

# TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



## **Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process**

September 9, 2024

Report Number: 2024-308-036

**This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.**

# HIGHLIGHTS: Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process

Final Audit Report issued on September 9, 2024

Report Number 2024-308-036

## Why TIGTA Did This Audit

The Inflation Reduction Act of 2022 (IRA) was signed into law on August 16, 2022. The IRA includes many provisions that impact a wide range of Government programs. To raise revenue, it also includes several tax law changes that are estimated to generate \$738 billion over the next 10 years, which includes increasing revenue by \$457 billion. The largest revenue-enhancing mechanism in the law is Section 10101, the Corporate Alternative Minimum Tax (CAMT, pronounced *CAM-7* by IRS personnel) that is projected to raise \$222 billion or 49 percent of the revenue. However, this revenue estimate may be lower based on the 2024 Further Consolidated Appropriations Act, which resulted in the rescission of \$20.2 billion in IRA Enforcement funding.

TIGTA initiated this audit to assess processes and procedures used to implement the CAMT provision included in the IRA and to ensure future compliance.

## Impact on Tax Administration

The CAMT imposes a new 15 percent alternative minimum tax on financial statement income (or "book income") adjusted by various provisions in the law. The tax is generally applicable to corporations with average annual earnings of \$1 billion or more over the preceding three years. Moreover, this tax requirement extends to foreign-parented multinational groups that meet the criteria, provided their United States includible earnings average \$100 million over the same three-year period.

## What TIGTA Found

The CAMT is a complex tax law due in part from the computation of Adjusted Financial Statement Income that starts with financial statement income (governed by Generally Accepted Accounting Principles for United States-based companies) that is then adjusted according to complex statutory tax rules. While most corporations will not be affected by the CAMT, some corporations that do not expect to owe the CAMT may be required to prepare Adjusted Financial Statement Income computations before filing their tax returns. Many of the details necessary to comply with CAMT provisions were left to the Department of the Treasury and the IRS to develop guidance. As of May 4, 2024, 118 IRS employees, *i.e.*, attorneys and tax law specialists, have spent approximately 21,327 hours on the first six CAMT notice publication projects.

TIGTA's review of the process used by the Office of Chief Counsel (hereafter referred to as Chief Counsel) to implement CAMT guidance shows that formal, written procedures for the pre-rulemaking process are lacking. TIGTA's analysis of comments received from the first two CAMT-published guidance notices found that comments were not always tracked, and Chief Counsel's consideration of the comments was not documented until TIGTA requested them.

Although six CAMT guidance notices have been issued, questions remain that some taxpayers will need answered in forthcoming regulations. With the CAMT beginning with Tax Year 2023, incomplete guidance may create compliance challenges, requiring complex computations even for those not expecting to owe CAMT. Taxpayers must also consider the time, resources, and processes needed to gather information and perform calculations without complete guidance.

[REDACTED] but IRS management has begun training personnel.

## What TIGTA Recommended

TIGTA recommended that Chief Counsel should provide for a written process that will track all comment letters submitted prior to the issuance of a Notice of Proposed Rulemaking or other guidance to facilitate consideration of those comments by the Chief Counsel drafting team assigned to the project.

The IRS disagreed with this recommendation stating its Chief Counsel Directives Manual already provides written guidance. The IRS also stated that not all projects require such detailed documentation. TIGTA's recommendation is intended to enhance the efficiency and effectiveness of the pre-rulemaking process. Our audit identified instances in which the selective flexibility in the documentation of comments led to comments being missed. TIGTA believes that any comment solicitation process should document a thorough review, assessment, and resolution of all comments received.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

**U.S. DEPARTMENT OF THE TREASURY**  
**WASHINGTON, D.C. 20024**

September 9, 2024

**MEMORANDUM FOR:** COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in cursive script, reading "Danny R. Verneuille".

**FROM:** Danny R. Verneuille  
Acting Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process (Audit No.: 202330827)

This report presents the results of our review to assess processes and procedures to implement the Corporate Alternative Minimum Tax Provision included in the Inflation Reduction Act of 2022 and to ensure future compliance. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Tax Compliance and Enforcement*.

Management's complete response to the draft report is included as Appendix V. If you have any questions, please contact me or Frank O'Connor, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations).

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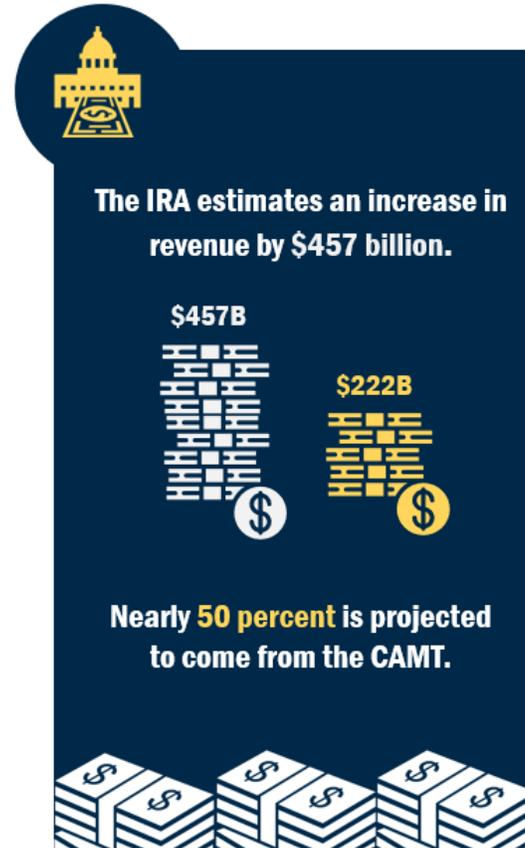
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## Background

The Inflation Reduction Act of 2022 (IRA) was signed into law on August 16, 2022.<sup>1</sup> The IRA includes many provisions that impact a wide range of Government programs. To raise revenue, it also includes several tax law changes that are estimated to generate \$738 billion over the next 10 years, which includes increasing revenue by \$457 billion according to the Congressional Budget Office. The largest revenue-enhancing mechanism in the law is Section 10101, the Corporate Alternative Minimum Tax (CAMT, pronounced *CAM-T* by Internal Revenue Service (IRS) personnel) that is projected to raise \$222 billion or 49 percent of the expected IRA revenue, according to the same estimates.<sup>2</sup> The CAMT component of the IRA provides significant regulatory authority to the Secretary of the Treasury and applies to all taxable years beginning after December 31, 2022.

The CAMT imposes a new 15 percent alternative minimum tax on financial statement income (or “book income”) adjusted by various provisions in the law.<sup>3</sup> The tax is generally applicable to corporations with average annual earnings of \$1 billion or more over the preceding three years. Moreover, this tax requirement extends to foreign-parented multinational groups that meet the criteria, provided their United States includible earnings average \$100 million over the same three-year period. The 15 percent tax will be imposed on adjusted financial statement income (AFSI), which represents book income adjusted as prescribed by the statute.

