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by Jessica Theilken, Monisha C. Santamaria, and Natalie Tucker

Jessica Theilken

Monisha C. Santamaria

Natalie Tucker

Jessica Theilken is a managing director in the Washington National Tax (WNT) methods group of KPMG LLP, Monisha C. Santamaria is a principal in the WNT passthroughs group, and Natalie Tucker is a partner in the WNT methods group. The authors thank Ron Dabrowski for his helpful comments.

In this article, the fourth in a series, the authors explain the effects of H.R. 7024 on the corporate alternative minimum tax and offer suggestions for companies preparing tax strategies under the possibility of the bill's enactment.

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This is the fourth article in the CAMTyland Adventures series,[1] which is intended to assist taxpayers in better understanding the requirements of the corporate alternative minimum tax (CAMT) — a minimum tax based on financial statement income imposed on applicable corporations.[2]

Our adventures in this article highlight how the potential enactment of three retroactive tax extenders — currently under consideration by Congress[3] — could affect a taxpayer's turn in CAMTyland for its 2023 tax year (a year that has ended, at least from a non-tax-compliance standpoint) and beyond.

Our adventures in this article also take note of the fact that on March 11 Treasury released the Green Book[4] containing explanations of the tax proposals in the Biden administration's fiscal 2025 budget. These proposals, as explained in the Green Book, would increase the regular corporate tax rate to 28 percent and increase the CAMT rate to 21 percent. While the legislation would be prospective if enacted (the Green Book's proposal to increase the CAMT rate is proposed to be effective for tax years beginning after December 31, 2023), a taxpayer's elections regarding the

[1] *See* Monisha C. Santamaria et al., "CAMTyland Adventures, Part I: How to Play the Game — Corporate Alternative Minimum Tax Basics," *Tax Notes Int'l*, July 24, 2023, p. 367; Santamaria et al., "CAMTyland Adventures, Part II: 'Right-Sizing' in the Licorice Lagoon," *Tax Notes Int'l*, July 31, 2023, p. 515; and Galin, Santamaria, and Tucker, "CAMTyland Adventures, Part III: 2023 Scope Bubble Corporations — Lost in Lollipop Woods," *Tax Notes Int'l*, Feb. 12, 2024, p. 821.

[2] The CAMT is effective for tax years beginning after December 31, 2022; *see* Inflation Reduction Act, section 10101(f).

[3] *See* H.R. 7024, "Tax Relief for American Families and Workers Act of 2024" (118th Cong., 2d Sess., as placed on the Senate Calendar, March 21, 2024).

[4] *See* KPMG, "Treasury Releases 'Green Book' Explanation of Tax Proposals in FY 2025 Budget," Tax News Flash, Mar. 11, 2024; and KPMG, "Analysis and Observations of Tax Proposals in Biden Administration's FY 2025 Budget" (Mar. 14, 2024).

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retroactive tax extenders could be even more impactful.

Will a Move-Backward Card Be Dealt?

On January 31 the House of Representatives passed the Tax Relief for American Families and Workers Act of 2024 (H.R. 7024), bipartisan legislation that would address scheduled changes in business taxation under the Tax Cuts and Jobs Act,[5] among other provisions. It remains uncertain whether H.R. 7024 will be passed by the Senate, where opposition has arisen and 60 votes are needed for passage. Any amendments, either in committee or on the floor, could complicate final passage and would, at a minimum, require re-passage by the House.

While waiting for Senate action (if any), this article discusses the interplay of H.R. 7024's proposed changes to the three tax extenders — section 163(j) (business interest expense limitation); section 168(k) (bonus depreciation); and section 174 (amortization of specified research and experimental expenditures (SRE expenditures)), with the CAMT and issues to consider if the bill becomes law.

Early consideration of these issues is important because if H.R. 7024 is enacted, taxpayers and tax advisors will need to quickly take into account the three tax extenders for 2023 tax returns and 2024 estimated tax payment calculations.[6] In addition, the interaction of the three tax extenders and the CAMT create novel issues for taxpayers and tax advisers in trying to traverse the CAMTyland game path. Further, because there are elections available for the three tax extenders, modeling may allow taxpayers to minimize their overall tax liability (the sum of regular tax liability, section 59A base erosion and antiabuse tax (BEAT) liability, and CAMT liability).

