S. GAAP statement (the AFS of the partnership in which the corporate partner holds a direct interest under a ''one-tier approach''); (2) UTP's U.S. GAAP statement adjusted for its distributive share of LTP's AFSI (the AFS of each partnership in the chain under a ''bottom-up approach'') or (3) A's U.S. GAAP statement (the AFS of the corporate partner under a ''top-down approach'').

The statutory language, and particularly §56A(c)(2)(D)(ii), seem to suggest that Congressional drafters contemplated either the one-tier approach or bottom-up approach. The top-down approach may be viewed as inconsistent with the statutory language. However, the top-down approach may be viewed as a shortcut method when the corporate partner consolidates or uses the equity method with its partnership

taxpayer's interpretation ''was reasonable under the circumstances''). Note, however, that under §7805(b)(2), the IRS and Treasury have 18 months to enact regulatory guidance that can be retroactively effective to the date President Biden signed the Inflation Reduction Act (Aug. 16, 2022).

[45] The application of the partnership rule in §56A(c)(2)(D) is not the same as the application of the non-consolidated-for-tax corporate subsidiary rule in §56A(c)(2)(C). The latter provides that AFSI of the corporation with respect to the non-consolidated-for-tax corporate subsidiary is adjusted for certain shareholder level activity. §56A(c)(2)(C) (''adjusted financial statement income of the taxpayer with respect to such other corporation shall be determined by only taking into account the dividends received from such other corporation . . . and other amounts which are includible in gross income or deductible as a loss under this chapter . . . with respect to such other corporation.''). This is notably different from the ''distributive share only'' rule applicable to partnerships which does not contain similar, or any, language regarding partner-level activity.

[46] *See* n.41 and accompanying text, above.

[47] In many cases, the financial statements in such a fact pattern may not be of equal priority under §451 and the regulations thereunder. For example, if A was a public U.S. company, in many cases, A's financial statement may be of higher priority. If A is a foreign parent and uses IFRS while UTP and LTP prepare audited U.S. GAAP financial statements, it is unclear which financial statement is of the highest priority with respect to UTP and LTP. *Compare* §451(b)(5) (cross-referenced in §56A(c)(2)(A)) (''if the financial results of a taxpayer are reported on the applicable financial statement (as defined in paragraph (3)) for a group of entities, such statement shall be treated as the applicable financial statement of the taxpayer'') *with* Reg. §1.451-3(h)(1)(i) (''If a taxpayer's financial results are reported on the AFS for a group of entities (consolidated AFS), the taxpayer's AFS is the consolidated AFS. However, if the taxpayer's financial results are also reported on a separate AFS that is of equal or higher priority to the consolidated AFS under paragraph (a)(5) of this section, then the taxpayer's AFS is the separate AFS.'').

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investment for financial reporting purposes and the partnership does not have a separate financial statement of equal or higher (or possibly, just higher) priority. Furthermore, the Secretary has discretion to extend the use of a top-down approach and administrative and/or policy considerations could justify such extension.

The one-tier approach, bottom-up approach, and top-down approach are discussed in greater detail immediately below.

a. One-Tier Approach

Under a one-tier approach, the AFS of the partnership in which the corporate partner holds a direct interest is the AFS for purposes of the ''distributive share only'' rule. This is based on reading ''the taxpayer'' in §56A(c)(2)(D)(i) as a corporation — a reading premised on treating the reference to taxpayer in §56A(c)(2)(D)(i) as a reference to the taxpayer in §56(A)(a). This reading is further supported by the fact that §56(A)(c)(2)(C) uses the phrase ''the taxpayer with respect to such *other* corporation,'' also suggesting that taxpayer as used in §56(A)(c) is a corporation. The fact that the CAMT does not contain a specific look-through rule for partnerships provides yet additional support for this reading.[48]

A one-tier approach would have the impact of respecting the financial accounting treatment of lower-tier partnership investments. As noted above, in the example above, the relevant AFS would be UTP's financial statement. Determining the FSI of UTP (and, indirectly, of LTP) with respect to A would involve respecting how UTP has accounted for its LTP investment under the financial accounting rules. For example, if A consolidated UTP and UTP used the fair value option with respect to LTP, the mark-to-market gain or loss would be included in A's AFSI. One can query if this is consistent with Congressional intent.[49]

b. Bottom-Up Approach

Under a bottom-up approach, the AFS of each partnership in the chain would be the AFS with respect to such partnership for purposes of computing each upper-tier partnership's, and ultimately the corporate partner's, AFSI. This is premised on §56A(c)(2)(D)(ii), which provides that the AFSI of a partnership is the partnership's net income or loss set forth on the partnership's AFS, is a single number with respect to all partners[50] and can be read to require an iterative process.[51] This reading also draws support from reading ''the taxpayer'' in §56A(c)(2)(D)(i) as including a partnership — a reading based on authorities treating a partnership as a taxpayer[52] and treating the reference to taxpayer in §56A(c)(2)(D)(i) as a reference to ''a taxpayer'' in §56(A)(c)(2)(A). However, a bottom-up approach raises administrative and practical issues. It is unclear whether every partnership in a chain would have an AFS and, if not, what the CAMT implications are.[53] Furthermore, even if an AFS exists at each partnership, one can query whether there is an ability to timely secure the necessary information, and for the IRS to audit such information.

