



January 16, 2025

The Honorable Aviva Aron-Dine
Acting Assistant Secretary for Tax Policy
U.S. Department of the Treasury
Department of the Treasury
1500 Pennsylvania Ave., NW, Room 3120
Washington, DC 20220

The Honorable Douglas W. O'Donnell
Deputy Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Via Electronic Submission

RE: Notice of Proposed Rulemaking Regarding Implementation of the Corporate Alternative Minimum Tax Applicable After 2022 (REG-112129-23)

Dear Acting Assistant Secretary Aron-Dine and Deputy Commissioner O'Donnell:

The American Council on Renewable Energy ("ACORE"), American Clean Power Association ("ACP"), and the Solar Energy Industries Association ("SEIA") (collectively, the "Clean Energy Organizations") respectfully submit these comments in response to the Department of the Treasury ("Treasury") and Internal Revenue Service's ("IRS") notice of proposed rulemaking released on September 12, 2024, regarding the implementation of the Corporate Alternative Minimum Tax ("CAMT").

ACORE is a 501 (c)(3) nonprofit organization that unites finance, policy, and technology to accelerate the transition to a clean energy economy. ACORE's membership spans the entire energy value chain, including clean energy developers, institutional investors, corporate buyers of clean energy, manufacturers, electric power generators, retail energy providers, and other stakeholders. In 2023, roughly 85 percent of the booming utility-scale U.S. renewable growth was financed, developed, owned, or contracted for by ACORE members.

ACP is the leading voice of today's multi-tech clean energy industry, representing over 800 energy storage, wind, utility-scale solar, clean hydrogen and transmission companies. ACP is committed to meeting America's national security, economic and climate goals with fast-growing, low-cost, and reliable domestic power.

SEIA is the national trade association of the U.S. solar and storage industry. Our members promote the responsible development of distributed rooftop and utility-scale solar energy and storage projects. We are committed to working with federal agencies and other stakeholders to achieve this goal. As the national trade association for the U.S. solar and storage industry, which employs 280,000 Americans, SEIA represents over 1,200 organizations that manufacture, install, and support the development of solar and storage projects. Advancing American energy security is a top priority for the solar and storage industry. Solar energy is clean, abundant, and the United States has some of the richest solar resources in the world. It is an energy solution that provides clean, reliable electricity, increases consumer choice, and helps consumers and business owners save money on their utility bills. Critically, solar energy components are increasingly made right here at home, positioning our nation as a geostrategic technology leader while reducing trade deficits.

A. Introduction

Section 10101 of the Inflation Reduction Act (“IRA”) directs the imposition of the CAMT on the adjusted financial statement income (“AFSI”) on certain taxpayers for taxable years beginning after December 31, 2022. Accurate development and calculation of the AFSI is essential to achieving the statute's objective and ensuring effective taxpayer compliance. The Clean Energy Organizations are concerned that the proposed CAMT rules not only fail to meet the statute’s objectives, but that if implemented as drafted, could be very detrimental to sustaining much needed private investment in the clean energy sector at a time of substantial forecast electricity demand growth.

Specifically, under the proposed rule’s formula for calculating AFSI, taxpayers utilizing the hypothetical liquidation at book value (“HLBV”) or proportional amortization method (“PAM”) of accounting would unintentionally result in a calculation that allocates more than 100% of a partnership’s income to a single partner. As discussed in this letter, tax equity investments, which are a critical source of financing for clean energy projects, are based on a partnership structure. Finalizing a proposal that would result in instances where more than 100% of a flow-thru entity’s income to a single member would undermine taxpayers’ ability to effectively comply with the intent of the law and could create a chilling effect for important capital flowing to clean energy projects.

The Clean Energy Organizations appreciate the Treasury acknowledgment that the currently proposed methodology for the calculation of the CAMT inclusion amount (including the calculation of the distributive share percentage (“DSP”) provided for in § 1.56A-5(e)(2)) may produce imprecise results in certain circumstances.¹

These comments seek to provide the Treasury and IRS with requested insight² into a less distortive method that may be used for the calculation of income inclusion under CAMT from partnership investments, particularly for investments accounted for under the HLBV or PAM of accounting (as defined below) for book purposes. These comments offer an alternative approach to addressing these concerns and meeting the law’s objectives, and specifically, a “Top-Down” Election for investments accounted for under PAM or HLBV for book purposes (or for all non-consolidated partnerships).

