



July 14, 2026

[VIA E-MAIL]

The Honorable Kevin Salinger
Deputy Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Principal Deputy Chief Counsel, Internal Revenue Service
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Proposed Regulations Regarding the Corporate Alternative Minimum Tax

Mr. Salinger:

The Securities Industry and Financial Markets Association¹ (“SIFMA”) appreciates the opportunity to submit this letter to the U.S. Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) in response to the September 2024 proposed regulations that implement the corporate alternative minimum tax (“CAMT”) that was enacted as part of the Inflation Reduction Act (the “Proposed Regulations”) and the five CAMT notices² that were issued subsequent to the 2024 Proposed Regulations (the “CAMT Notices”). SIFMA requests that the comments provided in this letter be considered as Treasury and the IRS develop revisions to the Proposed Regulations (the “Forthcoming Proposed Regulations”). SIFMA shares the goals of Treasury and the IRS to implement the CAMT in a manner that is both administrable and aligned with Congress's intent when it enacted the CAMT statute. SIFMA would be happy to

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² Notices 2025-27, 2025-28, 2025-46, 2025-49 and 2026-7.

discuss its recommendations with Treasury and the IRS or provide further information if doing so would be helpful in developing further CAMT guidance.

I. Executive Summary

First and foremost, SIFMA thanks Treasury and the IRS for their recent efforts in developing and issuing the CAMT Notices, which are responsive to concerns raised by several stakeholders regarding the exceedingly complex nature of the Proposed Regulations. Consistent with the CAMT Notices, the policy objectives stated in Executive Order 14192 (regarding burden reduction), and Treasury’s public statements regarding efforts to reduce CAMT compliance burdens, SIFMA recommends that the Proposed Regulations be further modified to improve the administrability of CAMT as follows -

- The Forthcoming Proposed Regulations should provide that all adjusted financial statement income (“AFSI”) adjustments that are not required by statute (for example, AFSI adjustments provided under Section 56A(c)(15) authority) are optional.
- The Forthcoming Proposed Regulations should eliminate (or minimize) the need for taxpayers to maintain a so-called “third set of books.” The need for a third set of books arises when an AFSI adjustment causes a CAMT attribute (such as basis) to differ from the corresponding financial reporting attribute or regular tax attribute. In circumstances in which an AFSI adjustment results in a CAMT attribute that deviates from the corresponding financial reporting attribute, the Forthcoming Proposed Regulations should make the CAMT attribute equal to its corresponding regular tax attribute (to prevent a unique CAMT attribute), unless the statute expressly requires otherwise.
- The Forthcoming Proposed Regulations should further simplify and clarify the approaches set forth in Notice 2025-28 regarding the computation of a partner’s distributive share of a partnership’s AFSI under Section 56A(c)(2)(D)(i).
- The Forthcoming Proposed Regulations should eliminate the rules in Prop. Reg. Sections 1.56A-1(c)(3)(iv) (the “top-down” reconciliation requirement) and 1.56A-2(g)(2)(v) (the foreign-parented multinational group (“FPMG”) AFS priority rule) for purposes of determining the CAMT liability of U.S. subsidiaries and branches of a foreign entity and instead permit those subsidiaries and branches to determine their separate financial statement income (“FSI”) by reference to the amount in Part I, line 11 of the Schedule M-3. In this regard, SIFMA endorses the recommendations in the comment letters that were submitted by

the Institute of International Bankers (“IIB”) on January 15, 2025, and October 16, 2023, regarding the determination of the AFS and FSI of U.S. subsidiaries and branches of a FPMG (the “IIB Letters”).

- The Forthcoming Proposed Regulations should clarify the rule in Prop. Reg. Section 1.56A-24(e)(3) to prevent prior “mark to market” adjustments relating to a net investment hedge (“NIH”) from being reversed through AFSI in a situation in which the taxpayer sells or terminates a net investment hedge (“NIH”) but the underlying hedged item itself is not yet sold or liquidated (e.g., the relevant controlled foreign corporation (“CFC”) is still owned by the taxpayer).

