U.S. Chamber of Commerce

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January 16, 2025

Dr. Aviva Aron-Dine
Acting Assistant Secretary (Tax Policy)
U.S. Department of Treasury
1500 Pennsylvania Avenue N.W.
Washington, D.C. 20220

The Honorable Marjorie A. Rollinson
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue N.W.
Washington, D.C. 20224

Re: Corporate Alternative Minimum Tax Applicable After 2022 (REG-112129-23)

Dear Dr. Aviva Aron-Dine and Ms. Rollinson:

The U.S. Chamber of Commerce ("Chamber") welcomes the opportunity to comment on the proposed regulations addressing the application of the corporate alternative minimum tax ("AMT") imposed by section 55 of the Internal Revenue Code, as amended by the Inflation Reduction Act of 2022 ("IRA").[1] The corporate AMT is a novel and complex minimum tax imposed on the adjusted financial statement income (or "book income") of certain corporations with average annual earnings of $1 billion or more over the preceding three taxable years. As experience and the enclosed comments demonstrate, however, using adjusted financial statement income as the base for a new income tax regime is the antithesis of sound tax policy. Implementation of the corporate AMT has proven neither simple nor administrable, and its continued application poses a competitive disadvantage to U.S.-headquartered companies.

The proposed regulations, which were published more than two years after the IRA's enactment, span 182 single-spaced pages in the *Federal Register* and are a testament to the undue complexity of the corporate AMT's design. Previously characterized by an administration official as a "behemoth" package of guidance, the proposed regulations would address a myriad of administrative, substantive, and reporting issues under the statute. As currently drafted, however, the proposed regulations would provide only limited relief in the form of safe harbors or de minimis rules. The obvious implication of this approach is that many taxpayers who are not subject to the corporate AMT as applicable corporations would still be required to expend substantial amounts of time and resources complying with this unduly complex and burdensome regime. As a threshold matter, therefore, assuming the new Congress does not quickly repeal the corporate AMT, the Chamber respectfully urges

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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).

the Department of the Treasury ("Treasury") and the Internal Revenue Service ("IRS") to withdraw and drastically simplify the proposed regulations to mitigate such deadweight loss.

The enclosed comments reiterate and amplify several recommendations from the Chamber's previous submission of October 12, 2023.[2] They also identify numerous other implementation issues arising under the law and provide consensus-based recommendations for addressing them in final regulations or other guidance. Please note, however, that the enclosed comments represent only a subset of the many issues raised by our member companies and are by no means exhaustive.

The Chamber appreciates the opportunity to comment on the proposed regulations and urges Treasury and the IRS to engage closely with the business community while reviewing our and other stakeholders' comments. As always, we would welcome the opportunity to discuss our comments with you or your colleagues in further detail and provide whatever additional information you may require. Please feel free to contact Sarah Corrigan, the Chamber's Tax Counsel, at (202) 680-8008 or SCorrigan@USChamber.com. Thank you for your time and attention.

Sincerely,

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

Enclosure

cc: The Honorable Michael D. Crapo, Chairman, Committee on Finance, United States Senate
The Honorable Ronald L. Wyden, 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

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[2] Chamber of Com. of the U.S., Comment Letter on 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 (Oct. 12, 2023), https://www.uschamber.com/assets/documents/2023-10-12_USCC-Comments-on-Notice-2023-64-Corporate-AMT-Implementation_FINAL.pdf.

<table>
<tr><th>PROVISION</th><th>ISSUE(S)</th><th>DISCUSSION</th></tr>
<tr><td colspan="3">SEC. 10101. CORPORATE ALTERNATIVE MINIMUM TAX</td></tr>
<tr><td colspan="3">Sec. 10101(b)(1), ADJUSTED FINANCIAL STATEMENT INCOME.—IN GENERAL</td></tr>
<tr><td>I.R.C. § 56A(b), APPLICABLE FINANCIAL STATEMENT
(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.</td><td>Administrative Burden and Compliance Costs
The proposed regulations would introduce substantial complexity and uncertainty into corporate tax planning and transactions. The calculations are based on financial statement income, which differs from taxable income in numerous fundamental ways. As a result, the corporate alternative minimum tax (“AMT”) places a significant administrative burden on taxpayers by requiring them to maintain at least three sets of books—to calculate income for financial accounting, regular corporate tax, and corporate AMT purposes. Moreover, the proposed regulations would require taxpayers to:
• prepare entity-level financial statements; and
• maintain separate books and records to track corporate AMT basis in assets, corporate AMT basis in stock, corporate AMT earnings and profits, and accounting for intercompany transactions for corporate AMT purposes.</td><td>Recommendations
The Department of the Treasury (“Treasury”) and Internal Revenue Service (“IRS”) should issue final regulations or other published guidance allowing consolidated financial statement group members to use their consolidated financial statements and, to the extent that’s not possible, net income should be the only item required to be provided.

