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Internal Revenue Service
1111 Constitution Ave. N.W.
Washington, D.C. 20224

Via electronic submission

RE: TEI Comments on REG-112129-23

Dear Sir or Madam:

President Biden signed the Inflation Reduction Act[1] ("IRA") into law on August 16, 2022. Among the IRA's income tax provisions is a corporate alternative minimum tax imposing a 15 percent tax on adjusted financial statement income ("AFSI", such tax, the "CAMT"). The IRA delegates significant authority to the Secretary of the Department of the Treasury (the "Secretary," and the "Treasury") to further define AFSI, as well as other CAMT items. Treasury and the Internal Revenue Service (the "Service," together with the Treasury, the "Government") published proposed regulations on September 13, 2024 (the "Proposed Regulations").[2] On behalf of Tax Executives Institute, Inc. ("TEI"), I am pleased to provide comments on the CAMT and the Proposed Regulations.

About TEI

TEI was founded in 1944 to serve the needs of business tax professionals.[3] Today, the organization has 56 chapters in North and South America, Europe, and Asia. As the preeminent association of in-house tax professionals worldwide, TEI

[1] Pub. L. No. 117-169.
[2] REG-112129-23, 89 Fed. Reg. 75062 (Sep. 13, 2024). Previously, the Government published Notice 2023-64, 2023-40 I.R.B. 1, and Notice 2023-20, 2023-10 I.R.B. 523, which provided interim guidance that taxpayers could rely on until the issuance of the Proposed Regulations. The Government also published Notice 2023-42, 2023-26 I.R.B. 1085, which provided relief from the addition to tax under § 6655 in connection with the application of the CAMT.
[3] TEI is organized under the Not-For-Profit Corporation Law of the State of New York. TEI is exempt from U.S. Federal Income Tax under section 501(c)(6). All "section" references are to the Internal Revenue Code of 1986, as amended (the "Code").

has a significant interest in promoting sound tax policy, as well as the fair and efficient administration of the tax laws, at all levels of government. Our nearly 6,000 individual members represent over 2,900 of the leading companies around the world.

TEI is dedicated to the development of sound tax policy, compliance with and uniform enforcement of tax laws, and minimization of administration and compliance costs to the benefit of both government and taxpayers. These goals can be attained only through the members' voluntary actions and their adherence to the highest standards of professional competence and integrity. TEI is committed to fostering a tax system that works—one that is administrable and with which taxpayers can comply in a cost-efficient manner. The diversity, professional training, and global viewpoints of our members enable TEI to bring a balanced and practical perspective to the CAMT.

TEI Comments

AFSI Adjustments: ***Adjustment to Mark-to-Market Treatment of Financial Instruments***

Section 55(a) imposes a CAMT equal to the excess, if any, of the tentative minimum tax for the taxable year, over the sum of a taxpayer's regular Federal income tax liability plus any tax imposed by Section 59A. Section 55(b)(2)(A) provides that a taxpayer's tentative minimum tax for the taxable year is the excess of 15% of the taxpayer's applicable financial statement income ("AFSI") for the taxable year over the CAMT foreign tax credit ("FTC") for the taxable year.

Section 56A defines AFSI as the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement ("AFS") for the taxable year, adjusted as provided in Section 56A. Section 56A(c) then prescribes several "adjustments" to financial statement income ("FSI") so that AFSI for CAMT purposes may be reflected properly. Section 56A(c)(2) provides special rules for related entities.

Specifically, Section 56A(c)(2)(C) provides a special rule that, in the case of a corporation that is not included on a consolidated return with the taxpayer, the AFSI of the taxpayer with respect to that other corporation is determined by only taking into account dividends received from that other corporation (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts that are includible in gross income or deductible as a loss under Chapter 1 of the Code (chapter 1), other than amounts required to be included under Sections 951 and 951A of the Code or such other amounts as provided by the Secretary, with respect to that other corporation.

Pursuant to the aforementioned authority granted by Section 56A(c)(2)(C) regarding the issuance of regulations by the Secretary providing rules regarding investments in corporations that are not included on a consolidated return with a CAMT taxpayer, we recommend final regulations clarify that Section 56A(c)(2)(C) should result in an adjustment to AFSI to eliminate any financial accounting mark-to-market gains or losses with respect to debt instruments, debt-

like securities, warrants, options and other similar financial instruments that are held by the CAMT taxpayer for investment and are not issued by a member of the CAMT-related group, as defined in Prop. Treas. Reg. § 1.56A-26(b)(1). This approach is consistent with the approach taken in the Proposed Regulations with respect to stock investments, and the policy rationale for those provisions applies equally here.

