Congressional Research Service
Informing the legislative debate since 1914

The 15% Corporate Alternative Minimum Tax

December 7, 2022

Congressional Research Service
https://crsreports.congress.gov
R47328

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

SUMMARY

R47328

December 7, 2022

Jane G. Gravelle
Senior Specialist in Economic Policy

The 15% Corporate Alternative Minimum Tax

The Inflation Reduction Act of 2022 (P.L. 117-169) imposes a corporate alternative minimum tax (CAMT) of 15% on the adjusted financial statement income of large corporations. Corporations would pay the larger of the minimum tax or the regular tax, which is imposed at a 21% rate and includes any additional tax from the base erosion and anti-abuse tax (BEAT). This new CAMT would apply to taxable years beginning after December 31, 2022.

The CAMT makes a number of adjustments to financial statement income that bring the measure closer to taxable income, allowing for tax depreciation and net operating losses. Other adjustments reduce the base of the tax, including provisions affecting private equity firms, firms with defined benefit pension plans, and firms owning spectrum rights. The CAMT also allows tax credits and a carryforward of the minimum tax to be credited against future regular tax liability in years when the CAMT does not apply.

The CAMT applies to firms with an average of $1 billion or more in profits in any three-year period and to foreign-parented U.S. firms with profits of over $100 million if the aggregated foreign group has over $1 billion in profits. It does not apply to Subchapter S corporations, real estate investment trusts (REITs), and regulated investment companies (RICs, such as mutual funds). These three entity types generally are not subject to the corporate tax but instead pass through income to investors who pay taxes.

The CAMT is projected to raise $222 billion over the next 10 years, an increase of 5.8% of corporate revenues, which is equivalent to the revenue that would be raised by increasing the regular 21% rate by slightly more than two percentage points. Relatively few corporations would be affected by the tax. One study estimated about 80 firms would be affected, 16% of the Fortune 500.

The CAMT is different from the 15% Pillar 2 global base erosion (GLoBE) tax proposed by the Organisation for Economic Co-operation and Development and G20 (OECD/G20) and endorsed by 130 countries. The CAMT imposes a minimum tax on worldwide income, whereas GLoBE would impose a minimum tax in each country. The tax base is different in numerous ways as well. Other minimum taxes currently in force—the tax on global intangible low taxed income (GILTI) and BEAT—also are not imposed on a per country basis. It is unclear how these taxes would interact with GLoBE, which, if adopted, would allow foreign countries to tax income of U.S. multinationals if effective tax rates are below 15%.

The CAMT, while raising taxes, imposes a marginal effective tax rate that is lower than the regular corporate rate. It also would increase taxes on earnings from foreign investment. This incentive effect may encourage the shifting of capital to the United States, but it is likely to be quite small given the limited coverage of the tax. The CAMT is likely to fall on capital income, indicating a progressive tax.

The CAMT expressly grants the Secretary of the Treasury a substantial amount of regulatory authority for implementing the tax. Some important issues in implementing the tax include the treatment of intercorporate dividends, whether income will be recognized under the CAMT for tax-exempt corporate reorganizations (mergers and divisions), the treatment of private equity firms, the circumstances under which firms may no longer be subject to the tax because of a change in ownership or profitability, and the treatment of partnerships or Subchapter S corporations where a corporation is a partner or shareholder.

Contents

Taxable Versus Financial Income 1
Taxable Income 1
Financial Statement Income 2
Adjustments to Financial Income to Determine Tax Liability 2
Consolidated Returns Based on Tax Rules, Adjusted 3
Adjustments for Different Years 3
Income on a Pretax Basis and Foreign Tax Credits 3
Net Operating Losses 3
Depreciation and Spectrum Rights 3
Defined Benefit Pension Plans 4
Other Special Deductions and Income Adjustments 4
Cooperatives 4
Alaska Native Corporations 4
Mortgage Servicing Companies 4
General Business Credits 4
Timing Differences and the Minimum Tax Credit 5
Application to Large Firms 5
Revenue, Industry, and Firm Effects 5
Comparison to Other Minimum Taxes 7
Effects on Economic Incentives, Profit Shifting, and Distribution 11
Investment in Plant and Equipment 11
Investment in Intangibles 12
International Profit Shifting 12
Distributional Effects 12
Regulatory Issues and Implementation 13
Tax Treatment of Intercorporate Dividends and Other Items from Nonconsolidated Firms 13
Private Equity Firms Operated as Partnerships 14
Corporate Reorganizations: Divisions and Mergers 14
Corporations Subject to Minimum Tax with a Change in Ownership or Profitability 15
Financial Statement Income: Using Different Methods for Consolidated Accounts 15
Financial Statement Income: Other Comprehensive Income and Other Special Items 16
Financial Statement Income: Recognition of Income 16
Pass-Through Issues 16
Depreciation 17
Net Operating Loss Carrybacks of Property and Casualty Companies 18
Life Insurance Companies 18
Treatment of Capital Gains, Including Like-Kind Exchanges 18
Transition Issues 18
International Issues 19

Tables

Table 1. Comparison of Basic Features of the CAMT, GILTI, BEAT, and GLoBE 10

Appendixes

Appendix. References to Articles on Regulatory and Implementation Issues..... 20

Contacts

Author Information..... 21

The Inflation Reduction Act of 2022 (P.L. 117-169) imposes a corporate alternative minimum tax (CAMT) of 15% on the adjusted financial statement income of large corporations. The CAMT applies to public and private corporations. Corporations pay the larger of the minimum tax or the regular tax, which is imposed at a 21% rate and includes any additional tax from the base erosion and anti-abuse tax (BEAT). This CAMT would apply to taxable years beginning after December 31, 2022.

Taxable Versus Financial Income[1]

A CAMT designed to tax a broader base at a lower rate than the regular corporate tax can begin with *taxable income* and add preferences or can begin with *financial statement income* and make adjustments. Although the prior corporate alternative minimum tax, repealed in 2017, began with taxable income, the new one begins with financial statement income. The timing and amount of income and deductions can vary between tax and financial statement income when comparing the two design routes.

Taxable Income

Corporations report income for tax purposes to the Internal Revenue Service (IRS) by subtracting deductions allowed by tax law from receipts (revenues). Taxable income is calculated before federal and foreign taxes, with deductions for state and local income taxes and credits for foreign taxes. Taxable income excludes some income (such as tax-exempt interest) and allows some special or more generous deductions than financial statement income. Taxable income cannot be negative, which represents a significant difference from financial income (see "Net Operating Losses," below).

Large corporations generally have subsidiaries, some domestic and some foreign, that are separately incorporated. They own shares of the subsidiaries and receive dividends. Corporate parents and their 80% owned domestic subsidiaries may elect to file a single consolidated tax return that combines income and deductions. For firms not filing a consolidated tax return, dividends from domestic corporations are subject to an intercorporate dividend deduction. Deduction amounts for domestic dividends are 100% of dividends from an 80%-or-more owned subsidiary, 65% from a 20%-80% owned subsidiary, and 50% from a lesser owner domestic subsidiary.[2]

Current law exempts dividends from foreign corporations (subsidiaries) paid to corporations that hold 10% ownership while imposing a minimum tax on the global intangible low-taxed income (GILTI) earned by controlled foreign corporations (CFCs). CFCs are firms with at least 50% U.S. ownership by U.S. shareholders, each owning at least 10%. Many CFCs are subsidiaries entirely owned by a U.S. parent. The calculation of GILTI allows a deduction of 10% of tangible assets and a deduction of 50% of the remaining GILTI (37.5% after 2025). A deduction of 50% of the remaining amount, with the corporate tax rate of 21%, provides an effective tax rate of 10.5% (21% times 50%). GILTI does not include some types of income, including income related to

[1] For a discussion of minimum taxes on business income, see CRS Report R46887, *Minimum Taxes on Business Income: Background and Policy Options*, by Molly F. Sherlock and Jane G. Gravelle.