Furthermore, Treasury and the IRS should incorporate simplifying safe harbors into the final regulations or simply eliminate the requirement to track corporate AMT basis in assets, corporate AMT basis in stock, corporate AMT earnings and profits, and accounting for intercompany transactions for corporate AMT purposes.</td></tr>
<tr><td>I.R.C. 56A(c)(2)(B), GENERAL ADJUSTMENTS.—SPECIAL RULES FOR RELATED ENTITIES.—CONSOLIDATED RETURNS
(c) GENERAL ADJUSTMENTS
(2) SPECIAL RULES FOR RELATED ENTITIES
(B) CONSOLIDATED RETURNS.—Except as provided in regulations prescribed by the Secretary, if the taxpayer is part of an affiliated group of corporations filing a consolidated return for any taxable year, adjusted financial statement income for such group for such taxable year shall take into account items on the group’s applicable financial statement which are properly allocable to members of such group.</td><td>Fixing Inconsistency
Prop. Treas. Reg. § 1.1502-56A(k) would provide that a selling consolidated group does not reduce its annual adjusted financial statement income (“AFSI”) history when a member departs the group, and that the departing member keeps its AFSI history in the buyer group (assuming the buyer is a member of another consolidated group). This approach appears to conflict with that in Prop. Treas. Reg. § 1.59-2(f)(1), however, which would provide special rules for applying the average AFSI test where persons join or leave a corporation’s test group.

In describing Prop. Treas. Reg. § 1.59-2(f), the preamble to the proposed regulations provides, in relevant part:</td><td>Recommendation
Treasury and the IRS should issue final regulations that eliminate this inconsistency as well as the possibility of duplicating AFSI.</td></tr>
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	The second approach would require the corporation to include in its AFSI for the three-taxable-year period only the AFSI of persons it was related to under the relevant relationship criteria during the three-taxable-year period (and for the period in which they were related). The Treasury Department and the IRS are of the view that the second approach better implements the language of the statute, as it would decrease the instances in which a person's AFSI is duplicated in more than one corporation's AFSI for the same three-taxable-year testing period. This approach is also consistent with rules provided by the Treasury Department and the IRS to determine the applicability of other sections of the Code, where such applicability is determined based on the size of the taxpayer. Accordingly, [Prop. Treas. Reg.] § 1.59–2(f)(1) would provide special rules for applying the average annual AFSI test if a corporation's test group changes. These rules generally would require that a corporation include in its AFSI for a taxable year the AFSI of all persons treated as related to the corporation under the relevant relationship criteria at any point during the taxable year. If a person is treated as related to the corporation under the relevant relationship criteria for only a portion of the taxable year, the corporation includes in its AFSI for that taxable year the AFSI of the person for only the portion of the taxable year in which the relevant relationship criteria is satisfied. Similar to the rules in [Prop. Treas. Reg.] § 1.56A–3 for [corporate AMT] entities with a financial accounting period that differs from the [corporate AMT] entity's taxable year, the related person determines AFSI for the portion of the corporation's taxable year by performing an interim closing of its books. For example, if a corporation has the calendar year as its taxable year and a person becomes related to the corporation on April 1 and unrelated on November 1 of the taxable year, the person would perform an interim closing of its books at the end of the day on March 31 and October 31, and the corporation would include the AFSI of that person on the person's books (after taking the interim closing of the books into account) from April 1 through October 31 for that year.	

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<tr>
<td rowspan="2">I.R.C. § 56A(c)(2)(C), General Adjustments.—Special rules for related entities.—Treatment of dividends and other amounts
(c) General Adjustments
(2) Special Rules for Related Entities
(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, this phrase refers to other amounts that are includible in gross income or deductible as a loss for federal income tax purposes.

The preamble to the proposed regulations provides that pursuant to section 5.01 of Notice 2024-10, taxpayers may rely on the interim guidance described in section 3 of Notice 2024-10 for Covered CFC Distributions received on or before September 13, 2024.