II. Background

The CAMT imposes a minimum tax on an “applicable corporation” that is generally equal to 15% of that corporation's AFSI.³ A corporation's AFSI is the net income or loss of the corporation set forth on the corporation's “applicable financial statement” (“AFS”) for such taxable year (that is, the corporation’s FSI), subject to certain adjustments.⁴ Treasury has substantial authority to modify how AFSI is computed. For example, under Section 56A(c)(2)(D)(i), Treasury has the authority to provide exceptions to the general rule that a partner in a partnership shall include in its AFSI the partner’s distributive share of the partnership’s AFSI. Treasury also has the authority to provide any AFSI adjustment that “the Secretary determines necessary to carry out the purposes of [Section 56A].”⁵

On September 12, 2024, Treasury and the IRS issued the Proposed Regulations. On January 16, 2025, SIFMA submitted a comment letter to Treasury and the IRS regarding several issues in the Proposed Regulations. In response to these and other comments on the Proposed Regulations, including several comments on their complexity and administrability (particularly with respect to partnership investments), Treasury and the IRS issued the CAMT Notices. In addition to announcing that the Proposed Regulations would be modified and repropounded, the CAMT Notices provided additional interim guidance that taxpayers can rely on until Treasury and the IRS issue the Forthcoming Proposed Regulations.

The interim guidance in the CAMT Notices represents a significant step in improving the administrability of the CAMT regime by providing certain simplified AFSI computation options (for example, the “top-down election” and the “taxable income election” in Notice 2025-28) and incorporating certain regular tax concepts that taxpayers and practitioners are more familiar with

³ See Section 55(b)(2).

⁴ See Section 56A(a).

⁵ See Section 56A(c)(15).

(for example, the corporate transaction rules in Notice 2025-46). SIFMA appreciates the efforts that Treasury and the IRS are making to reduce the complexity of the CAMT rules and improve the administrability of the CAMT regime. SIFMA, however, continues to have significant concerns on CAMT administrability, particularly for highly regulated financial institutions with global operations where complicated banking and financial services intermediation activities result in complicated financial statements from ordinary operations. As described in more detail below, SIFMA believes that additional modifications to the Proposed Regulations and certain provisions in the CAMT Notices are needed to better achieve the policy objectives of CAMT, minimize the compliance burden for taxpayers, and improve the administrability of the CAMT regime for both taxpayers and the IRS.

III. Recommendations

A. General Simplification

SIFMA recommends that the Proposed Regulations, as modified by the CAMT Notices, be further modified to reduce the compliance burden for taxpayers and improve the administrability of the CAMT for both taxpayers and the IRS by limiting the number of AFSI adjustments taxpayers are *required* to make and by eliminating (or minimizing) the need for taxpayers to maintain a third set of books and records.

Make Regulatory AFSI Adjustments Optional

Several sections of the Proposed Regulations and the CAMT Notices provide AFSI adjustments that are not otherwise required by statute (for example, AFSI adjustments provided under the authority grant in Section 56A(c)(15)) (herein after referred to as “Regulatory AFSI Adjustments”). While these Regulatory AFSI Adjustments may be welcomed by many taxpayers, making and tracking them year-over-year will generally increase the compliance burden on taxpayers and make CAMT more difficult to administer for both taxpayers and the IRS (as any deviation from FSI will inherently increase the complexity of the CAMT regime). Further, in many cases making (versus not making) the Regulatory AFSI Adjustments will not affect a taxpayer’s CAMT liability because the taxpayer pays sufficient regular taxes and adjustments to AFSI will not cause the tentative minimum tax under Section 55 to exceed the taxpayer’s regular tax liability. Accordingly, for many taxpayers making the Regulatory AFSI Adjustments will significantly increase their CAMT compliance costs without affecting their CAMT liability. For these reasons, SIFMA recommends that Regulatory AFSI Adjustments be made at the option of the taxpayer. Said differently, the Forthcoming Proposed Regulations should provide that a taxpayer is required to make only those AFSI adjustments that are

explicitly mandated by the statute (i.e., those provided in Section 56A(c)(1)-(14) and Section 56A(d)).

SIFMA acknowledges that there may be circumstances in which Treasury and the IRS find it necessary, due to countervailing policy considerations, to use the authority Congress granted them to implement Regulatory AFSI Adjustments, even if those adjustments are not explicitly required by the statute. Nevertheless, we would urge Treasury and the IRS to be judicious about mandating such adjustments and recommend that they only be mandated in situations where an adjustment is necessary to prevent avoidance of the CAMT or to address significant policy concerns. Minimizing Regulatory AFSI Adjustments (and instead basing the CAMT on FSI where possible) will simplify the inherently challenging task of complying with the CAMT and will improve the administrability of the regime for both taxpayers and the IRS, which is consistent with the policy objectives underlying Executive Order 14192. Furthermore, having CAMT follow books is most consistent with our understanding of the policy aims of CAMT when enacted.