[2] The 65% and 50% amounts were 80% and 70%, respectively, before the 2017 tax revision. See the Tax Cuts and Jobs Act (TCJA; P.L. 115-97).

foreign oil and gas extraction. Income of some CFCs that is easily shifted (called Subpart F income) is taxed in full. Foreign taxes are added to this income to put it on a pretax basis.

Foreign taxes are credited against U.S. taxes, limited to 80% of foreign taxes paid on GILTI.[3] Foreign tax credits are limited to U.S. tax due on foreign source income, and this limit is applied within "baskets" with separate limitations for passive, active, and GILTI. Within those baskets, foreign taxes across countries are combined so that foreign taxes in excess of U.S. tax due on income from high-tax countries can be used to offset U.S. tax due on income from low-tax countries. Foreign tax credits cannot be carried forward for GILTI, but can be carried back one year and forward for 10 years for other foreign taxes.

Some U.S. companies are subsidiaries owned by foreign parents, and their income is taxable in the United States.

Financial Statement Income

The objective of financial statement income (also known as "book income") is to measure the profitability of a company. Income and deductions are in accordance with Generally Accepted Accounting Principles (GAAP) as set by the Financial Accounting Standards Board, and financial disclosures for public companies are filed with the Securities and Exchange Commission (SEC), including an annual 10-K report. These rules are designed to measure accrued income and costs, including the depreciation of assets. Financial statement income reports profits on an after-tax basis (i.e., after deductions for federal, foreign, and state and local income taxes). Financial statement income is negative if a firm realizes a loss.

Consolidation rules for financial reporting purposes differ depending on the level of control. Income of firms that are more than 50% controlled is consolidated worldwide, whereas shares of income from firms that are 20%-50% owned are reported, and dividends are reported for firms that are 20%-or-less owned.

Adjustments to Financial Income to Determine Tax Liability

The CAMT begins with financial statement income and makes some adjustments. Firms that file consolidated tax returns include on their financial statement income allocable to the firm from related firms, including controlled foreign corporations (and any disregarded entities);[4] for other related firms, dividends would be included. The CAMT then makes a number of adjustments to this modified financial statement income before applying the 15% tax.[5]

[3] For a more detailed discussion of the international tax regimes, see CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples; and CRS Report R47003, *Corporate Income Taxation in a Global Economy*, by Jane G. Gravelle, Mark P. Keightley, and Donald J. Marples.

[4] A *disregarded entity* is an entity that is not viewed separately for tax purposes so that payments between firms are not recognized.

[5] For a more detailed discussion of these adjustments, see Jasper L. Cummings Jr., "The 2022 Corporate AMT," *Tax Notes*, September 26, 2022, pp. 2005-2025.

Consolidated Returns Based on Tax Rules, Adjusted

The CAMT consolidates firms for adjusted financial statement purposes based on tax rules for consolidation, with dividends from nonconsolidated firms included in adjusted financial statement income. However, for purposes of the CAMT, adjusted financial statement income includes income from firms that are 50% controlled (under a single employer rule). Tax rules exclude foreign subsidiaries from the consolidation so that for financial statement income, only dividends from foreign subsidiaries are included. However, a separate rule provides inclusion of a pro rata share of income of controlled foreign corporations. As a result, financial statement income is broader than income based on standard tax consolidation rules.

Adjustments for Different Years

Adjustments are made for CAMT purposes when financial statement income covers a different period from taxable income to include financial statement income relating to the taxable year.

Income on a Pretax Basis and Foreign Tax Credits

Adjusted financial statement income adds back federal and foreign income taxes to place income on a pretax basis. Foreign taxes in the financial income statement are credited against CAMT and carried forward for five years. However, a company can take a deduction for foreign taxes if it does not elect to take the foreign tax credit. For foreign taxes paid by a CFC, the credit is limited to 15% of income. For foreign taxes paid by the parent company (such as on branch income), there is no limit.

Net Operating Losses

One of the most important differences between financial and taxable income is the treatment of losses. As noted above, the tax system bounds income at zero. Losses calculated for tax purposes, therefore, are not subtracted in the current year but are carried forward where they can be used to offset positive taxable income in the future. The offset is limited to 80% of taxable income. In the case of financial income, firms report current losses and profits. The CAMT adjusts for this treatment by carrying forward financial losses to offset against future financial income in a manner similar to the income tax system. The CAMT also limits the loss offset to 80% of taxable income as measured by the financial income base.

Depreciation and Spectrum Rights

The CAMT adjusts financial income to allow the (1) tax treatment of depreciation and (2) treatment of spectrum auction licenses for tax purposes. Depreciation deductions normally are taken earlier for tax than for book purposes, especially in the case of equipment. Through 2022, firms can expense (deduct immediately) investments in equipment. This treatment is to phase out over five years, beginning in 2023, absent a legislative change. Any part of an investment that is not expensed can be recovered at accelerated rates over relatively short periods (generally five or seven years for most equipment) compared to financial statement depreciation. Financial income generally does not allow the recovery of the cost of spectrum licenses, which are recovered over 15 years for tax purposes.[6]

[6] A spectrum license gives a company an exclusive right to use a frequency band. Spectrum licenses are used by

Defined Benefit Pension Plans

The CAMT adjusts financial statement income to allow for the tax treatment of defined benefit pension plans. Tax treatment allows for deductions when contributions to the plan are made and there is no tax on the earnings. Financial statement income reflects benefits accruals as liabilities and reflects the changes in assets and liabilities. Under mark-to-market accounting, firms also report unrealized gains and losses in pension assets that are not included in regular corporate income for tax purposes. This adjustment to defined benefit pensions is made for measuring income but not for the income test to determine applicability.

Other Special Deductions and Income Adjustments

The CAMT allows a number of specialized adjustments to income and deductions.

Cooperatives

Cooperatives deduct certain payments and allocations to patrons (members of the cooperative) under Section 1382 of the Internal Revenue Code. These deductions also are allowed for adjusted financial statement income for purposes of the CAMT.

Alaska Native Corporations

The basis of assets is normally the price paid for them, but a special rule applies in the case of the property conveyed to Alaskan Native Corporations. The Internal Revenue Code allows the assets of Alaska Native Corporations to be valued for computing depletion and cost recovery for income taxes at the fair market value at the first time of commercial development, which would normally be a higher value. The CAMT allows this same treatment for determining adjusted financial statement income as the regular corporate tax law.

Mortgage Servicing Companies

Mortgage servicing companies purchase loans that originate with other lenders and collect the monthly payments. The income is recognized for financial statement purposes when the loan is acquired, but the income for tax purposes is reported when received. The CAMT does not include income for determining adjusted financial statement income any earlier than it is recognized for regular corporate tax purposes.