Notice 2024-10 provides that a “Covered CFC Distribution” means a distribution received with respect to stock of a controlled foreign corporation to the extent it is a dividend (within the meaning of section 316) determined without taking into account section 959(d).[1]</td>
<td>Recommendation
Treasury and the IRS should issue final regulations 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.</td>
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<td>Treatment of Debt, Warrants, and Options
Prop. Treas. Reg. § 1.56A–18(c)(2) would generally disregard any financial statement income resulting from equity ownership of domestic corporations that are not members of the shareholder’s tax consolidated group. For example, the proposed regulations would disregard financial statement income that otherwise would result from applying the equity method or the fair value method to the shareholder’s investment in stock of the subsidiary domestic corporation. Instead, the shareholder would be required to follow federal</td>
<td>Recommendation
Treasury and the IRS should issue final regulations that allow taxpayers to follow federal income tax principles to determine AFSI resulting from other investments in subsidiary domestic corporations like debt, warrants, and options.
• This approach would enable taxpayers to follow regular tax timing and treatment under the Code (i.e., time of realization event for taxpayers other than those with mark-to-market elections or within a mark-to-market tax regime) and be consistent with regular tax realization principles.</td>
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[1] I.R.S. Notice 2024-10, § 3.02, 2024-3 I.R.B. 406, 408.

	income tax principles to determine AFSI resulting from equity ownership of subsidiary domestic corporations. As drafted, Prop. Treas. Reg. § 1.56A–18(c)(2) would apply only to stock investments. For financial accounting purposes, however, the equity method or the fair value method could apply to other types of investments, including debt, debt-like securities, warrants, and options that are held for investment. The rationale for the adjustment provided in Prop. Treas. Reg. § 1.56A-18(c)(2) should apply equally to these other types of investments.	

I.R.C. § 56A(c)(2)(D), General Adjustments.—Special rules for related entities.—Treatment of partnerships	Treatment of Partnerships – Distributive Share	Recommendations
(c) General Adjustments (2) Special Rules for Related Entities (D) Treatment of partnerships. (i) In general—Except as provided by the Secretary, if the taxpayer is a partner in a partnership, adjusted financial statement income of the taxpayer with respect to such partnership shall be adjusted to only take into account the taxpayer's distributive share of adjusted financial statement income of such partnership. (ii) Adjusted financial statement income of partnerships. For purposes of this part, the adjusted financial statement income of a partnership shall be the partnership's net income or loss set forth on such partnership's applicable financial statement (adjusted under rules similar to the rules of this section).	Congress made it clear that the corporate AMT should apply only to a limited number of the largest corporations. The current approach in the proposed regulations would contravene congressional intent by requiring a significant number of small and middle-market partnerships to bear the burden of complying with the unduly complex corporate AMT regime. Prop. Treas. Reg. § 1.56A-5 would provide rules under section 56A(c)(2)(D) regarding a partner's distributive share of partnership AFSI. The applicable method is generally a modified "bottom-up" approach and would require partners, including middle-tier partnerships and upper-tier partnerships, to perform various aspects of the computation—notably, the determination of the distributive share percentage. The proposed regulations would impose an exceptionally high administrative burden on taxpayers by creating significant new book and record keeping requirements that would apply with respect to all partnerships that have direct or indirect corporate owners potentially subject to the corporate AMT, with penalties for noncompliance.	Treasury and the IRS should issue final regulations that simplify the computation for determining a corporate partner's distributive share of AFSI from any partnership investments. Specifically, the Chamber recommends that Treasury and the IRS include in the final regulations a safe harbor to determine a corporate partner's distributive share of AFSI for a noncontrolled partnership using the information found in its easily accessible applicable financial statement method to facilitate a "top-down" approach. • This approach would alleviate some of the administrative burdens of determining a corporate partner's distributive share of the partnership's AFSI. In the alternative, as previously requested by many stakeholders, the Chamber recommends that Treasury and the IRS include in the final regulations an elective safe harbor (revocable only with the consent of the Commissioner) that would allow a corporate partner to use the information provided on Schedules K-1 and K-3 received from its partnership investments in determining its distributive share of partnership AFSI. • Schedules K-1 and K-3 are readily available to partners in a partnership and would also alleviate the heavy administrative burden on taxpayers in determining its distributive share of partnership AFSI.