The new CAMT includes a complex combination of financial accounting concepts and tax law principles to establish an alternative tax base. Further, CAMT rules for determining an entity’s applicable financial statement, consolidated entries, and financial statement group members do



<sup>1</sup> Pub. L. No. 117-169, 136 Stat. 1818 (August 16, 2022). The IRS also received approximately \$79.4 billion in supplemental funding when the President signed the IRA into law in August 2022. However, in June 2023, the enactment of the Fiscal Responsibility Act of 2023, resulted in the rescission of approximately \$1.4 billion of IRA funding provided to the IRS, and the Further Consolidated Appropriations Act, 2024, resulted in the rescission of \$20.2 billion in the Enforcement funding activity. Therefore, current IRA funding is approximately \$57.8 billion.

<sup>2</sup> This revenue estimate may be lower based on the 2024 Further Consolidated Appropriations Act, which resulted in the rescission of \$20.2 billion in IRA Enforcement funding.

<sup>3</sup> The CAMT provides a list of prioritized applicable financial statements, including but not limited to those consistent with Generally Accepted Accounting Principles for United States-based entities or prepared in accordance with International Financial Reporting Standards. Generally Accepted Accounting Principles consist of Financial Accounting Standards promulgated by the Financial Accounting Standards Board, an independent, private-sector, not-for-profit organization recognized by the U.S. Securities and Exchange Commission as the authority responsible for setting accounting standards for public companies.

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not apply for regular tax purposes.<sup>4</sup> The CAMT also involves unique adjustments to financial statement income compared to regular taxable income, creating a hybrid tax base distinct from both. Separate calculations are needed to assess whether a corporation meets CAMT criteria to determine whether it is an applicable corporation. Additionally, adjustments, group members, and consolidation entries may vary, particularly for foreign-parented multinational groups.

The Department of the Treasury (hereafter referred to as the Treasury Department) and the IRS are responsible for issuing tax guidance to the public. The IRS Office of Chief Counsel (hereafter referred to as Chief Counsel) collaborates with the Treasury Department's Office of Tax Policy to develop, author, and issue guidance.<sup>5</sup> As explained in the Chief Counsel Directives Manual (CCDM), the Office of Tax Policy typically assigns a Treasury Department attorney-advisor to guidance projects simultaneously with the assignment of the projects to IRS Chief Counsel. Treasury Department attorneys are involved in these projects from the initial stages and assist in developing published guidance.<sup>6</sup> The CCDM also encourages Chief Counsel to solicit input from the Treasury Department on material issues throughout the progression of a publication project.<sup>7</sup> The clearance process does not begin until directed by the Treasury Department. After being approved by Chief Counsel and the IRS Commissioner, published guidance projects are sent to the appropriate office in the Treasury Department for final review and approval.<sup>8</sup>

When new legislation is signed into law, the IRS may issue published guidance to taxpayers through Internal Revenue Bulletin guidance, *e.g.*, announcements, notices, revenue procedures, and revenue rulings.<sup>9</sup> This guidance often provides taxpayers the information they need to comply with prevailing tax law. At times, the guidance invites public comments (from interested parties) to assist in shaping supplemental or more authoritative guidance reflective of taxpayers' needs. When the IRS issues guidance in the form of a notice and solicits public comments, it may then use those comments to draft more formalized guidance, such as a Notice of Proposed Rulemaking (NPRM).<sup>10</sup> The NPRM contains proposed regulations and is the official announcement and explanation of the agency's intention to add rules and regulations or to modify or eliminate existing rules or regulations for tax guidance. All NPRMs must be published in the Federal Register to give the public an opportunity to comment and respond. The NPRM and the public comments received form the basis of the final rule if the final regulations are

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<sup>4</sup> Consolidated entries are the financial accounting journal entries that are made for applicable financial statement purposes in order to present the financial results of an applicable financial statement group as though all members of the applicable financial statement group are a single company.

<sup>5</sup> Published Guidance projects include, but are not limited to, revenue rulings, revenue procedures, notices, announcements, and/or regulations.

<sup>6</sup> CCDM 32.1.1.4.5 (Aug. 2, 2018).

<sup>7</sup> CCDM 32.2.2.6.6.2.4(1) (Apr. 28, 2009).

<sup>8</sup> CCDM 32.2.7.8 (Oct. 21, 2011).

<sup>9</sup> The IRS uses a number of documents to convey its interpretation of tax laws to taxpayers, but only considers Internal Revenue Bulletin guidance to be authoritative. See Appendix II for an overview description of the rulemaking process.

<sup>10</sup> Chief Counsel does not always solicit comments before drafting an NPRM or other published guidance.

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eventually published.<sup>11</sup> The IRS requests comments from the public when issuing the NPRMs consistent with the guidelines of the Administrative Procedure Act (APA).<sup>12</sup>

After the Federal Register publishes the NPRM, Chief Counsel will compile, review, and address comments it receives. Significant and relevant comments received in the NRPM phase must be addressed in the preamble to the final regulations even if the comment is made by a single commenter.<sup>13</sup> Additionally, a comment does not lose its significance if the comment is brief. The failure to adequately address such comments when issuing final regulations could be a basis to challenge the validity of the regulation.



Chief Counsel has been working diligently to review CAMT comments solicited and received from public and nonpublic stakeholders through published guidance notices. Because of the scope, complexity, and intertwined nature of CAMT provisions, CAMT Chief Counsel working groups have developed processes for closely coordinating CAMT guidance. The Income Tax and Accounting Group in Chief Counsel has subject matter jurisdiction over Internal Revenue Code (I.R.C.) § 55, and the Associate Chief Counsel in the Income Tax and Accounting group is responsible for approving CAMT guidance released under I.R.C. § 55. Accordingly, the Income Tax and Accounting group is responsible for coordinating CAMT guidance across the organization. Because the CAMT involves rules and principles that fall within the jurisdiction of other Chief Counsel divisions, each division established its own CAMT working group and each working group for each division is responsible for working the issues and drafting the guidance that falls within its subject matter jurisdiction. Attorneys have also spent significant time attending training and researching financial accounting practices. As of May 4, 2024, 118 IRS employees, *i.e.*, attorneys and tax law specialists, spent approximately 21,327 hours on the first six CAMT notice publication projects.

As of April 15, 2024, Chief Counsel had issued six CAMT guidance notices, including: two general implementation notices, one insurance industry-specific notice, two penalty relief notices, and one notice for controlled foreign corporations (CFC) and tax consolidated groups. Four of the notices requested public comments to help the IRS and the Treasury Department draft the NPRM. In response, they received 75 comment letters and tracked 476 comments within them. The six notices are:

- **Notice 2023-7** *Initial Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code*

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<sup>11</sup> Although it is not legally required, the IRS will often address comments in the final regulations that are not considered significant.

<sup>12</sup> 5 U.S.C. §§ 551-59; see also 5 U.S.C. §§ 701-06. The APA was originally enacted into law in 1946, Pub. L. No. 79-404, 60 Stat. 237 (1946). In addition to the requirements under the APA, an agency may also need to comply with requirements related to rulemaking imposed by other statutes.

<sup>13</sup> Generally, the APA does not apply to guidance notices.