In our example, the AFS of LTP would be LTP's U.S. GAAP financial statement and the AFS of UTP would be UTP's financial statement. Determining the

[48] *Compare* §56A *with* §355(g)(2)(b)(v)(II) (look-thru rule for certain partnership interests applicable with respect to §355(g)'s ''investment asset'' determination); §731(c)(3)(C)(iv)(I) (look-thru rule for partnership interests for §731(c)'s marketable securities rules); and §988(c)(1)(E)(v)(IV) (look-thru rule for partnership interests for purposes of the exclusion from the mark-to-market rules for certain hedging transactions).

[49] A special rule in the CAMT for amounts with respect to defined pension plans is read by some to suggest a desire to generally exclude mark-to-market amounts. Cong. Res. Serv., *The Corporate Minimum Tax Proposal* (Aug. 10, 2022) (''The proposal also addresses an issue with defined benefit pension plans, which are treated differently for financial purposes. For instance, under mark-to-market accounting, firms report gains and losses in pension assets that are not included in regular corporate income for tax purposes. The proposal would adjust financial income to remove income or expense associated with defined benefit pension plans.''), at https://crsreports.congress.gov/product/pdf/IF/IF12179. Furthermore, a colloquy between Senators Wyden and Cardin referencing other comprehensive income is read by some to suggest an intent to exclude mark-to-market amounts. *Congressional Record*, Vol. 168, No. 133 at S4166 (Aug. 6, 2022), at https://www.congress.gov/117/crec/2022/08/06/168/133/CREC-2022-08-06.pdf.

[50] If AFSI with respect to a partnership may be a single number, it would logically follow that the sum of the partners' distributive share of partnership AFSI equals the partnership AFSI. As discussed below, some of the §56A(c) (i.e., the enumerated and often remove-book-and-replace-with-tax)) modifications to AFSI appear at odds with this conclusion. This may suggest that the determination of which AFS is relevant should be based by looking to the statutory scheme, and policy goals, more holistically.

[51] However, §56A(c)(2)(D)(ii)'s ''adjusted under rules similar to the rules of this section'' language can be read to merely adjust the *amount* of partnership AFSI, and not impact *who* (i.e., which entity) is making the adjustments.

[52] Under existing case law, a partnership may be treated as a taxpayer under §7701(a)(14). However, the case law is not entirely consistent, and some cases apply a purposive approach when determining whether a partnership should be treated as a taxpayer. *See Southern v. Commissioner*, 87 T.C. 49 (1986); *Hayden v. Commissioner*, 112 T.C. 115 (1999), *aff'd*, 204 F.3d 772 (7th Cir. 2000); *Siller Bros. Inc. v. Commissioner*, 89 T.C. 256 (1987); *Elliston v. Commissioner*, 82 T.C. 747 (1984), *aff'd without written opin.*, 765 F.2d 1119 (5th Cir. 1985); and *Clearmeadow Investments LLC v. United States*, No. 05-1223 T (Fed. Cl. 2010). The enactment of §6225 (the new partnership audit rules), in 2015 and thus after the aforementioned cases, strengthens a position that a partnership may be treated as a taxpayer as a partnership may be subject to liability for federal income tax under §6225.

[53] As noted above, the Secretary has authority to deem a financial statement an AFS. §56A(b).

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AFSI of UTP (and LTP) with respect to A would require an iterative process. The following would need to be determined:

(1) the AFS of LTP;

(2) the FSI (i.e., the §56A(a) amount prior to §56A(c) adjustments) of LTP;

(3) the §56A(c) adjustments with respect to LTP;

(4) UTP's distributive share of LTP's AFSI;

(5) the AFS of UTP;

(6) the FSI (i.e., the §56A(a) amount prior to §56A(c) adjustments) of UTP;

(7) the §56A(c) adjustments with respect to UTP (which would include subtracting UTP's FSI inclusion(s) with respect to LTP and adding UTP's distributive share of LTP's AFSI (i.e., determination (4)); and

(8) A's distributive share of UTP's AFSI.

As discussed throughout this article, many of these determinations are both unclear and complex. The multiple different reasonable interpretations made by each of A, UTP and LTP would appear to have an unknowable impact on A's AFSI. In addition, the iterative nature of a bottom-up approach could result in a large information sharing burden to each of A, UTP and LTP. A bottom-up approach would also seem to require every lower-tier partnership in a tiered-partnership structure to compute and allocate AFSI to partnerships up the chain just in case a C corporation owns (or, under the three-year average annual AFSI test, may own in the future) a direct or indirect interest in such partnership. It is also unclear how the IRS would audit such information.

c. Top-Down Approach

Under a top-down approach, the corporate partner's own AFS would be used to determine such partner's distributive share of the AFSI from a partnership. This approach would generally look to the corporate partner's FSI inclusion with respect to its partnership investment on its audited financial statements. For example, if the partnership investment is consolidated with the corporate partner for U.S. GAAP, the distributive share of AFSI would look to the net income attributable to the controlling holder, an amount that appears on the face of financial statements. If the corporate partner uses the equity method, the distributive share of AFSI would look to the one-line amount that includes the corporate partner's share of the earnings and losses of the partnership. If the fair value method or the measurement alternative method is used, it is unclear whether the ''top-down'' approach is viable as the amount would generally be a mark-to-market inclusion.[54] In our example, the relevant AFS would be A's financial statement and the FSI of UTP (and LTP) with respect to A is whatever A has reported its A's own AFS under the U.S. GAAP rules.

