U.S. Chamber of Commerce

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March 21, 2023

The Honorable Lily L. Batchelder
Assistant Secretary (Tax Policy)
U.S. Department of the Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

William M. Paul, Esq.
Principal Deputy Chief Counsel and
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue N.W.
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Re: New Corporate Alternative Minimum Tax – Implementation Issues and Priority Guidance Recommendations

Dear Assistant Secretary Batchelder and Mr. Paul:

On behalf of the U.S. Chamber of Commerce (the "Chamber"), I am pleased to provide the enclosed comments concerning the new corporate alternative minimum tax ("AMT") enacted in Public Law 117-169, the Inflation Reduction Act of 2022 ("IRA").[1]

The enclosed comments identify a range of threshold implementation issues arising under the new law and provide constructive recommendations for addressing them in regulations or other guidance. Our objective in providing these comments is to help you and your colleagues prioritize those implementation issues of greatest mutual concern to American companies—and for which regulatory or other guidance is most urgently needed—as they work to apply and comply with the IRA. The enclosed comments are the product of extensive consultations with a cross-industry, geographically diverse group of Chamber members.

The Chamber appreciates your collective efforts to provide taxpayers interim guidance regarding certain time-sensitive issues arising under the new corporate AMT, as reflected in Notices 2023-7 and 2023-20. With the timing and scope of the forthcoming proposed regulations still uncertain, however, we felt it incumbent on us to share the enclosed implementation concerns and priority guidance recommendations with respect to the new tax. We strongly urge the Department of the Treasury and Internal Revenue Service to work closely with the business community throughout the IRA implementation process to address these and other issues that are critical to the international competitiveness of affected U.S. companies. To that end, I would welcome the opportunity

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[1] An Act to provide for reconciliation pursuant to title II of S. Con. Res. 14, Pub. L. No. 117-169, § 10201, 136 Stat. 1818, 1818–28 (2022) (codified at I.R.C. §§ 55, 56A, 59).

to discuss our comments with you or your colleagues in further detail and provide whatever additional information you may require. Thank you for your time and attention.

Sincerely,

Watson M. McLeish
Senior Vice President, Tax Policy
U.S. Chamber of Commerce

Enclosure

Copies: The Honorable Ronald L. Wyden, Chairman, Committee on Finance, United States Senate
The Honorable Michael D. Crapo, Ranking Member, Committee on Finance, United States Senate
The Honorable Jason T. Smith, Chairman, Committee on Ways and Means, United States House of Representatives
The Honorable Richard E. Neal, Ranking Member, Committee on Ways and Means, United States House of Representatives
Thomas A. Barthold, Chief of Staff, Joint Committee on Taxation, United States Congress
Robert H. Wellen, Associate Chief Counsel (Corporate), Internal Revenue Service
Scott Vance, Associate Chief Counsel (Income Tax and Accounting), Internal Revenue Service

**PUBLIC LAW 117-169, THE INFLATION REDUCTION ACT OF 2022
IMPLEMENTATION ISSUES AND PRIORITY GUIDANCE RECOMMENDATIONS**

PROVISION	ISSUE(S)	DISCUSSION
SEC. 10101. CORPORATE ALTERNATIVE MINIMUM TAX		
Sec. 10101(a)(2), IMPOSITION OF TAX.—APPLICABLE CORPORATION		
I.R.C. § 59(k)(1)(C), APPLICABLE CORPORATION.—APPLICABLE CORPORATION DEFINED.—EXCEPTION (C) EXCEPTION.—Notwithstanding subparagraph (A), the term 'applicable corporation' shall not include any corporation which otherwise meets the requirements of subparagraph (A) if— (i) such corporation— (I) has a change in ownership, or (II) has a specified number (to be determined by the Secretary and which shall, as appropriate, take into account the facts and circumstances of the taxpayer) of consecutive taxable years, including the most recent taxable year, in which the corporation does not meet the average annual adjusted financial statement income test of subparagraph (B), and (ii) the Secretary determines that it would not be appropriate to continue to treat such corporation as an applicable corporation.	**Application of the Exception** By its terms, the exception to applicable corporation status that Congress provided for a corporation that previously met the average annual adjusted financial statement income test appears to require some form of affirmative guidance from the Department of the Treasury ("Treasury") or the Internal Revenue Service ("IRS"). The statute does not, however, indicate what factors Treasury or the IRS should consider in determining whether it would be appropriate to continue to treat a corporation as an applicable corporation for purposes of the new corporate alternative minimum tax ("AMT").	**Recommendation** Treasury and the IRS should prioritize the issuance of regulations or other published guidance under section 59 of the Internal Revenue Code ("Code") specifying the number of consecutive taxable years required by subparagraph (C)(i)(II) and articulating clear, simple, and objective criteria governing the Secretary's determination under subparagraph (C)(ii).[1]

