



July 3, 2024

Ms. Aviva Aron-Dine
Acting Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Marjorie A. Rollinson
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Peter H. Blessing
Associate Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
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Mr. Dan McCall
Deputy Associate Chief Counsel (International)
Internal Revenue Service
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Mr. Taylor Kiessig
Special Counsel at Office of Chief Counsel (International)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Request For Clarification on Form 4626, Part V (Members of a Controlled Group Treated as a Single Employer and Foreign-Parented Multinational Group (FPMG) Members Taken Into Account in “Applicable Corporation” Determination)

Dear Ms. Aron-Dine, Ms. Rollinson, Mr. Blessing, Mr. McCall, and Mr. Kiessig:

The American Institute of CPAs (AICPA) is submitting a request to clarify the instructions of the Form 4626, *Alternative Minimum Tax—Corporations*, to provide that corporations that have already determined themselves to be an “applicable corporation” for purposes of the corporate alternative minimum tax may skip Form 4626, Part V, *Members of a Controlled Group Treated as a Single Employer and Foreign-Parented Multinational Group (FPMG) Members Taken Into Account in “Applicable Corporation” Determination*.

Overview

Section¹ 55(b)(2) applies a 15% minimum tax (corporate alternative minimum tax or “CAMT”) to applicable corporations. Section 59(k) provides that an “applicable corporation” is a corporation (other than an S corporation, RIC, or REIT) that meets the “average annual adjusted financial statement income test” (“Average Annual AFSI Test”) in one or more prior tax years ending after December 31, 2021. A corporation meets the Average Annual AFSI Test for a tax year if the average annual AFSI over a three-tax-year period ending with the tax year at issue exceeds \$1

¹ All references to “section” are to the Internal Revenue Code of 1986, as amended, and all references to “Treas. Reg. §”, “Prop. Reg. §”, and “regulations” are to U.S. Treasury regulations promulgated thereunder, unless otherwise specified.

billion (subject to certain adjustments for newly formed corporations, predecessor corporations, and short tax years).²

The Average Annual AFSI Test is required to be computed on a combined basis for (i) members of controlled group treated as a single employer under section 59(k)(1)(D) and section 52 (a “controlled group”), or (ii) members of a FPMG within the meaning of section 59(k)(2)(B). Thus, for a FPMG, the determination of whether a US corporation meets the \$1 billion Adjusted Financial Statement Income (AFSI) test to be treated as an applicable corporation would include the AFSI of the US corporation, any Controlled Foreign Corporations (CFCs) held by the US corporation, the US corporation’s foreign parent, and any other corporations (US or foreign) held by the foreign parent.

If a US corporation is an applicable corporation, their CAMT liability (if any) is determined using only the AFSI of the US corporation and any CFCs of the domestic corporation (*i.e.*, in the case of a US corporation that is a member of a FPMG and has already been determined to be an applicable corporation, the AFSI of the foreign parent and other entities held by the foreign parent is not relevant to the determination of an applicable corporation’s CAMT liability).

If a corporation has already determined it is an applicable corporation for purposes of the CAMT, the current instructions provide that it can “skip Part I.” [*Applicable Corporation Determination*] Part I, *Applicable Corporation Determination*, of Form 4626 includes the three-year average AFSI calculation for the applicable corporation determination. However, filers of the Form 4626 are required to complete Part V, *Members of a Controlled Group Treated as a Single Employer and FPMG Members Taken Into Account in an “Applicable Corporation” Determination*, (“Part V”) if they are a member of either a controlled group or a FPMG, regardless of whether they are an applicable corporation. In Part V, taxpayers are required to provide the following information for each member of the controlled group or FPMG: Name, EIN, EIN/FIN of the US return (if any) on which most of the member’s income is reported, and the member’s financial statement income. The Form 4626 instructions for Part V indicate that “[i]ncomplete or nonspecific responses, including phrases such as ‘available upon request’ is not a sufficient response [SIC].”

Recommendation

AICPA recommends that the IRS update the instructions to Form 4626 to indicate that, consistent with Part I of the Form 4626, *Applicable Corporation Determination*, Part V is only required for taxpayers that are not an applicable corporation.

Analysis

The requirement to complete Part V represents a substantial compliance and administrative burden for the taxpayers, but the information included in Part V does not appear to provide commensurate

² An additional requirement exists for FPMGs such that the average annual AFSI of the US group for the 3-taxable-year period must be \$100 million or greater.

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value to the IRS with respect to a corporation that has already determined it is an applicable corporation for purposes of the CAMT. Some foreign parents (*e.g.*, sovereign wealth funds) may have thousands of members in their FPMG that would need to be included.³ In addition, given the size of the groups subject to this tax, they often have changes in their legal entity structure happening on a near-daily basis, making it administratively challenging to provide a detailed listing of all entities at a set-point in time.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Chaya Siegfried, Chair, AICPA International Tax Technical Resource Panel, at (732) 759-6835, or csiegfried@withum.com, Reema Patel, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9217, or Reema.Patel@aicpa-cima.com; or me at (830) 372-9692, or bvickkers@alamo-group.com.

Sincerely,



Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: The Honorable Daniel I. Werfel, Commissioner, Internal Revenue Service
Ms. Lindsay M. Kitzinger, Office of the International Tax Counsel, Department of the Treasury
Ms. Brenda Zent, Special Adviser, Office of the International Tax Counsel, Department of the Treasury

³ Consideration should also be given as to whether the information in Part V is necessary for members of a controlled group. Although the information may be more readily available (*e.g.*, a similar controlled group standard is generally applied for purposes of section 59A), Part V appears to be duplicative and irrelevant for the CAMT calculation for members of a controlled group that have already determined themselves to be an applicable corporation.