The top-down approach may be viewed as inconsistent with the statutory language. Section 56A(c)(2)(D)(ii) provides that the AFSI of a partnership is the partnership's net income or loss set (i.e., FSI) forth on the partnership's AFS adjusted under rules similar to the rules applicable to the determination of a corporation's AFSI. This suggests that the *partnership's,* rather than the partner's, financial statement is relevant. However, the top-down approach may be viewed as a shortcut method when the corporate partner consolidates or uses the equity method for its partnership investment for financial reporting purposes and the partnership does not have a separate financial statement of equal or higher (or possibly, just higher) priority.[55]

However, it is worth noting that Congressional drafters also seemed to contemplate that the Secretary could depart from a one-tier or bottom-up approach. The introductory language of §56A(c)(2)(D)(i) provides the Secretary ample discretion to determine a corporate partner's AFSI from a partnership and §56A(b) provides the Secretary unfettered discretion to determine which financial statement is the AFS.

2. The §56A(c) Adjustments

Section 56A(c) enumerates adjustments to FSI to arrive at AFSI. While a full-fledged discussion of the §56A(c) adjustments and how such adjustments could be applied in the partnership context is beyond the scope of this article, it is worth highlighting that a number of the §56A(c) adjustments raise partnership-specific questions, one of which is whether a specific adjustment is made at the partnership level or the partner level.

An example of an adjustment to AFSI that raises this issue is §56A(c)(2)(C)'s rule providing that if a

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[54] Questions arise as to whether including a mark-to-market inclusion is consistent with the statutory scheme as such number is not tied to items of net income or loss of the partnership and many of the adjustments, particularly remove-book-and-replace-with-tax adjustments, in §56A(c) may therefore be viewed to lack logical underpinnings. *See also* n.49, above.

[55] §451(b)(5) (cross-referenced in §56A(c)(2)(A)) (''if the financial results of a taxpayer are reported on the applicable financial statement (as defined in paragraph (3)) for a group of entities, such statement shall be treated as the applicable financial statement of the taxpayer''); Reg. §1.451-3(h)(1)(i) (''If a taxpayer's financial results are reported on the AFS for a group of entities (consolidated AFS), the taxpayer's AFS is the consolidated AFS. However, if the taxpayer's financial results are also reported on a separate AFS that is of equal or higher priority to the consolidated AFS under paragraph (a)(5) of this section, then the taxpayer's AFS is the separate AFS.'').

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corporate subsidiary is not included in a consolidated return with the corporate taxpayer, only dividends and certain other amounts includible in gross income or deductible as a loss for U.S. federal income tax purposes are included in AFSI. This contrasts with §56A(c)(2)(B)'s rule requiring that if the taxpayer is part of an affiliated group of corporations filing a consolidated return for any taxable year, AFSI for such group takes into account items on the group's AFSI which are properly allocable to members of such group. If a corporate partner and the partnership both own stock of a subsidiary that is part of the corporate partner's consolidated group, it is unclear if §56A(c)(2)(C)'s generally favorable remove-book-and-replace-with-tax rule applies to compute the corporate partner's distributive share of partnership AFSI with respect to the subsidiary. If §56A(c)(2)(B)'s generally favorable remove-book-and-replace-with-tax rule applies to compute the partnership's AFSI with respect to the subsidiary (which seems consistent with §56A(c)(2)(D)(ii), more appropriate than applying §56A(c)(2)(B) to partnership AFSI generally, and likely appropriate with the respect to the partnership's other partners),[56] it is unclear whether a modification to the corporate partner's distributive share of the partnership's AFSI is required. If a modification is required, it would appear that this adjustment should be made at the corporate partner level (and the partnership would have to provide such partner with certain information).

Another example is the rule providing that ECI-like principles apply in the case of foreign corporations.[57] It is unclear whether (and how) this rule applies to compute the partnership's AFSI with respect to an investment in a foreign corporation or with respect to a partner that is a foreign corporation.[58] If the rule applies, it would appear that this modification should be made at the partner level (and the partnership would have to provide the partner with certain information).

A third example is the rule providing that the AFSI of tax-exempt entities shall be adjusted only to take into account unrelated business taxable income (UBTI). It is similarly unclear whether (and how) this rule applies to compute the partnership's AFSI with respect to the tax-exempt partner. Once again, if the rule applies, it would appear that this modification should be made at the partner level (and the partnership would have to provide the partner with certain information).[59]

3. Distributive Share

With respect to the determination of a corporate partner's distributive share of AFSI under a bottom-up (or one-tier) approach, at least two fundamental questions exist. First, is a partner's distributive share a single percentage or may the percentage vary with respect to different items? Second, how is the percentage (or the percentages) computed?