[5]Pub. L. No. 115-97 (Dec. 22, 2017), commonly referred to as the "Tax Cuts and Jobs Act" or "TCJA."

[6]Unlike 2023, the IRS and Treasury have not yet waived estimated tax underpayment penalties for amounts related to the CAMT for 2024. *See* Notice 2023-42, 2023-26 IRB 1085 (granting penalty relief for a corporation's failure to pay estimated income tax for the CAMT for tax years that began during 2023).

CAMT In General

The CAMT is a minimum tax imposed solely on applicable corporations starting in tax years beginning after December 31, 2022.[7] In general, an applicable corporation is a corporation that, taking into account certain aggregation rules, averages $1 billion of adjusted financial statement income (AFSI) for the three-tax-year period preceding a current year (for example, 2020 through 2022 for a calendar-year corporation testing for 2023).[8] Once a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-tax-year average AFSI falls below $1 billion. Conversely, if a taxpayer does not meet the definition of an applicable corporation in a given year, it must repeat the scope determination in each future tax year to determine whether it has become an applicable corporation.

AFSI is calculated differently in determining whether a corporation is an applicable corporation (scope AFSI) and for determining CAMT liability (liability AFSI). Scope AFSI is the financial statement income (FSI) of a corporation as set forth on the corporation's applicable financial statement (AFS), adjusted to include 100 percent of the AFSI of other members of the taxpayer's section 52 single-employer group or foreign-parented multinational group, and to account for certain adjustments prescribed by statute and administrative guidance. Liability

[7]*See* sections 55(b)(2), 56A, and 59(k). *See also* the additional CAMT guidance issued to date: Notice 2023-7, 2023-3 IRB 390 (initial CAMT guidance and scope determination safe harbor; *see* KPMG, "Initial Observations on CAMT Guidance" (Jan. 4, 2023)); Notice 2023-20, 2023-10 IRB 523 (guidance for the insurance industry; *see* KPMG, "Observations From Notice 2023-20" (Feb. 21, 2023)); Notice 2023-42 (2023 estimated tax payment relief; *see* KPMG, "Relief for Corporations That Did Not Pay Estimated CAMT" (June 7, 2023)); Notice 2023-64, 2023-40 IRB 974, modifying and clarifying Notice 2023-7 (among other guidance, lists financial statements that meet the definition of an applicable financial statement (AFS), provides priority rules for identifying an AFS, and provides general rules for determining financial statement income (FSI) and AFSI; *see* KPMG, "New CAMT Guidance in Notice 2023-64" (Sept. 28, 2023)); Notice 2024-10, 2024-3 IRB 406 (providing guidance on the treatment of controlled foreign corporation dividends in determining AFSI and the AFS determination for tax consolidated group members; *see* KPMG, "Interim Guidance on Corporate Alternative Minimum Tax" (Dec. 15, 2023)); and 2023 IRS Form 4626 and related instructions (requires extensive information reporting; *see* KPMG, "Updated Draft CAMT Form" (Nov. 17, 2023); KPMG, "Key Takeaways From Recent CAMT Releases" (Jan. 17, 2024); and KPMG, "Final Form 4626 and Instructions for Corporate Alternative Minimum Tax (CAMT)" (Feb. 16, 2024)).

[8]Special rules apply for members of foreign parented multinational groups.

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AFSI is the AFSI of the taxpayer (aggregation rules don't apply), as adjusted to include rules prescribed by the statute and administrative guidance.

