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Partnerships Struggle With Impact of US Corporate Minimum Tax

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- Corporate partners await guidance on book tax
- Distributive share definition creates discrepancies

A partnership is not subject to a new corporate alternative minimum tax but its financial statement income could determine if its corporate partner is liable.

Confusion lingers for partnerships as to who and how much tax is paid as practitioners await guidance on the corporate AMT outlined in President Joe Biden's tax-and-climate law—known as the Inflation Reduction Act.

Applicable corporations or companies that meet an income test, excluding S corporations, regulated investment companies, or real estate investment trusts, will have to determine if they exceed the \$1 billion threshold of average annual applicable financial statement income over a three year period and are therefore subject to the corporate AMT— the so-called book tax.

For corporations that are a partner in a partnership it is less clear what income corporations will be required to count from the partnership to determine the corporate AMT and its applicability.

“There are more questions than answers,” said Victoria Glover, a partner at Washington National Tax at Deloitte.

Applicability and Liability

The consolidation of a corporation's book income to consider its partnership's financial statement income opens questions about how much of the income should be included and what reporting is going to be required of partnerships to the corporate partner.

The financial statement income for calculating if corporations are subject to the rule and its tax liability will often be different, said Monisha Santamaria, a principal at KMPG's Washington National Tax Practice.

“Because they can be different, it is very confusing, especially in the partnership context,” Santamaria said.

For determining the adjusted financial statement income of an applicable corporation that is a corporate partner, the Inflation Reduction Act outlines the income is “adjusted to only take into account” distributive share of the partnership’s AFSI.

There could be concern that a corporation is taking all of the partnership’s income into account as opposed to just the corporate partners share, Glover said.

The corporate AMT provision “never went through committee and it has very little legislative history from when it actually passed the House,” Glover said. “And obviously, there were significant changes that were made along the way. And so I think, with respect to that provision, specifically, there are more questions than answers of how this provision operates.”

The shares can be calculated in different ways depending on if a taxpayer interprets it literally under tax code Section 704(b) or takes into account other areas such as Section 743 adjustments, and 704(c) allocations, that affect the partner share of taxable income, said Glenn Dance, a former IRS official and now a partner at Hothouse, Carlin & Van Trigt LLP in Irvine, Calif.

Partners with different tax return preparers could interpret distributive shares differently, he said.

“Somebody is going to be taxed on a whole lot of book income,” Dance said. “And somebody else is going to be taxed on too little book income. And once people discovered that, that’s how the world works, they’ll find ways just to make sure that they always play the game the right way.”

Treasury will also have to clarify if non-recognition events will continue to be tax free and how they plan to address tiered partnerships, Glover said.

Burden on Partnerships

It is “unusual” for a corporation to receive a distributive share of income from a partnership, said Michael D’Addio, a principal at Marcum LLP. Partners file a Schedule K-1 with taxable income information not financial statement income, unless there is a provision in the agreement.

Practitioners have expressed [concerns](#) with additional reporting requirements for partnerships with the extended foreign income forms earlier this year.

Corporations will need to get information concerning its share of that partnership adjusted financial statement income by either requesting the information from the partnership or the IRS could create a rule requiring partners to provide that information.

Until guidance from the IRS is released, companies will have to develop their own procedures in receiving information from partnerships, which D'Addio said is difficult to do.

A broad rule requiring all partners to provide financial statement income would put a burden on partnerships to develop information that isn't hit by the corporate AMT, D'Addio said. He expects requests for financial statement information during tax filing season.

"You have to expect that for most partnerships, it would be a bit of overkill to provide that information across the board," D'Addio said. About 150 taxpayers are expected to be subject to the corporate AMT, according to a [report](#) from the Joint Committee of Taxation.

"I think everyone is just trying to get their arms around how the basic operations of this provision works, and what was congressional intent of this provision," Glover said.