[1] Unless otherwise indicated, all textual references to "section" herein are to sections of the Internal Revenue Code of 1986, as amended ("Code").

Sec. 10101(b)(1), ADJUSTED FINANCIAL STATEMENT INCOME.—IN GENERAL		
I.R.C. § 56A(a), IN GENERAL (a) IN GENERAL.—For purposes of this part, the term 'adjusted financial statement income' means, with respect to any corporation for any taxable year, the net income or loss of the taxpayer set forth on the taxpayer's applicable financial statement for such taxable year, adjusted as provided in this section.	**Issue** Under U.S. Generally Accepted Accounting Principles ("GAAP"), companies report comprehensive income, which comprises both net income and other comprehensive income ("OCI").[2] • Net income is a measure of financial performance resulting from the aggregation of revenues, expenses, gains, and losses that are not items of OCI.[3] • Many of the items classified as OCI are unrealized and would increase the volatility of earnings if included in net income. Some examples include foreign currency translation adjustments, unrealized holding gains and losses on available-for-sale debt securities, and gains or losses associated with pension or other postretirement benefits.[4] By definition, OCI items are *excluded* from financial accounting net income or loss.[5]	**Recommendation** Treasury and the IRS should issue regulations or other published guidance confirming that, consistent with congressional intent,[6] OCI is not included in adjusted financial statement income ("AFSI") for purposes of the new corporate AMT.

[2] FASB ASC 220.

[3] *Id.*

[4] FASB ASC 220-10-45-10A.

[5] FASB ASC 220-10-20.

[6] *See, e.g.*, 168 Cong. Rec. S4166 (daily ed. Aug. 6, 2022) (colloquy of Sens. Ben Cardin and Ron Wyden) (clarifying that "for purposes of the corporate alternative minimum tax, Other Comprehensive Income is not included in financial statement income").

I.R.C. § 56A(b), APPLICABLE FINANCIAL STATEMENT	**Applicable Financial Statements – Insurance Companies**	**Recommendation**
(b) APPLICABLE FINANCIAL STATEMENT.—For purposes of this section, the term 'applicable financial statement' means, with respect to any taxable year, an applicable financial statement (as defined in section 451(b)(3) or as specified by the Secretary in regulations or other guidance) which covers such taxable year.	Under subchapter L of the Code,[7] insurance companies are generally required to calculate their taxable income using the same statutory accounting conventions required by state regulators. • Throughout the United States, insurers are required to prepare financial statements for financial regulation purposes using statutory accounting principles ("SAP") developed by the National Association of Insurance Commissioners. • Many insurance companies, including most mutual insurance companies, prepare financial statements *only* in accordance with SAP. In the absence of a financial statement prepared on the basis of GAAP or international financial reporting standards ("IFRS"), section 451(b)(3) defines an applicable financial statement to include "a financial statement filed by the taxpayer with any other regulatory or governmental body specified by the Secretary."[8]	Treasury and the IRS should take into account the unique business models and regulatory requirements underpinning the use of SAP in applying the new corporate AMT to insurance companies. To this end, Treasury and the IRS should issue regulations or other published guidance specifying that a financial statement prepared in accordance with SAP and filed with the appropriate state insurance regulator will qualify as an applicable financial statement under section 451(b)(3)(C) for purposes of the new corporate AMT regime.

[7] I.R.C. §§ 801–848.