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(Notice 1) – issued December 27, 2022. This notice announced the Treasury Department and IRS intention to issue proposed regulations addressing application of the CAMT. The notice described the rules intended to be included in forthcoming proposed CAMT regulations including those related to Subchapters C-Corporate Distributions and Adjustments and K-Partners and Partnerships of the Code, troubled corporations, consolidated Federal income tax returns, I.R.C. § 168 depreciation, and the treatment of certain Federal income tax credits.<sup>14</sup> The notice also provided a simplified method for determining whether a corporation is an "applicable corporation" subject to the new CAMT tax regime. Finally, the notice requested public comments and provided the procedure for submitting them.<sup>15</sup>

- **Notice 2023-20** *Interim Guidance Regarding Certain Insurance Related Issues for the Determination of Adjusted Financial Statement Income under Section 56A of the Internal Revenue Code*

(Notice 2) – issued February 17, 2023. This notice provided interim guidance on certain insurance issues related to CAMT AFSI determination.<sup>16</sup> The notice supplements Notice 1 guidance to mitigate substantial, unintended adverse consequences the insurance industry may have faced due to CAMT application. This notice also requested public comments and provided the procedure for submitting them.

- **Notice 2023-42** *Relief from Certain Additions to Tax for Corporation's Underpayment of Estimated Income Tax under Section 6655*

(Notice 3) – issued June 7, 2023. This notice granted relief for corporations that failed to pay estimated tax in connection with the CAMT. In doing so, the IRS waived failure to pay estimated tax penalties with respect to CAMT obligations in Tax Year 2023. This notice did not request comments.

- **Notice 2023-64** *Additional Interim Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code*

(Notice 4) – issued September 12, 2023. This notice provides additional interim guidance that is intended to further clarify the application of the CAMT regime. Specifically, it describes rules for identifying a taxpayer's applicable financial statements and determining their AFSI, including rules for consolidated groups and certain foreign corporations.<sup>17</sup> Additionally, it provides a definition of financial statement income that does not include amounts reflected elsewhere in the taxpayer's applicable financial statements, including in equity accounts such as retained earnings and other comprehensive income. It also provides AFSI adjustment rules associated with

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<sup>14</sup> Title 26 U.S. Code Subchapter C - Corporate Distributions and Adjustments; Title 26 U.S. Code Subchapter K - Partners and Partnerships.

<sup>15</sup> Notice 2023-7 provides a safe harbor for determining applicable corporation status, which simplifies the AFSI calculation for most corporations. However, corporations that do not meet the safe harbor, but nevertheless fail to be applicable corporations, will need to make the AFSI calculation provided under the statute.

<sup>16</sup> The "insurance industry specific notice" also contains guidance on matters that may affect taxpayers outside the insurance industry.

<sup>17</sup> The term consolidated group means an affiliated group of corporations filing (or required to file) consolidated returns for the tax year (26 CFR § 1.1502-1(h)).

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I.R.C. § 168 property depreciation and qualified wireless spectrum amortization. Further, it includes additional guidance on the treatment of certain taxes and the prevention of certain duplications and omissions. The notice also describes rules regarding the determination of applicable corporation status, CAMT foreign tax credit, and financial statement net operating losses. Finally, it requested public comments and included the procedure for submitting such comments.

- **Notice 2024-10** *Additional Interim Guidance Regarding the Application of the Corporate Alternative Minimum Tax under Sections 55, 56A, and 59 of the Internal Revenue Code*

(Notice 5) – issued December 15, 2023. This notice includes additional interim guidance regarding the application of the CAMT. Specifically, it provides rules for determining the AFSI of a U.S. shareholder when a CFC pays a dividend to the U.S. shareholder or another CFC. It also modifies and clarifies the interim guidance provided in Notice 2023-64 regarding the applicable financial statement of tax consolidated group members. Consistent with prior CAMT interim guidance notices, this notice also requested public comments or questions arising from its issuance.

- **Notice 2024-33** *Relief from Certain Additions to Tax for Corporation's Underpayment of Estimated Income Tax under Section 6655*

(Notice 6) – issued April 15, 2024. This notice extends the relief provided in Notice 2023-42, which waived the estimated tax penalty imposed under I.R.C. § 6655 (for a corporation's failure to pay estimated income tax) for certain taxable years.

The CAMT is a complex provision that will require taxpayers to expend significant time and resources in order to determine if the CAMT applies. For example, there are dozens of code sections that corporations must consider when calculating their AFSI. Additionally, this complexity arises because computing AFSI, according to statutory rules, necessitates information that a taxpayer may not readily have available and involves numerous technical questions. While most corporations will not be affected by the CAMT, some corporations that do not expect to owe CAMT may be required to prepare potentially complex AFSI computations before filing their returns. Comprehensive Treasury Regulations can help to alleviate some complexity and uncertainty.

During this review, the Treasury Inspector General for Tax Administration (TIGTA) focused on analyzing 352 comments the IRS had received in response to the law itself and the initial guidance issued as of April 28, 2023. TIGTA identified 32 significant subject areas that were of concern to the public. Figure 1 shows the top 10 subject areas and which of the six published notices have provided some guidance in the significant subject areas identified (see Appendix III for all 32 subject areas).

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**Figure 1: Top 10 Significant Subject Areas Identified From Public Comments**



Source: TIGTA analysis of CAMT comments Chief Counsel received as of April 28, 2023. The chart shows subject categories representing topics that the IRS provided additional guidance for in Notices 1 through 6.

Although the IRS has issued six guidance notices for the CAMT, there are still many remaining questions that corporations are hoping to see addressed in the forthcoming proposed regulations. As of January 2024, the CAMT NPRM is being drafted and at this time is [REDACTED] pages long and final rules are not imminent.<sup>18</sup> When the NPRM is released, it will contain the proposed regulations and will allow the public to comment.

The Large Business and International (LB&I) Division is generally responsible for enforcement activities for domestic and foreign businesses with a U.S. tax reporting requirement and assets equal to or exceeding \$10 million.<sup>19</sup> Therefore, the LB&I Division is the operating division that will conduct audits of CAMT taxpayers. To do so, revenue agents will need to be trained on many aspects of CAMT tax law, [REDACTED].

[REDACTED] According to LB&I Division management, they are focused on CAMT implementation and are also planning a compliance campaign involving examinations, when appropriate, of taxpayers with the CAMT. [REDACTED] as many of the corporations will not file their returns until October 2024.

<sup>18</sup> Speaking at a New York State Bar Association meeting on January 16, 2024, a Treasury Department official indicated that final rules implementing the CAMT are “not imminent in a private sector sense,” and the Treasury Department cannot provide “specific time frames” as to when guidelines will be issued.

<sup>19</sup> [REDACTED]

## **Results of Review**

### **Chief Counsel Needs an Improved Process for Handling Public Comments During the Pre-Rulemaking Process**

During this review, TIGTA focused on the pre-rulemaking process prior to NPRM issuance. Our review of the process used by Chief Counsel to review, track, and consider public comments during the pre-rulemaking phase showed that comments were not always tracked, and documentation was not present to show how comments were considered and resolved. Also, review of CCDM procedures and discussions with Chief Counsel determined that there are no detailed formal, written procedures for the pre-rulemaking process. Finally, some key subject areas have not yet been addressed in the six CAMT guidance notices issued thus far.

