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Episode - CAMT: Compliance and Reporting Strategies

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Carrie Falkenhayn: From Deloitte tax, welcome to the Tax News and Views Podcast. In this series we talk to specialists from Deloitte about the latest business issues. I'm Carrie Falkenhayn, your host for Tax News and Views. Today we'll be talking about some compliance issues related to the corporate AMT, or CAMT as a lot of us like to call it, which was part of the Inflation Reduction Act. The CAMT introduces a 15% tax on what they call adjusted financial statement income on applicable corporations. The CAMT was effective for taxable years beginning after December 31st, 2022. So the 2023 filings was our first year in dealing with those rules. Since then, there's been a few rounds of guidance issued that may impact how organizations approach their tax year 2024 filings and beyond. Joining me today to discuss these developments are two of our partners from Washington National Tax, Victoria Glover and Wendy Friese, and then we're joined by Paul Wagoner. He is one of our specialists leading modeling for corporate AMT, and he has some great insights on that. To get us started, Paul, I will start with you. Are there any common fact patterns that are causing taxpayers to fall into the corporate AMT liability?

Paul Wagoner: Yeah, we're seeing some, and they're not necessarily the ones that we may have thought when they first came out with corporate AMT. If you remember, it was kind of sold as a tax that's going after the biggest of the big US firms and stock-based comp, R&D capitalization, the tax depreciation rule have produced some favorable offsets. So it hasn't necessarily been who this may have been targeted at at the beginning. What we're seeing, though, is companies with pre-2020 NOLs who have done some specific transactions or acquisitions, or maybe in some specific industries that have permanent differences like mining and utilities. They're the ones that are really facing corporate AMT, and it's affecting a broader base, though maybe not more companies total. We think there are hundreds of companies who have the kind of AFSI threshold to possibly be in corporate AMT, so it's not just the biggest of the big, but it's a broader base and people who have these types of attributes. The other thing I would say is, it's not always immediately clear who's going to be in corporate AMT because the guidance we've gotten has been very comprehensive and very complicated. There's this idea of corporate AMT basis, which is different from tax basis, book basis, or Pillar 2 basis. It's really kind of a fourth set of books. There are a bunch of adjustments that are required for transactions, for consolidated financials, for partnerships. The corporate AMT guidance at this point is nearly as extensive as Pillar 2. So it's kind of surprising people. What we're finding is you have to do your homework to figure out if you're in corporate AMT or not, if you have these fact patterns or are getting caught by the complications of the guidance.

Carrie Falkenhayn: Okay, well, Wendy, jump in here. What are some of the compliance issues that organizations need to be aware of?

Wendy Friese: Yeah, Carrie. The IRS recently posted on irs.gov that suggested corporate taxpayers who reported a tax year 2023 CAMT liability review their applicable corporation determination that they filed on the 2023 Form 4626. The IRS noted a number of small businesses that completed Form 4626 even though it appeared the corporation may not have, or may have qualified under the simplified method to not be an applicable corporation. As a reminder, a corporation that is not an applicable corporation should not complete Form 4626 or pay CAMT liability.

If a corporation has incorrectly reported CAMT, the corporation can file. We also want to highlight that the proposed regulations issued in September of 2024 extended the CAMT simplified method for testing the applicable corporation status, but requires all members of the test group to rely on the proposed regulations. I also want to highlight some changes to be aware of for the 2024 Form 4626. Previously there were two worksheets, Worksheet A and Worksheet B, dealing with pro rata share of adjusted net income or loss of CFCs that were off the Form 4626 as separate worksheets, and for 2024 they're incorporated actually on the Form 4626. Also, the instructions to the 2024 Form 4626 provide that corporations must include a statement describing the approach taken in completing the Form 4626 and the guidance relied upon. For the 2024 tax year, corporations can rely on the proposed regulations if they so choose, or rely on the statutory interpretation. The government wants a disclosure with the Form 4626.

Carrie Falkenhayn: So take a look at what you did for 2023. If you didn't need to fill out 4626, you've got an opportunity to go back and amend, and then pay attention to the changes for 2024. It looks like there's a lot there to think about. Thank you for that, Wendy. Victoria, turning to you as our partnership person on the call, talk about the partnership requirements under a corporate AMT regime. You might guess that, or it might not be obvious how they apply.

