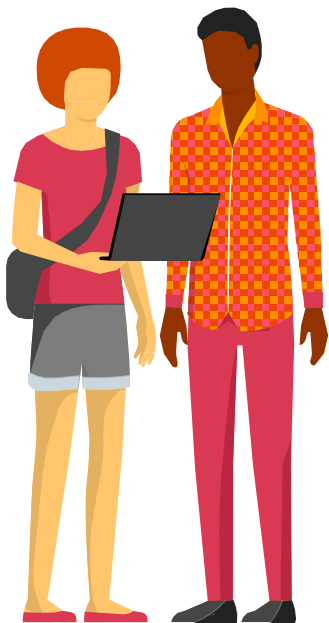


Inflation Reduction Act: Key Tax Provisions Affecting Manufacturing

Agenda



- Overview
- Book minimum tax
- Stock buybacks
- Credits and incentives

1

Overview

Inflation Reduction Act - What's in

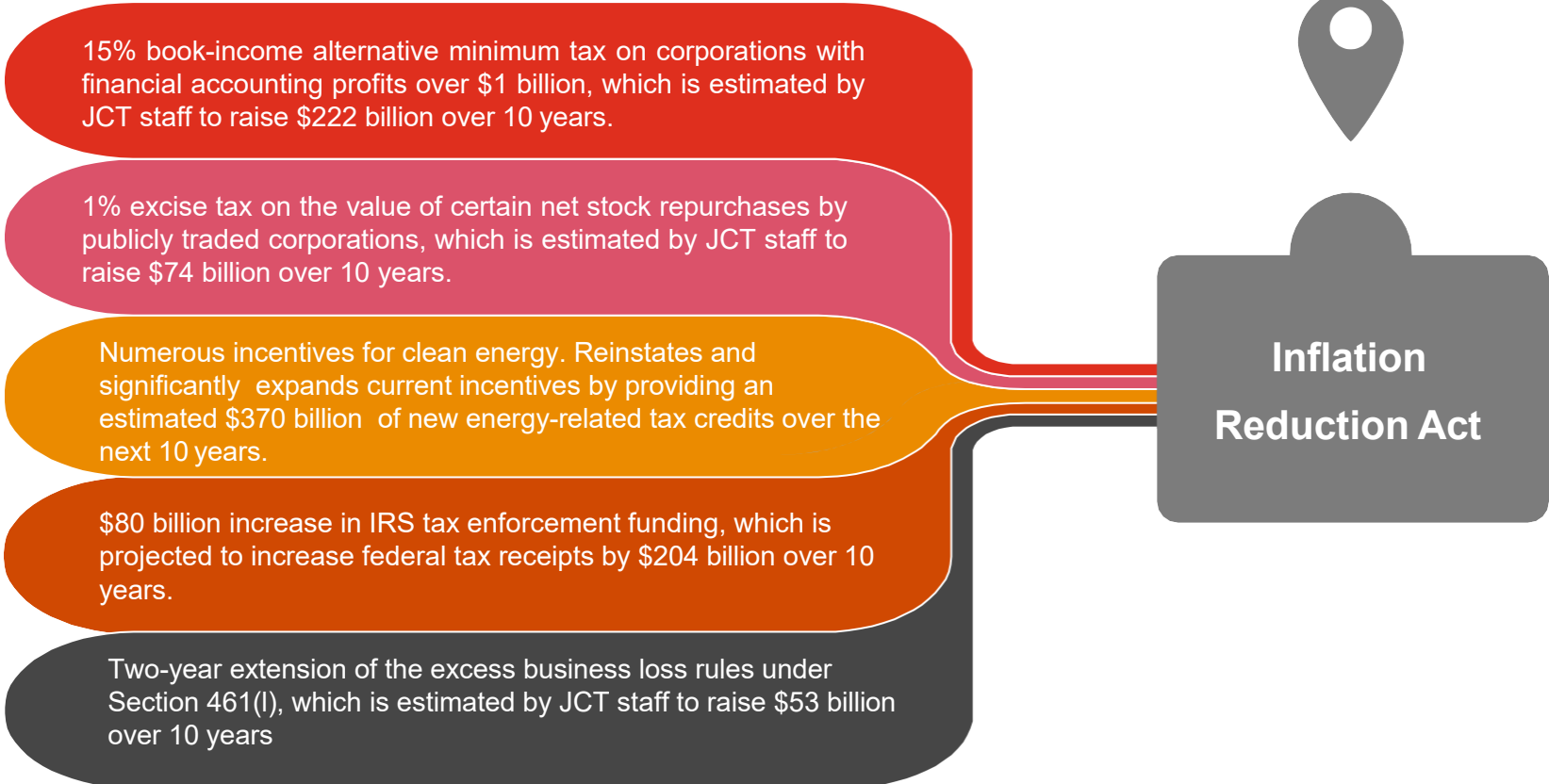
15% book-income alternative minimum tax on corporations with financial accounting profits over \$1 billion, which is estimated by JCT staff to raise \$222 billion over 10 years.

1% excise tax on the value of certain net stock repurchases by publicly traded corporations, which is estimated by JCT staff to raise \$74 billion over 10 years.