In general, an applicable corporation's CAMT liability is the excess of its tentative minimum tax minus the sum of its regular tax and BEAT liabilities. The tentative minimum tax is 15 percent of the taxpayer's liability AFSI (reduced by financial statement net operating loss carryovers, but not exceeding 80 percent of AFSI[9]) less CAMT-specific foreign tax credits. General business credits (for example, the research credit) may generally offset a portion of a taxpayer's combined regular tax (less certain credits) and CAMT liability.[10] If a taxpayer is required to pay CAMT in a given year, it will receive a CAMT credit for the amount paid that may be carried forward indefinitely to offset regular tax and BEAT liabilities in a future year, subject to a limitation based on the taxpayer's tentative minimum tax in the carryforward year.[11]

It's important to remember that scope AFSI and liability AFSI can each differ, and differ significantly, from each of FSI and taxable income for many reasons, including differences between the book and tax treatment of business interest expense, depreciable assets, and SRE expenditures (discussed below). Equally important to remember is that both scope AFSI and liability AFSI can be higher than FSI — which often comes as a surprise to taxpayers — and that claiming tax deductions that aren't reflected in FSI or AFSI may increase the chance a taxpayer has a CAMT liability.

Section 163(j) — Business Interest Expense Limitation

In general, section 163(j) precludes a taxpayer from deducting business interest expense above the sum of the taxpayer's:

- business interest income;
- 30 percent of adjusted taxable income (ATI) from a trade or business; and
- floor plan financing interest for the tax year (the business interest limitation).

Any disallowed business interest expense may be carried forward indefinitely. Special rules apply in the case of partnerships.

ATI is defined as taxable income computed:

A. without regard to
   - items not allocable to a trade or business;
   - business interest expense or business interest income;
   - NOLs under section 172;
   - the 20 percent deduction for qualified business income under section 199A; and

B. with any adjustments provided by the Secretary.

For tax years beginning in 2018 through 2021, ATI is computed without regard to tax depreciation, amortization, or depletion deductions. For tax years beginning after 2021, ATI includes tax depreciation, amortization, and depletion deductions. Thus, section 163(j) is more likely to limit a taxpayer's business interest expense deduction for tax years beginning after 2021.

H.R. 7024 proposes to reinstate the addback to ATI for tax depreciation, amortization, and depletion deductions for tax years beginning after 2023 and before 2026, with an election to apply an addback to tax years beginning in 2022 and 2023. As a result, for tax years beginning in 2022 and 2023, the bill's section 163(j) proposal could result in a taxpayer having higher ATI (and therefore higher allowed interest expense and lower taxable income) if the election is made. For tax years beginning after 2023 and before 2026, certain

[9]Section 56A(d) provides for a reduction to AFSI for financial statement NOLs. For CAMT liability purposes only, AFSI for a tax year is reduced by the lesser of: (1) the aggregate amount of the corporation's financial statement NOL carryovers to the year, or (2) 80 percent of the AFSI for the tax year computed without regard to financial statement NOL carryovers. A financial statement NOL is the amount of an AFSI loss (determined without regard to a financial statement NOL) for tax years ending after December 31, 2019. Financial statement NOL carryovers can be carried over indefinitely. Notice 2023-64 favorably confirms that a corporation that becomes an applicable corporation (whether in 2023 or later) can have a financial statement NOL carryover equal to net AFSI losses for tax years ending after 2019 (the financial statement NOL carryover is determined without regard to whether the corporation was an applicable corporation for any prior tax year). Note that Notice 2023-64 illustrates the operation of this rule with an example in which a financial statement NOL generated by a calendar-year taxpayer in 2020 is partially absorbed by positive AFSI in the taxpayer's 2021 through 2023 tax years, even though the taxpayer only becomes an applicable corporation in 2024.

[10]*See* section 38.

[11]*See* section 53.

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taxpayers will have lower taxable income as a result of the bill's section 163(j) proposal.

CAMT Implications

In general, if a taxpayer's business interest expense deduction is limited by section 163(j), the amount of interest expense deducted for tax purposes will likely be less than the amount expensed for financial statement purposes because U.S. generally accepted accounting principles (GAAP) and international financial reporting standards (IFRS) generally do not have a similar limitation on business interest expense that is not subject to capitalization. In addition, there is no specific adjustment to FSI for interest expense for purposes of determining AFSI. As such, taxpayers may experience a favorable CAMT result in a tax year in which their business interest expense deduction is limited, because the business interest expense in FSI may be greater than the amount allowed as a deduction for tax purposes. Hence, adding back tax depreciation, amortization, and depletion deductions to ATI may cause a change in a taxpayer's CAMT position (that is, cause a CAMT liability as a result of the tentative minimum tax exceeding regular tax and BEAT liabilities) because it would cause ATI to be higher, which would equate to more interest being deductible for tax purposes, and less taxable income.