I.R.C. § 56A(c)(15), General Adjustments.— Secretarial authority to adjust items	Adjustments for Accounting Method Changes	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— (A) to prevent the omission or duplication of any item, and (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).	The preamble to the proposed regulations provides that in order for a corporate AMT entity to make an AFSI-only change, Treasury and the IRS are *considering rules* that would require a corporate AMT entity to follow consent procedures similar to those that apply for changes in method of accounting for regular tax purposes under sections 446 and 481. Similar to a change in method of accounting for regular tax purposes, a corporate AMT entity would not be permitted to make an AFSI-only change on an amended return or by filing an adjustment request under section 6227. The AFSI-only change procedures would instead require that a corporate AMT entity request advance consent from the IRS before changing the item under consent procedures similar to those required under section 446(e) and Revenue Procedure 2015-13[2] (or successor) on a form similar to Form 3115. However, similar to Revenue Procedure 2015-13, automatic consent may be provided for certain changes. If automatic consent is provided for an AFSI-only change, the manner of obtaining automatic consent may involve reduced filing requirements or certain streamlined procedures. In addition, the consent procedures for AFSI-only changes may also include the computation of a cumulative adjustment to AFSI resulting from the AFSI-only change, which the corporate AMT entity would include in AFSI over a prescribed number of taxable years beginning with the year of change.	Treasury and the IRS should issue regulations or other published guidance confirming that any automatic accounting method change with respect to an AFSI-only change will have rules similar to those in sections 446 and 481, and that the procedures under Revenue Procedure 2015-13 will apply. And consistent therewith, such guidance should include language confirming that taxpayers will receive audit protection on voluntary accounting method change requests for AFSI-only changes.

[2] 2015-5 I.R.B. 419.

	Finally, such consent procedures would provide audit protection to taxpayers that voluntarily request to make an AFSI-only change in certain circumstances. Applying procedures to AFSI-only changes that are similar to the change in method of accounting principles under section 446(e) may encourage voluntary compliance when a corporate AMT entity is inadvertently accounting for an AFSI-only item in an impermissible manner because the corporate AMT entity would be afforded audit protection and favorable spread periods.	
	Transition Rules – In General The preamble to the proposed regulations explains that Treasury and the IRS are considering transition rules to address AFSI and corporate AMT attribute adjustments necessary to implement the rules in final regulations if a corporate AMT entity accounted for and reported the AFSI adjustment or corporate AMT attribute in a manner inconsistent with the final regulations in prior taxable years. Specifically, the preamble outlines three separate potential transition rules: • the Transition Year Adjustment Approach; • the Cut-Off Basis Transition Approach; and • the Fresh Start Transition Approach. Under section 553 of the Administrative Procedure Act, federal agencies must follow notice-and-comment rulemaking procedures before issuing, amending, or repealing legislative rules. If the notice-and-comment requirement applies, Treasury must (1) publish a notice of proposed rulemaking in the *Federal Register* and (2) give interested persons an opportunity to comment on the proposed rule.[3]	**Recommendation** The Chamber respectfully requests that Treasury and the IRS issue proposed regulations or other published guidance prior to finalizing any transition rule mentioned in the preamble. Treasury and the IRS should be required to publish proposed regulatory text regarding each transition rule to give taxpayers a sufficient opportunity to comment on the rules. Without proposed regulatory text, taxpayers do not have sufficient opportunity to comment on the transition rule that is ultimately adopted in final regulations.

[3] *See* 5 U.S.C. § 553(b).

	Transition Rule – Transition Year Adjustment Approach The first transition rule described in the preamble, the "Adjustment Approach," would require a cumulative adjustment to an entity's AFSI as of the beginning of the "transition year" as if the entity had first applied the rules in the final regulations in its first taxable year after December 31, 2019. The adjustment to AFSI would be the difference between (i) the redetermined cumulative adjusted financial statement income amount and (ii) the aggregate adjusted financial statement income amounts reported in years prior to the transition year (the "Transition Year Adjustment"). In conjunction with the Transition Year Adjustment, the related corporate AMT attributes would be redetermined as of the beginning of the transition year as if the entity had first applied the rules in the final regulations in its first taxable year beginning after December 31, 2019. If the Adjustment Approach is adopted in the final regulations, it may cause certain taxpayers to increase their AFSI in the transition year for items that arose before the effective date of corporate AMT. This result may arise because the Adjustment Approach would require taxpayers to redetermine their adjusted AFSI beginning with the first taxable year after December 31, 2019, which is a year that precedes the statutory effective date for the corporate AMT. Such a retroactive application of the corporate AMT would clearly violate the plain language of the statute and congressional intent regarding its effective date. Furthermore, section 56A(c)(15), which Treasury cites as its authority to promulgate transition rules, does not authorize Treasury to apply the corporate AMT to pre-effective date years. Rather, it authorizes Treasury to	**Recommendation** If Treasury and the IRS adopt the Adjustment Approach in final regulations with respect to an AFSI adjustments or corporate AMT attributes, this transition rule should be elective for taxpayers, which would allow taxpayers the option to apply the Adjustment Approach or, in the alternative, one of the other transition rules described in the preamble to the proposed regulations.

