



TAX NEWS & VIEWS PODCAST

Episode - Exploring the latest CAMT guidance

Host

Carrie Falkenhayn, Tax Partner, Deloitte Tax LLP

Speakers

Ethan Harris, Tax Partner, Deloitte Tax LLP

Wendy Friese, Tax Partner, Deloitte Tax LLP

Christina Edwall, Tax Partner, Deloitte Tax LLP

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 and developments. I'm Carrie Falkenhayn, your host for Tax News and Views, and today we're going to be talking about some recent guidance issued related to the corporate alternative minimum tax. I call it CAMT, some folks call it C-A-M-T, CMT, this rule set was introduced as part of the Inflation Reduction Act. And there's been guidance that is of particular interest to taxpayers. We have talked about the CAMT before in this series. But as a quick reminder, it's a 15% tax on what is known as Adjusted Financial Statement Income, or also called AFSI, for applicable corporations. Joining me today to discuss these developments, we have three specialists from Deloitte's Washington National Tax Group. We have Wendy Friese, who specializes in tax policy. We have Christina Edwall, who is focused on accounting for income taxes, and we also have Ethan Harris, who is focused on corporate taxation. Welcome everyone to the call, and to start, I will start with Ethan, in particular, focused on Notice 2025-49. That included some guidance around applicable dates and reliance with respect to CMT guidance. Please share what is important about that new guidance.

Ethan Harris: Thank you, and with Notice 2025-49, as you noted, they included a long, section on, applicability dates and reliance that, as a general matter, you know, was a taxpayer favorable, as it relates to, the existing CMT proposed regulations and guidance in the notices. And so, where this came from

was, proposed regulations for CMT were issued on, September 13, 2024, a huge, you know, 600-page package, that were obviously voluminous and complex and confusing, and they made the applicability date and reliance section confusing as well, and what the preamble to the proposed regulations did was they divided the proposed regulations generally into two sets. One set of proposed regulations that applied for taxable years ending after September 13, 2024, what was defined as the specified regulations, so those, you know, sort of kicked in immediately. And then, generally, other regulations that were perspective-only, meaning they, you know, don't apply until they're finalized. And the preamble went on to have complex reliance rules which generally provided that if you want to follow one of the specified regulations, you have to follow all of the specified regulations. And, if you want to follow one of the other regulations, which I'll call non-specified regulation, then you also have to follow all of the specified regulations, and in certain instances, you are required to file other, follow other non-specified regulations. These rules create a lot of confusion for taxpayers in terms of just figuring out what sets of proposed regulations they could rely on if they wanted to, and which ones they had to rely on if they wanted to rely on others. And it also resulted in, like, a complex analysis, that taxpayers had to undertake, because if you wanted to under, rely on one proposed regulation, you had to rely on a lot of them, and so you had to go through all those regulations and figure out, how they would apply to your particular facts and circumstances. A lot of people didn't like that, you know, comment letters, raised that as well. And then we got to notice 2025-49, specifically Section 3, and it starts out and says, notwithstanding what the existing proposed reg said, no proposed CMT regulations, the existing ones, or the forthcoming ones that the notice mentioned will be coming out at some point, will be applicable for any tax year beginning before final regs are published. So, the notice basically says all regulations are, all proposed regulations are going to be prospective only which changes, the specified regulations used to be applying for the, on or after taxable years and on or after September 13, 2024.

In addition, the notice went on to say taxpayers can rely on any section of the proposed regulations without having to rely on any other section of the proposed regulations, other than in one instance relating to, foreign corporations, so long as once you decided which proposed regulation or regulations you want to rely on, you consistently follow those rules going forward. So. Big change, you know, from what the existing proposed regulations had said, where they had their specified regulations and non-specified regulations. And then the notice, further goes on to basically say the same thing about a reliance, on guidance in the notices, and it's referring to Notice 2025-49, obviously. Also, 2025-46, which came out at the same time. And then two other notices that are still currently in play. Notice 2025-27, which provides for interim simplified method for determining applicable corporation status, and then notice 2025-28, which relates to certain partnership matters. And the notice 2025-49 basically said, you can rely on the guidance set forth in those notices, you know, without having to follow any of the proposed regulations unless required by the notices, so in some.