Under a bottom-up or one-tier approach, as noted above, it is unclear whether the process requires the determination of (i) a single distributive share (to be multiplied by the total partnership AFSI), (ii) separate distributive shares for FSI (i.e., the §56A(a) amount prior to §56A(c) adjustments) and for each of the §56A(c) adjustments of the partnership, or (iii) multiple distributive shares using some other approach. It is worth highlighting that using a single percentage would ignore tax allocations with respect to certain §56A(c) tax-based adjustments (including with respect to §168 property) and ignoring such tax allocations could be viewed as divorcing that portion of a partner's distributive share of AFSI from the most common meaning of distributive share. This could suggest that at least the remove-book-and-replace-with-tax §56A(c) adjustments should be allocated under the USFIT rules. However, allocating all amounts of the remove-book-and-replace-with-tax adjustments under the USFIT rules would ignore how the removed book items are shared under certain U.S. GAAP approaches.[60]

Under a bottom-up or one-tier approach, a taxpayer would need to determine the relevant percentage that is the distributive share of FSI or AFSI. Options would include (1) using the percentage that is applied for financial reporting purposes (specifically, if the corporate partner consolidates the partnership investment, the percentage used to calculate net income at-

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[56] However, the related-entity rules of §56A(c)(B) and §56A(c)(C) arguably both appear specific to the corporate taxpayer. If these related-entity rules are read to be applied at the partnership level, it would appear that the sum of the partners' distributive share of partnership AFSI would generally not equal the partnership AFSI in any case where a partnership owns a subsidiary that is consolidated for tax with a corporate partner. One can query if such result is consistent with §56A(c)(2)(D)(ii), which suggests partnership AFSI is a single number with respect to all partners and thus the sum of the partners' distributive share of partnership AFSI should equal the partnership AFSI.

[57] §56A(c)(4).

[58] If the rule applied, the sum of the partners' distributive share of partnership AFSI would not appear to equal the partnership AFSI in any case where there a foreign corporation was a partner and the partnership had non-U.S.-source FSI. One can query if such result is consistent with §56A(c)(2)(D)(ii).

[59] This is consistent with the current reporting rules with respect to UBTI, under which a partner is required to notify the partnership of its tax-exempt status and the partnership is required to report any information the partner needs to figure its UBTI (subject to certain exceptions). Partnerships use Schedule K-1, box 20, code V, to report UBTI information. *See* §6031(d) and IRS, *Partner's Instructions for Schedule K-1 (Form 1065)*, 2021, at https://www.irs.gov/instructions/i1065sk1#en_US_2020_publink11396nd0e4334.

[60] *See* nn.61 and 62 and accompanying text, below.

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tributable to the controlling holder, or if the partner uses the equity method with respect to the partnership investment, the percentage used to calculate the one-line pickup); (2) using a percentage that corresponds to tax item allocations for the year; (3) using a percentage that corresponds to §704(b) book item allocations for the year; or (4) applying §704(a) and §704(b) concepts to AFSI, rather than to taxable income.

a. Based on Financial Reporting Percentage

An approach based on the percentage used for financial reporting purposes aligns with viewing the term ''distributive share'' as a reference to the corporate partner's economic share and with aligning the CAMT regime with the financial reporting treatment.

As background, under U.S. GAAP, if the corporate partner consolidates a partnership, the partnership's comprehensive income is attributed to such partner (i.e., the parent) and any NCI holders in the parent's consolidated financial statements. Generally, this attribution is based on the relative ownership percentages of the parent and NCI holders, but could also be based on another method, such as the hypothetical liquidation at book value (HLBV) method when a subsidiary's contractual agreements do not attribute comprehensive income to the investors solely based on their ownership percentages. Notably, U.S. GAAP provides little detailed guidance for this attribution.[61] If the corporate partner uses the equity method, it is required to determine its share of the earnings and losses in computing its one-line pickup. Like consolidation, this is generally done using the investor's respective ownership percentage unless a subsidiary's contractual agreements do not attribute comprehensive income to the investors solely based on their ownership percentage, in which case another method, such as the HLBV method, may be used.[62] Given that many partnerships do not have ratio or unit-based agreement (such that U.S. GAAP attributions may not be solely based on ownership percentages), it would appear that taxpayers would need assistance from financial accounting experts to use an approach based on U.S. GAAP (or other financial reporting rules). Likewise, the Secretary would likely also need assistance from financial accounting experts to develop guidance or regulations using the U.S. GAAP (and/or another financial reporting) framework. As the CAMT provides that the corporate partner includes a distributive share of partnership AFSI and the U.S. GAAP rules provide that the determination of the attribution of comprehensive income and the share of earnings and losses (e.g., inclusive of partner-level-only adjustments) is ultimately done at the partner level, if an approach based on the methodology used for financial reporting is adopted by Treasury, it would appear to make the most sense for the partner, rather than the

[61] KPMG Financial Reporting View, *Consolidation*, Question 7.5.10 (May 2022), at https://frv.kpmg.us/reference-library/2022/handbook-consolidation.html (''Subtopic 810-10 provides general guidance for attributing comprehensive income to the parent and NCI. However, the Subtopic does not prescribe a specific attribution method for complex circumstances. When a partially owned subsidiary's contractual arrangements do not attribute comprehensive income solely based on ownership interests, questions may arise as to the appropriate attribution method to use. The hypothetical liquidation at book value ('HLBV') method was discussed in the AICPA's Proposed SOP, Accounting for Investors' Interests in Unconsolidated Real Estate Investments, in the context of applying the equity method. Under the HLBV method, an equity method investor determines its share of an investee's comprehensive income by comparing its claim on the investee's book value at the beginning and end of the period, assuming the investee were to liquidate all assets at their US GAAP amounts and distribute the resulting cash to creditors and investors under their respective priorities. The proposed SOP was never issued; however, the HLBV method is commonly used in practice by equity method investors and parent companies when an investee's capital structure gives them different rights and priorities from their ownership interests. This situation is common in a number of structures where distributions are made pursuant to contractual waterfall provisions.'').