However, because the 15 percent CAMT rate is lower than the 21 percent regular corporate tax rate, the change could still result in less total tax being paid for the tax year. While any CAMT paid will create a CAMT credit that may be carried forward indefinitely until used, this may or may not be desirable depending on when a taxpayer thinks it will be able to use the credit (depending on when and the extent to which it thinks its regular tax and BEAT liabilities will exceed its tentative minimum tax for a tax year). Thus, if H.R. 7024 is enacted, corporations should take time to model the effects to CAMT for 2023 before making the election to retroactively apply the depreciation, amortization, and depletion addback in computing ATI for purposes of the business interest limitation for 2023, particularly if it causes them to have a CAMT liability that creates a credit they might not be able to use soon. Applicable corporations (and corporations with scope AFSI of close to $1 billion that may or may not actually be an applicable corporation, that is, "scope bubble corporations" in the parlance of a previous CAMTyland article[12]) should also take time to study the effect of the potential section 163(j) change to their 2024 and 2025 years.

Section 168(k) — Bonus Depreciation

Under section 168(k), taxpayers may generally write off a specified percentage of the cost of qualified property for tax purposes (commonly referred to as bonus depreciation). Qualified property generally includes depreciable business assets (machinery, equipment, computers, appliances, furniture, etc.) with a recovery period of 20 years or less and certain other property like computer software.[13]

For qualified property placed in service (and specified plants planted or grafted) through 2022, a 100 percent rate applied (through 2023 for longer production period property and certain aircraft). Starting with property placed in service in 2023, the 100 percent rate phases down by 20 percent per year such that 80 percent bonus depreciation applies in 2023, 60 percent in 2024, 40 percent in 2025, and 20 percent in 2026.[14] A taxpayer may elect out of bonus depreciation on an asset recovery class basis.[15]

H.R. 7024 proposes to reinstate 100 percent bonus depreciation for qualified property placed in service (and specified plants planted or grafted) through 2025 and retain the 20 percent rate for qualified property placed in service during 2026.[16] The bill's section 168(k) proposal will generally decrease taxable income when compared with current law section 168(k) unless a taxpayer elects out of bonus depreciation for some or all asset recovery classes.

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[12] *See* Galin, Santamaria, and Tucker, *supra* note 1.

[13] An election is also available to claim bonus depreciation on certain plants bearing fruits and nuts (specified plants) planted or grafted during the year. *See* section 168(k)(5).

[14] In the case of longer production period property and certain aircraft, the phasedown starts in 2024 such that 100 percent bonus depreciation applies in 2023, 80 percent in 2024, 60 percent in 2025, 40 percent in 2026, and 20 percent in 2027.

[15] *See* section 168(k)(7).

[16] In the case of longer production period property and certain aircraft, the 100 percent rate will apply through 2026 and 20 percent will apply in 2027.

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CAMT Implications

While accelerated depreciation is generally used for federal income tax purposes, the straight-line method of depreciation is generally used for financial accounting purposes (that is, the cost of an asset minus its salvage or residual value is generally recovered ratably over the asset's depreciable life).[17] In addition, the recovery periods used for financial accounting are often longer than those used for federal income tax because they generally reflect an asset's useful life rather than a recovery period prescribed by statute or administrative guidance. Further, a tax recovery period for an asset may not be used for GAAP purposes if that recovery period doesn't fall within a reasonable range of the asset's useful life.[18] As such, even without the availability of bonus depreciation, book depreciation is typically spread over a longer period of time than tax depreciation, meaning that taxpayers typically see favorable book-tax differences for depreciation in the earlier years of an asset's useful life, which flip to unfavorable book-tax differences as the tax depreciation winds down and book depreciation continues. This whipsaw effect is intensified when bonus depreciation is claimed for tax purposes.