Given the major distortions created pursuant to the “bottom up” method for calculating AFSI under the Proposed Regulations and the heavy compliance burden, The Clean Energy Organizations are requesting the Treasury and the IRS to issue guidance allowing Taxpayers to use the Top-Down Election described below pending the finalization of the Proposed Regulations.

B. Overview of the Clean Energy Market and Role of Tax Equity

Over 90 percent of the new generation capacity added to America’s power grid in the first six months of 2024 came from solar, wind, and batteries, with similar forecasts for the end of the year and well into 2025.³ The clean energy resources brought online between September 2022 and March 2024 represent sufficient power to supply carbon-free electricity to over 10 million homes, the nation's greatest increase in new clean energy infrastructure ever recorded.⁴ Clean energy resources also comprise approximately 95 percent of the more than 2.6 terawatts of capacity waiting in the nation’s interconnection queues, representing more than twice what the country has currently installed and demonstrating the continued interest in and potential for the market.⁵

¹ Internal Revenue Service, Treasury, September 13, 2024, “Corporate Alternative Minimum Tax Applicable After 2022,” Notice of Proposed Rulemaking, Federal Register, available online at: <https://www.federalregister.gov/documents/2024/09/13/2024-20089/corporate-alternative-minimum-tax-applicable-after-2022> at <https://www.federalregister.gov/d/2024-20089/p-140>

² Ibid.

³ EIA. Preliminary Monthly Electric Generator Inventory (June 2024), available at: <https://www.eia.gov/electricity/data/eia860m/>.

⁴ American Clean Power Association. Clean Energy Investing in America (August 2024), available at: <https://cleanpower.org/investing-in-america/>.

⁵ Rand, J. et al. Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection (April 2024), available at: <https://emp.lbl.gov/queues>. Note: Due to the uncertainty of the interconnection process, many of these projects will ultimately not be built. However, the interconnection queues demonstrate the significant potential availability of clean energy capacity.

Sustaining this progress is particularly important to the U.S. economic and national security, given the substantial forecasted increases in electricity demand largely driven by strategic industries, such as data centers that support artificial intelligence and other advanced technologies and domestic manufacturing.⁶

Tax equity, largely provided by domestic banks, has been a critical financing source for clean energy projects. Domestic banks have been major providers of tax equity, representing over 80% of the roughly \$20 billion annual market. They are poised to increase their tax equity investments to meet the rising demand generated by current federal tax policies, with many forecasters estimating a needed increase in market size to over \$50 billion.⁷

Like many other infrastructure assets, clean energy projects often involve substantial upfront capital costs. Clean energy projects typically have a high level of contracted revenue, limited variable operating costs, and relatively predictable cash flows. Projects are often held in a limited liability company (“LLC”) that is characterized as a partnership for U.S. tax purposes.

In most cases, the project sponsors do not have sufficient tax liabilities to efficiently use the tax benefits that may be available for these projects. Thus, the sponsor sells non-controlling passive interests in the LLC to a tax equity investor in a structured tax equity transaction. This structure is designed to allow the tax equity investor to fund a large portion of the capital cost of the project and to receive an appropriate rate of return, which consists primarily of the value of tax credits and other tax benefits. Additional details related to tax equity finance for clean energy projects is available on ACORE’s website at: <https://acore.org/resources/the-risk-profile-of-renewable-energy-tax-equity-investments/>.

Partnerships are a core facet of successful clean energy project finance where tax equity is required. Ensuring that investments in partnerships are not hampered by the CAMT regime’s rules that result in uneconomic inclusions or CAMT’s extensive reporting regime for partnerships and partners is central to the overall success of the IRA. As described further in this comment, the Clean Energy Organizations are concerned that, as currently proposed, the Department’s method of calculating a distributive share of partnership AFSI may lead to highly distorted results and substantial compliance and oversight challenges.