General Business Credits

General business credits are allowed for CAMT on adjusted financial statement income. Numerous tax credits make up the general business credit, which can offset up to 75% of the combined regular and minimum tax. The most significant of the credits in dollar terms is the credit for research and experimentations. Other credits include a number of energy credits (which will become larger in the future), the low-income housing credit, the orphan drug credit, the work opportunity tax credit, the new markets credit, and a variety of other specialized credits.[7]

---

cellular carriers, broadcasters, satellite operators, and other entities. Whereas some rights are assigned, others are sold by government auction.

[7] For a full list, see Internal Revenue Service (IRS) Form 3800 and related forms listed at https://www.irs.gov/pub/irs-pdf/f3800.pdf. Chapters on these credits are included in U.S. Congress, Senate Committee on the Budget, CRS

Other parts of the Inflation Reduction Act allowed for the sale of certain energy tax credits, but the law is silent on how the income from this sale would be treated for purposes of the CAMT.[8]

Timing Differences and the Minimum Tax Credit

Some of the differences between financial statement and tax income arise from timing. One factor that can cause timing differences is interest deductions, which are currently subject to limits under the regular corporate income tax. Net interest deductions are limited to 30% of adjusted income (which is income before taxes and interest). Any unused interest deductions carry forward. Financial income allows full deduction of interest costs, and interest deductions that give rise to a minimum tax could be lost. Firms may also recognize bad debt earlier on financial statements than they do for tax purposes, which may contribute to book-tax differences over the business cycle. While provisions affected by timing defer rather than forgive taxes, ongoing expenditures that lead to these differences create ongoing differences between book and tax income. To address these timing issues, minimum taxes paid carry forward to years when tax under the regular system is larger than the CAMT and offsets regular tax liability.

Application to Large Firms

The CAMT applies to corporations with $1 billion or more in average annual earnings, calculated over a consecutive three-year period ending in tax years beginning after December 31, 2021. For a calendar year taxpayer, that period comprises 2020, 2021, and 2022. In the case of U.S. corporations that have foreign parents, the CAMT applies only to income earned in the United States of $100 million or more, calculated over a three-year period (and applies when the international financial reporting group has income of $1 billion or more). It applies to a new corporation in existence for less than three years based on the earnings in the years of existence.

Once a firm becomes subject to the CAMT, it is always subject to the tax unless the Secretary of the Treasury deems it no longer covered. This elimination could occur due to a change in ownership or reduced income over a period of years.

The CAMT excludes Subchapter S corporations (corporations with a limited number of shareholders that elect to be taxed under the individual income tax). It also excludes regulated investment companies (RICs, such as mutual funds) and real estate investment trusts (REITs). These entities pass through income to individual investors to be taxed under the individual income tax. Income from private equity firms is covered, although language was removed while the Inflation Reduction Act (P.L. 117-169) was being considered that would have explicitly included portfolio companies owned by these firms. As discussed below, the treatment of private equity firms may be addressed in regulations.

Revenue, Industry, and Firm Effects

The CAMT is to be a major revenue raiser in the Inflation Reduction Act. The Joint Committee on Taxation (JCT) estimates that the CAMT will generate additional revenues of $222.2 billion from FY2023 through FY2031. An earlier version of the CAMT was originally projected to raise

---

Committee Print CP10004, *Tax Expenditures: Compendium of Background Material on Individual Provisions — A Committee Print Prepared for the Senate Committee on the Budget, 2020*, by Jane G. Gravelle et al.

[8] See Kat Lucero "Sale Of Clean Energy Credits Could Trigger Corp. AMT," Law 360, November 23, 2022, https://www.law360.com/real-estate-authority/articles/1551916/sale-of-clean-energy-credits-could-trigger-corp-amt.

$313 billion over 10 years, but that revenue gain reportedly was reduced to $258 billion by changes made in allowing tax recovery for the depreciation and wireless spectrum rights.[9] That number does not reflect the exemptions for portfolio companies of private equity firms, which news reports indicate would reduce the yield by $35 billion.[10] The JCT's estimate of a gain of $222 billion is consistent with these reports.[11] Thus, these estimates reflect the view that portfolio companies would be excluded.

Based on projections of $3,855 billion in corporate revenues for FY2023-FY2031 by the Congressional Budget Office, the $222 billion revenue projection indicates an increase in corporate tax revenues of 5.8%, equivalent to the revenue that would be raised by increasing the regular 21% rate by slightly more than two percentage points.[12]

Relatively few corporations would be affected by the CAMT. A *Washington Post* study reported that 250 companies in the Fortune 500 had earnings of over $1 billion, but some of these companies would not pay the tax.[13] A JCT analysis of the proposal before the Inflation Reduction Act was changed to make adjustments for depreciation, spectrum rights, and private equity firms estimated that about 150 taxpayers would be subject to the minimum tax each year, indicating that about 30% of the Fortune 500 could be subject to the minimum tax. About half the tax in that previous version of the legislation would be collected from manufacturing (with about 16% from chemical manufacturing) and about 11% each from information and holding companies.[14]

With the changes made to the Inflation Reduction Act, fewer firms would be affected, and it is likely that the depreciation revision will reduce the share of manufacturing firms affected. One feature affecting the likelihood of paying the tax is foreign source income. A consolidated firm's financial statement income includes worldwide income, and significant shares of that income are not subject to the regular corporate tax. Firms that benefit from the deductions for foreign-derived intangible income (firms that hold intangible assets in the United States but have significant intangible income and exports) would have lower taxable income for that reason. Equity-based compensation, including stock options, also generates larger deductions for tax income compared to financial statement income.[15]

---

[9] Ernst and Young (EY), "Revised text of Inflation Reduction Act Makes Tax, Health Changes," Tax News Update 2022-1197, August 7, 2022, at https://taxnews.ey.com/news/2022-1197-revised-text-of-inflation-reduction-act-makes-tax-health-changes.

[10] Jeff Stein, "With Sinema's Help, Private Equity Firms Win Relief From Proposed Tax Hikes," *Washington Post*, August 7, 2022, at https://www.washingtonpost.com/us-policy/2022/08/07/inflation-reduction-act-sinema-private-equity/.

[11] Joint Committee on Taxation (JCT), *Estimated Budget Effects Of The Revenue Provisions Of Title I – Committee On Finance, Of An Amendment In The Nature Of A Substitute To H.R. 5376, "An Act To Provide For Reconciliation Pursuant To Title II Of S. Con. Res. 14," As Passed By The Senate On August 7, 2022, And Scheduled For Consideration By The House Of Representatives On August 12, 2022*, JCX-18-22, August 9, 2022, at https://www.jct.gov/publications/2022/jcx-18-22/.

[12] See U.S. Congressional Budget Office, *Options for Reducing the Deficit, 2021 to 2030*, December 2020, p. 77, at https://www.cbo.gov/system/files/2020-12/56783-budget-options.pdf.

[13] Kevin Schaul, "The Corporate Minimum Tax Could Hit These Ultra-profitable Companies," *Washington Post*, August 12, 2022, at https://www.washingtonpost.com/business/2022/08/11/minimum-corporate-tax/.

[14] Letter from Chief of Staff Thomas Barthold, JCT, to Chairman Ron Wyden, Senate Finance Committee, August 1, 2022, at https://www.finance.senate.gov/imo/media/doc/jct_analysis_book_minimum.pdf.