Eliminate the need for a “Third Set of Books”

Along these same lines, SIFMA recommends that the Forthcoming Proposed Regulations eliminate (or minimize) the need for taxpayers to maintain a third set of books to comply with the CAMT. As previously noted, the need for a third set of books arises when an AFSI adjustment causes a CAMT attribute (namely, basis) to differ from the corresponding financial reporting (AFS) attribute or regular tax attribute. One way to eliminate (or minimize) the need for a third set of books is to make Regulatory AFSI Adjustments optional (as discussed above). However, where an AFSI adjustment is made and results in a CAMT attribute that deviates from the corresponding AFS attribute, another way to eliminate (or minimize) the need for a third set of books is to set the resulting CAMT attribute equal to its corresponding regular tax attribute.

Proposed Regulation Section 1.56A-1(b) provides that the term *CAMT basis* means the basis of an item for purposes of determining AFSI. That provision also indicates that except as otherwise provided in the Proposed Regulations, the CAMT basis of an item is the AFS basis of the item (i.e., the carrying value of the item on the taxpayer’s AFS), adjusted as provided in the Proposed Regulations. There are several provisions in the Proposed Regulations that address the CAMT basis of certain items, including corporate stock, partnership interests, financial instruments, Section 168 property, and property acquired in certain taxable and tax-free acquisitions. Even though most of these provisions relate to items for which AFSI adjustments are made to align the CAMT treatment of the item with the regular tax treatment of the item, the application of these provisions often results in a CAMT basis for an item that deviates from the item’s AFS basis *and* regular tax basis (i.e., results in a hybrid basis).

Maintaining additional records to track unique CAMT basis amounts increases the compliance burden on taxpayers and makes the CAMT regime harder for both taxpayers and the IRS to administer. Additionally, while using a unique CAMT basis amount (relative to the AFSI basis amount or regular tax basis amount) may provide a more precise computation of AFSI, it often has no effect on a taxpayer's CAMT liability. For these reasons, SIFMA recommends that the Forthcoming Proposed Regulations follow the approach in Prop. Reg. Section 1.56A-4(d)(5) (regarding CAMT basis in foreign stock) for purposes of determining the CAMT basis for an item to which an AFSI adjustment applies. Under Prop. Reg. Section 1.56A-4(d)(5), the CAMT basis of foreign stock *always* equals the regular tax basis of foreign stock, even though certain transactions involving foreign stock could justify the use of a hybrid basis to obtain a more precise computation of AFSI. SIFMA acknowledges that there may be circumstances in which Treasury and the IRS find it necessary, due to countervailing policy considerations, to require the use of a unique CAMT basis for an item. Nevertheless, we would urge Treasury and the IRS to be judicious about mandating the use of a unique CAMT basis and recommend that it only be mandated in situations where it is necessary to prevent avoidance of the CAMT or to address significant policy concerns. Minimizing the use of a unique CAMT basis will simplify the inherently challenging task of complying with the CAMT and will improve the administrability of the regime for both taxpayers and the IRS, which is consistent with the policy objectives underlying Executive Order 14192.

B. Simplification for Partnership Investments

Consistent with the general simplification recommendations above, SIFMA recommends that the Forthcoming Proposed Regulations further simplify the approaches set forth in Notice 2025-28 regarding the computation of a partner's distributive share of a partnership's AFSI under Section 56A(c)(2)(D)(i).

Financial institutions routinely invest in partnerships that engage in projects that provide societal benefits, including those that support disadvantaged communities such as Low-Income Housing Tax Credit (LIHTC) projects and New Markets Tax Credit (NMTC) projects. These partnership investments are typically structured as "tax equity" partnerships and generally have a limited lifespan.⁶ Excluding the benefits of associated tax credits, which are disregarded under Section 56A(c)(5), these investments typically produce a loss for the investor over the total life of the investment. At any given time, a financial institution may have hundreds, if not

⁶ In a typical tax equity transaction, a project sponsor will form a partnership with a tax equity investor to jointly own the project LLC. The tax equity investor generally acts as a passive owner and receives a rate of return, which comes from project cash flow, tax credits, and other tax-related benefits (e.g., the ability to claim depreciation of the project's qualified assets).

thousands, of these types of partnership investments - making compliance with Section 56A(c)(2)(D)(i) incredibly burdensome absent special rules.