⁶ Grid Strategies, LLC, “Strategic Industries Surging: Driving U.S. Power Demand,” (December 2024), available online at: <https://gridstrategiesllc.com/wp-content/uploads/National-Load-Growth-Report-2024.pdf>

⁷ ACORE. The Risk Profile of Renewable Energy Tax Equity Investments (December 2023), available at: <https://acore.org/wp-content/uploads/2023/12/ACORE-The-Risk-Profile-of-Renewable-Energy-Tax-Equity-Investments.pdf>.

Without modification, the current proposed rules could have a very detrimental impact on clean energy project finance and will undermine the progress being made to support economic growth and national security by providing affordable, reliable, domestic clean energy to American businesses and consumers.

C. Impact of Proposed Rules on Partnership Investments

The imposition of the CAMT is based on the AFSI, making accurate calculations and development of the AFSI critical to the effective implementation of the law. Under the Proposed Regulations, an applicable corporation⁸ includes a distributive share of partnership AFSI.⁹ More specifically, the distributive share of partnership AFSI generally is computed under Prop. Treas. Reg. § 1.56A-5 which requires the use of the “applicable method”.¹⁰ The proposed CAMT rules describe the applicable method as a “bottom-up” method for computing partnership’s inclusions for CAMT purposes. However, the Department and IRS also note that as currently proposed, this method may lead to “imprecise results,” and requests comment on more precise methods for calculating DSP.¹¹

Under this bottom-up method, AFSI is first computed at the partnership level, and a corporate partner must then determine its distributive share of such AFSI. Determining a partner’s distributive share is a multi-step process that includes the following three steps (among other steps):

- First, the applicable partner must determine its DSP. This percentage is generally equal to a fraction of, (1) the numerator of which is the financial statement income (“FSI”), with respect to such partnership on the partner’s applicable financial statement (subject to certain modifications) and (2) the denominator of which depends on such partnership’s method of accounting for financial statement purposes. If the partner accounts for its partnership investment using the equity method of accounting, the denominator is 100% of the partnership’s FSI.¹²

⁸ The tax equity investor in the partnership with the project sponsor will likely meet the definition of an Applicable Corporation under Section 59(k).

⁹ Section 56A(c)(2)(D)(i).

¹⁰ With respect to non-foreign tax credits, Proposed Treasury Regulation section 1.56A-1(b)(18) defines “federal income taxes” to include amounts allowed as credits against taxes imposed by subtitle A, including clean energy tax credits and credit amounts generated by a partnership and passed through to a partner.

¹¹ Internal Revenue Service, Treasury, September 13, 2024, “Corporate Alternative Minimum Tax Applicable After 2022,” Notice of Proposed Rulemaking, Federal Register.

¹² The preamble to the Proposed Regulation explicitly addresses the treatment of the Hypothetical Liquidation at Book Value (“HLBV”) method and provides that it is included in the definition of an “Equity Method”. The preamble to the Proposed Regulation does not address the treatment of the Proportional Amortization Method (“PAM”), including whether such method is included in the definition of an Equity Method. This comment letter does not address the complicated question of whether PAM

- Second, the partnership must determine its modified FSI (i.e., FSI with the adjustments required under CAMT, such as using tax depreciation rather than book depreciation for section 168 property).
- Third, the applicable partner must multiply its DSP by the partnership's modified FSI.

Applying this process can lead to significant distortions for taxpayers using the PAM and HLBV for AFS purposes. This is primarily due to the disconnect between the base on which the numerator of DSP is based and the denominator. Specifically, when the taxpayer uses either PAM or HLBV, the numerator is not based on the FSI of the partnership but rather on a completely different base. As explained in more detail in Annex A, PAM determines the investor's inclusion by amortizing the initial cost of the investment in proportion to the tax benefits received in a given year relative to the total tax benefits over the life of the investment and the inclusion is the net amount of the two (amortized cost + tax benefits in that year) recorded to the income tax accounts; HLBV determines the investor's inclusion in a given year as the amount it would receive if the partnership were liquidated at book value at the end of a given year and these impacts are recorded in pretax. These amounts – the ones that are used in the DSP's numerator – are very different than the typical GAAP calculation used by the partnership; as we noted, this typical GAAP amount is the one included in the DSP's denominator. Ultimately, the DSP effectively seeks to divide two unrelated numbers. This discrepancy can lead to the partnership and partners having significantly different FSIs for the same investment.