One of the statutorily mandated adjustments to FSI in determining AFSI (both scope AFSI and liability AFSI) is an adjustment that, at a high level, removes book depreciation expense and replaces it with tax depreciation deductions for section 168 property (the depreciation adjustment).[19] Generally, section 168 property includes all tangible property as well as certain intangible assets eligible for bonus depreciation (for example, computer software). For years in which bonus depreciation is claimed, the depreciation adjustment is generally favorable for CAMT purposes because book depreciation expense in FSI will be replaced with greater tax depreciation deductions in determining AFSI.

However, if a taxpayer takes 100 percent bonus depreciation in a pre-CAMT year, for example, 2022, the CAMT depreciation adjustment on the section 168 property will be unfavorable in future years (2023) because the book depreciation expense will need to be added back to FSI in determining AFSI with no tax depreciation deduction available with which to replace it because the asset will have been fully depreciated for federal income tax purposes in 2022. Thus, if 100 percent bonus depreciation is reinstated in 2023 and extended through 2025, taxpayers should engage in multiyear modeling to determine if claiming bonus depreciation in 2023 will result in the creation of, or increase in, CAMT liability for future tax years and whether they should elect out of bonus depreciation for certain classes of assets, particularly if the amount of asset additions in one year is significantly less than a prior year in which 100 percent bonus depreciation was deducted.

Even taxpayers that are not currently applicable corporations should model the effect on future tax years if bonus depreciation is claimed, because this whipsaw effect could drive a taxpayer into applicable corporation status in a future tax year. A taxpayer trying to avoid applicable corporation status in future tax years should model the effects of electing out of bonus depreciation for certain asset classes to extend tax depreciation deductions (and favorable AFSI adjustments) into those future tax years. Further, when the proposed extension of 100 percent bonus depreciation is coupled with the proposed reinstatement of the ATI addback for any depreciation, amortization, and depletion deductions for section 163(j) purposes, the effect on taxable income could be material. A taxpayer's available elections for section 163(j) in 2022 and 2023 and bonus depreciation, as well as each asset class of bonus depreciation eligible property, could materially affect the taxpayer's overall tax liability.

Section 174 — SRE Expenditures

Under section 174, taxpayers are generally required to capitalize SRE expenditures paid or incurred after December 31, 2021, and recover them through amortization over five tax years for SRE expenditures incurred in the United States

[17] *See* GAAP Accounting Standards Codification (ASC) 360, Property, Plant, and Equipment; and International Accounting Standard 16, Property, Plant, and Equipment. *See also* KPMG, "Handbook: IFRS Compared to U.S. GAAP" (Nov. 2023).

[18] *See* ASC 360-10-35-9, Unacceptable Depreciation Methods.

[19] Section 56A(c)(13).

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(domestic SRE expenditures) and over 15 tax years for SRE expenditures incurred elsewhere (foreign SRE expenditures), starting with the midpoint of the tax year in which incurred.

H.R. 7024 proposes modifying section 174 to defer mandatory capitalization of domestic SRE expenditures until tax years beginning after December 31, 2025. Foreign SRE expenditures would still be subject to mandatory capitalization and recovered over a period of 15 years. Accordingly, because the current version of the bill permits taxpayers to deduct domestic SRE expenditures paid or incurred for tax years beginning after December 31, 2021, taxpayers will be able to retroactively apply the section 174 provisions to domestic SRE expenditures that were previously capitalized in tax returns for amounts paid or incurred in tax years beginning after December 31, 2021.

CAMT Implications

While SRE expenditures are generally subject to capitalization and amortization for federal income tax purposes under current law, these amounts are generally expensed for financial accounting purposes (subject to certain exceptions and special rules for certain types of costs).[20] In addition, there is no specific adjustment to FSI for SRE expenditures when determining AFSI.[21] Thus, the capitalization and amortization of SRE expenditures for regular tax purposes can be helpful for CAMT because it could result in taxable income being higher than FSI, depending on the taxpayer's other book-tax differences.