[8] I.R.C. § 451(b)(3)(C).

<table>
<tr>
<td rowspan="3">I.R.C. § 56A(c)(2)(C), GENERAL ADJUSTMENTS.—SPECIAL RULES FOR RELATED ENTITIES.—TREATMENT OF DIVIDENDS AND OTHER AMOUNTS
(C) TREATMENT OF DIVIDENDS AND OTHER AMOUNTS.— In the case of any corporation which is not included on a consolidated return with the taxpayer, adjusted financial statement income of the taxpayer with respect to such other corporation shall be determined by only taking into account the dividends received from such other corporation (reduced to the extent provided by the Secretary in regulations or other guidance) and other amounts which are includible in gross income or deductible as a loss under this chapter (other than amounts required to be included under sections 951 and 951A or such other amounts as provided by the Secretary) with respect to such other corporation.</td>
<td>Treatment of Dividends and Other Amounts
The term “this chapter” in the phrase “other amounts which are includible in gross income or deductible as a loss under this chapter” refers to chapter 1 of subtitle A of the Code. Alternatively stated, therefore, this phrase refers other amounts that are includible in gross income or deductible as a loss for federal income tax purposes.</td>
<td>Recommendation
Treasury and the IRS should issue regulations or other published guidance confirming that, for purposes of section 56A(c)(2)(C), the term “dividends” refers to dividends for federal income tax purposes (as defined in section 316(a)), not financial reporting purposes.
The ensuing reference to “other amounts” includible in gross income for federal income tax purposes when determining AFSI with respect to a non-consolidated corporation supports this interpretation of the term “dividends.”</td>
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<td>Treatment of Unrealized Gains and Losses
As a general rule, investments representing less than 20% of an investee corporation’s voting stock are accounted for at either amortized cost or fair value, in accordance with Accounting Standards Codification (“ASC”) Topic 320, Investments—Debt and Equity Securities, and ASC Topic 321, Investments—Equity Securities.[9] These standards establish essentially a mark-to-market valuation approach whereby investments in equity securities generally must be accounted for at their fair values, with annual unrealized changes in fair value recognized in the year’s net income. If a taxpayer accounts for its investment in a non-consolidated corporation under the fair value method for financial reporting purposes, therefore, the taxpayer would use a mark-to-market method to report the change in value of the lower-tier corporation on its applicable financial statement.</td>
<td>Recommendation
Treasury and the IRS should issue regulations or other published guidance confirming that section 56A(c)(2)(C) disregards both equity method and fair value (mark-to-market) method financial accounting treatments for purposes of determining the taxpayer’s AFSI with respect to a non-consolidated corporation.
Here again, the phrase “and other amounts which are includible in gross income or deductible as a loss under this chapter [i.e., for federal income tax purposes]” supports this interpretation.
Under this interpretation, mark-to-market adjustments made for federal income tax purposes (e.g., by a dealer in securities under section 475) are taken into account in determining AFSI with respect to a non-consolidated corporation, in addition to any dividends received.</td>
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<td>Dividends Received Deduction
The statute does not expressly allow for a dividends received deduction, even in cases where dividends received by a taxpayer would otherwise be eligible for a dividends received deduction for regular tax purposes.</td>
<td>Recommendation
Treasury and the IRS should issue regulations or other published guidance allowing a dividends received deduction in cases where dividends received by the taxpayer would otherwise be eligible for a dividends received deduction for regular tax purposes.
Such guidance would help ensure parity between taxable income and AFSI with respect to a non-consolidated corporation.</td>
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[9] 1 D. Edward Martin, *Attorney’s Handbook of Accounting, Auditing & Financial Reporting* § 5.03 (2021). At levels of 20% to 50%, however, GAAP require that certain investments in capital stock be accounted for under the equity method of accounting. *See id.* at § 4.06.