Because the numerator and denominator of DSP bear no relationship to each other, (i) the DSP is distortive and therefore (ii) the AFSI inclusion that results from the use of the DSP is distortive. The distortions are not reversed until the sale of the interest in the partnership or its liquidation.

Under HLBV, tax depreciation and credits can result in large losses for the tax equity investor during the early years while the sponsor has income. The partnership FSI will likely be small relative to each partner's HLBV income or loss, which offset one another.

This significantly impacts the DSP calculation and can result in a very large percentage because the partners' HLBV income/loss is significantly larger than the partnership's FSI. The percentage will also be negative for one the partners when one partner has HBLV income, and another partner has HLBV loss.

is (or is not) an Equity Method. To the extent that PAM is not included in the definition of an Equity Method (e.g., if it is treated as part of the "cost method"), the proposed "top-down" method seems to be clearly the best path to calculate the distributive share amount in the absence of any other explicit alternative method. Accordingly, the remainder of this letter assumes that PAM is treated as an Equity Method subject to the "bottom up" method under the Proposed Regulations (with the partnership's FSI used as the denominator).

The HLBV examples in the Proposed Regulations (Reg. Sec. 1.56A-5(k), Examples 2 and 3) do not reflect the distortion that is likely to occur because the partner FSI does not significantly exceed the partnership FSI, nor is there a negative distributive share percentage.

When applying the Proposed Regulations to actual investments, our membership have witnessed DSPs ranging from over 2,700% to -1,000% demonstrating the unworkability of the bottom-up approach where a taxpayer accounts for the investment for AFS purposes under PAM and HLBV (See Annex B for illustrative examples of the results of applying the CAMT Proposed Regulations to a typical investment accounted for under PAM).

In addition to the potential distortions presented by this multi-step process, calculating AFSI will be extraordinarily challenging and will require an item-by-item and partnership-by-partnership analysis, as well as extensive coordination between partners and partnerships. CAMT calculations and reporting will be burdensome for partners and partnerships and make it hard for the government to examine and administer.

Ultimately, the proposed rule risk of distorted AFSI calculations, the burden of preparation, examination, and administration, and the potential impact on the project finance landscape for clean energy projects merit consideration of an alternative solution in order to effectively and efficiently compute a partner's distributive share of partnership AFSI and meet the law's objectives.

D. Alternative Approach to Achieving Law's Objective: "Top-Down Election"

As noted in the proposed rules, Section 56A(c)(2)(D)(i) provides the Secretary with sufficient discretion to consider and implement regulations to address these issues.¹³ As the Department and IRS note, there are alternative approaches to determining the distributive share amount, including a top-down method. As described in the proposed rule, under a top-down method, a partner's distributive share of AFSI from a partnership investment generally would be based on the partner's method used to account for the investment for AFS purposes.

The Clean Energy Organizations encourage the Department and IRS to address concerns identified by clean energy tax equity investors, and described in Section C of these comments, by implementing a Top-Down Election alternative in the final rule.

¹³ Internal Revenue Service, Treasury, September 13, 2024, "Corporate Alternative Minimum Tax Applicable After 2022," Notice of Proposed Rulemaking, Federal Register, available online at: <https://www.federalregister.gov/documents/2024/09/13/2024-20089/corporate-alternative-minimum-tax-applicable-after-2022> at <https://www.federalregister.gov/d/2024-20089/p-15>.

The proposed Top-Down Election would enable partners (whether corporate partners or upper tier partnerships) to compute their AFSI inclusion based on the FSI reported in their AFS (i.e., the FSI that the partner disregards under Prop. Treas. Reg. §1.56A-5(c)(1)) in lieu of using distributive share of partnership AFSI for purposes of determining the applicable corporation's CAMT liability. This election should be available for all investments accounted for under PAM or HLBV for AFS purposes (or to all non-consolidated partnerships). The rule would require an applicable corporation to make this election at the later of (a) the first taxable year that the corporation is an applicable corporation to which final CAMT regulations apply and (b) the first taxable year in which the applicable corporation makes an investment accounted for under HLBV or PAM. It is proposed that the election would be applied to all investments accounted for under PAM or HLBV and would be irrevocable, absent an approval by the IRS.