Specifically, under Prop. Treas. Reg. §1.56A-18(c)(2), FSI resulting from the application of the equity or fair value method to the ownership of domestic non-consolidated corporations that would otherwise be included in GAAP net income is generally disregarded. This provision as drafted applies only to stock investments; however, for accounting purposes, equity or fair value method may apply to other financial instruments, including debt, debt-like securities, warrants and options. Expanding the exception in Prop. Treas. Reg. §1.56A-18(c)(2) to include other financial instruments held for investment ensures that normal tax realization principles continue to apply for all investment assets, not just equity investments. This avoids significant distortions that could arise by following the book treatment of these investments.

In the Proposed Regulations, the Government acknowledged that financial accounting may include amounts for which realization has not occurred, the financial accounting consequences of an investment in a domestic corporation differ considerably from the Federal income tax consequences of such an investment. Under the Code, a shareholder generally has income or deductions upon the occurrence of a realization event with respect to the shareholder's stock. In contrast, financial statement income often includes gain or loss with respect to stock even if there has been no realization event for Federal income tax purposes.

To avoid the distortion that may arise when no realization event has occurred, the Proposed Regulations provide for exceptions in the case of equity investments, as well as certain hedging transactions under Prop. Treas. Reg. §1.56A-24. The policies underlying these exceptions, which reverse non-economic consequences arising from specific accounting rules, should be extended to exclude financial accounting adjustments for all financial instruments issued by unrelated parties, not just equity investments and certain hedging transactions.

The language of Section 56(A)(c)(2)(C) is broad enough to allow the Secretary the discretion to provide exceptions for these financial instruments (e.g., debt, debt-like securities, warrants, options) issued by a person that is not a member of the CAMT-related group, which may be marked to market for AFS purposes. Indeed, the legislative history indicates that Congress expected the Secretary would use its regulatory authority to avoid mismatches arising from accounting rules that accelerate the recognition of income or loss relative to tax rules and that could result in duplication or omission of income under CAMT.[4]

[4] *See, e.g.*, Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 117th Congress (JCS–1–23), December 2023, at page 171 (in which the Joint Committee on Taxation leveraged the authority provided by Congress in Section 56A(c)(15) regarding potential omissions and duplications of income to enable mismatches involving certain hedging transactions to be addressed; "for example, under new Section 56A(c)(15) and (e), the Secretary is intended to exercise authority to provide that gains and

In this case, prescriptive guidance on a particular method of subtraction from or addition to AFSI would be too narrow to capture the diversity of practice in all accounting situations. Accordingly, we recommend that the Government allow an adjustment in computing AFSI to reflect income and loss timing that follows the Code rather than financial accounting treatment for investment in financial instruments issued by a person that is not a member of the CAMT-related group, including debt, warrants, and options. Specifically, we recommend issuing guidance that allows this adjustment in computing AFSI to reflect income and loss timing following the tax treatment rather than financial accounting results (e.g., inclusive of book and tax potentially matching for taxpayers that are broker dealers or otherwise on a mark-to-market accounting method for U.S. tax purposes) for such instruments.[5] For most taxpayers, the timing would be based on recognition rather than on a mark-to-market basis.

Tax Law Change Transition Relief

The Proposed Regulations acknowledge that financial accounting changes may produce distortive results and, accordingly, provisions should be included in the CAMT rules to provide relief from these results. A similar distortive result can arise from amendments to the tax laws, particularly when such amendments result in the acceleration of income or deferral of deductions, but do not include corresponding changes to CAMT. We recommend that the final regulations provide transition relief in the case of changes in tax law that may have a distortive effect on a taxpayer's CAMT determination.[6]

The final regulations should provide relief to explicitly take into consideration adjustments provided to implement such changes in law in the CAMT calculation, which may include:

- The use of regular tax liability computed without regard to Section 481(a) adjustments for purposes of the Section 55(a) computation;
- Provision for adjustments to be made to AFSI to take into account Section 481(a) adjustments; and/or
- In the case of favorable Section 481(a) adjustments that reduce taxable income in full in the year of adjustment without any impact to FSI, provide that for CAMT

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losses with respect to derivative contracts used to manage business risks are to be included in AFSI when such gains and losses are recognized for regular Federal income tax purposes.").

