

Troubled Companies Invited to Weigh In on Corporate AMT Guidance

by Chandra Wallace

Recently issued interim guidance provides a framework for implementation of the corporate alternative minimum tax, and the government is looking to advisers of troubled companies to help flesh it out, Treasury and IRS officials said.

“Don’t be shy with getting your comments in, because this is a framework,” Colin Campbell of the Treasury Office of Tax Policy said January 25 at a conference sponsored by the District of Columbia Bar Taxation Community. “It’s a framework for what we intend to go forward with in the next round of guidance, but that will be informed by the comments we’re receiving.”

Notice 2023-7, 2023-3 IRB 390, issued in December 2022, addressed some targeted concerns related to cancellation of debt income and companies emerging from bankruptcy, but it leaves larger questions unanswered, according to Kevin M. Jacobs of Alvarez & Marsal Taxand LLC. The notice provides interim guidance on the corporate AMT, enacted in August 2022 as part of the Inflation Reduction Act (P.L. 117-169).

Jacobs described fact patterns that could present problems under the new tax for companies emerging from bankruptcy and noted the urgent need for guidance addressing those scenarios.

In the guidance process, the government often asks tax advisers what the highest priorities are, Jacobs said, noting that troubled companies should be on that list. “Companies are emerging from bankruptcy now” and have to make decisions that may affect their tax bills under the new law, he said.

“The intent of this notice was to provide as much day 1 certainty as possible, but these types of comments are exactly the types of comments we are hoping to receive,” Campbell said.

Immediate Concerns

The government continues to work through areas in which guidance is needed, said Robert Liquerian of the IRS Office of Associate Chief Counsel (Corporate). He explained that some provisions in Notice 2023-7 were intended to

address immediate concerns, not to be the final word on a more comprehensive rule.

For example, Liquerman said, the notice provision that would exclude from adjusted financial statement income any book gain or loss that results when a company or group of companies emerges from bankruptcy targets a specific scenario. The immediate concern was that excluded cancellation of debt income picked up for book purposes could “prevent companies from restructuring, prevent companies possibly from emerging from bankruptcy, and even potentially force liquidations,” he said. “So we wanted to get something out to help in that situation.”

Before Treasury and the IRS issue more generic rules to address differences between book and tax treatment of cancellation of debt income, they need to understand “the standard types of reasons why there’s a difference, and what typically gives rise to those differences,” Liquerman said. ■