I.R.C. § 56A(c)(3), GENERAL ADJUSTMENTS.—ADJUSTMENTS TO TAKE INTO ACCOUNT CERTAIN ITEMS OF FOREIGN INCOME	**Application of the Adjustment**	**Recommendation**
(3) ADJUSTMENTS TO TAKE INTO ACCOUNT CERTAIN ITEMS OF FOREIGN INCOME.— (A) IN GENERAL.—If, for any taxable year, a taxpayer is a United States shareholder of one or more controlled foreign corporations, the adjusted financial statement income of such taxpayer with respect to such controlled foreign corporation (as determined under paragraph (2)(C)) shall be adjusted to also take into account such taxpayer's pro rata share (determined under rules similar to the rules under section 951(a)(2)) of items taken into account in computing the net income or loss set forth on the applicable financial statement (as adjusted under rules similar to those that apply in determining adjusted financial statement income) of each such controlled foreign corporation with respect to which such taxpayer is a United States shareholder. (B) NEGATIVE ADJUSTMENTS.—In any case in which the adjustment determined under subparagraph (A) would result in a negative adjustment for such taxable year— (i) no adjustment shall be made under this paragraph for such taxable year, and (ii) the amount of the adjustment determined under this paragraph for the succeeding taxable year (determined without regard to this paragraph) shall be reduced by an amount equal to the negative adjustment for such taxable year.	Some uncertainty persists regarding the appropriate application of section 56A(c)(3) for taxable years in which the taxpayer is a United States shareholder of more than one controlled foreign corporation ("CFC").	Treasury and the IRS should issue regulations or other published guidance confirming what the statute suggests: the taxpayer's pro rata share of each CFC's net income or loss is computed in the aggregate (netted) for purposes of section 56A(c)(3) and not on a CFC-by-CFC or country-by-country basis. • Such guidance would be consistent with the legislative history of section 56A(c)(3) as articulated in the Section-By-Section summary issued by the House Committee on Rules, which provides that the adjustment related to net income or loss of a CFC is an aggregate adjustment taking into account the activity of all CFCs for which the taxpayer is a U.S. shareholder.[10] • Such guidance would also foster consistent application of section 56A(c)(3) by all taxpayers as well as prevent the inadvertent omission or duplication of certain items of foreign income.

I.R.C. § 56A(c)(5), GENERAL ADJUSTMENTS.—ADJUSTMENTS FOR CERTAIN TAXES	**Treatment of State and Local Taxes**	**Recommendation**
(5) ADJUSTMENTS FOR CERTAIN TAXES.—Adjusted financial statement income shall be appropriately adjusted to disregard any Federal income taxes, or income, war profits, or excess profits taxes (within the meaning of section 901) with respect to a foreign country or possession of the United States, which are taken into account on the taxpayer's applicable financial statement. To the extent provided by the Secretary, the preceding sentence shall not apply to income, war profits, or excess profits taxes (within the meaning of section 901) that are imposed by a foreign country or possession of the United States and taken into account on the taxpayer's applicable financial statement if the taxpayer does not choose to have the benefits of subpart A of part III of subchapter N for the taxable year. The Secretary shall prescribe such regulations or other guidance as may be necessary and appropriate to provide for the proper treatment of current and deferred taxes for purposes of this paragraph, including the time at which such taxes are properly taken into account.	All taxes paid or accrued are commonly deducted under GAAP in accounting for income. Section 56A(c)(5) requires those deductions for federal and creditable foreign income taxes—not other federal taxes, other foreign taxes, or any state or local taxes—to be reversed in determining the taxpayer's AFSI for corporate AMT purposes.	Treasury and the IRS should issue regulations or other published guidance providing that AFSI shall also be adjusted to disregard any state or local income taxes that either (i) are reported as deferred tax expense on the taxpayer's applicable financial statement or (ii) relate to any "uncertain tax position" as defined in ASC Topic 740, *Income Taxes*. • Federal and creditable foreign income taxes are not deductible for federal income tax purposes, whereas current state and local income taxes are deductible in computing federal taxable income. • Reducing AFSI for current state and local income taxes deducted on the taxpayer's applicable financial statement would foster consistent treatment of state and local income taxes for both corporate AMT and federal income tax computational purposes.