[5] The proposed approach also is consistent with the rules of section 451(b), which generally require the acceleration of the timing of recognition of taxable income to match AFSI, but specifically do not change the U.S. tax treatment of a "transaction or instrument that is not required to be marked-to-market for Federal income tax purposes but that is marked-to-market for AFS purposes. Treas. Reg. § 1.451-3(f)(2).

[6] Similar transition relief has been provided before, for example, Section 13523(e) of the Tax Cuts and Jobs Act provided transition relief for insurance companies that were required to update their unpaid loss reserve calculations. Although such relief was provided statutorily, it demonstrates the understood need for relief subsequent to tax law changes.

purposes an AFSI adjustment is permitted to spread the Section 481(a) impact over a period (not to exceed 15 years) consistent with a change in accounting principles.

Section 481(a) commonly is used in connection with law changes that require a change to accounting methods to prevent the duplication or omission of items as a result of such a change. These adjustments exist for tax purposes only, and do not impact AFSI.[7] As a result, Section 481(a) adjustments may have a distortive impact on CAMT. The above recommendations minimize the risk of a distortive result.

The nature of a Section 481(a) adjustment is that it imposes taxable income (whether positive or negative) attributable to a change in regular Federal income tax liability related to multiple tax years. As such, it is inherently distortive in the context of CAMT, which targets differences between financial accounting income and regular taxable income related to a single tax year. Because a taxpayer's CAMT liability is designed to reflect an applicable corporation's average annual AFSI from the proceeding tax years, inclusion of a significant Section 481(a) adjustment in the CAMT calculation will produce distortive results, that is, a change in CAMT liability exclusively attributable to a tax law change rather than a change to AFSI. Such a change could impact whether a taxpayer is subject to, or excluded from, CAMT, or push a company into, or out of, CAMT.

In light of the foregoing, the final regulations should provide that adjustments are to be made to AFSI to take into account Section 481(a) adjustments to ensure that such adjustments do not result in the duplication or omission of items of income or loss and, that the timing impacts of such adjustments are in accord with regular taxable income. More specifically, due to the potential distortive effects a Section 481(a) adjustment related to the disparate change in tax law could have on a taxpayer's CAMT determinations, we recommend transition relief be provided in the final regulations to explicitly disregard such adjustment in the CAMT calculation. Similar relief is provided for taxpayers implementing new accounting standards under Prop. Treas. Reg. §1.56A-17, and we believe Section 56A(c)(15)(A) provides the Secretary with the authority to expand the relief already provided to include changes to the applicable tax laws. Such a rule will carry out the purposes of Section 56A by eliminating potential distortions to a taxpayer's CAMT liability that do not exist for purposes of regular tax liability, as well as making adjustments to prevent the duplication or omission of any item.

FTC Considerations

An applicable corporation's tentative minimum tax for the taxable year is reduced under Section 55(b)(2)(A)(ii) by the CAMT foreign tax credit for the taxable year. Section 59(l)(1)

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[7] For example, legislation that has been proposed to restore full expensing for research and development expenses under Section 174 would require a change in taxpayers' method of accounting to be implemented through a Section 481(a) adjustment. Unless corresponding adjustments are made for AFSI purposes, the required Section 481(a) adjustments could result in incremental CAMT liability, in contravention of the intent of the legislation to restore the deductions.

determines the CAMT foreign tax credit by reference to "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 are both taken into account in a relevant AFSI and paid or accrued by the applicable corporation or a controlled foreign corporation with respect to which the applicable corporation is a United States shareholder.

The Proposed Regulations would impose an additional restriction on the CAMT foreign tax credit, not contemplated by the statute. Specifically, under Prop. Treas. Reg. § 1.59-4, a CAMT foreign tax credit under Section 59(l) is generally only allowed with respect to an "eligible tax." "Eligible tax" is defined in Prop. Treas. Reg. § 1.59-4(b)(1) as "a foreign income tax, other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under Section 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) of the Code." The preamble to the Proposed Regulations explains that "[t]he Treasury Department and the IRS are of the view that the policies underlying these disallowances and suspensions for regular tax purposes apply equally in the context of the CAMT FTC." The preamble then cites as an example the disallowance of a foreign tax credit for regular tax purposes under Section 901(j), based on foreign policy considerations related to specified foreign countries.

