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Book Minimum Tax Blunts Some Federal Rescue Tools, Banks Warn

By Caleb Harshberger

- Trade group wants FDIC federal financial assistance exception
- Current language could see banks avoid FDIC deals to dodge CAMT

Language in the corporate alternative minimum tax changes the way gains from federal financial assistance from the Federal Deposit Insurance Corporation are taxed in a way that could blunt future efforts to stave off banking crises such as the one seen last spring.

The current corporate alternative minimum tax language would tax gains from FDIC federal financial assistance in a way that could slam the FDIC's Deposit Insurance Fund and discourage some lenders from taking part in FDIC-assisted transactions. Taxing the assistance all at once could mean banks need more FDIC help to make the math work on deals—effectively sending money from the agency to the IRS.

Steptoe Partner Larry Hill said the topic likely slipped past drafters when writing the new tax in the Inflation Reduction Act.

"This is an example of where the extensive scope of the CAMT provisions has potential unintended consequences," he said.

The American Bankers Association also argues in a letter to the IRS that the agency should pass guidance excluding federal financial assistance from adjusted financial statement income and accounting for such income "in the same manner as it is accounted for under Section 597."

Rather than taxed all at once as income, Section 597 says federal financial assistance gains are "taxed over time, as the acquired assets—such as loans and other bank assets—are resolved and income is realized," according to the American Bankers Association letter, addressed to Assistant Secretary (Tax Policy) Lily Batchelder and dated Dec. 20.

The FDIC declined to comment, spokesperson Carroll Kim said.

Banks Fail

When Silicon Valley Bank failed in spring 2023, the FDIC snapped into action to find buyers for the bank's assets and liabilities. That failure was followed by Signature Bank and First Republic Bank in the weeks and months that followed.

To ease the sale, the FDIC supports these sorts of deals with partial guarantees of the assets. These guarantees make the deals "FDIC-assisted" and can lead to taxable gains—governed under Section 597.

First Citizens BancShares ultimately bought Silicon Valley Bank. Flagstar Bank bought most of Signature Bank's deposits, and JP Morgan bought the deposits and most of the assets of First Republic Bank.

CAMT could make these sorts of deals a lot harder.

According to the tax, corporations that make an average of $1 billion or more as calculated in an adjusted financial statement of income, or AFSI, over three years qualify as an applicable corporation and must pay the minimum 15% tax.

Without the exception, banks that otherwise wouldn't qualify for CAMT could—providing an incentive to avoid those deals. And once a company is in, it stays in for good unless Treasury decides to let it out.

The agency has yet to clarify what metrics it would consider in allowing companies to exit CAMT applicability.

Rather than banks paying the tax on gain over time as in Section 597, they'd be expected to pay up right away.

Avoiding Ripple Effect

The American Bankers Association said this will hit mid-sized banks especially hard.

Without the Section 597 exception, Hill said some banks might not do FDIC-assisted deals.

"This may disincentivize banks from purchasing banks or bank assets from FDIC receivership, which could have a negative impact on the financial system," Hill said.

Fewer banks opting into these kinds of deals could damage the FDIC's ability to get control of bank crises and prevent the fallout from damaging or taking down other institutions that could've otherwise been spared, said Marcum LLP Tax and Business Services Leader Joseph Perry.

"You don't want to have a ripple effect," Perry said. "I think that's the concern."

He said the drafters of CAMT likely didn't think through the implications on banks and FDIC-assisted deals, adding that the tax on the gains is ultimately paid under Section 597—only the timing is changed.

"I don't think they understood the consequences," he said. "It's not necessarily the best answer for the government."

Eric Solomon, a former assistant secretary for tax policy at Treasury and partner at Ivins, Phillips & Barker, said the topic is narrow, but important, as it typically comes up in times of crisis for banks.

"So it is important, especially in times of distress," he said. "And you have these periodic times of distress where the banking industry gets into trouble, like in the late '80s and 2008, and earlier last year."

The letter came as Treasury continues to work on a behemoth guidance package to tackle a wide variety of topics and issues raised in comment letters and in conversations since the passage of the bill. The agency had hoped to publish those by the end of last year but had to push it back.

"It's one of a litany of topics," Tax Foundation Vice President of Federal Tax Policy Will McBride said in an interview. "They just keep coming."

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