[62] KPMG Financial Reporting View, *Equity Method of Accounting*, Question 4.3.20 (Aug. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-equity-method-of-accounting.html (''Certain investment agreements may designate different allocations among the investors for items including profits and losses, cash, liquidation proceeds, specified costs and expenses, and tax attributes. . . . We believe an investor computes its share of the investee's earnings based on its rights to the distributions and residual assets of the investee, including the effects of retroactive or 'claw-back' provisions, if any. The investor should apply its method consistently to similar investments. If an investment agreement specifies an allocation for earnings that matches the allocation of cash from operations and on liquidation, the investor uses the earnings allocation included in the investment agreement when recognizing its share of the investee's earnings. This includes situations in which the investment agreement includes contractual changes in fixed allocation rates. We believe an investor may not apply a single blended rate over the expected life of the investment, even if its share of the investee's earnings will change based on a contractually specified schedule. If the specified allocation for earnings differs from the allocation of cash from operations and on liquidation, the investor should not use the specified earnings or loss percentages to determine its share of the investee's earnings. Rather, the investor should analyze the investment agreement to determine how the increase or decrease in the investee's net assets during the reporting period would affect the cash that the investor would receive over the investee's life and on its liquidation. [970-323-35-17] In some cases, the investment agreement is silent (or unclear) about cash distributions and the investor needs to interpret its conditions to determine how cash would be distributed if the investee was hypothetically liquidated at the reporting date. Regardless, the investor's analysis must be consistent with the contractual provisions of the investment agreement. Investors often consider the guidance in the AICPA's Proposed SOP, Accounting for Investors' Interests in Unconsolidated Real Estate Investments (draft SOP). While the draft SOP was never finalized, an investor may find it helpful when evaluating whether its earnings allocation is consistent with the principles of Subtopic 970-323.'').

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partnership, to compute that amount. Like the top-down approach, discussed above, this would appear to align a CAMT determination with the applicable corporation's own financial statement presentation.

b. Based on Allocation of Taxable Income

An approach based on the allocation of taxable income for the year may not represent the underlying economics. One reason for the disconnect with the underlying economics is that an approach based on taxable income would take into account §704(c) allocations, which do not have a parallel in book financials, and the tax basis of property, which seems inconsistent with the purposes of the CAMT. Consider the following example:

> *Example:* Corp A (''A'') contributes built-in-gain property and Corp B (''B'') contributes cash to form a 50/50 partnership ('' PRS''). Each partner uses the equity method with respect to its partnership investment under U.S. GAAP and will initially pick-up the same (or similar) amount of FSI from PRS related to its operations in that year. However, as a result of §704(c), taxable income is allocated 100/0 in the taxable year.

Allocating FSI or AFSI 100% to A and 0% to B could be viewed as inappropriately increasing A's CAMT liability or decreasing B's CAMT liability.

c. Based on Allocation of §704(b) Income

An approach based on the allocation of §704(b) income or loss for the year may also not represent an appropriate share of economic book income. For example, in instances where the FSI base differs from the §704(b) base (for example, if a partnership has positive FSI but a §704(b) loss), one can query whether such approach makes sense and whether an inclusion based on this percentage would represent an appropriate economic share of FSI.

> *Example:* Corp A (''A'') and Corp B (''B'') are partners in a partnership (''PRS''). Profits are allocated 40% to A and 60% to B. Losses are allocated 50% to A and 50% to B. Assume PRS has a positive U.S. GAAP income and a loss for tax purposes.

Allocating FSI or AFSI 50% to A and 50% to B (in line with §704(b) loss) could be viewed as inappropriately increasing A's CAMT liability or decreasing B's CAMT liability.

d. Based on §704(a) and §704(b) Concepts

As a threshold matter, using §704(a)'s principle that a partner's distributive share is determined under the partnership agreement makes sense. A term used by the writers of the legislation ordinarily is defined by its common meaning, and §704(a) and §704(b) are generally viewed as the tax provisions that define a partner's ''distributive share,'' at least of §704(b) income.