CMT taxpayers now have a lot more flexibility in terms of which CMT guidance they want to follow, and they also don't have to do super complex analysis to figure out, you know, what other regulations they would have to follow and how that might impact them, so really good taxpayer-friendly result here.

Carrie Falkenhayn: Absolutely, a lot more clarity than what was originally provided, so I'm sure taxpayers are very happy about that. Wendy, I mentioned at the beginning this concept of AFSI, and AFSI adjustments are certainly getting a lot of attention from taxpayers. What was provided in Notice 2025-49 that we're seeing people pay attention to?

Wendy Friese: We have seen quite a few questions on the AFSI adjustment for embedded depreciation deduction for net operating loss companies, and then also the AFSI adjustment for eligible goodwill amortization. There's a host of other AFSI adjustments that were provided under Notice 2025-49. But, like I mentioned, the AFSI adjustment for embedded depreciation deduction and then the eligible goodwill amortization have gotten a lot of traction from taxpayers. So, the AFSI adjustment for

embedded depreciation deduction basically allows the CMT entity to reduce its AFSI for a tax year by the tax depreciation deductions that were taken into account in determining an NOL arising in tax years ending on or before December 31st, 2019, that's carried forward and utilized as an NOL deduction under Section 172 for the current tax year. The notice provides that, like, taxpayers can use any reasonable method to determine the portion of the eligible NOL deduction attributable to a historical tax depreciation, but, it also is helpful in providing two approaches that are deemed reasonable, the two approaches that are provided within the notice is, one is the proportional approach, and the other is the lesser-of approach. The notice really provides a good, the step and mechanics of how the two approaches work, and some examples. In our experience so far, we've found that the proportional approach generally spreads the AFSI adjustment for embedded depreciation over a longer period of time. Whereas the lesser approach can have the effect of, like, front-loading the AFSI adjustment. So, you know, kind of a theme is taxpayers now have choices. And then the second issue I mentioned, where we get a lot of traction, is the AFSI adjustment for eligible goodwill amortization, which allows the CMT entity to reduce its AFSI for a tax year by the amount of deductible goodwill tax amortization allowed under Section 197 for the tax year. But only to the extent that such amount is allowed as a deduction and computing taxable income for that tax year. So, in order to qualify for this AFSI adjustment, the taxpayer must have goodwill, that's an amortizable Section 197 and acquired in a transaction that was either completed on or before October 28th, 2021, or publicly announced on or before that date. So we've been working a lot with clients to analyze the various types of transactions that gave rise to the Section 197 intangible, and then tracing through their historical timeline of the transaction to determine whether they satisfied the required acquisition date.

Carrie Falkenhayn: Thank you for that. Ethan, I'm gonna turn back to you. You mentioned Notice 2025-46. And it included limitations on the ability of CAMT taxpayers to use financial statement net operating losses, or FSNOLs. Can you tell us a little bit more about that?