Notice 2025-28 simplifies compliance with Section 56A(c)(2)(D)(i) relative to the 2024 Proposed Regulations; however, it still requires a partner to make several adjustments to the FSI the partner reports for a partnership investment and maintain a unique CAMT basis in the partnership investment. While that may be manageable for taxpayers with only a few partnership investments, for financial institutions with hundreds or thousands of partnership investments, such an undertaking requires a significant compliance effort. For this reason, SIFMA recommends that the Forthcoming Proposed Regulations provide additional simplified approaches for computing a partner's distributive share of a partnership's AFSI under Section 56A(c)(2)(D)(i). For example, Treasury could consider a modified version of the "top-down" election in Section 3 of Notice 2025-28 under which the partner simply treats as its distributive share amount the FSI it reports for its partnership investment, adjusted only for federal or foreign income taxes under Section 56A(c)(5). Under such an approach, the partner's CAMT basis in the partnership investment would equal its AFS basis in the partnership investment. Such an approach is in line with the general simplification recommendations noted above as it results in either no AFSI adjustment with respect to a partnership investment or an AFSI adjustment that does not create the need to maintain a third set of books with respect to the partnership investment.

C. Determining the FSI of U.S. Subsidiaries and Branches of Foreign Corporations

SIFMA recommends that Treasury and the IRS eliminate the rules in Prop. Reg. Sections 1.56A-1(c)(3)(iv) (the "top-down" reconciliation requirement) and 1.56A-2(g)(2)(v) (the FPMG AFS priority rule) for purposes of determining the CAMT liability of U.S. subsidiaries and branches of foreign entity and instead permit those subsidiaries and branches to determine their separate financial statement income ("FSI") by reference to the amount in Part I, line 11 of the Schedule M-3.

Section 56A(b) provides that the term "applicable financial statement" means an applicable financial statement (as defined in Section 451(b)(3) or as specified by the Secretary in regulations or other guidance). Section 451(b)(3) and the regulations issued under Section 451(b)(3) generally prioritize U.S. GAAP financial statements over other financial statements, and separate financial statements over consolidated financial statements. Notwithstanding Section 451(b)(3), Prop. Reg. Section 1.56A-2(g)(2)(v) requires non-U.S. GAAP financial statements issued by a FPMG to be treated as the AFS of a U.S. subsidiary or branch that is part of that FPMG, even if the U.S. subsidiary or branch has separate financial statements (including

books and records described in Prop. Reg. Section 1.56A-2(c)(5)) that are prepared on a U.S. GAAP basis. Prop. Reg. Section 1.56A-1(c)(3)(iv) requires such a U.S. subsidiary or branch to reconcile its separate FSI with the FSI reported on the consolidated financial statement issued by the FPMG.

The requirement for a U.S. subsidiary or branch to use the consolidated financial statement issued by its FPMG as its AFS and the requirement to perform a “top-down” reconciliation under Prop. Reg. Section 1.56A-1(c)(3)(iv) place unnecessary compliance burdens on the U.S. subsidiary or branch. This is because they require the U.S. subsidiary or branch to seek tax relevant data to sort and separate US operations from global operations for CAMT purposes that ordinarily does not exist at a sufficient level of detail within the global consolidated financial statements (because of consolidation, netting and elimination, as permitted under the applicable accounting standards). Importantly, SIFMA is concerned that this CAMT operational inquiry can be undertaken only after the global financial statements are fully consolidated, including for regular tax liability purposes. In effect, the proposed rule requires a “last step” re-opening and manual de-construction of the global financial statements solely to determine CAMT liability. As such, the proposed rule demands very high effort within an existing time sensitive global reporting process that supports earnings releases and the publication of audited financial statements to regulators and the public markets. Such a new CAMT undertaking, which is impracticable, seems wholly unnecessary when the U.S. subsidiary or branch may otherwise prepare a separate financial statement (usually under U.S. GAAP) that is used for a non-tax purpose (i.e., provided to the FPMG for incorporation into the consolidated financial statement issued by the FPMG) and that has long been accepted by the IRS as a starting point for completing the schedule M-3. Using that separate financial statement as the AFS of the U.S. Subsidiary or branch and eliminating the “top-down” reconciliation requirement would significantly reduce the cost of complying with the CAMT and improve the administrability of the CAMT for both taxpayers and the IRS. Such an approach is also consistent with Section 451(b)(3) and the regulations thereunder, which, as noted above, generally prioritize separate U.S. GAAP financial statements. In this regard, SIFMA endorses the recommendations in the IIB Letters regarding the determination of the AFS and FSI of U.S. subsidiaries and branches of a FPMG. Accordingly, we will not address those recommendations in detail in this letter.