However, an approach under which §704(a) and §704(b) concepts are applied to AFSI raises questions.[63] As a threshold matter, to the extent §704(a) concepts are relevant, the partnership agreement would appear to control (unless §704(b) concepts provide otherwise). However, current partnership agreements allocate §704(b) income but do not mention AFSI. Query whether AFSI would be ''deemed'' to be allocated based on §704(b) concepts. Assuming so, the determination of a distributive share of AFSI in a ratio or unit-based agreement would be possible. However, questions are raised in other contexts (for example, if the agreement provides first for a preferred return allocation and then residual allocations are made pro-rata to common unit holders; uses hurdles or targets; has transitory allocations of AFSI; includes special allocations based on source; or contains minimum gain under the tax rules). Consider the following examples:

> *Example 1:* Corp A (''A'') and Corp B (''B'') each contributed cash to form a partnership (''PRS'') in 2015. A is entitled to 80% of profits and B is entitled to 20% of the profits until a taxable income-based hurdle (''hurdle 1'') is met; A is entitled to 20% of profits and B is entitled to 80% of the profits until a taxable income-based hurdle ('' hurdle 2'') is met, and thereafter A and B are each entitled to 50% of the profits. A is an applicable corporation in 2023 and PRS allocates all taxable income under hurdle 2 in 2023.

In order to determine A's distributive share of AFSI, a question arises to what time period must be considered (for example, the taxable year or the life of partnership). The answer is unclear in the absence of guidance. If the life of the partnership is relevant, an additional question arises to whether taxpayers would be able to obtain the data necessary to engage in the analysis.

> *Example 2:* Corp A (''A'') and Corp B (''B'') each contribute cash to form a 50/50 partnership (''PRS''). The PRS partnership agreement states that AFSI is allocated 100/0 in Year 1 and 0/100 in Year 2. FSI income is projected to be consistent in Year 1 and Year 2.

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[63] As a general matter, §704(b) provides limits to respecting allocations which are provided in the partnership agreement.

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This example may indicate §704(b) substantiality principles should apply.

> *Example 3:* Corp A (''A''), a U.S. corporation, and Corp B ('' B''), a foreign corporation, each contribute cash to form a 50/50 partnership (''PRS''). The PRS partnership agreement allocates 100% of ECI to A (i.e., the U.S. corporation) to the extent of its 50% distributive share and 100% of non-ECI to B (i.e., the foreign corporation) to the extent of its 50% distributive share.

This example likewise may indicate that §704(b) principles should apply to determine when allocations of non-ECI to B that decrease B's AFSI are respected for CAMT purposes.

However, to the extent that policy considerations suggest an importation of §704(b) principles into the CAMT context, certain other questions are raised. In order to administer a CAMT system incorporating §704(b) principles, would separate AFSI capital accounts and bases (both the partner's AFSI basis in its partnership interest and the partnership's AFSI bases in its assets) need to be tracked? If so, is the CAMT a parallel and separate system along the lines of the former alternative minimum tax? Did Congress intend to create a parallel system by enacting the CAMT? Is concluding that a parallel system exists for CAMT purposes at odds with the credit mechanism in the CAMT? Even assuming the CAMT is a parallel system, what are the limits to a parallel system and is a parallel system workable in the partnership context?[64]

V. WHEN DOES THE 'DISTRIBUTIVE SHARE ONLY' RULE APPLY?

The above discussion reveals there are more questions than answers with respect to the CAMT's ''distributive share only'' rule — specifically how to determine a partner's distributive share of partnership AFSI. However, the CAMT, and specifically §59(k)(1)(D), raise another gating question with respect to the rule.

Specifically, there is uncertainty regarding whether, and when, the ''distributive share only'' rule applies for Scope Determination purposes based on the language of §59(k)(1)(D).[65] If the partnership is treated as a single employer with a tested corporation under §52, §59(k)(1)(D) clearly mandates that the ''distributive share only'' rule does not apply for Scope Determination purposes and 100% of the partnership's AFSI is included in the tested corporation's AFSI for Scope Determination purposes.[66] What is not clear is whether §59(k)(1)(D)'s rule that ''adjusted financial statement income of such corporation shall be determined without regard to [the 'distributive share only' rule]'' (1) *only* applies if §52 treats the partnership and tested corporation as a single employer and 100% of the AFSI of the partnership has been included in the tested corporation's AFSI (for Scope Determination purposes) (''Option 1'' or the ''Linked Reading'') or (2) applies for *all* purposes of the Scope Determination — including when the partnership is not treated as as a single employer with the tested corporation under §52 (''Option 2'' or the ''Independent Reading'').

Section 59(k)(1)(D)'s ambiguity results from two grammatical issues — the use of the term ''such corporation'' without a clear antecedent and the placement of a comma.[67] Parsing the words of §59(k)(1)(D) does not provide sufficient clarity as to

[64] For a discussion of these issues in the context of the former alternative minimum tax, see Theodore Stone, *The Alternative Minimum Tax Separate System: How Far Does It Go?* 95 Tax Notes Today 135-68 (July 10, 1995); and Stephen J. White and James W. Pratt, *How to Exploit the Interaction Between Subchapter K and the Alternative Minimum Tax*, 9 J. P'ship Tax'n 147 (1992).

[65] The ''distributive share only'' rule clearly applies for purposes of determining AFSI for Liability Determination purposes.