#### **Chief Counsel lacks formal, written procedures for the pre-rulemaking process**

Chief Counsel initially provided a comment tracker spreadsheet that did not show how Chief Counsel considered and responded to the 352 comments on the spreadsheet. When we asked Chief Counsel to provide a comment resolution for each of the 352 comments, management responded that they could not accommodate such a request given the amount of work it would entail. Therefore, we could not determine whether all comments were considered or why they were not considered.

To determine whether all comments received were being tracked on the comment tracker spreadsheet dated April 28, 2023, we reviewed 30 comments from the source comment letters and traced them back to the comment tracker. We also reviewed 10 comments by tracing the comments back to the source comment letters. We identified seven (23 percent) comments that were not recorded on Chief Counsel's tracking spreadsheet. When we asked Chief Counsel management about the comments that were not included in the tracker, they responded that four of the seven comments included content similar to other comments already tracked on the spreadsheet. However, Chief Counsel agreed the remaining three were missed and later added them to the tracker.

Additionally, there were some other concerns in the pre-rulemaking process that we observed, including that there is no consistent method used by working groups to track comments. Some Chief Counsel working groups use text documents and some use spreadsheets. Also, comments are not formally ranked or categorized by risk when they are received.

Our review of the CCDM found that there is only limited guidance related to public comments, which includes:

- CCDM 32.2.8.6(1): On occasion, the public is offered the opportunity to provide comments on proposed publications, usually proposed revenue rulings or proposed revenue procedures. The drafting attorney will consider any comments received during the development of the proposed publication.
- CCDM 32.2.8.6(3): When considering public comments, steps should be taken to identify the source and content of the comments in materials that are reviewed, when appropriate.

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While these procedures do say the drafting attorney should consider any comments received, it does not provide the employee with any details or internal controls on tracking and reviewing the comments received from notice guidance. According to the *Standards for Internal Control in the Federal Government*, management should establish policies and procedures to achieve objectives and respond to risks in the internal control system.<sup>20</sup> Internal control principles support the inclusion of formalized procedures and processes for reviewing, documenting, and monitoring public feedback. This is crucial given the importance and magnitude of Chief Counsel's work on complex guidance projects, such as the CAMT.

In addition, the Office of Management and Budget (OMB) *2007 Bulletin for Agency Good Guidance Practices* (hereafter referred to as "the Bulletin") established policies and procedures to enhance the transparency and quality of agency pre-rulemaking guidance projects, e.g., notices, that have a significant impact on the public.<sup>21</sup> The Bulletin serves as a foundational document that outlines best practices and standards for creating guidance documents, which underscore the importance for the development, issuance, and use of significant guidance documents.<sup>22</sup> The Bulletin provides nine best practice areas that should be considered when developing guidance (see Appendix IV).

When we raised our concerns about this issue with Chief Counsel, management stated that the lack of formalized CCDM procedures increases working group flexibility allowing working groups to address guidance on a team/project basis, and that the needs of a particular project, the work style of the drafting team, and the volume of comments received inform the way comments are considered. Chief Counsel also stated that there is no set rule or consistency on how working groups address incoming comments received in response to comment solicitations.

In addition, Chief Counsel stated that its guidance does not prescribe specific procedures for addressing comments received and issues noted, along with no requirements on ranking or prioritization of how comments are reviewed and summarized prior to the issuance of an NPRM.<sup>23</sup> However, in response to our concerns, Chief Counsel later added two additional columns to its comment tracker spreadsheet for employees to document the resolution of each

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<sup>20</sup> Government Accountability Office, GAO-14-704G, *Standards for Internal Control in the Federal Government* (Sept. 2014).

<sup>21</sup> OMB, Memorandum M-07-07, *Issuance of OMB's "Final Bulletin for Agency Good Guidance Practices"* (Jan. 18, 2007).

<sup>22</sup> The OMB defines a significant guidance document as a guidance document that is likely to:

- Lead to an annual effect of \$100 million or more on the economy or a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments.
- Have a substantial direct effect on the rights or interests of the public or a significant number of individuals.
- Raise novel or important legal or policy issues.

Examples of significant guidance documents include policy statements, Interpretive Rules, Staff manuals, Circulars, Bulletins, and Advisories.

<sup>23</sup> TIGTA, Report No. 2024-308-035, *The Request for Comments Process Used for the Advanced Manufacturing Production Credit Pre-Rulemaking Needs to Be Improved* (Aug. 2024), in which a similar process was used prior to the issuance of the NPRM. In that audit, TIGTA identified the same issue.

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comment and provided an updated copy to TIGTA in December 2023.<sup>24</sup> The two added columns now provide a way to document:

- Whether the Office of Tax Policy and Chief Counsel agree or disagree with the comment, with an explanation.
- Whether the comment will be addressed in the NPRM or in future guidance, with an explanation.

Chief Counsel noted that one of the CAMT working groups stated that having this additional information in the comment tracker has been helpful because the resolution of each issue is recorded in a document that is easy for the entire CAMT working group to access. However, Chief Counsel stated that it intends to only incorporate these fields on a case-by-case basis, suggesting some publication projects requesting feedback may not necessitate such detailed tracking of public comments. TIGTA disagrees with this approach and believes that any comment solicitation process should document a thorough review, assessment, and resolution of all comments received.

The lack of procedures and controls for addressing public comments in guidance projects, whether from published notices with interim guidance or the NPRM process is concerning. Courts have recently invalidated notices and tax regulations because Chief Counsel either did not follow proper APA notice and comment procedures or did not adequately consider significant comments they received.<sup>25</sup> Under the APA, agencies must issue a general NPRM, provide stakeholders an opportunity to participate through written submissions, and incorporate a general statement of purpose and basis in the final rule that rebuts significant comments. The APA's notice and comment process gives stakeholders an opportunity to be heard on potential legal changes while helping the agency make more informed decisions.

Although Chief Counsel has not yet issued the NPRM, it would be beneficial to establish procedures to ensure that all comments are documented, reviewed, and considered. This would help to provide legal protection and strengthen Chief Counsel's response to similar comments it receives prior to NPRM issuance. Also, having a single set of procedures for the pre-rulemaking process may:

- Reduce the likelihood of employees making mistakes or following different procedures.
- Improve the uniformity of the pre-rulemaking process across the agency.
- Make it easier to identify and address any problems with the pre-rulemaking process.
- Increase the transparency and accountability of the pre-rulemaking process.

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<sup>24</sup> CAMT Chief Counsel working groups eventually established an informal process for reviewing the comment letters received in response to CAMT notices. Each comment letter received was reviewed by the CAMT Chief Counsel working group for each division.