The Clean Energy Organizations believe that enabling corporate partners to compute their AFSI inclusion based on the FSI reported in their AFS will improve the efficiency and accuracy of calculating a taxpayer's AFSI and is an appropriate use of Treasury's authority.

The election mechanism should address the presentation of items under PAM. Under PAM, the provision for income taxes for financial accounting purposes includes tax credits, non-credit current tax benefits, and amortization of the cost basis of the investment. Pre-tax income is generally not affected by an investment in a partnership where the investment is accounted for under PAM (except to the extent of cash distributions). As a result, the income tax expense provision includes amounts not normally reported as components of income tax (or benefit) in the traditional sense. The amounts that are naturally not a "tax item", i.e. amortization of the cost basis of the investment, ought to be treated as the relevant FSI of the relevant partner with respect to the investment in the partnership, in addition to any cash distributions classified in pre-tax income line items. Annex A provides an overview of HLBV and PAM and illustrates how the Top-Down Election should address the presentation issues associated with PAM.

E. Addressing the Treasury Rejection of the Top-Down Approach

Lastly, the Clean Energy Organizations acknowledge that the Treasury addressed the possibility of using such a "top-down method" and had rejected it. Specifically, the Treasury explains that: "A bottom-up approach is consistent with the statute and is more conducive to taking into account section 56A adjustments."

However, we believe that the proposed Top-Down Election is still required at least for investments accounted for under PAM or HLBV:

- First, while the Treasury acknowledges that the bottom-up approach may produce “imprecise” results, as was explained in section C, it seems that the Treasury underappreciated the extent of the distortions created by that approach, particularly when applied to investments accounted for under HLBV or PAM. The Proposed Regulations seem to assume that, in any given year, there is a logical relationship between the DSP’s numerator (investor’s GAAP inclusion under PAM and HLBV) and the DSP’s denominator (partnership’s FSI). In fact, there is no such relationship. That is because the partnership’s FSI is *not* calculated using PAM or HLBV, while the partner/investor’s income *is* calculated using PAM or HLBV.
- Second, the bottom-up approach is not more conducive to taking into account 56A adjustments when applied to investments accounted for under HLBV or PAM. The results under the bottom-up approach with respect to investments accounted for under PAM or HLBV for book purposes are so distortive, such that there is no real relationship between the section 56A adjustment and the CAMT AFSI inclusion amount (the distributive share amount) with respect to such investment.¹⁴
- Third, unlike the mandatory “top down” method considered by the Treasury, the Top-Down Election avoids the question whether Treasury is authorized to force taxpayers to forego many of the typically taxpayer favorable adjustments made to financial statement income under the CAMT with respect to a partnership income (such as replacing book depreciation for tax depreciation for section 168 property), as this is an “election” of the applicable taxpayer/partner.
- Fourth, the fact that the election is generally irrevocable and applies to all investments accounted for under PAM or HLBV should negate any “cherry-picking” concerns. The Clean Energy Organizations further believe that governmental interests would not be adversely impacted by the Top-Down Election as, at its core, the Top-Down Election would allow an elector to forego these typically taxpayer favorable adjustments in exchange for avoiding the distortions presented by the DSP methodology in the proposed regulations while using a greatly simplified process.

¹⁴ With respect to PAM, as reflected in Annex A, the accounting method itself allocated the amortization in accordance with the pro-rata portion of the tax benefits (including tax depreciation for 168 property), such that the book amount itself already takes into account one of the main adjustments under Section 56A (i.e., tax depreciation for 168 property).

- Finally, as described previously, calculating AFSI will be extraordinarily challenging and will require an item-by-item and partnership-by-partnership analysis, as well as extensive coordination between partners and partnerships. From a government administration perspective, examining DSP percentages for hundreds or thousands of partnerships for some taxpayers will be tremendously burdensome for the government to examine and administer.

The Clean Energy Organizations hopes that the Treasury and IRS will consider this alternative calculation method, which would allow for greater precision based the accounting methods employed by different taxpayers. This approach will allow taxpayers to continue beneficial investments in critical economic sectors, enhance taxpayer compliance and administration, and better achieve the statute's objectives.