[66] The determination that a tested corporation and the partnership are treated as a single employer under §52(b) could have significant ramifications for a corporation that is relying on its consolidated financial statements as a proxy for making the Scope Determination, particularly in cases when the partnership is not consolidated in those financial statements. Specifically, if the partnership is not consolidated in the tested corporation's consolidated financial statements, then the tested corporation's FSI will reflect something that is less than 100% of the partnership's AFSI (either its proportionate share of the partnership's earnings or losses under the equity method (or mark-to-market adjustments and/or impairment charges depending on whether the partner applies the fair value or measurement alternative methods)). Therefore, the tested corporation's AFSI for Scope Determination purposes could significantly exceed the FSI reported in its consolidated financial statements (as a result of having to include 100% of the partnership's AFSI under §59(k)(1)(D)). This would increase the chances that the tested corporation would be an applicable corporation and subject to CAMT.

[67] Section 59(k)(1)(D) provides ([clause demarcations] added to assist with discussion below):

> SPECIAL RULES FOR DETERMINING APPLICABLE CORPORATION STATUS.—[clause 1] Solely for purposes of determining whether a corporation is an applicable corporation under this paragraph, [clause 2] all adjusted financial statement income of persons treated as a single employer with such corporation under subsection (a) or (b) of section 52 shall be treated as adjusted financial statement income of such corporation,

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whether Option 1 (i.e., the Linked Reading) or Option 2 (i.e., the Independent Reading) is the better reading of the provision. Congressional intent and policy considerations may become relevant.

As a preliminary matter, it appears that the staff of the Senate Finance Committee has publicly indicated that Option 1 is their reading, and the intended reading, of §59(k)(1)(D).[68] Furthermore, analyzing §59(k)(1)(D) within the statutory scheme favors Option 1. Its reference to the ''distributive share only'' rule was likely necessary merely because the CAMT's ''distributive share only'' rule uses the term ''only'' and if it applies when §52(b) applies, the policy of including 100% of the AFSI of all §52(b) group members would be frustrated. There is no policy need to turn off the ''distributive share only'' rule when the tested corporation and the partnership are not members of the same §52(b) group.

Additionally, the numerous policy and technical questions raised by Option 2 favor Option 1. If a tested corporation holds an interest in a partnership, the tested corporation and partnership are *not* members of the same §52(b) group, and the ''distributive share only'' rule does not apply, then a question arises as to how much partnership AFSI the tested corporation would include for Scope Determination purposes. Would the tested corporation's financial statement treatment of the partnership prevail? If so, in any situation when the tested corporation consolidates the partnership for financial statement purposes, the AFSI of the tested corporation for purposes of the Scope Determination would appear never to be modified (reduced) to reflect only distributive share and thus would appear to include 100% of partnership AFSI.[69] This would be true even if §52(b) did not apply — frustrating a possible Congressional intent to only include 100% of the AFSI of another entity if the other entity was part of a §52 group (or part of the tested corporation's consolidated-for-tax group).[70] This also would appear true if another partner of the partnership included the partnership's AFSI — resulting in double counting. Different issues arise if the tested corporation's financial statement treatment of the partnership applies and the corporate partner accounts for the partnership investment at fair market value. In these situations, the AFSI of the corporate partner would appear to reflect mark-to-market financial statement gain — frustrating a possible Congressional intent to exclude mark-to-market gains from AFSI.[71] Issues also arise if the tested corporation accounts for its investment in the partnership for U.S. GAAP purposes using the measurement alternative.[72] In these situations, it would appear that AFSI could be deferred un-

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> [clause 3] and adjusted financial statement income of such corporation shall be determined without regard to paragraphs (2)(D)(i) [''distributive share only'' rule] and (11) [regarding certain pension plans] of section 56A(c).

This question regarding §59(k)(1)(D) appears to result from at least two structural issues. First, there exists possible ambiguity as to whether ''such corporation'' in clause 3 refers to ''such corporation'' in clause 2 or ''an applicable corporation'' in clause 1. Grammatical conventions would suggest it refers to the second ''such corporation'' in clause 2 — the most proximate use of the term ''corporation.'' However, this reading is not clear, and arguably, legislative drafters should have used additional words (for example, ''in such case'' after clause 2) to indicate ''such corporation'' in clause 3 is limited to corporations described in clause 2. Furthermore, whether the second ''such corporation'' in clause 2 must mean a member of a §52 group is arguably unclear.

Second, the placement of the comma between clause 2 and clause 3 is consistent with the grammatical preference to use commas to demarcate independent clauses and may be viewed as inconsistent with the grammatical preference not to use a comma before a dependent essential clause. However, the use of commas with respect to dependent clauses appears to be a subject of debate among grammarians. Furthermore, clause 2 and clause 3 are not demarcated as independent rules that each apply whenever clause 1 applies (using for example, ''(i)'' and ''(ii)'', as would be standard in legislative drafting). Thus, parsing the words of §59(k)(1)(D) appears to indicate that Option 1 and Option 2 are possible readings in the absence of guidance.

[68] Lee Sheppard, *Book Income Minimum Tax as Prepayment*, Tax Notes Federal (Sept. 26, 2022) (''[Jonathan] Goldman [senior tax counsel for the Senate Finance Committee] made an important point about the inclusion of partnership AFSI in the AFSI of a corporate partner for purposes of determining whether it might become an applicable corporation. How much partnership AFSI comes into the threshold test depends on whether the partnership is merely consolidated for financial accounting purposes or would be treated as part of a single employer group (section 52). If the partnership would be part of a single employer group, 100 percent of its AFSI comes into the threshold determination (section 56A(c)(2)(D)(ii)). If it is consolidated for book purposes but not more than 50 percent controlled, only the corporate partner's distributive share of partnership AFSI is considered (section 56A(c)(2)(D)(i)). Treasury will have to figure out what distributive share of AFSI is, according to Goldman.'').