	issue regulations and guidance to adjust AFSI as is "necessary to carry out the purposes of" the corporate AMT, including adjustments (i) "to prevent the omission or duplication of any item" and (ii) "to carry out the principles" of certain parts of subchapter C and subchapter K of the Code.	
	Transition Relief – Section 481(a) Adjustments If Congress were to restore the current-year deduction for research and experimental expenditures under section 174, a favorable section 481(a) adjustment in the year of change would result in a large corporate AMT liability. In other words, fixing section 174 would create a corporate AMT liability and nullify some of the section 174 benefit.	**Recommendation** As a part of any transition rules in the final regulations or other published guidance, Treasury and IRS should provide transition relief allowing taxpayers to not take the section 481(a) adjustment into account when computing corporate AMT. • A change in tax law (e.g., section 174) should not create an artificial or distortive corporate AMT liability.
	Financial Statement Income Adjustments from Corporate Transactions Many transactions (e.g., acquisitions, liquidations, reorganizations) follow regular tax principles in the proposed regulations, which is a welcome feature of the regime. For nonrecognition transactions with boot, however, the proposed regulations would diverge from regular tax rules and require recognition of the entire gain (the so-called "cliff effect"). • For example, if $1 of boot were received in an otherwise qualifying section 351 exchange, the entire gain on the exchange would be recognized. This result would contravene well-established tax rules.	**Recommendation** Treasury and the IRS should issue final regulations or other published guidance providing an elective safe harbor that allows taxpayers to follow the regular tax rules for certain transactions (e.g., acquisitions, liquidations, reorganizations) that may have boot.

	Post-Enactment GAAP Changes to Treatment of Crypto Assets Would Produce a Conflict with Congressional Intent At the time of corporate AMT's enactment, both GAAP and IFRS, the accounting frameworks underpinning corporate AMT, did not recognize unrealized gains on crypto assets as part of financial statement net income.[4] In December 2023, however, the Financial Accounting Standards Board updated GAAP to require crypto assets be measured at fair value with changes in value recognized in net income.[5] As a result, unrealized crypto gains are subject to corporate AMT under GAAP but not IFRS, effectively targeting domestic corporations in contravention of Congress's intent. **Current Crypto Treatment Violates Constitution** Under GAAP, crypto assets are to be measured at fair value with changes in value recognized in net income.[6] Unadjusted, this results in unrealized crypto gains in the corporate AMT tax base, raising significant constitutional concerns. As explained by four of the five Justices who recently addressed the question of realization in *Moore v. United States*, the Sixteenth Amendment does not permit Congress to tax	**Recommendation** Consistent with congressional intent and to avoid the unconstitutional taxation of unrealized crypto gains, Treasury and the IRS should issue regulations or other published guidance that provides an adjustment to exclude unrealized gains and losses from AFSI. For example: • "Adjusted Financial Statement Income shall be adjusted to exclude the amount of any unrealized gain or loss in the fair value of a corporation's assets, which shall be disregarded for purposes of calculating AFSI." Alternatively, Treasury and the IRS could issue regulations or other published guidance providing that no post-enactment accounting standards update will be taken into account for corporate AMT purposes unless and until it is affirmatively incorporated into the corporate AMT tax base through regulation or published guidance.

[4] At the time of corporate AMT's enactment, GAAP accounting rules required companies to record crypto assets at cost and test for impairment, meaning any increase in value would not be reported as income unless the gain was realized such as through an asset sale. *See* Financial Accounting Standards Board, BOARD MEETING HANDOUT "ACCOUNTING FOR EXCHANGE - TRADED DIGITAL ASSETS AND COMMODITIES" (May 11, 2022). Under IFRS, crypto assets not traded as part of normal business operations are reported under IAS 38, where increases in fair value are counted as other comprehensive income, which Congress explicitly intended to exclude from corporate AMT's financial statement income. *See* 117 Cong. Rec. S4166 (daily ed. Aug. 6, 2022) (statement from Sen. Wyden) ("[F]or purposes of the corporate minimum tax, Other Comprehensive Income is not included in financial statement income.").