If H.R. 7024 is enacted, the expensing of domestic SRE expenditures for regular tax purposes could result in AFSI being higher than taxable income, depending on a taxpayer's other book-tax differences. Further, as drafted, the bill provides various transition rules to assist with retroactivity.[22] For example, the bill generally permits a taxpayer to make an election to expense unamortized 2022 domestic SRE expenditures in 2023, in lieu of filing an amended 2022 return.[23] If a taxpayer makes this election, it could have adverse effects for CAMT in 2023 if it causes the taxpayer's taxable income to be significantly lower than its AFSI for 2023 (because of taking into account the expensing of unamortized 2022 domestic SRE expenditures in 2023 as well as its 2023 domestic SRE expenditures). Thus, if the current version of H.R. 7024 is enacted, taxpayers should revisit their 2023 CAMT models to determine the effect of the transition rules to retroactively deduct 2022 domestic SRE expenditures.

Illustrations of H.R. 7024 Effects on CAMT

Each example assumes that H.R. 7024 is enacted without change.

Example 1

Nana Nutt Co., a calendar-year U.S. corporation not subject to the BEAT, determines that it is an applicable corporation for purposes of CAMT for its 2023 tax year (determined by reference to its section 52 group's AFSI in the 2020, 2021, and 2022 tax years). Before the enactment of H.R. 7024, Nana Nutt Co. computed 2023 regular taxable income of $200 million, which included $600 million of 80 percent bonus depreciation arising from placing in service $750 million of qualified property and an unfavorable book-tax difference for the business interest expense limitation computed under section 163(j) of $150 million. Nana Nutt Co. computed its 2023 AFSI as $250 million and therefore did not anticipate paying CAMT for the 2023 tax year because its 2023 tentative minimum tax of $37.5 million ($250 million * 15 percent) did not exceed its 2023 regular tax liability of $42 million ($200 million * 21 percent).[24]

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[20] *See* ASC 730, Research and Development; and IAS 38, Intangible Assets. *See also* KPMG, *supra* note 17.

[21] SRE expenditures are not section 168 property. *See* section 174(c). However, under Notice 2023-64, depreciation that is capitalized under section 174 can be part of the section 56A(c)(13) adjustment when deducted as part of the section 174 amortization deduction (or section 174A deduction under the bill).

[22] For a more detailed description of the various options provided by the bill, see KPMG, "Implications of Proposed Changes to Sections 174 and 280C in Bipartisan Tax Extenders Legislation" (Feb. 8, 2024).

[23] Use of "2022" and "2023" is assuming a calendar year taxpayer for simplification purposes.

[24] Assume that Nana Nutt Co. does not have any FTCs and does not have any NOL carryovers for regular tax purposes or financial statement NOL carryovers for CAMT purposes.

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Table 1. King Kandy Treats' Projected Scope AFSI for Each of Tax Years 2023 Through 2027 Before Enactment of H.R. 7024 (in millions of dollars)

	2020	2021	2022	2023	2024	2025	2026	2027
FSI	$750	$750	$750	$750	$750	$750	$750	$750
Plus: Book Depreciation (with respect to section 168 property only)	$200	$200	$200	$255[a]	$255	$255	$255	$255
Less: Tax Depreciation (with respect to section 168 property only)[b]	$0	$0	$0	($323.4)	($24.6)	($14.8)	($8.6)	($8.6)
AFSI	$950	$950	$950	$681.6	$980.4	$990.2	$996.4	$996.4
Prior Three-Year Average AFSI				$950	$860.5	$870.7	$884.1	$989

[a]$200 million of depreciation on prior-year additions plus $55 million ($385 million/seven years) for assets placed in service in 2023.

[b]Computed using the modified ACRS half-year convention and five-year class life with 80 percent bonus depreciation under current law.

Upon enactment of H.R. 7024, Nana Nutt Co. has an additional bonus depreciation deduction of $150 million, and it recomputes its section 163(j) limitation to be $0. Nana Nutt Co. now computes a regular tax NOL of ($100 million) for the 2023 tax year ($200 million original taxable income - $150 million of additional interest expense - $150 million of additional bonus depreciation), and its 2023 AFSI is recomputed as $100 million ($250 million original AFSI - $150 million of additional tax depreciation). Accordingly, even though Nana Nutt Co.'s regular tax liability is recomputed as $0, it will now owe $15 million ($100 million * 15 percent) of CAMT liability for the 2023 tax year ($15 million tentative minimum tax - $0 regular tax). However, Nana Nutt Co.'s overall tax liability for the 2023 tax year will be less than its preenactment tax liability, and it will have a CAMT credit carryforward as a result of the enactment of H.R. 7024.

