

## Treasury Doubles Down on CAMT FTC Restrictions

By Brian Jenn

Since the passage of the reconciliation bill known as the “One Big Beautiful Bill Act” (OBBBA), many corporate taxpayers are discovering that they need to more closely familiarize themselves with the details of the corporate alternative minimum tax (CAMT). In particular, the reintroduction of the current deduction for research and development (R&D) expensing through Code Sec. 174A (including accelerated deduction of previously capitalized R&D expenses), together with changes to eliminate interest and R&D expense allocation to gross foreign-derived deduction-eligible income (FDDEI) and the reduction of gross FDDEI by qualified business asset investment (QBAI), have resulted in a reduction in regular tax liability that potentially brings the CAMT into play.

An important factor in determining CAMT liability is the CAMT foreign tax credit (FTC) described in Code Sec. 59(l), which on its face offers a more generous FTC regime than is available for regular tax purposes. At a high level, the CAMT FTC is available for income taxes within the meaning of Code Sec. 901 without the application of the normal basketing rules under Code Sec. 904. Foreign income taxes paid by a controlled foreign corporation (CFC) may be claimed as CAMT FTCs subject only to the limitation that the amount of CAMT FTCs utilized in a given year may not exceed 15% of the applicable financial statement income (AFSI)<sup>1</sup> taken into account by the U.S. shareholder with respect to its CFCs,<sup>2</sup> with a five-year carryforward permitted for unutilized CAMT FTCs attributable to such CFCs.<sup>3</sup> For CAMT FTCs related to foreign income taxes directly paid by the applicable domestic corporation, there is no limitation on the amount of CAMT FTCs that may be utilized against pre-FTC CAMT liability for the taxable year.

Since the enactment of the CAMT, the Treasury Department (“Treasury”) and the Internal Revenue Service (IRS) have issued numerous notices regarding the application of the CAMT, as well as proposed regulations. The proposed CAMT regulations (the “Proposed Regulations”), issued on November 13, 2024, near the end of the Biden Administration, encapsulated the guidance in prior notices, including rules regarding the determination of the CAMT FTC. Under the Proposed Regulations, many of the limitations on the creditability of foreign taxes under the regular tax—including the disallowance of FTCs under Code Sec. 901(m)—apply for purposes of the CAMT FTC, as well.



**BRIAN JENN** is a Partner in the Washington, DC office of McDermott Will & Schulte LLP.

On September 30, 2025, Treasury and the IRS issued Notice 2025-49, which generally provides that final regulations implementing the CAMT will only be effective for taxable years beginning after the publication of such final regulations in the Federal Register. Taxpayers are also permitted to rely on specific provisions of the prior notices or the Proposed Regulations, subject to certain consistency requirements. Thus, as a general matter, Notice 2025-49 represented welcome relief from proposed regulations that were burdensome in many ways. One aspect of Notice 2025-49 that was less welcome, however, relates to the CAMT FTC. In particular, the notice requires taxpayers who wish to rely on aspects of the proposed regulations related to foreign corporations, including CFCs, to also follow the Proposed Regulations that apply Code Sec. 901(m) and other restrictions in determining the taxpayer's CAMT FTC. This consistency requirement is surprising since, as discussed below, there is not clear statutory or policy basis for applying this restriction.

*Overall, there is much in Notice 2025-49 to be welcomed by taxpayers—in particular, the general ability to follow or not follow the Proposed Regulations pending the issuance of final regulations.*

## **CAMT FTC Under the Code Sec. 59(l) and the Proposed Regulations**

Under Code Sec. 59(l), if a domestic corporation elects to claim FTCs for regular tax purposes, then its CAMT FTC generally is the sum of (1) the domestic corporation's *pro rata* share of the "amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States which are"... "taken into account on the applicable financial statement of each CFC of which it is a United States shareholder" and "paid or accrued (for Federal income tax purposes) by each such CFC"; and (2) the amount of such taxes "taken into account on the domestic corporation's applicable financial statement" and "paid or accrued (for Federal income tax

purposes) by the domestic corporation."<sup>4</sup> As described above, the CAMT FTC for foreign taxes paid or accrued by CFCs is limited to 15% of the domestic corporation's *pro rata* share of the AFSI of the CFCs, with Code Sec. 59(l)(2) providing a five-year carryover of any excess foreign taxes paid or accrued by CFCs. As a grant of regulatory authority, Code Sec. 59(l)(3) merely provides that "the Secretary shall provide for such regulations of other guidance as is necessary to carry out the purposes" of Code Sec. 59(l).

Proposed Reg. §1.59-4 provides general rules for the computation of the CAMT FTC, starting from a definition of "eligible tax." Under Proposed Reg. §1.59-4(b)(1), an eligible tax means a foreign income tax, other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under Code Sec. 245A(d), 245A(e)(3), 901(e), 901(f), 901(i), 901(j), 901(k), 901(l), 901(m), 907, 908, 909, 965(g), 999, or 6038(c). For this purpose, the term "foreign income tax" has the meaning provided in Reg. §1.901-2, which, in addition to defining what it means for a foreign tax to constitute an income tax in the U.S. sense, also describes what it means for an amount paid to be considered a tax payment (*e.g.*, it is a compulsory payment).