The preamble fails to acknowledge that the various disallowance and suspension provisions referenced in Prop. Treas. Reg. § 1.59-4(b)(1) reflect starkly different policy considerations from one another. Certain of those provisions, such as Section 901(j), are based on policy justifications that are unrelated or only loosely related to tax policy, and it may be that it is appropriate to extend those disallowances and suspensions to the CAMT foreign tax credit. However, several of the referenced provisions are based solely on technical considerations related to the regular tax, and there seems to be no rational basis for extending those limitations to the CAMT foreign tax credit.

For example, certain disallowances are based on the rationale that the implicated foreign taxes are imposed on income that is not ever subject to the regular tax. It is deemed appropriate to deny a regular tax foreign tax credit for those taxes, because no credit is necessary to prevent double taxation under the regular tax. However, where the relevant income generally is subject to tax under CAMT, any disallowance or suspension of a CAMT foreign tax credit for such taxes is arbitrary.

As a specific example, the Section 901(m) disallowance for regular tax purposes is intended to address the mismatch between U.S. taxable income and foreign taxable income that results when a covered asset acquisition creates stepped-up asset basis for U.S. tax purposes—and related cost recovery deductions, particularly for amortization of intangibles under Section 197(a)—but does not result in an asset basis step-up for foreign tax purposes. Because there is generally no allowance for CAMT purposes of an amortization deduction under Section 197(a)—and taking into account that the covered asset acquisition resulting in the regular tax basis step-up that implicates section 901(m) may not result in a CAMT basis step-up—the rationale underlying the Section 901(m) disallowance does not apply to CAMT, and incorporating the

Section 901(m) disallowance into the CAMT foreign tax credit rules is therefore not appropriate.

As another example, Section 245A(d) generally denies a regular tax foreign tax credit for foreign withholding (and other) taxes imposed on a distribution of residual earnings from a controlled foreign corporation ("CFC") on the basis that such earnings are never subject to the regular tax. However, as noted in the preamble to the Proposed Regulations, "such earnings of the CFC are included in AFSI of the U.S. shareholder of the CFC through the application of section 56A(c)(3)." Thus, just as it is appropriate for Prop. Treas. Reg. § 1.59-4(d)(3) to provide a CAMT foreign tax credit for all taxes imposed on the earnings of a CFC at the CFC level, regardless of the character of those earnings for regular tax purposes, it is appropriate to provide a CAMT foreign tax credit for any foreign taxes imposed on the distribution of such earnings, rather than arbitrarily applying the Section 245A(d) disallowance.

Importing these and analogous regular tax disallowances and suspensions into the CAMT foreign tax credit inevitably will result in double taxation under CAMT, and there appears to be no basis under the statute for such an approach. To the extent the Government determines that it is appropriate to incorporate a particular disallowance or suspension in the CAMT foreign tax credit rules, the rationale for doing so should be clearly articulated with respect to each such provision.

In addition to the overbroad generalization as to policy justifications, the preamble asserts that "[i]ncorporating the same amount of disallowances or suspensions for regular tax purposes, instead of creating a separate, parallel set of CAMT FTC rules, is intended to reduce taxpayers' compliance burden and the IRS's administrative burden." While we support adopting approaches that actually reduce taxpayers' compliance burden in the CAMT context where consistent with achieving a reasonable determination of liability for CAMT, this consideration rings hollow in the context of eligible taxes. The disallowances and suspensions at issue here are by their nature specific adjustments required to be made for regular tax purposes, which can easily be reversed (e.g., in order to calculate the regular foreign tax credit after application of Section 901(m), a taxpayer must necessarily first compute the amount of its regular foreign tax credit before application of Section 901(m)).

The proposed "eligible tax" limitation goes well beyond any apparent policy justification and will inevitably impose double taxation on taxpayers, contrary to the intent of the statute. We recommend that final regulations not adopt this approach and the Government only apply regular income tax disallowance and suspension rules in the CAMT foreign tax credit context where it is determined that a specific policy justifies extension of the limitation to the CAMT.