If you have any additional questions about these comments, please contact: Lesley Hunter at hunter@acore.org.

Sincerely,

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Annex A – What are PAM and HLBV?

The PAM and HLBV methods were developed primarily for equity investments in partnerships that own assets qualifying for tax credits (e.g., low income affordable housing or renewable energy) because the traditional equity method failed to align with the economics of the investments where the partnership's capital structure provides for different rights and priorities to its owner or where ownership percentages are either not mentioned or are not constant throughout the life of the investment.

HLBV is a balance sheet-oriented approach to the equity method of accounting which provides a methodology for allocating GAAP income or losses to investors. HLBV calculates the amount each partner would receive if the partnership were liquidated at book value at the end of each measurement period. The change in the allocated amount to each partner during the period is the book income/expense allocated to that partner (adjusted for distributions and contributions). Because the income or losses are allocated based on the amount each partner would receive upon a liquidation of the partnership, investors using the HLBV approach may have income/expense deviating significantly from the partnership's book income or loss.¹⁵ The tax depreciation and credits can result in large losses for the tax equity investor during the early years while the sponsor has income. The partnership FSI can be modest relative to each partner's HLBV amount when the partners' HLBV amounts are offsetting.

The Proportional Amortization Method (PAM) is primarily used for investments that own assets qualifying for tax credits, such as low-income housing tax credit partnerships. Under PAM, the investor amortizes the cost of the investment in proportion to the tax credits and other tax benefits received over the life of the investment. This method aligns the recognition of the investment's cost with the receipt of tax benefits, such as tax credits and tax deductions. The amortization expense is recognized in the tax line of the income statement. This approach generally used for investors seeking to match the timing of tax benefits with the financial reporting of the investment's cost, providing a clearer picture of the investment's impact on the investor's financial position.¹⁶ The following example illustrates the application of PAM.

¹⁵ The definition of the term Equity Method in Prop. Treas. Reg. §1.56A-1(b)(15) includes an implicit definition of HLBV: "The term equity method means the practice, under financial accounting principles, of a CAMT entity (investor) initially recording its investment in the equity of another CAMT entity (investee) as an asset in the investor's AFS, generally, at cost and then adjusting the AFS basis of such asset by the investor's share of the earnings or losses of the investee for periods following the date of investment. See, for example, ASC 323. The equity method includes the hypothetical liquidation at book value (HLBV) method under which the investor uses a balance sheet approach to calculate the investor's share of investee earnings or losses based on the change in the investor's claim on the net assets of the investee."

¹⁶ See FASB accounting Standard Update: "Investments—Equity Method and Joint Ventures (Topic 323)" expanding the use of the PAM method.

The example assumes that X is a tax-equity investor in PRS. The investor accounts for the investment under PAM. The investor is subject to tax at a 20% rate. The investor invests \$90mm and expects to receive \$98mm of tax benefits over a five-year period from the investment (consisting of \$80mm of tax credits and tax depreciation benefit of \$18mm from bonus depreciation). No cash distributions are made. The expected tax benefit and the actual tax benefits are equal.

The following table illustrates the yearly results of the investment for book purposes. Ultimately, as result of the investment, the partner’s investments only affect the “tax line” of the income statements (after netting off the tax benefit and the pro-rata portion of the amortization).¹⁷

	Formula	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Tax Credit	a = \$80mm/5	\$ 16.00	\$ 16.00	\$ 16.00	\$ 16.00	\$ 16.00	\$ 80.00
Tax Effects of Depreciation (bonus depreciation)	b = (\$90mm*20%)/2	\$ 9.00	\$ 9.00	\$ -	\$ -	\$ -	\$ 18.00
Expected Tax Benefit	c=a+b	\$ (25.00)	\$ (25.00)	\$ (16.00)	\$ (16.00)	\$ (16.00)	\$ (98.00)
Expected Tax Benefit Ratio	d=c/sum of all years	25.51%	25.51%	16.33%	16.33%	16.33%	100%
Proportional Amortization of the Investment	e=d*\$90mm	\$ 22.96	\$ 22.96	\$ 14.69	\$ 14.69	\$ 14.69	\$ 90.00
Income Line	N/A	0	0	0	0	0	0
Tax Line - Current Tax Expense (Benefit)	c+e	\$ (2.04)	\$ (2.04)	\$ (1.31)	\$ (1.31)	\$ (1.31)	\$ (8.00)