## **The Questionable Disallowance of FTCs Under the Proposed Regulations**

In importing essentially every FTC restriction from the regular tax system into the CAMT FTC regime, the Proposed Regulations appear to ignore critical distinctions among the different regular tax provisions invoked, as well as potentially different policy considerations under the CAMT as compared to the regular tax. In particular, while certain of the listed regular tax provisions ("Definitional Rules") are actually defining what it means to be a foreign income tax for purposes of Code Sec. 901, other provisions ("Disallowance Rules") simply disallow a FTC for a foreign tax that does not meet the conditions of Code Sec. 901. For instance, Code Sec. 901(f) provides that the amount of any income, or profits, or excess profits taxes paid to any country in connection with the purchase and sale of oil or gas in such country is "not to be considered as tax" for purposes of Code Secs. 275 and 901 under certain conditions and so would be considered a Definitional Rule. Similarly, under Code Sec. 901(i), any "income, war profits, or excess profits tax shall not be treated as a tax for purposes of this title" to the extent the amount of such tax is used to provide

a subsidy. Other Definitional Rules include Code Secs. 901(e), 907, 908, 999, and 6038(c).

In contrast, several of the key FTC-limiting provisions in the Proposed Regulations are Disallowance Rules that do not call into question the status of the taxes as foreign income taxes for purposes of Code Sec. 901 but nonetheless disallow a regular FTC based on policy considerations. For instance, Code Sec. 901(m) provides that a portion of any foreign income tax determined with respect to relevant foreign assets resulting from a covered asset acquisition “shall not be taken into account in determining the credit allowed under [section 901(a)] or for purposes of Code Sec. 960. Similarly, Code Sec. 245A(d) provides that “no credit shall be allowed under section 901 for any tax paid or accrued ... with respect to any dividend for which a deduction is disallowed under this section.” Other disallowance rules include Code Secs. 901(j), 901(k), 901(l), and 965(g). (Note that Code Sec. 909 seems to occupy a middle ground between Definitional Rules and Disallowance Rules, providing that a foreign income tax paid or accrued “shall not be taken into account for purposes of this title before the taxable year in which the related income is taken into account under this chapter.”)

As described above, under Code Sec. 59(l), the CAMT FTC is determined based on “the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States.” That is, the only question under the statute is whether a foreign tax is an income, war profits, or excess profits tax within the meaning of Code Sec. 901, and it should not be relevant for CAMT purposes whether a foreign income tax under Code Sec. 901 is subject to a Disallowance Rule that disallows a credit for the Code Sec. 901 tax under certain circumstances. The grant of regulatory authority in Code Sec. 59(l)(3) refers to “regulations or other guidance as is necessary to carry out the purposes” of Code Sec. 59(l) with no suggestion that a CAMT FTC should be disallowed for any tax that qualifies as a Code Sec. 901 foreign income tax.

The preamble to the Proposed Regulations indicates that Treasury and the IRS are of the view that the policies underlying the disallowances and suspensions in the Proposed Regulations “apply equally in the context of the CAMT” but do not consider each of the disallowances and suspensions individually or distinguish between Definitional Rules and Disallowance Rules. The only substantive comment in the preamble is that Treasury and the IRS are of the view that taxes paid or accrued with respect to listed countries under Code Sec. 901(j) (including countries with which the United States has severed diplomatic relations) should not qualify for the CAMT FTC, but even that comment is offered without explanation, including explanation of how Treasury has the authority to deny a CAMT FTC for foreign taxes described in Code Sec. 901(j), which is a Disallowance Rule. The preamble also refers to reducing administrative burdens by replicating complicated regular tax rules for purposes of the CAMT FTC.

## The CAMT FTC Under Notice 2025-49

Overall, there is much in Notice 2025-49 to be welcomed by taxpayers—in particular, the general ability to follow or not follow the Proposed Regulations pending the issuance of final regulations. For that reason, it is puzzling that part of the consistency requirements for taxpayers that choose to apply Proposed Reg. §1.56A-6, which includes a key rule preventing double taxation as a result of CFC-to-CFC dividends,<sup>5</sup> are compelled under Notice 2025-49 to follow Proposed Reg. §1.59-4, which is not clearly well founded on the statute and lacks any well-articulated policy rationale.<sup>6</sup> Hopefully, the requirement to follow Proposed Reg. §1.59-4 merely reflects caution on the part of Treasury and the IRS, who moved quickly to develop and release Notice 2025-49 following the change in administrations and may have wished for more time to fully consider the implications of including Disallowance Provisions in Proposed Reg. §1.59-4.

### ENDNOTES

<sup>1</sup> Code Sec. 56A.

<sup>2</sup> Code Sec. 59(l)(1).

<sup>3</sup> Code Sec. 59(l)(2).

<sup>4</sup> Code Sec. 59(l)(1).

<sup>5</sup> Under Proposed Reg. §1.56A-6(d) a CAMT excluded dividend includes a dividend that is excluded from a CFC's gross income under Code Sec. 959(b). Without this rule, it is

possible that a CFC receiving a PTEP distribution from another CFC would have to include the dividend in its AFSI, notwithstanding that the income underlying the dividend may already have been included in AFSI.

<sup>6</sup> As an exception, Notice 2025-49 permits a taxpayer that relies on Proposed Reg. §1.59-4 to treat a tax that would otherwise not qualify as

an eligible tax solely due to the applicability of Code Sec. 245A(d) as an eligible tax for purposes of Proposed Reg. §1.59-4 if the tax is a foreign income tax paid or accrued by the taxpayer with respect to a dividend received (or treated as received for purposes of Code Sec. 245A) from a CFC in which the taxpayer is a U.S. shareholder.

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