Ethan Harris: Sure. And continuing on with sort of the theme of the two notices, you know, this was another taxpayer-friendly provision in the notice, and the short answer right now, following this notice, is that there's no limitations on FSNOLs other than the limitation in 56AD that says you can only offset up to 80% of your AFSI for a taxable year with FSNOLs, and 56 Kep AD, the statutory rule for FSNOLs doesn't contain any other limitations, and so the notice walked back a provision that was in the, existing proposed CMT Treasury regulations from September 2024, specifically proposed Treasury Regulation 1.56 CAP A-23. This had a surly limitation for FSNOLs and certain built-in losses of a corporation that is acquired, or that otherwise joins a consolidated group. And this surly-like limitation, I say Surly-like because there's a Surly rule in the consolidated return regulations that's been around forever. But, from a high level, the rule basically says that if a corporation with FSNOLs is acquired or joins a consolidated group. Those FSNOLs can only be used to the extent that corporation generates income from the business that had originally generated the NOLs. And so, that business is still generating losses, you can't use the pre-acquisition NOLs in the group or by the acquiring company. And the Surly-like rule in the proposed regs was much more restrictive than the Surly limitation that applies for regular tax purposes for consolidated groups and had these very onerous documentation requirements in terms of having to track the income of the business that had been acquired that had originally generated the FSNOLs. And included creating pro formas if that business had been integrated into the acquiring corporation's business, or the acquiring consolidated groups business, which, would be probably very complex and, you know, may not actually be possible. And so, a lot of people, including comment letters, you know, raised that this could be a big issue, and it didn't seem like, you know, this rule should be so restrictive. And so, Section 6 of Notice 255-46 provides, CMT tax need to apply the Surly-like limitation, and forthcoming proposed regulations will revise, the existing proposed regulation 1.56, CAP A-23, to basically remove that Surly-like limitation. I also wanted to note that Section 5 of Notice 2025-46, which basically says CMT taxpayers can follow the consolidated return regulations for regular tax purposes, for CMT tax purposes as well. And those rules in the notice specifically say, if you choose to apply the

consolidated Return Treasury regulations for CMT purposes, you don't have to apply the Section 382 or Surly rules that, apply for regular tax purposes in those rules, and so it just is another, example of just showing right now there's no limitations on the FSNOLs. But that raises sort of the ultimate question of, well, what is IRS and Treasury going to do when they come out with these forthcoming proposed regulations? Are they just going to say, FSNOLs don't have any limitations, other than the 80% one? Previously mentioned, or are they just going to have a new sort of regime based on, for example, the Section 382 ownership limitation rules that exist for regular tax purposes, comment letters had raised that, you know, maybe you should get rid of this surly-like limitation and apply this 382 concept, because everybody's familiar with the 382 concept, and it creates parity between regular tax and CMT. I'll just note the IRS, when they came out with the existing proposed regulations in the preamble, specifically rejected Section 382 to apply for CMT purposes, because they thought it was too complex to import into the CMT world. I'm not sure why they said that, but, you know, maybe they're gonna, you know, do a 180 and sort of now, based on comment letters, you know, include Section 382, but we'll, you know, have to wait and see.

Carrie Falkenhayn: Yeah, so some clarity and some more questions, I guess, in that area. Let's switch to another topic of interest with respect to this guidance, and that is the mark-to-market, requirements for certain assets, including domestic stock and partnership interest, after that was contained in the guidance in Notice 2025-49.

Ethan Harris: Sure. And so, before Notice 2025-49, you know, we generally, even though there were proposed, regulations, there was not a lot of guidance on, whether, items that are marked to market for book purposes, and thus, you know, CMT purposes, but not for regular tax purposes, whether you could back out those mark-to-market items for CMT purposes, and the statute, most practitioners, including ourselves, thought that, the only thing under a statute that you can back out of with respect to mark-to-market items was, partnership interests, and, stock of domestic corporations that were not members of the, same consolidated group as the CMT entity, with it being a little bit statutory rules being a little bit more clear about kicking out mark-to-market items on the domestic stock. But mark-to-market items for other assets such as real estate, digital assets, warrants, to acquire stock, and debt, they weren't really covered by the statute, and the CMT proposed regulations that came out in September of 2024 didn't really cover those assets I just mentioned. They did cover partnership interests, and, stock of domestic corporations, with it being a little bit more clear with stock of domestic corporations, but given everything I just said, there is a little bit of uncertainty as to, you know, how you should, you know, remove, if at all, mark-to-market gains and losses with respect to these items. And then the notice came out, which was, again, you know, very helpful to taxpayers, and it had a provision, Section 5 of Notice 2025-49, that taxpayers could elect to apply starting in 2024, including if they go back in. Amend to return, and once they make that election, they gotta sort of use it going forward and can't really revoke the election, but the rule basically says you can disregard mark-to-market gains or losses on certain assets and liabilities, which they call fair value items, for a taxable year if the CMT entity does not also mark to market the fair value item for regular tax purposes. So, you know, creating parity between CMT and regular tax. And this guidance was very helpful to industries that had sent in comment letters. For example, you know, real estate assets, you can apply this rule. Digital assets, like cryptocurrency, you can apply this rule. And as I mentioned, warrants and debt, you can apply this rule as well. So very helpful to not create distortions between CMT and regular tax. The notice doesn't, you know, makes clear that it doesn't apply to partnership interests or, stock of domestic corporations, and the intro to the notice sort of implies, we didn't cover partnership investments or stock of domestic corps because, the statutory rules, you know, generally, kicked out mark-to-market items with respect to those investments. And as I said before, most people reading the statute that way. The notice language, referring to the statutory provisions is helpful, but it's sort of not definitive guidance, if you will. And so, I think there's a lot of ambiguity right now with respect to, you know, kicking out mark-to-market gains or losses, especially with respect to partnership investments. And so, as we'll probably see from comment letters, and hopefully