Example 2

King Kandy Treats, a calendar-year corporation, computes FSI of $750 million per year, including $200 million per year of book depreciation on section 168 assets that have been fully depreciated before 2020 for regular tax purposes. In 2023 King Kandy Treats placed $385 million of section 168 assets in service, which are depreciated on a straight-line basis over 7 years for financial accounting purposes. For tax purposes, the assets are qualified property eligible for 80 percent bonus depreciation, which King Kandy Treats claims and depreciates the remaining basis of the assets using the modified accelerated cost recovery system over 5 years (before enactment of H.R. 7024).[25] Assuming no other material additions are placed in service in future tax years and the only relevant adjustment to FSI to arrive at AFSI is the adjustment to section 168 property, King Kandy Treats' projected scope AFSI for each of tax years 2023 through 2027 (before enactment of H.R. 7024) is as illustrated in Table 1 (in millions of dollars).

Thus, King Kandy Treats does not anticipate becoming an applicable corporation in tax years 2023 through 2027 for CAMT purposes before enactment of H.R. 7024. Upon enactment of the bill, King Kandy Treats claims 100 percent bonus depreciation in 2023 for the $385 million placed in service during the tax year. Its recomputed scope AFSI for each of tax years 2023 through 2027 is as illustrated in Table 2 (in millions of dollars).

King Kandy Treats is now projecting to become an applicable corporation in its 2027 tax year, as its three-year-average annual AFSI is projected to exceed $1 billion in 2027. However, if King Kandy Treats is in a taxable loss position for 2023, it could elect out of bonus depreciation in

[25]For simplification purposes, assume FSI stays the same ($750 million) each year.

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Table 2. King Kandy Treats' Recomputed Scope AFSI for Each of Tax Years 2023 Through 2027 (in millions of dollars)

	2020	2021	2022	2023	2024	2025	2026	2027
FSI	$750	$750	$750	$750	$750	$750	$750	$750
Plus: Book Depreciation (with respect to section 168 property only)	$200	$200	$200	$255	$255	$255	$255	$255
Less: Tax Depreciation (with respect to section 168 property only)	$0	$0	$0	($385)	$0	$0	$0	$0
AFSI	$950	$950	$950	$620	$1,005	$1,005	$1,005	$1,005
Prior Three-Year Average AFSI				$950	$840	$858.3	$876.7	$1,005

2023 to try to avoid applicable corporation status without affecting its 2023 regular tax liability. Similarly, if King Kandy Treats' additions in 2023 represent different types of asset classes, it could model the effects of electing out of bonus depreciation only for certain asset classes such that it could both avoid becoming an applicable corporation in 2027 and avoid an increase in its 2023 regular tax liability.

Example 3

Princess Lollipops Co., a calendar-year U.S. corporation not subject to the BEAT, determines that it is an applicable corporation for purposes of CAMT for its 2023 tax year (determined by reference to its section 52 group's AFSI in the 2020, 2021, and 2022 tax years[26]). Princess Lollipops Co. incurred $75 million of domestic SRE expenditures in 2022 and $50 million of domestic SRE expenditures in 2023, which are deducted for financial accounting purposes but, before enactment of H.R. 7024, are capitalized for tax purposes and amortized ratably over a five-year period, beginning with the midpoint of the year in which the SRE expenditures are incurred. For the 2022 and 2023 tax years, Princess Lollipops Co. is not subject to any limitations on its business interest expense under section 163(j) and elects out of bonus depreciation for all eligible asset classes. Before enactment of H.R. 7024, Princess Lollipops Co. computed 2023 regular taxable income of $500 million, which included deductions for $15 million of amortization for 2022 domestic SRE expenditures and $5 million of amortization for 2023 domestic SRE expenditures.[27] Princess Lollipops Co. computed its 2023 AFSI as $650 million and therefore did not anticipate paying CAMT for the 2023 tax year because its 2023 tentative minimum tax of $97.5 million ($650 million * 15 percent) did not exceed its 2023 regular tax liability of $105 million ($500 million * 21 percent).[28]