[15] Large firms currently reconcile financial statement and taxable income on Schedule M-3. For aggregate data on this reconciliation, see 2019 data for Schedule M-3 at IRS, *Corporation Income Tax Returns: Line Item Estimates*, at https://www.irs.gov/pub/irs-pdf/p5108.pdf.

A study by researchers at the University of North Carolina found that 78 firms would have paid the CAMT in 2021 had it been in effect.[16] This study adjusted financial income to add back federal and foreign income taxes, used tax depreciation rather than financial statement depreciation, allowed recovery of spectrum rights, adjusted for defined benefit pensions, and allowed net operating losses. The estimates indicate that one firm, Berkshire Hathaway, a multinational holding company, would have paid $8.3 billion, about a quarter of total revenues. Along with the next five firms paying at least $1 billion (Amazon, Ford, AT&T, eBay, and Moderna), the study estimated that these six firms would have paid about half of the tax.

A study by Martin Sullivan identified 90 corporations that would likely be subject to the tax in 2023 based on effective tax rates, adjusting for tax credits and tax depreciation rules. This study estimated Berkshire Hathaway paying $8.1 billion.[17] The study estimated that two other firms, AT&T and Charter Communications, would each pay over $1 billion. The additional three firms in the top six were identified as Amazon, Intel, and Verizon.

These studies based on financial data are to be considered with some reservations. First, financial data do not report actual taxes paid. Second, there are other adjustments, both in the CAMT statutes and that may be allowed in regulations, which may affect the payment of the tax. For example, the legislation includes dividends of firms not in the consolidated group in adjusted financial statement income, but the Secretary of the Treasury has authority to adjust these dividends. Thus, a firm such as Berkshire Hathaway, which holds minority interests in large corporations, might have its dividends reduced in its adjusted financial statement income to reflect the intercorporate dividend deductions allowed in the regular corporate tax law, which are aimed at limiting multiple levels of corporate tax.

Comparison to Other Minimum Taxes[18]

Several tax structures have been referred to as "minimum taxes," in the past, in the present, and proposed for the future. A prior corporate alternative minimum tax was in place from 1987 through 2017. This tax was broadly applicable and was based on taxable income with preferences added back, and, for a brief period, one component (the ACE, or adjusted current earnings) was the difference between financial and taxable income. The individual income tax still contains a similar minimum tax that is targeted at high-income individuals and applies to income from pass-through businesses, such as proprietorships and partnerships.

Other current minimum taxes or alternative taxes include the tax on global intangible low-taxed income (GILTI) and the base erosion and anti-abuse tax (BEAT). Finally, an international minimum tax, the global base erosion (GLoBE) tax, is currently under consideration after being agreed to by 130 countries. This section explains these different taxes and to what extent they, along with the new CAMT, help to fulfill a minimum tax goal.[19]

---

[16] Jeffrey L. Hoopes and Christian Kindt, *Estimating the Minimum Tax on Book Income Liability Using Public Data*, University of North Carolina Tax Center, Working Paper, September 21, 2022, at https://tax.unc.edu/wp-content/uploads/2022/09/CAMT-estimate.pdf.

[17] Martin A. Sullivan, "Tax Credits and Depreciation Relief Slash Burden of New Corporate AMT," *Tax Notes*, August 22, 2022, pp. 1185-1191.

[18] These other minimum taxes are discussed in more detail in CRS Report R46887, *Minimum Taxes on Business Income: Background and Policy Options*, by Molly F. Sherlock and Jane G. Gravelle.

[19] For a discussion of the tax treatment of foreign source income, including the global intangible low-taxed income (GILTI) and the base erosion and anti-abuse tax (BEAT), see CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples; and CRS Report R47003,

GILTI is often referred to as a minimum tax, although under a worldwide tax system with full taxation of foreign-source income (with a foreign tax credit), GILTI deductions may be viewed as tax subsidies.[20] The GILTI tax, even if considered a minimum tax, is different from the prior CAMT because it is *added* to regular income tax liability. There is no difficulty in integrating GILTI with a typical minimum, tax because it is part of the regular tax system.

BEAT is aimed at profit shifting based on payments to foreign related entities, such as interest and royalties. These payments are called base erosion payments (although they generally exclude payments for goods and services) and are added back to taxable income to create a larger base. BEAT is calculated in a way that allows limited tax credits through 2025: the research credit and 80% of the sum of three credits (i.e., the low-income housing credit, the renewable electricity production credit in Section 45(a) of the Internal Revenue Code, and investment credits for renewable energy).[21] Other credits, including the foreign tax credit, are not allowed. If 10% of the BEAT taxable income minus credits exceeds regular tax liability, an additional amount is due. The new CAMT applies only if larger than the regular tax plus any additional tax due to BEAT.

GLoBE is a proposed minimum tax that would apply a tax rate of at least 15% in each country based on financial income. It is Pillar 2 of the Organisation for Economic Co-operation and Development (OECD) and G-20 proposal for addressing global tax avoidance. (Pillar 1 relates to the taxation of digital services.) Under GLoBE, the existing effective tax rate is measured based on deferred taxes in the financial statement after allowing deductions ("carve-outs") for a percentage of tangible assets and payroll. Three mechanisms are allowed to "top-up" any existing tax that falls below 15%. First, the country itself can impose a domestic top-up tax (a qualified domestic minimum top-up tax, or QDMTT). Second, the foreign parent of a subsidiary could apply an additional tax (income inclusion rule, IIR), just as GILTI applies an additional tax that is paid by the parent. If the tax is still not at the 15% rate, related firms of the corporation in other countries can disallow payments or take other measures to increase taxes (undertaxed payments rule, UTPR). These last rights would be allocated among countries with a UTPR based on their share of assets and employees in the combined firm.[22]

Table 1 compares the CAMT provisions with GILTI, BEAT, and GLoBE. An important difference between GLoBE and the existing U.S. taxes is that GLoBE is to be applied separately to each country and is specifically aimed at addressing tax havens. In that sense, GILTI's objective is closer to GLoBE, as it applies to foreign source income; nevertheless, GILTI applies on an overall basis so that some countries can have lower taxes, and U.S. tax on income in these countries is offset by foreign tax credits from high-tax countries. A proposal was included in an earlier version of H.R. 5376, known at the time as the Build Back Better Act, to impose GILTI on a per country basis (and at a higher rate) to make it acceptable as a substitute for GLoBE, but that proposal was not included in the version of H.R. 5376 enacted into law as the Inflation Reduction Act of 2022 (P.L. 117-169). BEAT and the CAMT apply to the entire worldwide income, although BEAT allows deductions for GILTI and some other tax provisions because it begins

Corporate Income Taxation in a Global Economy, by Jane G. Gravelle, Mark P. Keightley, and Donald J. Marples. For a discussion of the global base erosion (GLoBE) tax, see CRS Report R47174, *The Pillar 2 Global Minimum Tax: Implications for U.S. Tax Policy*, by Jane G. Gravelle and Mark P. Keightley.

[20] The JCT lists the lower tax rates imposed by GILTI as a tax expenditure or a departure from a normal tax system. See JCT, *Estimates Of Federal Tax Expenditures For Fiscal Years 2020-2024*, JCX-23-20, November 5, 2020, at https://www.jct.gov/publications/2020/jcx-23-20/.