Victoria Glover: Sure. When Congress enacted corporate AMT, there were a number of adjustments that Congress provided under 56(c), and that would impact the status test or the liability test. But there was a special adjustment for partnerships, which was a distributive share adjustment. Specifically, the applicable corporation, the taxpayer, only takes into account the distributive share of the partnership's AFSI for purposes of the liability test. It's turned off for purposes of the status test, and distributive share was never defined by Congress or in any legislative history. Instead, the proposed regs provided a definition or a method for what distributive share would mean, which we can talk about a little bit more. In addition, Congress granted Treasury authority to provide rules to implement the principles of subchapter K with respect to contributions and distributions to and from a partnership. The proposed regs provided, I would argue, complex rules with respect to both of these adjustments, whether with respect to contributions and distributions from a partnership as well as the distributive share adjustment. Even though partnerships are not subject to the tax in the proposed regs, they're treated as what's known as a CAMT entity. Partners and partnerships will have not only a lot of reporting requirements, but also complex calculations and determinations for purposes of CAMT.

Carrie Falkenhayn: It certainly sounds that way. What are some of the common partnership considerations as they think about how they're going to be reporting these amounts?

Victoria Glover: With respect to reporting, partnerships are receiving investor requests for CAMT information, specifically with regard to the distributive share adjustment. Under the proposed regs, if a partner in a partnership can't determine their distributive share, they are supposed to request information from the partnership by a certain time. There are very detailed rules. These rules become much more complex when you're thinking about tiered partnerships. The rules in the proposed regs have a different effective date than other rules, so the partnership rules are generally effective when the regulations are finalized. For those who are not early adopting the proposed regs from a partnership perspective, they would need to consider a reasonable approach to what distributive share adjustment means, as well as how to take into account contributions and distributions.Partners should be thinking about looking at the 2024 Form 1065 instructions and considering those issues as they're considering reporting information out to their investors.

Carrie Falkenhayn: Wendy started her portion of our discussion about the small business exception, and how that was perhaps missed by some of the 2023 filers. Are there small business exceptions for partnerships to take advantage of?

Victoria Glover: Unfortunately, there are not. Whether you have a small investment—so an investor could have a very small investment in a partnership, or the partnership could be small based on gross receipts or other thresholds—there is no exception. If an investor requests information from the partnership, the partnership needs to provide information with respect to these issues that I mentioned before, specifically the distributive share adjustment to the partner. Many stakeholders have requested, for purposes of final regulations, that there be some type of small business exception, whether that's in determining distributive share or with respect to reporting. But I think it's too early to determine whether a small business exception would apply in any final regulations. There is no exception for purposes of reporting or the calculation at this point.

Carrie Falkenhayn: A lot for partnerships to be thinking through for this reporting season, for sure. Paul, to wrap us up, anything else that's surprising taxpayers as they think about the corporate AMT?

Paul Wagoner: Yeah, I think one thing that's surprising a lot of taxpayers is that this might actually have an effect on your ETR. The way that it's designed is it's meant to be temporary. You get a credit for a year where you pay corporate AMT, and then in a future year, as your regular tax liability goes up, you can use that credit against RTL, so it's meant to wash and just be a temporary cost. But the way this is interacting with the ordering with general business credits is that AMT credit comes after your GBCs. A lot of taxpayers may pay a corporate AMT on the front end, but then they're not able to access the credit that was generated by that corporate AMT for a long time, long enough that it puts pressure on whether there needs to be a valuation allowance against it. In an infinite time horizon, it's true that corporate AMT is temporary. But it actually is affecting ETR, which I think is surprising a lot of taxpayers who looked at it and said, maybe I have a cash tax cost, but it's not going to affect my earnings. For some taxpayers that's not true, and you really have to model out what the use of that credit is going to look like. You might get questions from your auditor about having to put up a valuation allowance against it.

Carrie Falkenhayn: Got it. Thank you, Paul, Victoria, and Wendy. Really useful information for organizations as they think about the 2024 tax filing season. Thank you, audience, for tuning in here today. If you'd like more information on tax technical developments, I'd encourage you to download Deloitte's Tax at Hand app. You can find it on any app store, and there you can search and see a variety of releases across a lot of different tax technical topics. Of course, I hope you also join us next time. Until then, I hope everyone continues to be well. Take care.