D. Net Investment Hedges

SIFMA recommends that Treasury and the IRS modify the rule in Prop. Reg. Section 1.56A-24(e)(3) for situations where a taxpayer sells or terminates a NIH, but the hedged item itself is not yet sold or liquidated (e.g., the relevant CFC is still owned by the US taxpayer). In such

situations, Prop. Reg. Section 1.56A-24(e)(3) might be read as requiring the taxpayer to reverse (through AFSI) prior tax “mark to market” adjustments relating to the NIH.

In late 2025, select SIFMA members met with certain Treasury officials to discuss this net investment hedge issue. During the meeting, SIFMA shared a white paper on the issue; however, the white paper was never submitted as a comment letter. That white paper, with certain minor revisions since being shared with Treasury, is attached as an Appendix to this letter (Appendix A). Please refer to Appendix A for a more fulsome discussion of the issue and SIFMA’s recommendation for resolving it.

IV. Conclusion

SIFMA acknowledges and greatly appreciates Treasury’s and the IRS’s efforts in continuing the CAMT regulatory process and focusing on ways to reduce compliance burdens on taxpayers and improving the administrability of the CAMT regime for both taxpayers and the IRS. Thank you for attention to these concerns and for considering our recommendations. Please feel free to contact me at jbarker@sifma.org if you would like to discuss our recommendations further.

Respectfully Submitted,

A handwritten signature in black ink that reads "Jessica Barker". The signature is written in a cursive, flowing style.

Jessica Barker
Managing Director, Tax & Associate General Counsel

cc:

Krishna Vallabhaneni, Tax Legislative Counsel, Department of the Treasury

Appendix A



Re: CAMT & Net Investment Hedge – Proposed Technical Correction to Prop. Treas. Reg. § 1.56A-24(e)(3)

To whom it may concern:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to submit these comments regarding Prop. Treas. Reg. § 1.56A-24(e)(3). The purpose of this letter is to propose a technical correction to the corporate alternative minimum tax (“CAMT”) proposed regulation Prop. Treas. Reg. § 1.56A-24(e)(3) with respect to situations where a taxpayer sells or terminates a net investment hedge (“NIH”), but the hedged item itself is not yet sold or liquidated (e.g., the relevant controlled foreign corporation (“CFC”) is still owned by the US taxpayer). In such situations, Prop. Treas. Reg. § 1.56A-24(e)(3) might be read as requiring the applicable taxpayer to reverse prior tax “mark-to-markets.”

In light of the actual process mechanism pursuant to which many multinational corporations affect NIHS, the result of Prop. Treas. Reg. § 1.56A-24(e)(3) might cause the entire NIH regime (Prop. Treas. Reg. § 1.56A-24(e)) to be ineffective.

To solve for this concern, we propose the following revision to Prop. Treas. Reg. § 1.56A-24(e)(3):

“In the taxable year in which the ~~net investment hedge subject to paragraph (d) of this section matures or is sold, disposed of, or otherwise terminated, or in which the asset or liability that was a net investment hedge subject to paragraph (d) of this section ceases to constitute a net investment hedge~~ profits or loss of a net investment hedge subject to paragraph (d) of this section is included in a CAMT entity’s FSI and to such extent, the CAMT entity adjusts the amount included in AFSI by the cumulative mark-to-market gain or loss for regular tax purposes included in AFSI under paragraph (d) of this section.”

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

Holding NIH - § 1.56A-24(d) achieves its intended policy goal

Many multinational corporations (“MNCs”) hedge their net investment in a foreign operation the value of which is denominated in a foreign currency.² An MNC can achieve net investment hedging by entering into short positions in a particular currency to manage its long exposure in such currency with respect to the net investment in the foreign operation.