<sup>25</sup> *Hewitt v. Commissioner*, 21 F.4th 1336 (11th Cir. 2021), where the IRS's failure to respond to significant comments resulted in invalidation of the regulation; *Mann Construction Inc. v. United States*, 27 F.4th 1138 (6th Cir. 2022), where notice was deemed a legislative rule requiring notice and comment as opposed to interpretive rule resulting in invalidation of the notice; *CIC Services LLC v. IRS*, 592 F.Supp.3d 677 (E.D. Tenn. 2022), where notice was deemed a legislative rule rather than interpretive rule thereby requiring APA procedures; and *Green Valley Investors v. Commissioner*, 159 T.C. No. 5 (2022), where notice amounted to legislative rule rather than interpretive rule resulting in invalidation of the rule.

## **Incomplete guidance may create CAMT compliance challenges**

In August 2023, we interviewed some external stakeholders who had provided comments to the IRS on the CAMT in response to notice guidance, Notices 1 and 2. While appreciative of Chief Counsel's efforts to that point, these stakeholders did express concern about the insufficiency of the guidance released in certain subject areas. For example, companies must plan for financial transactions that may affect them in upcoming tax years. When sufficient tax law guidance is not available, financial decisions must be made that may or may not be accurate or beneficial.

As part of our review of the comment tracker spreadsheet, we compared the 32 comment subject categories we identified from the 352 comments received to corresponding content areas discussed in the issued notices. In reviewing the comments, we found that the IRS received 20 or more comments for each of the following six subject areas:

- Depreciation (51 comments).
- Partnerships/Distributive Share (37 comments).
- Troubled Companies (34 comments).
- Other Comprehensive Income (28 comments).
- Mark-to-Market (23 comments).
- AFS (Applicable Financial Statement)/AFSI (20 comments).

Together, these six areas accounted for 193 (55 percent) of the 352 comments received.

To develop a better understanding of how Chief Counsel was addressing some of these areas, we reviewed a judgmental sample of 18 comments from four key areas:<sup>26</sup>

- Depreciation (seven comments).
- Partnerships/Distributive Share (five comments).
- Mark-to-Market (three comments).
- AFS/AFSI (three comments).

Our review indicated that CAMT guidance had not yet addressed some key areas, even after notice guidance was issued. Figure 2 shows whether the 18 comments were fully addressed, partially addressed, or not addressed.

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<sup>26</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

**Figure 2: Chief Counsel Responses to  
Sampled Comments Not Addressed**

Comment Area	Number of Total Comments	Number of Comments Fully Addressed	Number of Comments Partially Addressed	Number of Comments Not Addressed
Depreciation	7	4	1	2
Partnerships/ Distributive Share	5	1	0	4
AFS/AFSI	3	1	0	2
Mark-to-Market	3	0	0	3

*Source: TIGTA analysis of Chief Counsel responses.*

We identified that six comments were fully addressed, one was partially addressed, and 11 were not addressed. Figure 2 underscores the lack of complete guidance in several important areas. In some cases, Chief Counsel is still working on evaluating guidance and/or awaiting input from the Office of Tax Policy and maintains that all of these issues are expected to be addressed in the forthcoming NPRM.

CAMT guidance (Notice 4) issued as of September 12, 2023 (released shortly after our external stakeholder interviews), provides additional clarity on many of the complex CAMT provisions and responds to some taxpayer concerns. However, this notice did not provide guidance in two areas: 1) the extent to which unrealized mark-to-market gains and losses, other than those unrealized mark-to-market gains and losses included in other comprehensive income, should be included in an applicable taxpayer's AFSI; and 2) the manner in which a partner in a partnership should determine its distributive share of partnership AFSI. However, it did include language about Chief Counsel's intent to address these issues in the forthcoming proposed regulations. The notice also requested additional public feedback on the following subjects, suggesting Chief Counsel's continued consideration in some key areas:

- Circumstances in which adjustments to the AFSI are required to clearly reflect income, *e.g.*, a situation in which a transaction between related entities is accounted for at the selling entity's cost instead of at an arm's-length value, such that no income, gain, loss, or deduction is recognized by the seller and the transaction is recorded at the seller's cost by the buyer.
- Scope of defined benefit plans that provide post-employment benefits other than a pension.
- Treatment of dividends received from and/or gains or losses from dispositions of foreign corporate stock for purposes of computing a taxpayer's AFSI.

- Disregarded entity branches and cross-border elimination entries between disregarded entities.

After the Treasury Department and the IRS released Notice 4, we noted some public concerns about Chief Counsel not addressing certain open issues related to consolidated groups as well as those issues discussed previously.<sup>27</sup> Even with the release of all six notices, some of the guidance that corporations need to comply with the CAMT have not been provided. For example, complete guidance on mark-to-market unrealized gains and losses, other than those mark-to-market unrealized gains and losses included in other comprehensive income, and partnership AFSI have not yet been addressed. The IRS has said that key subject areas not included in the notices are expected to be addressed in the NPRM, which is currently scheduled to be issued in August 2024.

Chief Counsel stated that it uses milestones to manage guidance projects and ensure that they are on track to be issued by their target publication dates. Progress on these milestones, when viewed in relation to the target publication date, assists in determining whether a project is subject to delay.<sup>28</sup> However, Chief Counsel noted that the target dates are not fixed and should be viewed more as “aspirational target dates” due to various changes and circumstances such as the complexity of the project, the high-profile nature of the guidance, the need to brief the highest levels in the IRS and the Treasury Department, and other competing priorities within the Treasury Department.

Although Chief Counsel is making an effort to issue CAMT guidance, an analysis of the project milestones suggests guidance has not been released as quickly as initially anticipated. While Chief Counsel attorneys acknowledged missing some of the target dates, they disagree that these dates represent concrete deadlines. Chief Counsel stated that CAMT guidance dates were extended because the Office of Tax Policy and Chief Counsel working groups for the CAMT needed more time to review and revise the fourth notice to address additional issues and comments raised internally. Chief Counsel also said it needed time to brief IRS management and Treasury Department officials.

As discussed previously, the absence of formal procedures may have impacted the process in various ways, including timeliness. These delays, in conjunction with the complexity of the subject matter, may have contributed to the lack of complete guidance in some areas. Also, although six CAMT guidance notices have been issued, questions remain that some taxpayers will need answered in forthcoming regulations. With the CAMT beginning with Tax Year 2023, incomplete guidance may create compliance challenges, requiring complex computations even for those not expecting to owe CAMT. Taxpayers must also consider the time, resources, and processes needed to gather information and perform calculations without complete guidance.<sup>29</sup>

**Recommendation 1:** The IRS Office of Chief Counsel should provide for a written process that will track all comment letters submitted prior to the issuance of an NPRM or other guidance to facilitate consideration of those comments by the Chief Counsel drafting team assigned to the project.

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<sup>27</sup> The IRS and the Treasury Department provided some additional guidance on consolidated groups in Notice 5.

<sup>28</sup> CCDM 32.2.2.6.6.2(4) (Apr. 28, 2009).

<sup>29</sup> Penalty relief Notice 3 alleviated some of the public concerns about CAMT compliance for Tax Year 2023.