[10] *See* Build Back Better Act – Rules Committee Print 117-18, Section-By-Section 159 (Nov. 3, 2021) ("The AFSI of CFCs are aggregated globally, and losses in one CFC may offset income of another CFC.").

I.R.C. § 56A(c)(13), General Adjustments.—Depreciation (13) Depreciation.—Adjusted financial statement income shall be— (A) reduced by depreciation deductions allowed under section 167 with respect to property to which section 168 applies to the extent of the amount allowed as deductions in computing taxable income for the taxable year, and (B) appropriately adjusted— (i) to disregard any amount of depreciation expense that is taken into account on the taxpayer's applicable financial statement with respect to such property, and (ii) to take into account any other item specified by the Secretary in order to provide that such property is accounted for in the same manner as it is accounted for under this chapter.	**Adjustments for Depreciation (Including Depreciation Capitalized to Inventory)** The Notice would clarify the treatment of cost of goods sold ("COGS") under section 56A(c)(13). Specifically, AFSI would be reduced by "Tax COGS Depreciation,"[11] which the Notice defines as tax depreciation that is capitalized to inventory under section 263A and recovered as part of cost of goods sold in computing gross income under section 61.[12]	**Recommendations** Treasury and the IRS should issue regulations or other published guidance clarifying that in computing Tax COGS Depreciation, AFSI will also be reduced by any amounts of prior year Tax COGS Depreciation that were capitalized into beginning-of-year inventory and recovered as part of cost of goods sold in computing taxable income for the taxable year. Furthermore, such regulations or other guidance should also clarify that any costs that have been deducted under sections 162, 181, or any other expressly permitting deductions in the year incurred but that have been capitalized and depreciated in the taxpayer's AFS will be accounted for in the same manner as the tax depreciation deductions described in section 56A(c)(13)(A).
	Property Placed in Service in Taxable Years Beginning before January 1, 2023 Under the Notice, the adjustment under section 56A(c)(13) would apply to Section 168 Property placed in service in *any* taxable year—including taxable years beginning before January 1, 2023.[13] As a result, taxpayers would be required to reverse book depreciation expense on Section 168 Property even where no tax depreciation is recognized with respect to such property during the taxable year. • For example, a taxpayer would be required to reverse any book depreciation expense included in its 2023 AFS with respect to Section 168 Property even if the property had been fully depreciated for federal income tax purposes in a prior taxable year (e.g., 2019, 2022).	**Recommendation** Treasury and the IRS should issue superseding regulations or other published guidance clarifying that section 56A(c)(13) applies only to property placed in service after the effective date of section 56A itself. To interpret this provision otherwise would result in the disallowance of book depreciation expense for property that was fully depreciated for federal income tax purposes in a prior year—before the corporate AMT's enactment—in contravention of congressional intent to promote capital investment and stimulate economic growth through increased bonus depreciation.

[11] I.R.S. Notice 2023-2, § 4.03, 2023-3 I.R.B. 390, 398.

[12] *Id.* § 4.02(6).

[13] *Id.* § 4.06.

I.R.C. § 56A(c)(15), GENERAL ADJUSTMENTS.—SECRETARIAL AUTHORITY TO ADJUST ITEMS	**Potential Duplication of CFC Items in AFSI**	**Recommendations**
(15) SECRETARIAL AUTHORITY TO ADJUST ITEMS.—The Secretary shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section, including adjustments— (A) to prevent the omission or duplication of any item, and * * *	Section 56A(c)(3) appears intended to include in AFSI certain items of income earned indirectly through a CFC, regardless of whether distributed in the form of a dividend. If section 56A(c)(2)(C) were also to apply with respect to such income, the potential for double counting would arise. Without more, a taxpayer's pro rata share of its CFCs' net income for the taxable year would be included in AFSI under section 56A(c)(3) and then potentially included in AFSI again if/when received as dividends under section 56A(c)(2)(C).	Treasury and the IRS should exercise their authority under section 56A(c)(15)(A) and issue regulations or other published guidance to prevent the potential duplication of CFC income in AFSI as described in the preceding column. Similarly, Treasury and the IRS should issue regulations or other published guidance confirming that distributions of previously tax earnings and profits will be respected as such for corporate AMT purposes and therefore excluded from AFSI. • Former Treasury regulations section 1.56-1(d)(4)(v) provided similar treatment for any item excluded from regular taxable income under section 959 for purposes of the pre-2018 corporate AMT regime.