The regular tax and book treatment of NIH differs significantly. For tax purposes, NIHs are often subject to mark-to-market for regular tax purposes (under Section 1256). For book purposes, under ASC 830-30, the change in the fair value of the hedge instrument designated as an NIH is recognized in a cumulative translation adjustment within other comprehensive income (“OCI”), and held there until the hedged net investment is sold or liquidated and only at that point that amount would be reclassified to earnings. Accordingly, changes in the fair value of these hedges are not included in financial statement income (“FSI”) prior to the sale or termination of the hedged item (e.g., prior to the liquidation or sale of the controlled foreign corporation).

Absent special CAMT regime, a taxpayer would be required to follow the book treatment (which “ignores” the NIH profits or loss) and not the tax treatment of the NIH. The Preamble to the proposed CAMT regulations acknowledges the potential distortion and points out that:

“changes in the fair value of these hedges are included in equity accounts, such as retained earnings or OCI, and as a result not included in FSI.³ ...

[T]hese hedges may be marked to market for regular tax purposes, resulting in a divergence between FSI and regular taxable income

[Prop. Treas. Reg. § 1.56A-24(d)] “is intended to result in greater conformity between the timing of the net investment hedge for financial accounting purposes and for regular tax purposes by including the unrealized gain or loss for the net investment hedge in AFSI.”⁴

To resolve this distortion, Prop. Treas. Reg. § 1.56A-24(d) would apply in situations in which a CAMT entity marks to market a net investment hedge for regular tax purposes and provides that:

² See Prop. Treas. Reg. § 1.56A-24(b)(5) for the definition of “net investment hedge” for purposes of the Proposed Regulations.

³ Preamble to Prop. Treas. Reg. § 1.56A, 89 Fed. Reg. at 75,109.

⁴ *Id.* at 75110.

“To the extent a CAMT entity marks to market a net investment hedge for regular tax purposes for a taxable year, the CAMT entity includes in AFSI for the taxable year the gain or loss resulting from marking to market the net investment hedge for regular tax purposes.”

Accordingly, under Prop. Treas. Reg. § 1.56A-24(d), a CAMT entity would include the mark-to-market gain or loss for regular tax purposes in its AFSI (the “Net Investment Hedge MTM Adjustment”). We believe that the Net Investment Hedge MTM Adjustment generally resolves the above-mentioned distortion (as long as the NIH is not terminated or sold, as further explained below).

Example 1 - Holding NIH. A calendar taxable year US taxpayer owns 100% of a UK controlled foreign corporation. On February 1, 2025, the US taxpayer, a CAMT entity, entered into a forward contract to sell GBP on February 1, 2026 (the “Forward”) and the Forward qualifies as a net investment hedge and is designated as such for financial accounting purposes.⁵ On December 31, 2025, the CAMT entity would mark-to-market the forward contract under Section 1256 for regular tax purposes. Due to weakening of the USD vs. GBP, the hedge’s fair market value is negative \$100 as of December 31, 2025.

The treatment of the NIH in year 2025 is as follows:

- **Book treatment:** Generally, as mentioned in the preamble, “changes in the fair value of these hedges are included in equity accounts, such as retained earnings or OCI, and as a result not included in FSI.” Accordingly, FSI is generally not affected by the NIH loss.
- **Regular Tax Treatment:** Because the taxpayer marks-to-market the forward contract under Section 1256 for regular tax purposes, the taxpayer has \$100 taxable loss, reducing its taxable income by this amount.
- **Current CAMT Treatment:** Under Prop. Treas. Reg. § 1.56A-24(d), the taxpayer is required to include the mark-to-market gain or loss for regular tax purposes in its AFSI. Accordingly, the taxpayer’s AFSI is reduced by \$100 compared to its FSI.

As Example 1 illustrates, the Net Investment Hedge MTM Adjustment successfully resolves the above-mentioned distortion (prior to the sale or termination of the NIH, as discussed below).

Selling or terminating the NIH prior to selling or terminating the hedged item - § 1.56A-24(e)(3) fails to achieve its intended policy goal

⁵ For purposes of this example, we have assumed that the “forward method” has been applied for U.S. GAAP purposes so that there is not a systematic amortization of forward points.

This section addresses the book, regular tax and CAMT treatments of the sale or termination of NIH prior to the sale or termination of the hedged item (e.g., prior to the liquidation or sale of the controlled foreign corporation).

As mentioned above, under ASC 830-30, the change in the fair value of the hedge instrument designated as a net investment hedge is recognized in cumulative translation adjustment within OCI and held there until the hedged net investment is sold or liquidated and only at that point that amount would be reclassified to earnings.