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**Management’s Response:** The Office of Chief Counsel disagreed with this recommendation to the extent that it suggests that a written record that tracks consideration of comments should be required in all cases. Chief Counsel agreed that it is crucial to the rulemaking process to have a robust process to consider comments submitted prior to the issuance of the NPRM or other guidance and stated that its CCDM already provides written guidelines for consideration of comments. The CCDM provides attorneys with guidelines for their consideration of comments received during the drafting of published guidance. Specifically, the CCDM requires review and consideration of comments and provides for the flexibility as to the form in which the review and consideration of comments takes place. While some projects will benefit from the creation of a document to track the consideration of comments, not all projects require such detailed documentation.

**Office of Audit Comment:** Our recommendation is intended to enhance the efficiency and effectiveness of the pre-rulemaking process. The recommendation was discussed and agreed to by Chief Counsel during the reporting phase of this audit. We continue to believe that any comment solicitation process, whether pre-rulemaking or the NPRM, should document a thorough review, assessment, and resolution of all comments received. Additionally, the claim that the CCDM already provides sufficient guidelines is inconsistent with Chief Counsel’s own actions. Our audit identified instances in which the selective flexibility in the documentation of comments led to comments being missed, highlighting a failure to consider and address all stakeholder input. Establishing a standardized written tracking process is important for upholding the integrity and thoroughness of the pre-rulemaking process, ensuring comprehensive evaluation of all stakeholder comments. Recent court cases demonstrate that the inadequate consideration of significant comments has necessitated costly regulatory revisions, underscoring the importance of thorough stakeholder engagement.

[REDACTED]

[REDACTED] the IRS’s LB&I Division stated that the Compliance Strategy Council, composed of senior directors, recently approved a compliance campaign for the CAMT issue. This campaign was announced to the public in December 2023. Its goals are to promote voluntary compliance, focus resources on the highest risk issues regarding the CAMT via consistent and thorough risk assessment, and ensure consistent development and resolution of CAMT issues.

[REDACTED]

[REDACTED] However, consistent with existing audit procedures as well as the complexity and size of CAMT taxpayers, [REDACTED]

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[REDACTED] management has already begun training personnel.<sup>30</sup> For example:

- Members of the implementation team have participated in Chief Counsel’s internal financial accounting training and publicly available external training. They have also had extensive engagement with Chief Counsel on financial accounting subject matter and attended stakeholder presentations at the Treasury Department.
- The Compliance Assurance Process teams have had some CAMT training and are expected to have more training after additional guidance (the NPRMs, regulations, *etc.*) is issued.
- More targeted tax and financial accounting training for audit teams with high-risk CAMT issues is being considered.

LB&I Division new hires receive basic financial accounting training, and technical employees with specialized duties (like the CAMT) can attend external training, webinars, and other educational events. Training needs will become clearer as guidance is issued, CAMT returns are filed, and risk is analyzed. [REDACTED]

<sup>31</sup>

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<sup>30</sup> [REDACTED]

<sup>31</sup> Generally, training would be needed after guidance is issued [REDACTED]

## **Appendix I**

### **Detailed Objective, Scope, and Methodology**

The overall objective of this audit was to assess processes and procedures to implement the CAMT provision included in the IRA and to ensure future compliance. To accomplish our objective, we:

- Evaluated processes and procedures for implementing the CAMT provision from the IRA and ensured future compliance by interviewing Chief Counsel personnel, reviewing the CCDM, and reviewing each of the six CAMT notices issued.
- Categorized comments received by the IRS. From 352 comments, we selected a judgmental sample of 18 comments from four of six key areas with 20 or more comments (Depreciation, Partnership/Distributive Share, Mark-to-Market, and AFS/AFSI) for analysis and tracked their inclusion in the comment tracker.<sup>1</sup>
- Evaluated the comment letter tracker spreadsheet dated April 28, 2023. We reviewed 10 comments from the comment tracker and traced the comments back to the source comment letters. We also reviewed 30 comments from the source comment letters and traced them back to the comment tracker spreadsheet. We provided the IRS notification of any discrepancies we noted during the review.
- Conducted interviews with Chief Counsel attorneys and external stakeholders and reviewed legal opinions.
- Interviewed LB&I Division management to determine post-processing CAMT compliance and operational needs.

#### **Performance of This Review**

This review was performed with information obtained from the Office of Chief Counsel in Washington, D.C., during the period February 2023 through March 2024. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Phyllis Heald London, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations); Michele Jahn, Acting Director; Jon-Michael Socaris, Audit Manager; Shalin Basnayake, Lead Auditor; Jennifer Earls, Lead Auditor; and Jocquin Gude, Auditor.

#### **Data Validation Methodology**

We obtained a comment tracker spreadsheet that included manually entered information (comments). We validated the data by organizing each of the comments into subject categories

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<sup>1</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

and confirming the categorization with Chief Counsel. Finally, we held interviews with the personnel involved in populating the comment tracker spreadsheet. We determined that the data were sufficiently reliable for purposes of this report.

### **Internal Controls Methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: applicable policies and procedures related to Chief Counsel's notice process. We evaluated these controls by reviewing Chief Counsel's CCDM, comment letters the IRS received from the first two CAMT notices, and the comment tracker spreadsheet.

## Appendix II

### IRS and Department of the Treasury Rulemaking Process<sup>1</sup>

#### ▼ NOTICE

A pre-rulemaking guidance document that does not have the force and effect of law and is published in the Internal Revenue Bulletin. The purpose of this guidance is to provide taxpayers a much needed clarity and certainty concerning the legal interpretation that the IRS is to apply. This process is not subject to the APA.

#### ▼ ADVANCE NOTICE OF PROPOSED RULEMAKING

A request for comments document that an agency may choose to issue before it is ready to issue an NPRM. The Advance Notice of Proposed Rulemaking is used to obtain public participation at an early stage in the formulation of a regulatory change, before reaching a decision on a particular change. The NPRM is still required to be issued before issuing final regulations. This process is not subject to the APA.

#### ▼ NOTICE OF PROPOSED REGULATIONS ISSUED

Issued in the Federal Register, with results subject to notice and comment period. Taxpayers may rely on the proposed regulations in taking tax positions on upcoming tax returns. Proposed regulations are published in the Federal Register for public comments and may include IRS prepared corrections to NPRMs.

#### ▼ TEMPORARY REGULATIONS ISSUED

An interim final rule issued that becomes effective immediately without a notice and comment period, followed by a statement of good cause explaining the basis for the finding. Section 7805(e) requires the IRS to publish a cross-referencing NPRM when it publishes a temporary regulation. This section also provides that a temporary regulation expires (sunset) within three years of issuance.

#### ▼ CHANGES TO PROPOSED REGULATIONS

Announcing to the public that the IRS is considering modifying regulations as published in the Federal Register.

#### ● FINAL REGULATIONS

Issued with the force of law after the IRS responds to public comments on proposed regulations through the NPRM period.

*Source: Treasury Department's Policy Statement on the Tax Regulatory Process (March 2019) and the CCDM.*

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<sup>1</sup> This is an overview of the rulemaking process, and each of the processes described can happen without the other steps happening or at other points in the process.