[5] Financial Accounting Standards Board, *Accounting Standards Update No. 2023-08, Intangibles-Goodwill and Other Crypto Assets* (Subtopic 350-60) (Dec. 2023).

[6] *See id.*

	unrealized gains.[7] This view aligns with the Supreme Court's historic consideration of income as something "received or drawn by the recipient for his separate use, benefit and disposal."[8] The current taxation of unrealized crypto gains under the corporate AMT, therefore, contravenes the constitutional principles outlined by the Supreme Court.	

[7] *See Moore United States*, 144 S. Ct. 1680 at 1701 (2024) (Barrett, J., concurring in the judgment) (the Sixteenth Amendment's textual "reference to income 'derived' from any source encompasses a requirement that income, to be taxed without apportionment, must be *realized*"); *id.* at 1721 (Thomas, J., dissenting) ("Because the Sixteenth Amendment requires a way to distinguish between income and source, it includes a realization requirement. The text of the Amendment incorporates such a requirement, and the concept of realization was well understood at the time of ratification. The Constitution thus limits unapportioned income taxes to taxes on *realized* income.").

[8] *Eisner v. Macomber*, 252 U.S. 189, 207 (1920).

I.R.C § 56A(d), Deduction for Financial Statement Net Operating Loss	Net Operating Losses – Property Casualty Insurers	Recommendation
(d) Deduction for Financial Statement Net Operating Loss.— (1) In General.—Adjusted financial statement income (determined after application of subsection (c) and without regard to this subsection) shall be reduced by an amount equal to the lesser of— (A) the aggregate amount of financial statement net operating loss carryovers to the taxable year, or (B) 80 percent of adjusted financial statement income computed without regard to the deduction allowable under this subsection. (2) Financial Statement Net Operating Loss Carryover.—A financial statement net operating loss for any taxable year shall be a financial statement net operating loss (FSNOL) which shall be carried to subsequent taxable years shall be the amount of such loss remaining (if any) after the application of paragraph (1). (3) Financial Statement Net Operating Loss Defined.—For purposes of this subsection, the term FSNOL means the amount of the net loss (if any) set forth on the corporation's applicable financial statement (determined after application of subsection (c) and without regard to this subsection) for taxable years ending after December 31, 2019.	As part of TCJA, Congress allowed property casualty insurers to maintain the two-year net operating loss ("NOL") carryback that was in effect prior to TCJA.[9] Congress preserved NOL carrybacks for property casualty insurers in recognition that insurers provide the economy much needed relief from catastrophic losses, and NOL carrybacks provide insurers quick access to capital to meet policyholder obligations. The proposed regulations would create a mismatch between property casualty insurers' regular tax NOLs, which can be carried back two years and carried forward up to 20 years, and their financial statement NOLs, which could be carried forward indefinitely but not carried back. • If property casualty insurers' NOL carrybacks are included in the corporate AMT calculation, such taxpayers would suffer higher corporate AMT liabilities in carryback years in contravention of Congress's decision to allow them to retain their access to capital through NOL carrybacks. • Treasury and the IRS acknowledged in the preamble that this disparity could create a substantial mismatch between AFSI and regular taxable income for nonlife insurance companies that does not exist for other corporations.	Treasury and the IRS should clarify in the final regulations that the corporate AMT be calculated without regard to NOL carrybacks with respect to property casualty insurers. • To prevent a potential double benefit, any financial statement NOL carryforward could be reduced (but not below zero) by an amount equal to the amount of regular tax NOL carried back to prior years.

[9] *See* I.R.C. § 172(b)(1)(C).