Upon enactment of H.R. 7024, if Princess Lollipops Co. elects to deduct any unamortized 2022 domestic SRE expenditures in its 2023 tax year, in its 2023 tax return, it will deduct $50 million of domestic SRE expenditures incurred in 2023 and unamortized 2022 domestic SRE expenditures of $67.5 million ($75 million * 90 percent).[29] Princess Lollipops Co. would recompute its 2023 regular taxable income as

[26] Once a taxpayer becomes an applicable corporation, it generally retains that status in future years, even if its three-tax-year average AFSI falls below $1 billion. *See* section 59(k)(1)(A). Thus, e.g., a sale of a line of business during a year could result in gain that is large enough for a taxpayer to become an applicable corporation and retain that status. While exceptions to this rule exist, each exception appears to require an affirmative rule or determination by Treasury. *See* section 59(k)(1)(C). In Notice 2023-7, Treasury requested comments regarding the application of section 59(k)(1)(C), which will hopefully be addressed by the forthcoming proposed regulations.

[27] The amortization deduction in the 2023 tax year for 2022 SRE expenditures is computed as $75 million/5 years. Amortization for 2023 SRE expenditures is computed as $50 million/5 years * 50 percent.

[28] Assume that Princess Lollipops Co. did not have any FTCs and does not have any NOL carryovers for regular tax purposes or financial statement NOL carryovers for CAMT purposes.

[29] The first-year deduction for amortization of domestic SRE expenditures equals 10 percent of the total costs incurred as the amortization is deducted ratably over five tax years, beginning with the midpoint of the year in which the costs are incurred. Thus, 90 percent of the costs are unamortized as of the beginning of the 2023 tax year.

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$402.5 million ($500 million original taxable income + $20 million original amortization - $50 million 2023 domestic SRE expenditures - $67.5 million unamortized 2022 domestic SRE expenditures). The company's AFSI would remain unchanged, and its tentative minimum tax of $97.5 million would exceed its recomputed regular tax liability of $84.5 million ($402.5 million * 21 percent) by $13 million and would generate a CAMT credit carryforward in its 2023 tax year.

However, if Princess Lollipops Co., instead of electing to account for its unamortized 2022 domestic SRE expenditures in its 2023 return, amended its 2022 tax return to reflect H.R. 7024, its recomputed 2023 regular taxable income would be $470 million ($500 million original taxable income - $50 million 2023 domestic SRE expenditures + $20 million original amortization). Its 2023 regular tax liability of $98.7 million ($470 million * 21 percent) would exceed its tentative minimum tax of $97.5 million in this scenario. It would pay $1.2 million more of tax in 2023 ($98.7 million - $97.5 million) if it amends its 2022 return rather than elect to account for the unamortized 2022 domestic SRE expenditures in 2023.

Conclusion

Today's CAMTyland adventure highlights the complexity of the CAMT regime and the potential effects of the three tax extenders on a taxpayer's CAMT position. The uncertainty of the future of H.R. 7024 adds a host of questions to an already challenging tax year. For example, the potential for enactment during the first half of 2024, or possibly later in 2024, creates challenges for taxpayers in deciding when to file 2023 tax returns and how to calculate quarterly 2024 estimated tax payments, particularly if any or all of the three tax extenders might have a material effect on a taxpayer's taxable income and CAMT game plan. In the case of an applicable corporation, the challenges are intensified when trying to determine AFSI and either prevent or minimize a CAMT liability for 2023 and 2024. Today's adventure also illustrates that modeling the CAMT effect of the three tax extenders may be of special importance to scope bubble corporations.[30] Any modeling done now could help ease tax pain — and identify gumdrops along the CAMTyland game path — if and when the bill is enacted.[31] ■

[30]*See* Galin, Santamaria, and Tucker, *supra* note 1.

[31]The foregoing information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser. This article represents the views of the authors only and does not necessarily represent the views or professional advice of KPMG LLP.

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