reflected in future guidance. The guidance will just be a little bit, you know, more definitive regarding partnership investments.

Carrie Falkenhayn: Thank you. Thanks for that update. Christina, let's get you involved. We have a lot of new guidance, some clarity, as well as some new questions, I suppose. What should companies be considering from a financial reporting perspective, as a result of these recently issued notices?

Christina Edwall: Absolutely. So entities are not required to follow the proposed rules until finalized, and one of the things that Ethan and Wendy had pointed out throughout this conversation is there's a lot more flexibility that now exists as a result of these notices, and so that can be a game changer for either, you know, companies taking certain positions or analyzing whether positions are more likely than not to be realized. So, these notices do represent new information that should be considered in the reporting period inclusive of the issuance date. So, just to give you an example, for Notice 2025-49, that would be, needed to be analyzed in the reporting period that included September 30th, 2025. And so, for a lot of companies, this will fall into an interim period, and if it does, companies would need to consider the guidance in 740-270 to determine which of those impacts would be reflected in the annual effective tax rate, as opposed to accounted for discretely in the period the notice was issued. And just to give you an example, Carrie. If the new information impacts the current year tax payable or deferred taxes related to current year ordinary income, it would go into the annual effective tax rate. But, if, for example, the impact of this new information would impact a prior year tax payable, it would be recognized discretely.

Carrie Falkenhayn: So, a lot to think about, with respect to year-end, as well as all of this guidance. Thank you, so much, to the speakers here, as they shared that information, as organizations approach the 2025 tax year-end. For our audience, a couple of notes for you. First of all, if you'd like more information on CAMT, I'd encourage you to sign up for the Deloitte Tax at Hand app. You can download it at any app store, and you can find a variety of technical releases, on text, technical topics, like CAMT. I'd also encourage our audience to go to Deloitte.com for additional information, and in particular, I'd like to highlight the fact that Deloitte has won the ITR award this year, especially around being named the Tax Technology Firm of the Year for 2025. It's actually our 8th consecutive year winning that award, and I like to think it's a testament to our client-focused innovation, so hopefully you guys get a chance to take a look at that.

Audience, as always, thank you for joining us, and hope you will be with us next time. Be well, everyone!

This podcast is produced by Deloitte. The views and opinions expressed by podcast speakers and guests are solely their own and do not reflect the opinions of Deloitte. This podcast provides general information only and is not intended to constitute advice or services of any kind. For additional information about Deloitte, go to [deloitte.com/about](https://www.deloitte.com/about).

About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. In the United States, Deloitte refers to one or more of the US member firms of DTTL, their related entities that operate using the "Deloitte" name in the United States and their respective affiliates. Certain services may not be available to attest clients under the rules and regulations of public accounting. Please see www.deloitte.com/about to learn more about our global network of member firms.