For a taxpayer that marks-to-market a NIH under section 1256 for tax purposes, the actual termination of the NIH doesn't affect the taxpayer's taxable income. This is because changes in the fair market value of the NIH are taken into account whether or not the NIH is terminated or sold due to the mark before disposition rule.

For CAMT purposes, Prop. Treas. Reg. § 1.56A-24(e)(3) governs the treatment of Net Investment Hedge MTM Adjustment upon selling or terminating the NIH. Specifically, it provides, in the relevant part, that:

[i]n the taxable year in which the net investment hedge subject to paragraph (d) of this section **matures or is sold, disposed of, or otherwise terminated**, or in which the asset or liability that was a net investment hedge subject to paragraph (d) of this section ceases to constitute a net investment hedge, **the CAMT entity adjusts the amount included in AFSI by the cumulative mark-to-market gain or loss for regular tax purposes included in AFSI under paragraph (d) of this section**. [Emphasis added.]

It is not clear how one should interpret the underlined language of Prop. Treas. Reg. § 1.56A-24(e)(3). Read literally, this seems to suggest that in a taxable year when the net investment hedge is sold, disposed of, or otherwise terminated, the Net Investment Hedge MTM Adjustment would be reversed, even though the occurrence of such events does not result in the reclassification of such amounts from OCI to P&L for U.S. GAAP purposes. If that is the result, the proposed regulations do not achieve its stated purpose of achieving conformity between timing of the net investment hedge for financial accounting purposes and for regular tax purposes.

Example 2 - Termination of NIH. Same facts as example 1, but further assume that, on December 31, 2025, the taxpayer pays \$100 to exit from the NIH. The taxpayer may or may not enter into a new NIH (this is often referred to as “rolling” the NIH).

The treatment of the NIH in year 2025 is as follows:

- **Book treatment:** Because the hedged item (the UK CFC) is not sold or terminated, the changes in the fair value of the NIH remains in equity accounts. Accordingly,

FSI is generally not affected by the termination or sale of the NIH itself. FSI remains “flat” in year 2026.

- Tax Treatment: Because the taxpayer marks to market the forward contract under section 1256 for regular tax purposes, the taxpayer has \$100 taxable loss, reducing its taxable income by this amount.
- Current CAMT Treatment: Read literally, Prop. Treas. Reg. § 1.56A-24(e)(3) suggests that in a taxable year when the net investment hedge is sold, disposed of, or otherwise terminated, the Net Investment Hedge MTM Adjustment would be reversed, even though the occurrence of such events does not result in the reclassification of such amounts from OCI to P&L for U.S. GAAP purposes. Under this reading, the taxpayer needs to “reverse” the cumulative mark-to-market gain or loss. Accordingly, the taxpayer’s AFSI remains the same as its FSI (it is reduced by \$100 and then increased by \$100).

Example 3 - Termination of NIH in a subsequent year. Same facts as example 1, but further assume that, when the forward contract matures on February 1, 2026, the fair market value of the NIH remains negative \$100. At that point of time, the hedged item (the foreign operations) is not terminated or sold.

The treatment of the NIH in 2025 is the same as in example 1.

The treatment of the NIH in 2026 is as follows:

- Book treatment: Because the hedged item is not sold or terminated, the changes in the fair value of the NIH remain in equity accounts. Accordingly, FSI is generally not affected by the termination or sale of the NIH itself. FSI remains “flat” in year 2026.
- Tax Treatment: Because the taxpayer marks to market the forward contract under section 1256 for regular tax purposes and because there is no change to the fair market value of the NIH in tax year 2026, the taxpayer does not recognize any gain or loss with respect to the NIH in year 2026. If the taxpayer rolls the NIH (by entering into a new NIH), the taxpayer will further mark to market any changes in the value of the new NIH.
- Current CAMT Treatment: Read literally, Prop. Treas. Reg. § 1.56A-24(e)(3) suggests that in a taxable year when the net investment hedge is sold, disposed of, or otherwise terminated, the Net Investment Hedge MTM Adjustment would be reversed, even though the occurrence of such events does not result in the reclassification of such amounts from OCI to P&L for U.S. GAAP purposes. Under this reading, the taxpayer needs to “reverse” the prior cumulative mark-to-market gain or loss. Accordingly, the taxpayer needs to increase its AFSI by \$100 in year 2026.