## Appendix III

### Thirty-Two Significant Subject Areas Identified by TIGTA, Including the Internal Revenue Code Sections, and Which of the Six Published Notices Have Provided Some Guidance in the Significant Subject Areas

Subject Category	Number of Comments	I.R.C. Sections	Notice 1 2023-7	Notice 2 2023-20	Notice 3 2023-42	Notice 4 2023-64	Notice 5 2024-10	Notice 6 2024-33
Depreciation	51	56A(c)(13)	X			X		
Partnerships/ Distributive Share	37	56A(c)(2)(D)	X			X		
Troubled Companies	34	56A(c)(15)	X					
Other Comprehensive Income	28	56A(a)				X		
Mark-to-Market	23	56A(c)(2)(C), 56A(c)(15)				X		
AFS/AFSI	20	56A		X		X	X	
Foreign Income/ Controlled Foreign Corporations/ Tax Treaties	18	56A(c)(3)				X	X	
Foreign-Parented Multinational Group	17	59(k)(2)				X		
Applicable Corporation Definition/ Income Test	15	59(k)(1)	X			X		
Consolidated Financial Statements/ Returns	14	56A(c)(2)(A)/(B)	X			X	X	
Covered Nonrecognition Transactions	14	56A(c)(15)(B)	X					
Financial Statement Net Operating Loss	13	56A(d)				X		
Penalty Relief/ Safe Harbor	10	59(k)(3)(A)	X		X			X
Earnings History	8	59(k)(1)	X					

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Subject Category	Number of Comments	I.R.C. Sections	Notice 1 2023-7	Notice 2 2023-20	Notice 3 2023-42	Notice 4 2023-64	Notice 5 2024-10	Notice 6 2024-33
Treatment of Dividends and Other Amounts	7	56A(c)(2)(C)				X		
Foreign Tax Credit	7	59(l)				X		
Extraordinary Items of Income	6	56A(a)				X		
Purchase Accounting	5	56A(c)(15)	X					
Omissions/ Duplications	4	56A(c)(15)				X		
Spin-Offs	4	56A(c)(15)(B)	X					
Boot Transactions	4	56A(c)(15)(B)	X					
Ownership Change	3	59(k)(3)	X			X		
Acquisitions	3	56A(c)(15)(B)	X					
Insurance	3	56A(a), 56A(c)(2)(C), 56A(c)(2)(D), 56A(c)(15)		X				
Transfers to Corporations	2	56A(c)(15)(B)	X					
Covered Benefit Plans	1	56A(c)(11)						
General	1	56A						
Effectively Connected Income	0	56(c)(4)				X		
Adjustments for Certain Taxes	0	56(c)(5)				X		
Disregarded Entities	0	56(c)(6)				X		
Elections for Direct Payment of Certain Credits (I.R.C § 48D(d)/6417)	0	56(c)(9)	X					
Qualified Wireless Spectrum	0	56(c)(14)				X		

*Source: TIGTA analysis of CAMT comments Chief Counsel received as of April 28, 2023. The chart shows subject categories representing topics that the IRS provided additional guidance for in Notices 1 through 6.*

## Appendix IV

### Office of Management and Budget 2007 Bulletin for Agency Good Guidance Practices in Relation to the IRS's Dissemination of the Inflation Reduction Act of 2022 Guidance

- 1. Transparency and Accessibility:** The OMB bulletin's emphasis on transparency and public access aligns with the IRS's duty to make guidance related to the IRA CAMT easily accessible to taxpayers and stakeholders. This ensures that those affected can readily find and comprehend the guidance.
- 2. Clarity and Consistency:** The OMB Bulletin's stress on clear and consistent guidance content is especially pertinent to Chief Counsel when interpreting and explaining IRA CAMT provisions. Clear guidance aids taxpayers in understanding their obligations and rights under the law. In addition, tax legislation can be intricate and voluminous. Chief Counsel must manage and communicate this complexity effectively in its guidance documents. The OMB Bulletin's guidance on clarity and organization is especially pertinent here, as it helps taxpayers navigate complex tax provisions like the CAMT.
- 3. Public Engagement:** The OMB Bulletin's call for public engagement aligns with Chief Counsel's obligation to consider input and feedback from taxpayers, tax professionals, and other stakeholders during the formulation of guidance linked to the IRA CAMT. Public input enhances the quality and effectiveness of IRS guidance. Further, given the wide-ranging impact of tax legislation, the IRS must actively engage with various stakeholders, such as tax professionals, industry associations, and advocacy groups, as part of its public engagement process. This engagement ensures that the guidance incorporates the diverse perspectives and concerns of those affected by the IRA.
- 4. Significance Determination:** The classification of guidance as "significant" or "non-significant" under the OMB Bulletin is particularly important for Chief Counsel when interpreting and implementing specific provisions of the IRA CAMT. Significant guidance, such as those associated with the CAMT, may necessitate more extensive review and public input.
- 5. Oversight and Documentation:** The OMB Bulletin's call for agencies to designate oversight officials is essential for Chief Counsel. It helps ensure that guidance pertaining to the IRA CAMT is developed, issued, and maintained in accordance with established procedures, fostering accountability.
- 6. Expertise in Taxation:** The IRS, as the agency responsible for tax administration, possesses specialized expertise in taxation matters. When interpreting and implementing the IRA CAMT, the IRS must use its in-house knowledge and experience to ensure that the guidance aligns with the intricacies of the tax code.
- 7. Taxpayer Rights and Obligation:** The IRS has a unique role in safeguarding taxpayer rights and ensuring compliance with tax laws. Therefore, the IRS's administration of guidance for the IRA CAMT must place a strong emphasis on clearly delineating taxpayer rights and

**Review of the Corporate Alternative Minimum Tax Implementation  
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obligations, in line with the principles of clarity and organization outlined in the OMB Bulletin.

- 8. Compliance and Enforcement:** The IRS plays a vital role in enforcing tax laws and ensuring compliance. Therefore, guidance related to the IRA CAMT must not only inform taxpayers but also outline the IRS's enforcement mechanisms. This requires a careful balance between clarity and comprehensive guidance, aligning with the OMB's principles.
- 9. Specialized Oversight:** While the OMB Bulletin provides a general framework, the IRS may need to establish specialized oversight mechanisms tailored to the unique challenges and responsibilities it faces in tax administration. This ensures that the IRS's guidance for the IRA CAMT aligns with its specific mission and objectives.

## Management's Response to the Draft Report



OFFICE OF THE CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

MEMORANDUM FOR DANNY VERNEUILLE  
ACTING DEPUTY INSPECTOR GENERAL FOR AUDIT

**FROM:** Drita Tonuzi Drita Tonuzi Digitally signed by Drita Tonuzi  
Date: 2024.07.03 16:03:27 -0400  
Deputy Chief Counsel (Operations)

**SUBJECT:** Draft Audit Report – Review of the Corporate Alternative  
Minimum Tax Implementation Identified Weaknesses in the Pre-  
Rulemaking Process (Audit No.: 202330827)

Thank you for the opportunity to review the subject draft report. We appreciate the Treasury Inspector General for Tax Administration's (TIGTA) input, analysis, and collaborative efforts thus far to improve the process and procedures to implement guidance relating to the Corporate Alternative Minimum Tax (CAMT).<sup>1</sup>

Implementing CAMT raised unique challenges for Treasury and Chief Counsel. CAMT is a new and complex tax provision, which combines financial accounting concepts and tax law principles. Significant regulatory authority was provided to the Secretary of the Treasury to implement the provision. The provision went into effect for taxable years beginning after December 31, 2022. Chief Counsel and Treasury initially published four notices that provide interim guidance to the public on important CAMT issues. These four notices also solicited feedback through a request for public comments. This report focuses on the process Chief Counsel used to review, track, and consider public comments received in response to these notices.