If a Top-Down Election is made, our request is that the distributive share amount for each year would consist of (i) the amount reflected in line “Proportional amortization of the investment” (e.g., \$22.96mm in year 1 that increased the current tax expense for book amortization of the investment) and (ii) any cash distributions classified as pre-tax income in the partner’s financial statement. This approach treats non-tax items equally regardless of the presentation of such items under PAM.

¹⁷ This example is modeled on the OECD report regarding “Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global AntiBase Erosion Model Rules (Pillar Two), July 2023” (page 38). See: <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-minimum-tax/administrative-guidance-global-anti-base-erosion-rules-pillar-two-july-2023.pdf>.

Illustrative Example 2. HLBV

The following table reflects the Distributive Share Percentage and the distributive share amount of the same actual deal (as in section A) if it was accounted for under HLBV for book purposes as calculated under the Proposed Regulations (the numbers were consistently modified by the same factor (as above) to prevent identification of the investment). Notably, this is exactly the same investment as the investment above.

		Equity Invested										
	Formula	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
K-1 Taxable Income/(Loss)		\$ (5,998,567)	\$ (48,760,034)	\$ (23,145,866)	\$ 2,082,500	\$ 754,775	\$ 1,621,193	\$ 1,169,446	\$ (3,902,901)	\$ 1,389,603	\$ 66,888	\$ (74,722,964)
Partner's FSI (Under HLBV- "Hypothetical Liquidation at Book Value")	a.	\$ (9,989,411)	\$ (5,467,329)	\$ (5,013,413)	\$ (12,103,285)	\$ (4,454,034)	\$ (5,441,692)	\$ (6,018,027)	\$ (5,786,130)	\$ (7,032,756)	\$ (7,434,090)	\$ (68,740,169)
Partnership's FSI (i.e., Partnership's Audited Financial Statement Net Income)	b.	\$ (14,510,358)	\$ (3,507,733)	\$ (2,402,079)	\$ (1,787,584)	\$ (3,469,003)	\$ (3,294,969)	\$ (4,144,619)	\$ (15,555,040)	\$ (13,563,196)	\$ (10,229,121)	\$ (72,463,700)
GAAP Depreciation Expense	c.	\$ (866,325)	\$ (5,208,629)	\$ (5,208,630)	\$ (5,208,630)	\$ (5,232,435)	\$ (5,232,435)	\$ (5,390,940)	\$ (5,398,965)	\$ (5,416,245)	\$ (5,407,380)	\$ (48,570,614)
Tax Depreciation Expense	d.	\$ (6,683,040)	\$ (50,805,735)	\$ (30,556,330)	\$ (18,400,520)	\$ (18,383,256)	\$ (10,189,456)	\$ (784,934)	\$ (487,702)	\$ (480,830)	\$ (480,830)	\$ (137,252,634)
Partnership's Adjusted Financial Statement Income (i.e., AFSI)	e. = b.-c.+d.	\$ (20,327,073)	\$ (49,104,839)	\$ (27,749,779)	\$ (14,979,474)	\$ (16,619,824)	\$ (8,251,990)	\$ 461,388	\$ (10,643,777)	\$ (8,627,781)	\$ (5,302,571)	\$ (161,145,720)
Partner's Distributive Share Percentage	f. = a. / b.	69%	156%	209%	677%	128%	165%	145%	37%	52%	73%	
Partner's Share of AFSI (i.e., "Distributive Share Amount")	g. = f. * e.	\$ (13,993,830)	\$ (76,537,287)	\$ (57,916,966)	\$ (101,422,297)	\$ (21,339,063)	\$ (13,628,290)	\$ 669,939	\$ (3,959,249)	\$ (4,473,657)	\$ (3,853,683)	\$ (296,454,383)

This table reflects the distortions created under the Proposed Regulations with respect to the (same) investment if it was accounted for under HLBV for book purposes. Again, it is hard to find any economic or tax policy rationales for these distortive results.