[21] Under the Inflation Reduction Act of 2022 (P.L. 117-169), the energy credits will sunset after 2024 and be superseded by other credits.

[22] For further explanation, see CRS Report R47174, *The Pillar 2 Global Minimum Tax: Implications for U.S. Tax Policy*, by Jane G. Gravelle and Mark P. Keightley.

from taxable income, and the CAMT begins from financial statement income and makes adjustments.

Table 1. Comparison of Basic Features of the CAMT, GILTI, BEAT, and GLoBE

	CAMT	GILTI	BEAT	GLoBE
Tax Rate	15%	10.5% (13.125% after 2025) with some tax applying to income earned in countries with tax rates of 13.125% or less (16.4% after 2025) if the foreign tax credit limit applies	10% (12.5% after 2025)	15%
Coverage	U.S. firms with over $1 billion or more of average profit over three prior years; applies to foreign-parented U.S. firms with over $100 million of profits	U.S. Controlled Foreign Corporations	Firms with $500 million or more average gross receipts over the past three years and with outbound payments over 3% of deductions	Firms with revenues exceeding €750 million ($773 million on November 21, 2022)
Tax Application	Worldwide Income	Overall foreign source income	Worldwide Income	Income in each country
Tax Base	Adjusted Financial Income	Taxable Income	Taxable Income	Financial Income
Substance Carve-Out (deduction)	None	10% of tangible assets	None	5% of tangible assets, 5% of payroll costs after a 10-year phase-down (rates start at 8% of tangible assets and 10% of payroll)
Avoiding Double Taxation	Foreign tax credit allowed, based on financial statement taxes	Foreign tax credit allowed but limited to 80% of foreign taxes	No foreign tax credit	Add-on or top-up tax, applied based on priority
Losses	Losses carried forward to offset 80% of adjusted financial statement income	No loss carryforward	Losses effectively carried forward but reduced by the ratio of base erosion payments to deductions	15% of losses carried forward as future credits
Other features	General business credits allowed, credit for additional minimum tax carried forward to address timing differences		Some general business credits allowed through 2025, credit for additional minimum tax carried forward	Credits for deferred income and deductions to address timing differences between tax and financial income
Excluded Industries	None	International shipping income and foreign oil and gas extraction income	None	International shipping income

Source: Congressional Research Service.

Notes: CAMT = corporate alternative minimum tax; GILTI = global intangible low-taxed income; BEAT = base erosion and anti-abuse tax; and GLoBE = global base erosion.

How the new CAMT (or GILTI, for that matter) would be treated if other countries were to adopt GLoBE is uncertain. GLoBE is calculated on a per country basis, but GILTI is based on aggregate foreign source income (including cross crediting of foreign taxes), and the CAMT is even more aggregated than GILTI since it applies on a worldwide basis. If GLoBE were adopted, other countries could tax income of U.S. corporations under the UTPR (both domestic operations and operations of foreign subsidiaries) so that how much tax is allocated to each would be central to determining whether a top-up tax by a foreign country could be applied. One commentator indicated the belief that the CAMT would not be considered a qualified IIR, and, in general, there is uncertainty about how the minimum tax would be considered under the GLoBE rules.[23] Another commentator, however, indicated that since the CAMT tax is applied to worldwide income, including controlled foreign corporations, it should take precedence over the QDMTT and UTPR.[24]

Effects on Economic Incentives, Profit Shifting, and Distribution

For firms that permanently are subject to the minimum tax, incentives to invest would depend on whether the investments are domestic or foreign, the type of investment, and the extent to which debt finance is used.

Investment in Plant and Equipment

For domestic investments in equipment and structures, the effective tax rates on marginal investment will be lower due to the lower tax rate and because tax and book depreciation are conformed.[25] This benefit will increase as bonus depreciation is phased out. This effect will be reduced to the extent that debt finance is used because the lower tax rate reduces the subsidy to debt from deducting nominal interest. The effects will be relatively small. For a fully financed equity investment in equipment, the effective tax rate will fall from 13.7% to 9.5%, a difference of four percentage points.[26] (The rate would be the same for both, 0%, if bonus depreciation is retained.) This effect will narrow with debt finance where lower tax rates reduce the subsidy for debt-financed investments. For nonresidential structures, which are taxed at rates close to the statutory rate, the difference will be larger, a fall from 18.5% to 13.1% on average and close to the statutory rate difference (six percentage points) for commercial and industrial buildings. Again, this differential will be narrowed if debt finance is used (to less than four percentage points for 36% debt financing). Given the small number of firms affected and the small differences, the increased investment incentives will be slight.

[23] Andre Velarde, "Treasury Strongly Hints at Corporate AMT CFC Double-Counting Relief," *Tax Notes Today Federal*, October 21, 2022.

[24] Reuven Avi-Yonah, "Is the United States Already Compliant With Pillar 2?" *Tax Notes Today Federal*, November 15, 2022.

[25] The *marginal effective tax rate* measures the share of returns for a new investment at the margin that breaks even and takes into account the timing of taxes and deductions.

[26] For computation of effective tax rates by broad asset category, see Tables 1-3 in CRS Report R45186, *Issues in International Corporate Taxation: The 2017 Revision (P.L. 115-97)*, by Jane G. Gravelle and Donald J. Marples.

Effective tax rates on foreign investment in plant and equipment will be increased in some cases (in low-tax countries) as firms include their share of earnings in CFCs in the minimum tax base without a deduction for a deemed return on tangible assets and tax this income at a higher rate than the current GILTI rate (10.5%). The rate differential will narrow after 2025 when higher GILTI rates apply, but the rate will still be lower than 15% (13.125%) and the deemed deduction for tangible assets will be retained so that more income will be subject to the CAMT than the regular tax.

In general, the incentives are to favor domestic over foreign investment.

Investment in Intangibles

The expensing of research and development (R&D) has changed to five-year amortization as of 2022, although Congress may consider reversing this change. Under GAAP rules, R&D is expensed. If expensing were retained, the marginal effective tax rate for an equity-financed investment, taking into account the research credit, would be -60.3%. With amortization, the effective tax rate in the absence of the minimum tax would be -30.2%. (Although these negative tax rates look large, they are not to be viewed in the same way as large positive tax rates, as they have a small effect on the required pretax return that drives marginal investment; this difference will change the required return by about one percentage point.)[27] Debt financing will reduce the benefit of the 15% tax rate and result in a small differential that will generally have small effects.

Other intangibles, including advertising but largely investment in human capital, are expensed and subject to a zero tax rate regardless of the tax rate. With debt finance, these investments are subject to negative tax rates because of the subsidy for debt so that the benefit for these investments will decline with a lower statutory tax rate.

International Profit Shifting

Firms have an incentive to shift profits into low-tax jurisdictions, and these concerns mostly are directed at the location of rights to intangible assets in low-tax countries. This location of rights often includes using a buy-in payment for the rights to an intangible and cost sharing of research that continues the rights to updated technology, new drugs, and other items. GILTI was designed to tax these profits in part (up to a 10.5% rate, which rises to 13.125% after 2025). There is also a deduction for foreign derived intangible income (FDII), similar to the GILTI deduction for income earned from abroad, on intangible investments located in the United States. FDII was roughly designed to impose the same tax rate on intangible income from foreign sources if assets were held in the United States rather than abroad. However, because the foreign tax credit is allowed on an overall basis for foreign source income, taxes on GILTI may be offset by unused foreign tax credits from other countries with higher taxes. On the whole, firms paying the CAMT are likely to have more taxes imposed on foreign source income of this nature than on domestic income, which would reduce the benefits to profit shifting.