While the notices that requested comments are not subject to the Administrative Procedure Act's notice and comment process, the CAMT working group agrees with TIGTA that it is important that Chief Counsel review all comments received in response to notices with a request for public comments. The report notes TIGTA's concern that there was no consistent method used by the CAMT teams for each office in Chief Counsel to track comments. Chief Counsel established a process that was consistently used by all of the CAMT teams to track comments through resolution. The working group created centralized comment trackers to document all public comments on the CAMT notices. Each team reviewed each comment letter, identified the comments within its subject matter jurisdiction, and summarized those comments in the comment tracker. TIGTA found a limited number of comments that were not initially included in the comment tracker because they either repeated comments that were already included in

<sup>1</sup> Section 10101 of Public Law 117-169, 136 Stat. 1818, 1818-1828 (August 16, 2022).

## Review of the Corporate Alternative Minimum Tax Implementation Identified Weaknesses in the Pre-Rulemaking Process

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the tracker or were accidentally omitted from the tracker. The CAMT teams reviewed and considered these comments and added them to the comment tracker.

The CAMT working group agrees with TIGTA that it is important to document the resolution of comments received in response to the CAMT notices. The report states that documentation was not present to show how comments were considered and resolved. However, as discussed with TIGTA, the comment tracker spreadsheet contained two columns to document how each comment was resolved. The Treasury and Chief Counsel teams for each division considered all comments under their jurisdiction when developing the scope and content of the proposed regulations. Each team filled out these columns over time as each comment was resolved. Updated comment trackers were provided to TIGTA with the resolution of resolved comments noted on the comment tracker.

The report states that these two columns were added to the tracker in response to TIGTA's concerns and that Chief Counsel's consideration of the comments was not documented until TIGTA requested them. Documentation provided to TIGTA shows that Chief Counsel discussed adding these columns to the first comment tracker before being asked by TIGTA to do so, and that one CAMT team began filling out this information on an updated comment tracker before TIGTA requested the additional columns. The initial comment tracker provided to TIGTA was the starting point for documenting the comments and was expanded over time to include how the comments were resolved.

The report asserts that the absence of formal procedures may have caused a delay in issuing CAMT guidance, which may have contributed to the lack of complete guidance in some areas. As discussed above, the CAMT working group established procedures for considering and documenting the resolution of all comments received in response to the notices. The procedures the CAMT team established meet the criteria for the written process to track comment letters in Recommendation 1. These documentation procedures, as well as the audit of the CAMT project while the CAMT guidance was being developed, did not affect the timing of the issuance of CAMT guidance or hinder the resolution of issues. Rather, some key CAMT issues were more complex and required additional time for Chief Counsel and Treasury to consider and review before they were resolved. The procedures the CAMT working group established allowed the team to issue key guidance while continuing to consider issues expected to be addressed in future guidance.

We have concerns with TIGTA's statement that "[i]ncomplete guidance may create CAMT compliance challenges." We believe that identifying key issues and issuing guidance on those issues is helpful for tax compliance. While working on more comprehensive guidance, the CAMT working group identified key issues requiring more immediate guidance and provided that guidance. When providing that guidance, the

**Review of the Corporate Alternative Minimum Tax Implementation  
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CAMT working group recognized taxpayers' compliance concerns and took action to mitigate such concerns. Because some key issues were not fully addressed in 2023 and early 2024, Chief Counsel and Treasury issued three notices providing penalty relief for corporations that failed to pay estimated tax in connection with the CAMT in tax year 2023 and for the first two quarters of 2024. In addition, to reduce the compliance burden for corporations that would clearly not be subject to CAMT, Notice 2023-7 (the first CAMT notice) provides a safe harbor for determining applicable corporation status. The safe harbor simplifies the adjusted financial statement income (AFSI) calculation for many corporations that may not owe CAMT. As part of the ongoing guidance process, the key CAMT subject areas that were not addressed in the notices are expected to be addressed in the proposed regulations tentatively projected to be issued in 2024.

Attached is our response to TIGTA's recommendation. If you have any questions, please contact me, or members of your staff may contact Judith Kindell, Special Counsel.

Attachment

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Attachment

**RECOMMENDATION 1:** The Office of Chief Counsel should provide for a written process that will track all comment letters submitted prior to the issuance of a notice of proposed rulemaking or other guidance to facilitate consideration of those comments by the Chief Counsel drafting team assigned to the project.

**CORRECTIVE ACTION:** To the extent that this recommendation suggests that a written record that tracks consideration of comments should be required in all cases, the Office of Chief Counsel respectfully disagrees with the recommendation. The Office of Chief Counsel agrees that a robust process to consider comments submitted to the agency prior to the issuance of a notice of proposed rulemaking or other guidance is crucial to the rulemaking process, but underscores that the Chief Counsel Directives Manual (CCDM) already provides written guidelines for consideration of comments. The CCDM currently provides attorneys with guidelines for their consideration of comments received during the drafting of published guidance.<sup>2</sup> Specifically, the CCDM requires review and consideration of comments; however, the CCDM provides flexibility as to the form in which the review and consideration of comments takes place. While some projects will benefit from the creation of a document to track the consideration of comments, not all projects require such detailed documentation.

**RESPONSIBLE OFFICIAL:** Associate Chief Counsel (Procedure & Administration)

**IMPLEMENTATION DATE:** N/A

**CORRECTIVE ACTION MONITORING PLAN:** N/A

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<sup>2</sup> CCDM 32.1 is the Chief Counsel Regulations Handbook and provides procedures for drafting and publishing regulations. CCDM 32.2 is the Chief Counsel Publications Handbook and provides procedures for drafting and published other published guidance.

## Abbreviations

AFS	Applicable Financial Statements
AFSI	Adjusted Financial Statement Income
APA	Administrative Procedure Act
CAMT	Corporate Alternative Minimum Tax
CCDM	Chief Counsel Directives Manual
CFC	Controlled Foreign Corporation
IRA	Inflation Reduction Act of 2022
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
LB&I	Large Business and International
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
TIGTA	Treasury Inspector General for Tax Administration



**To report fraud, waste, or abuse,  
contact our hotline on the web at [www.tigta.gov](http://www.tigta.gov) or via e-mail at  
[oi.govreports@tigta.treas.gov](mailto:oi.govreports@tigta.treas.gov).**

**To make suggestions to improve IRS policies, processes, or systems  
affecting taxpayers, contact us at [www.tigta.gov/form/suggestions](http://www.tigta.gov/form/suggestions).**

Information you provide is confidential, and you may remain anonymous.