

IRS Provides Interim Guidance with Respect to Portions of Proposed CAMT Regulations to Be Withdrawn: Interim Guidance Provides That Unrealized Cryptocurrency Gains Not Subject to CAMT

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On September 30, 2025, the Internal Revenue Service (**IRS**) released [Notice 2025-46](#) and [Notice 2025-49](#) (the **Notices**) which provide (i) that the IRS and US Department of the Treasury (**Treasury**) intend to partially withdraw proposed regulations relating to the corporate alternative minimum tax (**CAMT**) and (ii) interim guidance with respect to the CAMT. Among many changes, the Notices clarify that taxpayers may elect to adjust their income potentially subject to the CAMT to disregard unrealized gains on cryptocurrency and other digital assets, which should be welcome news to public companies holding significant cryptocurrency portfolios.

Background

The CAMT generally is a 15% minimum tax imposed on the “adjusted financial statement income” (**AFSI**) of corporations who are part of groups whose three-year average annual AFSI exceeds \$1 billion (**applicable corporations**).¹ The CAMT applies for tax years beginning after December 31, 2022. AFSI is generally an applicable corporation’s net income or loss as set forth on its applicable financial statement for a taxable year, with certain adjustments. On September 13, 2024, the IRS and Treasury released proposed regulations relating to the CAMT (**2024 Regulations**),² which set forth detailed rules pertaining to the application of CAMT and the computation and adjustments of AFSI.

Notice 2025-46 Provides Interim Guidance More Aligned with Tax Rules

Notice 2025-46 acknowledges taxpayer comments received with respect to the 2024 Regulations pertaining to (i) certain transactions where one or more assets are transferred by a domestic corporation, (ii) the CAMT consequences resulting from the insolvency or bankruptcy of an applicable corporation, (iii) the calculation of AFSI by an affiliated group of corporations that file a consolidated return for U.S. federal income tax purposes (**tax consolidated group**) and (iv) the permissible amounts of financial statement net operating losses and built-in losses available for AFSI adjustments with respect to a tax consolidated group succeeding to financial statement net operating losses and built-in losses of another corporation. While the IRS and Treasury anticipate that forthcoming proposed regulations (**Forthcoming Regulations**) will conclusively address these comments, Notice 2025-46 provides interim guidance, including the following:

- Reducing compliance concerns promulgated in the 2024 Regulations by allowing an applicable corporation to use rules more similar to U.S. federal income tax rules in determining (i) the applicable corporation’s amount of AFSI resulting from its direct ownership of stock in a domestic corporation that is not a member of the same tax consolidated group as such applicable corporation and (ii) the AFSI and CAMT basis consequences of certain transactions involving the transfer of assets by a domestic corporation (including assets transferred by a domestic corporation (a) subject to Section 311, 351, 355 or 361 of the Code, (b) in connection with a complete liquidation subject to Sections 332 and 337 of the Code, (c) that is part of a reorganization as defined in Section 368(a)(1) of the Code and subject to Section 354 or 356 of the Code and (d) in a purchase where either the seller makes an

¹ The term “applicable corporation” includes any corporation except for S-corporations, regulated investment companies, and real estate investment trusts. See Section 59(k)(1) of the Internal Revenue Code of 1986, as amended (**Code**).

² See [REG-112129-23](#) and [technical corrections](#) made on December 26, 2024.

election pursuant to Section 336(e) of the Code, the purchaser makes an election pursuant to Section 338(g) of the Code or the purchaser and seller make an election pursuant to Section 338(h)(10) of the Code)

- Providing additional relief and greater certainty in determining the CAMT consequences for insolvent and/or bankrupt applicable corporations
- Reducing compliance concerns promulgated in the 2024 Regulations by allowing tax consolidated groups to determine their AFSI by more closely following the consolidated return regulations when accounting for items on a tax consolidated group's applicable financial statement that are properly allocable to members of such group
- Revising the limitations on the amount of "financial statement net operating losses" and "built-in losses" (as defined in the 2024 Regulations) that are available to reduce AFSI with respect to a tax consolidated group that succeeded to financial statement net operating losses and/or built-in losses of another corporation in a "successor transaction" (as defined in the 2024 Regulations)

Notice 2025-49 Provides Interim Guidance on AFSI Adjustments

Notice 2025-49 acknowledges taxpayer comments received in response to the 2024 Regulations addressing a number of adjustments to AFSI. While the IRS and Treasury anticipate that the Forthcoming Regulations will conclusively address these comments, Notice 2025-49 provides interim guidance with respect to a number of points, most notable being the following:

- Providing an applicable corporation the election to disregard, for purposes of calculating its AFSI, gains and losses that are unrealized for regular tax purposes with respect to "fair value items," with Notice 2025-49 providing that this interim guidance (A) may apply, depending on the applicable financial accounting principles, to holdings of digital assets, debt securities that are classified as trading securities and derivatives that are not part of a hedging transaction, if those items are measured at fair value for financial purposes but are not marked to market for regular tax purposes, but (B) does not apply to a partnership investment, stock in a domestic corporation that is not a member of a tax consolidated group of which the applicable corporation and a net investment hedge, among others
- Allowing CAMT entities to reduce AFSI for a taxable year by the portion of an NOL carryover attributable to embedded depreciation deductions arising prior to 2020 that is allowed as an NOL deduction for such taxable year
- Allowing CAMT entities to adjust AFSI for eligible goodwill that is amortizable under Section 197 of the Code and acquired in a transaction that was either (i) announced to the public on or before October 28, 2021 or, (ii) if not announced to the public, closed and completed on or before October 28, 2021
- Simplifying the determination of the "accounting principle change amount" and AFSI "restatement adjustment" (as defined in the 2024 Regulations)

Effective Dates

While the IRS and Treasury expect the Forthcoming Regulations to provide rules consistent with the guidance provided in the Notices, because any such regulations would apply for taxable years beginning on or after the date the Forthcoming Regulations are finalized, the Notices generally permit taxpayers to rely on the interim guidance for taxable years beginning before such date. The Notices also provide that a taxpayer's reliance on the Notices will not cause the taxpayer to become subject to, or to violate, the reliance rules provided for the 2024 Regulations.

Implications for Companies with Substantial Digital Asset Holdings

As noted above, Notice 2025-49 provides that an applicable corporation may elect to disregard, for purposes of calculating its AFSI, gains and losses on digital assets that are unrealized for regular tax purposes and that the Forthcoming Regulations are expected to be consistent with Notice 2025-49. As a result, corporations concerned that unrealized (for tax purposes) gains on their digital asset holdings would cause them to satisfy the AFSI test and become applicable corporations subject to the CAMT have been granted a reprieve.

Recently, a significant number of U.S. companies have been accumulating large treasury positions in digital assets, particularly Bitcoin. If unrealized gains on digital assets were included in AFSI for CAMT purposes, many of these companies may have become liable for the CAMT. Foreign companies operating outside the United States generally do not face similar regimes, providing them with an advantage as compared to U.S. companies, a concern that was specifically identified in the White House's Working Group on Digital Asset Markets' [report](#) (**Report**) released on July 30,

2025. Notice 2025-49, seemingly responding to the Report, levels the playing field between U.S. and foreign companies and removes the potentially punitive treatment of extensive digital asset treasury holdings and other unrealized built-in gain assets.

If you have any questions about this article, please contact **Tom Geraghty** at tgeraghty@vedderprice.com, **Megan L. Jones** at mljones@vedderprice.com, **Alexander Madias** at amadias@vedderprice.com, or any other Vedder Price attorney with whom you have worked.

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