Distributional Effects

Extensive economics literature addresses the extent to which the corporate tax falls on capital income or is shifted to labor income. There is general agreement that the corporate tax falls on

[27] If the required after tax return is 7%, a 60% positive tax rate would increase the required return by 10.5 percentage points (0.07/(1-0.6) -0.07), and a negative tax rate would reduce the return by 2.6 percentage points (0.07 -0.07/(1+0.6).

shareholders in the short run but that it eventually spreads to other capital income and potentially to labor income. The JCT assigns 25% of the corporate tax to labor income in the long term, which is reached over 10 years.[28] The more corporate tax falls on labor, the less progressive the tax is, since lower-income families have a larger share of their income in labor income than higher-income families.

The major route through which a corporate tax can be shifted to labor is through flows of capital out of the United States to the rest of the world. A review of the empirical evidence indicates that direct statistical estimates that show a share falling on labor are often conflicting and flawed. More formalized models that take into account structural constraints and evidence on the general substitutability of investment and products in the international economy indicate a small share, if any, falls on wages.[29] A considerable uncertainty is that the models of corporate tax that suggest a share of the tax falls on labor income do not take into account the effects of debt finance, which is favored by a higher corporate tax rate. If debt is more substitutable internationally than equity, this effect could eliminate or reverse effects on labor estimated from international models.

Even if part of the ordinary corporate tax falls on labor, it is unlikely that these effects would apply to the CAMT. Although the CAMT raises revenue, as discussed above, the minimum tax has a lower rate and would have the opposite effects from a normal corporate tax, with benefits, if any, for labor income.

Regulatory Issues and Implementation

The Secretary of the Treasury appears to have broad authority in many areas to determine any further adjustments to financial statement income. For example, in Section 56A(c)(15) of the Internal Revenue Code, the Secretary has specific authority to adjust for duplication or omission and for corporate liquidations, reorganizations and partnership contributions and distributions, as well as has general authority to prescribe regulations. The provision relating to duplication or omission was contained in the previous book adjustment (ACE; adjusted corporate earnings) to the prior corporation alternative minimum tax and could be used to address attempts to reduce adjusted financial statement income for tax purposes by transactions or structuring affairs to reduce income, increase losses, or shift items between years or entities. Additional issues of concern have been raised and are discussed below.[30]

Tax Treatment of Intercorporate Dividends and Other Items from Nonconsolidated Firms

The statute defining adjusted financial statement income does not specifically allow for the same deductions for intercorporate dividends as are allowed in the tax law, but the Secretary of the

[28] JCT, *Modeling the Distribution of Taxes on Business Income*, JCX-14-13, October 16, 2013, at https://www.jct.gov/publications/2013/jcx-14-13/. The JCT's distributional study of the tax changes in the Inflation Reduction Act of 2022 (which reflects other provisions of the legislation outside of the CAMT) is at https://www.jct.gov/publications/2022/jcx-19-22r/. The Penn Wharton Budget model provided a distributional analysis of the CAMT plus the excise tax on stock buybacks, assigning 25% of the CAMT to labor and the excise tax to shareholders. Neither of these studies considered the incentive effects that would tend to shift capital investment to the United States and may assign a disproportionate burden to lower and middle incomes.

[29] For a review of both types of evidence, see CRS Report RL34229, *Corporate Tax Reform: Issues for Congress*, by Jane G. Gravelle.

[30] This section gathers concerns from a number of articles and many issues appear in multiple articles. See the **Appendix** for a list of articles consulted regarding regulatory issues and implementation.

Treasury has the authority to reduce the amount of dividends. In addition, some income from nonconsolidated firms is included in book but not tax income; commentators have suggested that regulations or additional guidance may be needed to clarify these issues.

Private Equity Firms Operated as Partnerships

The CAMT as enacted excluded earlier language from when it was under consideration that may have been aimed at clarifying that portfolio companies are part of the consolidated group for private equity partnerships. The JCT revenue estimates appear to reflect that portfolio companies are not included. Nevertheless, regulatory uncertainties remain about the scope of the provision. Corporate holding companies may own many firms, but they normally file a consolidated return and would be subject to the CAMT if they met the $1 billion income test. Partnerships do not file consolidated returns, and the regulations and treatment of partnerships under the CAMT appear uncertain.

At least one commentator argues that Treasury should, based on the law, treat these partnerships as businesses that would subject them and their portfolio companies to the minimum tax.[31] Another expressed the view that this issue will likely be the subject of regulations and court decisions,[32] and a Treasury official has indicated that regulations will address this issue.[33]

Corporate Reorganizations: Divisions and Mergers

One issue that has arisen is whether income would be recognized under the CAMT for tax-exempt corporate reorganizations. A divisive reorganization divides a corporation into different companies. Under financial accounting rules, income is not recognized when a firm distributes shares in the new company in exchange for shares of the parent company to shareholders on a pro rata basis (a spin-off); whereas if shares are exchanged on a non-pro rata basis (a split-off), income is recognized. For tax purposes, neither of these divisions involving swaps of shares results in tax for the firm under the tax-free reorganization rules. Acquisitions treated as taxable asset purchases in the tax code could also create differences in tax treatment. Although both financial accounting and the tax code treat these acquisitions as purchases, any part of the acquisition that is goodwill is deducted over time under the tax code but not for financial purposes. Another type of reorganization that could be affected by the minimum tax is the debt for equity exchange, where lenders cancel debt in exchange for an equity interest.

Not all types of reorganizations would reduce financial statement income. For example, in some cases, firms receive a stepped-up basis for financial statement purposes but not for tax purposes, which would increase depreciation or reduce gain. Another issue is whether financial statement net operating losses would remain with the parent or with the new firm under a separation. Finally, a merger could cause two or more firms not subject to the minimum tax to become subject to the tax, while a division could cause one or more of the firms to no longer meet the minimum requirements. Some have urged this latter issue be addressed by regulation (see next subsection).

---

[31] See Steven M. Rosenthal, "Private Equity Is a Business Subject To the New Book Minimum Tax. Treasury Should Say So," Tax Policy Center, September 16, 2022, at https://www.taxpolicycenter.org/taxvox/private-equity-business-subject-new-book-minimum-tax-treasury-should-say-so.

[32] See Kristin A. Parillo, "Partnership Rules Likely at Root of Corporate Minimum Tax Fight," *Tax Notes Today Federal,* August 11, 2022 (quoting Monte Jackel).

[33] Kristin A. Parillo, "Corporate AMT Guidance Will Clarify Aggregation Rules," *Tax Notes Today Federal,* October 17, 2022.

Corporations Subject to Minimum Tax with a Change in Ownership or Profitability

Questions have arisen about the circumstances under which firms may no longer be subject to the CAMT because of a change in ownership or profitability. The minimum tax applies to firms that meet the income size requirements. Once a firm becomes subject to the tax, it is always subject to the tax unless the Secretary of the Treasury deems it no longer covered. This elimination could occur due to a change in ownership or reduced income over a period of years. On the one hand, it may not be considered desirable for a firm to move in and out of the minimum tax regime. On the other hand, a permanent reduction in profitability may suggest such firms be removed from coverage. The circumstances that would lead to a reclassification remain subject to regulation. The question has also been raised about whether a spun-off subsidiary from a group subject to the minimum tax would remain liable for the tax or if a subsidiary sold by a group subject to the minimum tax would carry a taint that would require the buyer to be subject to the tax.