As the above two examples illustrate, the sale or termination of the NIH itself (absent termination or sale of the hedged item (i.e., the CFC)) affects neither the book treatment of the NIH (i.e., the amount remains in OCI) nor the regular taxable income of the taxpayer. Accordingly, it was expected that the sale or termination of the NIH itself (absent termination or sale of the hedged item (i.e., the CFC)) will not affect the CAMT result.

We understand that many MNCs are effecting their NIH strategy by entering into relatively short-term contracts, such that many taxpayers are similar to the taxpayer in Example 2, where the taxpayer made no adjust to AFSI on account of the NIH. Other taxpayers with longer NIH strategies (i.e., cross-years NIHS) are more akin to the taxpayer in example 3 that results in AFSI distortion in the year in which the NIH terminates.

It seems that Prop. Treas. Reg. § 1.56A-24(e)(3) assumes that when a net investment hedge matures, or is sold, disposed of, or otherwise terminated, the gain or loss on the net investment hedge is taken into account in FSI for financial accounting purposes. However, as explained above, for U.S. GAAP purposes, the entire \$100 loss in the examples above is still included in OCI when the NIH matures or sold because, under ASC 830-30, the change in the fair value of the hedge instrument designated as a NIH is recognized in cumulative translation adjustment within OCI and held there until the hedged net investment is sold or liquidated and only at that point that amount would be reclassified to earnings.

In summary, because of how the financial accounting guidance works, it is irrelevant when the net investment hedge is terminated, disposed of, or otherwise terminated, if the hedged item itself is not terminated, disposed of, or otherwise terminated.

Example 4 – Sale or liquidation of a hedged item (i.e. the foreign entity). Same facts as example 2, but further assume that in 2027 the foreign entity is sold or liquidated.

The treatment of the NIH in 2025 and 2026 is the same as in example 2.

The treatment of the NIH in 2027 is as follows:

- **Book treatment:** Because the hedged item is sold or terminated, the changes in the fair value of the NIH move from the equity accounts to P&L. Accordingly, FSI is reduced by \$100 in year 2027.
- **Tax Treatment:** Because the taxpayer marks to market the forward contract under section 1256 for regular tax purposes and because there is no change to the fair market value of the NIH in tax year 2027, the taxpayer does not recognize any gain or loss with respect to the NIH in year 2027 (such that taxable income is \$100 higher than FSI on account of the NIH).
- **Current CAMT Treatment:** Read literally, Prop. Treas. Reg. § 1.56A-24(e)(3) suggests that in a taxable year when the net investment hedge is sold, disposed of, or otherwise terminated, the Net Investment Hedge MTM Adjustment would be

reversed. Because the NIH itself is not sold or terminated in 2027, AFSI is equal to FSI in year 2027.

- The Proposed CAMT Treatment: The proposal is that in year 2027, the Net Investment Hedge MTM Adjustment is reversed (and not in 2026). Accordingly, the proposal is that AFSI would be \$100 higher than FSI in year 2027, which is the year on which loss (or profit) of the NIH is included in a CAMT entity's FSI. That is the appropriate result to avoid double-counting the hedge loss for CAMT purposes in both the year it was recognized for tax purposes (under the Proposed Reg) and the year in which the foreign entity is sold and the changes in the fair value of the NIH move from the equity accounts to P&L.

Proposal – Revising Treas. Reg. § 1.56A-24(e)(3)⁶

To achieve the stated purpose of the proposed regulations, the timing of the reversal to the Net Investment Hedge MTM Adjustment should match the financial accounting reclassification from OCI to earnings. Accordingly, to solve for this concern, we propose making the following revision to Prop. Treas. Reg. § 1.56A-24(e)(3):

“In the taxable year in which the ~~net investment hedge subject to paragraph (d) of this section matures or is sold, disposed of, or otherwise terminated, or in which the asset or liability that was a net investment hedge subject to paragraph (d) of this section ceases to constitute a net investment hedge~~ profits or loss of a net investment hedge subject to paragraph (d) of this section is included in a CAMT entity's FSI and to such extent, the CAMT entity adjusts the amount included in AFSI by the cumulative mark-to-market gain or loss for regular tax purposes included in AFSI under paragraph (d) of this section.”

⁶ Notably, Notice 2025-49 made certain changes to proposed Treas. Reg. § 1.56A-24. However, the notice does not provide new guidance relating to Treas. Reg. § 1.56A-24(e)(3).