Relief from Administrative Burden

The Proposed Regulations contemplate maintaining a separate set of books and records to track CAMT basis in assets. For example, for a taxpayer that is a party to a covered recognition transaction, Prop. Treas. Reg. §1.56A-18 would require the taxpayer: (i) to determine its AFSI by recomputing any gain or loss reflected in its FSI using the CAMT basis of any property

transferred in the transaction (in lieu of AFS basis); (ii) to determine the CAMT basis in any property received in the transaction to be its AFS basis; and (iii) to adjust CAMT earnings (in lieu of AFS earnings) by the amount of AFSI resulting from the transaction. In other words, financial accounting principles generally would apply to covered recognition transactions, using CAMT inputs in lieu of financial accounting inputs. To the extent CAMT inputs take into consideration regular tax adjustments, e.g., depreciation in the context of Section 168 property, the subsequent basis in acquired property is derived from a hybrid calculation with book as the starting point, only then impacted by subsequent adjustments based on tax principles.

The proposed reporting and filing requirements represent a significant expansion of existing annual compliance obligations, and failure to comply could result in penalties. CAMT computations and adjustments require taxpayers to maintain an entirely separate set of books and records to track CAMT basis in assets and stock, as well as other CAMT amounts such as CAMT retained earnings (CAMT E&P), in addition to their historic tax and financial accounting books and records, as well as more recently, Pillar Two calculations. More importantly, the new and incremental reporting requirements will needlessly complicate examinations for taxpayers subject to the CAMT rules.

To mitigate the burden on taxpayers and the Government, we recommend that future guidance provide relief or eliminate the need for a taxpayer to track its CAMT basis in assets. As a threshold measure, we suggest that the Government consider providing elective safe harbors to mitigate the need to track such items.[8] For example, the final regulations may allow taxpayers to rely on tax determinations of basis. Although this approach may be less accurate than an actual CAMT determination on an annual basis, it will reduce significantly the unreasonable administrative burden envisioned in the Proposed Regulations and if applied consistently should not result in material omissions or duplication of income. Alternatively, the safe harbor could follow book treatment, but in either case it would eliminate the burden of establishing and maintaining a separate set of books and records for tracking separate CAMT basis in assets. The requested relief, particularly in the context of covered recognition transactions, is needed for taxpayers to minimize the significant and undue administrative burden currently imposed by the Proposed Regulations.

Resolution of Potential Distortion Caused by Covered Recognition Transaction Rules

Tax law changes since the TCJA have encouraged the repatriation of assets by U.S. corporations from their foreign affiliates. Such repatriations may be effected through Section 311 distributions. Under Prop. Treas. Reg. §1.56A-4(b)(1)(i)(A), a Section 311 distribution from a foreign corporation is a covered asset transaction, and the AFSI of the distributing CAMT entity is therefore adjusted to disregard any FSI impact from the covered asset transaction and include any gain recognized, as determined using CAMT basis, under Prop. Treas. Reg. §1.56A-4(c)(2). Prop. Treas. Reg. §1.56A-4(d)(1)(i) correspondingly provides that following such a distribution CAMT basis is the FMV of the distributed asset.

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[8] Rules could be in line with Treasury's request for reporting relief for partnerships meeting certain criteria.

But, where the asset distributed is an intangible asset, the rules do not allow for amortization of the FMV basis of the distributed asset in determining AFSI of the recipient for periods after the distribution. That is, the Proposed Regulations take an inconsistent approach by requiring an adjustment to AFSI to follow regular tax rules with respect to the income event, but do not allow an adjustment to AFSI to follow regular tax rules as to recovery of the resulting CAMT basis. In order to prevent the duplication of income for CAMT purposes through selective incorporation of regular tax rules, amortization of the distributed asset's CAMT basis consistent with Section 197 should be included in AFSI. We recommend that the final regulations provide that in the case of a covered asset acquisition, if gain is recognized on the disposition of the asset based on regular tax rules for AFSI purposes, then tax amortization also be taken into account for AFSI purposes in order to prevent the duplication of income under the CAMT rules.

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TEI appreciates the opportunity to comment on the CAMT and the Proposed Regulations. TEI's comments were prepared under the aegis of the Tax Reform Task Force, whose Chair is Andreia Verissimo. Should you have any questions regarding TEI's comments, please do not hesitate to contact Andreia Verissimo at alveriss@amazon.com or TEI Tax Counsel Kelly Madigan at kmadigan@tei.org.

Respectfully submitted,

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