With a change of ownership, a merger between companies could create a larger company, and a divisive reorganization could create a smaller company. A prior or future reorganization could create an unusually large financial statement income in the three-year period, making a firm that would not ordinarily be subject to the minimum tax now with a large enough income to qualify.

Arguments have been made that a specific set of rules determining under what circumstances a change in ownership or profitability would remove a corporation from being subject to the minimum tax should be provided rather than addressing this issue on a case-by-case approach. At the same time, firms could use divisive reorganizations to avoid the minimum tax, especially if these are treated as nonrecognition events for purposes of financial statement income.

Financial Statement Income: Using Different Methods for Consolidated Accounts

The CAMT provision has a list of applicable financial statements that are prioritized, beginning with statements consistent with GAAP, statements prepared in accordance with international financial reporting standards (IFRS), and other financial statements prepared for regulatory agencies. When members of a consolidated group use different methods, the combination could create distortions, creating a potential issue of how to determine an overall statement. The American Institute of Certified Public Accountants (AICPA) suggests that the statement type used by most of the members be used and the priorities applied as a whole rather than applying the priorities separately to each group member.[34]

[34] Letter from the American Institute of Certified Public Accountants (AICPA) to the Hon. Lily Batchelder, Assistant Secretary for Tax Policy for Treasury, William Paul, Principal Deputy Chief Counsel for IRS, and Brett York, Deputy Tax Legislative Counsel for Treasury, October 14, 2022, at https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/aicpa-comment-letter-corporate-alternative-minimum-tax-10-14-22-submit.pdf (hereinafter AICPA letter, October 14, 2022).

Financial Statement Income: Other Comprehensive Income and Other Special Items

Financial statement income often reports income from discontinued operations, income from unusual events, and other comprehensive income (OCI);[35] transfer pricing adjustments and elimination entries; or income or loss of entities not wholly owned. Some argue that clarification is needed as to whether these items are to be included in financial statement income. The AICPA generally recommends treatment consistent with taxable income and notes a colloquy between Senator Ben Cardin and Senate Finance Committee Chairman Ron Wyden that OCI income would be excluded.[36]

Financial Statement Income: Recognition of Income

Section 451 of the Internal Revenue Code provides that income for accrual method taxpayers is recognized for tax purposes at the earliest of when income is earned, payment is due, payment is provided, or income is recognized for financial statement purposes. A special provision allows taxpayers to defer the recognition of advance payments (payments received before the goods or services are provided) if the taxpayer's financial accounting statement defers recognition, but only for one year. These rules can result in book-tax differences that can cause financial statement income to differ from taxable income, and it would appear that this issue might be addressed under the broad regulatory authority.

Pass-Through Issues

There are questions about the CAMT treatment of partnerships or Subchapter (S) corporations where a corporation is a partner or shareholder. S corporations are excluded from the CAMT. However, when a regular (C) corporation holds shares in an S corporation, a question arises as to whether such a C and S corporation can be aggregated (under rules where employees are treated as under a common employer) for purposes of determining whether the C corporation would be subject to the minimum tax.

Similar issues arise in the case of a C corporation with a partnership interest and to what extent partnership income would be included in the financial statement for determining if the C corporation is subject to the minimum tax.

Another partnership issue that has arisen is the need to report adjusted financial statement income by partnerships to partners (which is not normally done), since a small portion of corporations would be subject to the minimum tax. Options include requiring the corporation to request the financial statement income and simplifying methods of reporting.

Arguments also have been made for the need to clarify distributive share for purposes of the adjusted financial statement income. Partnerships have a great deal of flexibility to assign income, but there are restrictions on the treatment of gain from contributions of appreciated property for tax purposes to prevent the shifting of gain and loss to reduce the tax on the

[35] *Other comprehensive income* is the difference between net income and comprehensive income and may reflect income, gain, or loss yet to be realized, such as bonds and foreign currency transactions.

[36] Senate debate, *Congressional Record*, vol. 168, no. 133 (August 6, 2022), p. S4166, at https://www.congress.gov/117/crec/2022/08/06/168/133/CREC-2022-08-06-senate.pdf.

partners.[37] Some argue clarification is needed on whether these adjustments should be made for adjusted financial statement income.

Some transactions giving rise to book income do not create a similar recognition of taxable income. Commentators have argued that regulations need to clarify this issue, and the AICPA recommends aligning book treatment with taxable income treatment.[38]

Depreciation

For purposes of the CAMT, tax depreciation deductions rather than regular book depreciation deductions are allowed to be taken. Several issues arise with conforming book depreciation to tax depreciation.

The AICPA indicates that regulations should clarify that depreciation included in cost of goods sold (which is a reduction in income rather than a deduction) would be eligible for this treatment.[39]

For intercompany sales, the tax code applies a tax to the seller on the gain and allows depreciation on the new stepped-up basis (the fair market value). These transactions are not recognized for book purposes. Therefore, regulations might be needed to provide that the additional depreciation from the step-up should not be allowed for adjusted financial statement purposes.

In prior years, companies used bonus depreciation (which allowed costs of equipment to be deducted immediately) for tax purposes. For book purposes, these assets continue to be depreciated. Therefore, adopting book depreciation will cause a loss of depreciation for financial assets, causing financial income to be larger than taxable income. Beginning in 2023, bonus depreciation will be phased out over five years, meaning that depreciation for tax purposes (and book purposes) will decrease over time, but the loss of depreciation deductions on prior assets will make book depreciation smaller and financial statement income larger, increasing any minimum tax that applies. Therefore, a case could be made for a transition rule so that the tax depreciation rules do not apply to assets acquired in prior years that were subject to bonus depreciation. (Note that the same issue would apply, in a more limited fashion, if bonus depreciation were not taken but ordinary accelerated depreciation were taken.)

Several other issues have been raised about depreciation. Computer software and film, television, and theatrical productions are eligible for bonus depreciation but under a different section of the tax code than the code section referred to in the CAMT provisions. Regulations appear needed to clarify if they are eligible for depreciation conformity. The AICPA also suggests regulations to deal with foreign-parented multinationals in cases where U.S. depreciation is not allowed.[40] In addition, one commentator raised questions about the treatment of repairs and maintenance and depreciation recapture.

[37] For a discussion of the rules regarding contributions of property, see James M. Greenwell, "Partnership Capital Account Revaluations: An In-Depth Look at Sec. 704(c) Allocations," *The Tax Advisor*, February 1, 2014, at https://www.thetaxadviser.com/issues/2014/feb/greenwell-feb2014.html.

[38] AICPA letter, October 14, 2022.

[39] AICPA letter, October 14, 2022.

[40] AICPA letter, October 14, 2022.

Net Operating Loss Carrybacks of Property and Casualty Companies

Property and casualty insurance companies can carry back net operating losses for two years, which reduces taxable income compared to financial statement income in some years and increases it in others. Some commentators have raised this issue, although there is a question as to whether it could be addressed in regulation since the statutory language does not specifically allow a carryback.