I.R.C. § 56A(c)(15), GENERAL ADJUSTMENTS.—SECRETARIAL AUTHORITY TO ADJUST ITEMS	**AFSI Consequences of Covered Nonrecognition Transactions**	**Recommendation**
(15) SECRETARIAL AUTHORITY TO ADJUST ITEMS.—The Secretary shall issue regulations or other guidance to provide for such adjustments to adjusted financial statement income as the Secretary determines necessary to carry out the purposes of this section, including adjustments— * * * (B) to carry out the principles of part II of subchapter C of this chapter (relating to corporate liquidations), part III of subchapter C of this chapter (relating to corporate organizations and reorganizations), and part II of subchapter K of this chapter (relating to partnership contributions and distributions).	*Corresponding adjustments to basis of transferred property on an AFS* With respect to any property transferred to a Party as part of a Covered Nonrecognition Transaction (e.g., assets, securities), the Notice provides that any increase or decrease in the financial accounting basis of that property on the AFS of the transferee Party is not taken into account solely for purposes of computing the transferee Party's AFSI.[14] This means the transferee Party would continue to use the pre-transaction/historical financial statement carrying value of the property for purposes of computing ASFI, including AFSI gain on a subsequent sale of the property. • This rule would effectively create a separate, parallel basis system for corporate AMT purposes, imposing significant administrative complexity and compliance burden on affected taxpayers. • On a subsequent sale of the transferred property, the transferee Party's AFSI would presumably include appreciation that occurred during a *prior* owner's ownership period. • Another consequence of this rule could be to require taxpayers to recompute AFSI basis for Covered Nonrecognition Transactions occurring *prior* to the law's effective date (i.e., throughout the taxpayer's and any predecessor's history).	Treasury and the IRS should issue regulations or other published guidance clarifying that the corresponding basis adjustments described in section 3.03(2) of the Notice are not required with respect to any Covered Nonrecognition Transaction completed before the corporate AMT's effective date (i.e., before January 1, 2023), in which case any financial accounting gain or loss would be irrelevant to the computation of AFSI.

[14] I.R.S. Notice 2023-2, § 3.03(2), 2023-3 I.R.B. 390, 395.

REQUEST FOR INTERIM ADMINISTRATIVE RELIEF

I.R.C. § 6655. Failure by corporation to pay estimated income tax	**Estimated Tax Payments – Additions to Tax**	**Recommendation**
(a) Addition to tax Except as otherwise provided in this section, in the case of any underpayment of estimated tax by a corporation, there shall be added to the tax under chapter 1 for the taxable year an amount determined by applying— (1) the underpayment rate established under section 6621, (2) to the amount of the underpayment, (3) for the period of the underpayment. * * *	Section 6655 generally requires corporations to make quarterly estimated tax payments or be assessed an addition to tax for any underpayment.	Pending the issuance of sufficient regulatory or other published guidance addressing the application of the new corporate AMT, Treasury and the IRS should provide interim relief by affirmatively allowing taxpayers to compute their 2023 quarterly estimated tax payments without regard to section 55 and then recapture the benefit of underpaying their estimated taxes by the extended due date of their federal income tax returns. • Due to the significant breadth and depth of unanswered questions surrounding the new corporate AMT's application, it is in the interest of sound tax administration for Treasury and the IRS to affirmatively waive underpayment penalties under section 6655 with respect to a taxpayer's net tax liability under section 55. • Notice 2018-26 provides a recent and instructive precedent for granting such relief to affected taxpayers.[15] In that Notice, the IRS provided guidance concerning the application of the estimated tax rules in sections 6654 and 6655 and a waiver from the penalty imposed under those sections with respect to estimated taxes in connection with section 965 and the repeal of section 958(b)(4).[16]

[15] 2018-16 I.R.B. 480.

[16] *See id.* § 6, at 491.