[69] This assumes net income (i) is based on the consolidated financial statement, rather than a separate financial statement, and (ii) includes amounts attributable to NCIs.

[70] This intent is not entirely clear from the face of the CAMT. Additionally, special rules apply for members of multinational foreign-parented groups.

[71] This intent is not clear from the face of the CAMT. However, a special rule in the CAMT for amounts with respect to defined pension plans is read by some to suggest a desire to generally exclude mark-to-market amounts and a colloquy between Senators Wyden and Cardin referencing other comprehensive income is read by some to suggest an intent to exclude mark-to-market amounts. *See* n.49, above.

[72] An entity may elect to measure an equity security without a ''readily determinable fair value'' at its cost minus impairment, if any (assuming other GAAP does not apply, such as the equity method). *See* KPMG Financial Reporting View, *Investments* (Sept. 2022), at https://frv.kpmg.us/reference-library/2022/handbook-investments.html.

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til an ''observable transaction'' (within the meaning of the U.S. GAAP rules) has occurred — potentially deferring applicable corporation status and/or CAMT liability for certain taxpayers. It would also appear that an AFSI inclusion as a result of an ''observable transaction'' could cause a corporation to be an applicable corporation merely because the adjustment reflected multiple years of economic appreciation — frustrating a possible Congressional intent to include only corporations who were sufficiently large. While using the tested corporation's financial statement treatment of the partnership raises the issues enumerated above (and possibly more), viable alternatives are not evident. If the tested corporation's financial statement treatment of the partnership does not prevail, query whether the amount would simply be zero.[73]

Thus, Option 1 (i.e., the Linked Reading) appears more reasonable in the absence of guidance to the contrary.[74] This means that if the partnership is not treated as as a single employer with the tested corporation under §52, it appears that the ''distributive share only'' rule applies for Scope Determination purposes. Conversely, if the partnership is treated as as a single employer with the tested corporation under §52, it appears that the ''distributive share only'' rule does not apply for Scope Determination purposes.

VI. CONCLUSION

The above discussion reveals there are more questions than answers with respect to a single discrete aspect of partnership-specific issues raised by the CAMT: the CAMT's ''distributive share only'' rule. This CAMTyland station, even without considering the many other partnership issues in CAMTyland's Chocolate Swamp,[75] illustrates, at a minimum, that partnerships and their advisors will need to worry about the CAMT.

Regarding the ''distributive share only'' rule, in the absence of regulations or other guidance on point, it is unclear how a corporate partner should compute and include a distributive share of partnership AFSI. As the rule appears to matter for Scope Determination purposes, this uncertainty may matter for taxpayers who are not clearly applicable corporations.

The discussion suggests that, in the absence of regulations and guidance, there may exist multiple reasonable approaches to compute a corporate partner's distributive share of partnership AFSI. The lack of certainty and the seeming optionality may frustrate corporations seeking to prepare their tax provisions at a more-likely-than-not comfort level,[76] and such financial statements are generally needed for the first quarter of 2023. Partnerships and their advisors may be likewise frustrated by the lack of certainty and seeming optionality as partnerships with direct or indirect corporate partners will need to determine what information to provide so that corporations can determine whether they are in-scope and what their potential CAMT tax liability may be. Such information may need to span a minimum of three years, and possibly longer depending on how the percentage of distributive share is determined. Additionally, coordination between corporations and partnerships as to any approach, let alone a consistent approach, may prove challenging given the short time span between the CAMT's promulgation and the applicability of the new law. Furthermore, the optionality presented by the statute, and lack of guidance, does not appear certain to allow tax planning as regulations and guidance may be retroactive in nature.[77] Thus, taxpayers may wish for any guidance on the issue — either gumdrops or liquorice — from King Kandy, hopefully before any current-year candy cane turns stale.[78]

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[73] This seems contrary to Congressional intent.

[74] Regulations or other guidance could provide otherwise. Note that under §7805(b)(2), the IRS and Treasury have 18 months to enact regulatory guidance that can be retroactively effective to the date President Biden signed the Inflation Reduction Act (Aug. 16, 2022).

[75] The other partnership-specific issues raised by the CAMT may also be viewed to have more questions than answers.

[76] FASB Interpretation No. 48 (FIN 48), Accounting for Uncertainty in Income Taxes, sets the threshold for recognizing the benefits of tax return positions in financial statements as ''more likely than not'' (greater than 50%) to be sustained by a taxing authority.

[77] Under §7805(b)(2), the IRS and Treasury have 18 months to enact regulatory guidance that can be retroactively effective to the date President Biden signed the Inflation Reduction Act (Aug. 16, 2022).

[78] The authors acknowledge that developing guidance addressing the partnership-specific issues raised by the CAMT is a laborious task. For example, it appears that the direction of such guidance may depend on what the Secretary believes the policy goals of the CAMT are, and the emphasis placed on administrability concerns.

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