Life Insurance Companies

Some issues relate specifically to life insurance companies. These include embedded derivatives that are argued to be in the nature of other comprehensive income and separate account investments that are netted out in financial statements but not under the rules for the CAMT.

Other issues raised by life insurance companies include dealing with current restrictions on consolidating life and non-life companies (which primarily involves a waiting period), treatment of capital losses, and treatment of revisions to prior financial statements (especially for life insurance companies that are subject to retrospective revisions under a new GAAP rule).[41]

Treatment of Capital Gains, Including Like-Kind Exchanges

Capital gains are treated differently for book purposes than for tax purposes. Some companies are required to (or elect to) include unrealized gains on assets under GAAP accounting. Gains on some transactions are deferred for tax but not for book purposes. One example is like-kind exchanges, which applies to exchanges of real property. Guidance appears needed to determine whether gains are reduced on adjusted financial statement income if not realized for tax purposes. Like-kind exclusions are treated as tax expenditures by the JCT but exclusion of unrealized gains is not, raising the question of whether there could be different treatment of different types of capital gains differentials.

Another issue is whether tax or financial statement basis be used for determining gains and losses. Capital losses can be carried back for three years under the tax code, and there is no statutory provision that expressly addresses this differential.

Transition Issues

While minimum tax credits can deal with timing issues on an ongoing basis, there are issues about timing differences that arise from deductions taken for financial statement income in years prior to the imposition of the CAMT. The issue of bonus depreciation has already been discussed. However, transition issues arise in other contexts; for example, where losses have already been recognized for financial income purposes but not for tax purposes. There is also some uncertainty about whether foreign taxes incurred prior to the CAMT can be carried over to offset the CAMT under the five-year carryover rule.

[41] See "ACLI Alerts IRS to Corporate AMT Issues Affecting Insurers," *Tax Notes Today Federal*, September 27, 2022, for a more detailed discussion.

International Issues

The tax law does not contain a definition of *common parent* for purposes of imposing the tax on foreign-parented U.S. corporations. A definition was in a previous section of the proposed Build Back Better Act, but that section was not adopted in the Inflation Reduction Act.

The tax legislation requires that corporations include a pro rata share of income earned by controlled foreign corporations. It also requires that income include dividends from nonconsolidated subsidiaries. It is possible that income could be taxed twice, once as a pro rata share and again as a dividend. In addition, income that was included in years before the enactment of the CAMT and subsequently paid out after the effective date would be included in the CAMT base without adjustments. Similarly, dividends paid out of earnings previously included for corporations previously not under the threshold but that now become subject to the tax could be included in income. Another potential for double counting occurs when a CFC is sold and dividends from income previously included by the selling corporation are paid to the purchasing corporation. A similar effect could occur if a subsidiary is spun off and a dividend paid to the new spun-off corporation out of income previously included in the parent company income. The IRS has indicated that this problem could be addressed under regulatory authority.

The AICPA recommends clarification in certain other areas.[42] For example, the AICPA requests clarification that dividends reported on financial statement income are based on financial statement rules, not tax rules. They indicate that this issue is important for firms that elect to treat a sale, exchange, or distribution of stock as a sale of the underlying assets under Section 336 of the tax code or with fresh start accounting after a reorganization (where companies begin anew with assets valued at fair market value).[43] Other areas where AICPA recommends clarification are the treatment of the following: foreign tax credits when the foreign corporation has a different year from the parent corporation, foreign tax credits associated with foreign partnerships, and income where the primary right to taxation by the United States has been relinquished by treaty.

[42] AICPA letter, October 14, 2022.

[43] Fresh start accounting applies to companies after reorganizations involving bankruptcy if these companies meet certain conditions.

Appendix. References to Articles on Regulatory and Implementation Issues

The following articles were consulted on regulatory concerns:

"ACLI Alerts IRS to Corporate AMT Issues Affecting Insurers," *Tax Notes Today Federal*, September 27, 2022.

Corporate Alternative Minimum Tax Immediate Guidance Needed, Letter from the American Institute of Certified Public Accountants (AICPA), October 14, 2022, https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/aicpa-comment-letter-corporate-alternative-minimum-tax-10-14-22-submit.pdf.

Cummings, Jasper J. Jr., "The 2022 Corporate AMT," *Tax Notes*, September 26 2022, pp. 2005-2025.

"Firm Urgently Seeks Guidance on Application of Corporate AMT," *Tax Notes Today Federal*, August 8, 2022.

"Firm Asks Again for Guidance on Application of Corporate AMT," *Tax Notes Today Federal*, September 15, 2022.

KPGM, Analysis and Observations: Tax Law Changes in the "Inflation Reduction Act," August 16, 2022, https://assets.kpmg/content/dam/kpmg/us/pdf/2022/08/tnf-kpmg-report-tax-law-changes-inflation-reduction-act-aug16-2022.pdf.

Parillo, Kristin, "Partnership Rules Likely at Root of Corporate Minimum Tax Fight," *Tax Notes Today Federal,* August 11, 2022.

——. "Corporate AMT Guidance Will Clarify Aggregation Rules," *Tax Notes Today Federal*, October 17, 2022.

Richman, Nathan J. "Questions About the New Corporate AMT Pile Up," *Tax Notes Today Federal*, September 12, 2022.

——. "IRS Corporate AMT Working Group Up and Running," *Tax Notes Today Federal*, October 17, 2022.

——. "IRS Keeping Its Options Open on Corporate AMT Guidance," *Tax Notes Today Federal*, October 18, 2022.

Rosenthal, Steven M., "Private Equity Is a Business Subject To the New Book Minimum Tax: Treasury Should Say So," Tax Policy Center, September 16, 2022, https://www.taxpolicycenter.org/taxvox/private-equity-business-subject-new-book-minimum-tax-treasury-should-say-so.

Schwartz, Jodi J. et al., "Wachtell Lipton Discusses M&A and the Book Minimum Tax," The CLS Blue Sky Blog, September 1, 2022, https://clsbluesky.law.columbia.edu/2022/09/01/wachtell-lipton-discusses-ma-and-the-book-minimum-tax/.

Tax Law Center NYU, "Recommendations for Guidance on the Corporate Alternative Minimum Tax," September 28, 2022, https://www.law.nyu.edu/sites/default/files/Tax%20Law%20Center%20Comment%20Letter%20on%20CMT%20Implementation.pdf.

"TEI Focuses on Tax, Financial Accounting Issues in Corporate AMT," *Tax Notes Today Federal*, November 10, 2022.

"Trade Groups Request Guidance on Book Minimum Tax," *Tax Notes Today Federal*, October 1, 2022.

Velarde, Andrew, "IRS Notes Concerns About CFC Double Counting Under Corporate AMT," *Tax Notes Today Federal*, October 17, 2022.

——. "Treasury Strongly Hints at Corporate AMT CFC Double-Counting Relief," *Tax Notes Today Federal*, October 21, 2022.

Wallace, Chandra, "EY Seeks Fast Relief Exempting Split-Offs From Corporate AMT," *Tax Notes Today Federal*, August 19, 2022.

——. "IRS Focuses on 'Day 1 Issues' With Corporate AMT, Buyback Tax," *Tax Notes Today Federal*, October 26, 2022.

——. "Tax Advisers Push for Guidance on Corporate AMT in Any Form," *Tax Notes Today Federal*, October 27, 2022.

Author Information

Jane G. Gravelle
Senior Specialist in Economic Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.