	Net Operating Losses – Financial Statement NOLs The preamble to the proposed regulations explains that the existence of financial statement NOLs may incentivize acquisitions for federal income tax reasons in a manner inconsistent with the purposes of section 56A. Accordingly, Prop. Treas. Reg. § 1.56A-23(e) would limit the use of financial statement NOLs to which an applicable corporate succeeds (i) in a reorganization or liquidation described in section 381(a) or (ii) after a stock acquisition (including a stock acquisition in which the target corporation becomes a member of a consolidated group). Under Prop. Treas. Reg. § 1.56A-23(e)(2), however, a successor corporation or a successor group could use the financial statement NOLs of an acquired business to offset the successor's AFSI only if the acquired business is separately tracked in the successor's books and records, and only to the extent of the AFSI generated by the separately tracked business after the successor transaction. The preamble to the proposed regulations describes a similar concept with respect to the use of built-in losses after a successor transaction, as they would be treated as if they were acquired financial statement NOLs for purposes of Prop. Treas. Reg. § 1.56A-23(e), and Prop. Treas. Reg. § 1.56A-23(f) would provide related rules. The preamble explains that the foregoing limitations are modeled after the separate return limitation year rules in Treas. Regs. §§ 1.1502-15 and 1.1502-21(c).	Recommendation Treasury and the IRS should issue final regulations allowing taxpayers to follow regular tax rules and eliminate the need for separate tracking, along with the creation of pro forma income statements that would not otherwise be created, which would impose a significant additional administrative burden relative to computing an acquisition date limitation, particularly where a section 382 analysis is likely to be required for other purposes.

Sec. 10101(c), CORPORATE AMT FOREIGN TAX CREDIT.—		
I.R.C. § 59(l) CORPORATE AMT FOREIGN TAX CREDIT (1) IN GENERAL.—For purposes of this part, if an applicable corporation chooses to have the benefits of subpart A of part III of subchapter N for any taxable year, the corporate AMT foreign tax credit for the taxable year of the applicable corporation is an amount equal to sum of— (A) the lesser of— (i) the aggregate of the applicable corporation's pro rata share (as determined under section 56A(c)(3)) of the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States which are— (I) taken into account on the applicable financial statement of each controlled foreign corporation with respect to which the applicable corporation is a United States shareholder, and (II) paid or accrued (for Federal income tax purposes) by each such controlled foreign corporation, or (ii) the product of the amount of the adjustment under section 56A(c)(3) and the percentage specified in section 55(b)(2)(A)(i), and (B) in the case of an applicable corporation that is a domestic corporation, the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States to the extent such taxes are—	**Foreign Tax Credit Disallowance** Section 59(l)(1) determines the corporate foreign tax credit by reference to "the amount of income, war profits, and excess profits taxes (within the meaning of section 901) imposed by any foreign country or possession of the United States." However, the proposed regulations would impose an additional restriction on the corporate foreign tax credit that is not contemplated by the statute. Under Prop. Treas. Reg. § 1.59-4, a corporate AMT foreign tax credit under section 59(l) would generally be allowed only with respect to an "eligible tax." The proposed regulations would adopt several limitations from the regular tax system in the definition of "eligible tax" for which a corporate AMT foreign tax credit is available. An "eligible tax" would be defined in Prop. Treas. Reg. § 1.59-4(b)(1) as "a foreign income tax, other than a foreign income tax for which a credit is disallowed or suspended for regular tax purposes under sections 245A(d), 245A(e)(3), 901(e), 901(f), 901(i), 901(j), 901(k), 901(l), 901(m), 907, 908, 909, 965(g), 999, or 6038(c) of the Code." The preamble fails to acknowledge that the policies behind some of the disallowance and suspension provisions referenced in Prop. Treas. Reg. § 1.59-4(b)(1) may not apply in the corporate AMT context. • For example, section 901(m) denies a foreign tax credit for the "disqualified portion" of any foreign income tax following a covered asset acquisition. In a covered asset acquisition, the U.S. shareholder or CFC acquirer obtains a stepped-up basis in the foreign target's assets for regular U.S. tax purposes, typically without a corresponding basis step-up for foreign tax purposes. Thus, regular U.S. taxable income is	**Recommendation** Treasury and the IRS should drop the "eligible tax" limitation from the final regulations and remove regular income tax disallowance and suspension rules from the corporate AMT foreign tax credit context.

(i) taken into account on the applicable corporation's applicable financial statement, and (ii) paid or accrued (for Federal income tax purposes) by the applicable corporation.	typically less than foreign taxable income because of increased depreciation or amortization. Section 901(m) is designed to address this discrepancy. • No such discrepancy exists between AFSI and foreign taxable income in the context of the corporate AMT. Importing the section 901(m) disallowance into the corporate AMT foreign tax credit rules would inevitably result in double taxation, and there is no basis under the statute for such an approach.	