Numerous incentives for clean energy. Reinstates and significantly expands current incentives by providing an estimated \$370 billion of new energy-related tax credits over the next 10 years.

\$80 billion increase in IRS tax enforcement funding, which is projected to increase federal tax receipts by \$204 billion over 10 years.

Two-year extension of the excess business loss rules under Section 461(l), which is estimated by JCT staff to raise \$53 billion over 10 years



**Inflation
Reduction Act**

Polling question #1

Which tax provision in the Inflation Reduction Act is your business most focused on?

1

Book minimum tax

2

1% excise tax on stock buybacks

3

Green incentives

4

Two-year extension of the excess business loss rules

5

N/A or other



2

Book minimum tax

Book minimum tax

Overview

- Corporate alternative minimum tax (AMT) of 15% on adjusted financial statement income (AFSI) (book minimum tax, or BMT), effective for tax years beginning after December 31, 2022
- Generally applies to corporations with AFSI in excess of \$1 billion (additional \$100 million test applies for certain corporations with foreign parent)
- Computation of AFSI is relevant for determining if a corporation is an applicable corporation and, once an applicable corporation, for computing BMT
- Operative only if tentative minimum tax exceeds regular tax plus BEAT
- Generally may claim general business tax credits against the BMT, and would be eligible to claim a tax credit against the regular corporate tax for BMT paid in prior years
- Once a corporation is subject to the corporate BMT, it remains subject to it unless otherwise provided in Treasury regulations
- New AMT foreign tax credit provided

Book minimum tax

BMT calculation

1. Financial Statement Income
2. +/- Adjustments
3. - Financial Statement NOL (not to exceed 80% of the sum of line 1 and line 2)
4. = Adjusted Financial Statement Income (AFSI)
5. x 15% tax rate
6. = AMT before credits
7. - AMT foreign tax credits
8. = Tentative Minimum Tax (TMT)
9. - Regular Tax (after FTCs and before GBCs) plus BEAT
10. = AMT (if greater than zero)**

If AMT > 0, then

11. Subtract GBCs from Federal Income Tax, limited to approximately 75% of the sum of regular tax plus AMT less credits allowable under subparts A and B
12. = Net Federal Income Tax

***Creates AMT credit carryforward*

Book minimum tax

Applicable corporation

- 'Applicable corporation' means a corporation (except S corps, RICs, and REITs) that meets an AFSI test for any three-year taxable period beginning before the current tax year (the tested year) and ending after December 31, 2021
- AFSI test, in general
 - Average AFSI (excluding NOL carryovers) over three tax years ending with the relevant tax year exceeds \$1 billion (excluding certain AFSI adjustments)
 - Test based on years in existence if in existence for less than three years
 - AFSI annualized for short tax years
- Two-part AFSI test for corporations with foreign parent
 - Three-year average AFSI (excluding adjustments related to distributive share of partnership AFSI, certain items of foreign income, effectively connected income, and defined benefit pension plans) of all members of the group > \$1 billion AND
 - Three-year average AFSI of US members of the group, US trades or business of foreign group members that are not subsidiaries of US members, and foreign subsidiaries of US members > \$100 million

Book minimum tax

Applicable corporation–aggregation rule

- *Solely to determine if a corporation is an applicable corporation*, AFSI is aggregated with the AFSI of all persons treated as a single employer under Section 52(a) or 52(b)
 - All members of the corporation's controlled group, and
 - All trades or businesses under common control with the corporation
- AFSI for purposes of applying the aggregation rules excludes the adjustments relating to a partner's distributive share of partnership AFSI and defined benefit pension plans

Applicable corporation–exceptions

- A corporation otherwise qualifying as an applicable corporation may be excepted if it–
 - Has a change in ownership, or
 - Does not meet the AFSI test for the most recent tax year and a number (to be determined by Treasury) of consecutive years
- In either case, Treasury must determine that an exception is appropriate

Polling question #2

Does your business expect to be subject to the BMT?

1

My company likely will be an applicable corporation for the BMT

2

My company's status as an applicable corporation for the BMT is uncertain

3

My company likely will not be an applicable corporation for the BMT

4

N/A or other



Book minimum tax

Adjusted financial statement income (AFSI)

- Net income or loss of a corporation on corporation's applicable financial statement (AFS) for the tax year, with adjustments
- AFS has same meaning as for Section 451(b)(3) (generally, an audited GAAP or IFRS statement)
- Adjustments
 - Financial statement and federal income tax reporting years that do not coincide
 - Rules similar to Section 451(b)(5) apply for an AFS for a group of entities
 - Corporations filing a consolidated return
 - Corporations not included in a consolidated return
 - Partnerships
 - Controlled foreign corporations
 - Foreign corporations
 - Disregarded entities

Book minimum tax

Adjusted financial statement income (AFSI)

- Adjustments (continued)
 - Defined benefit pensions
 - Depreciable property under section 168
 - Qualified wireless spectrum amortizable under section 197
 - Federal and foreign income taxes
 - Direct payment of certain credits
 - Certain income related to mortgage servicing contracts
 - Tax-exempt income of tax-exempt entities
 - Alaska native corporations and cooperatives
 - Financial statement net operating losses

Book minimum tax

AMT FTC, general business credits, and minimum tax credit

- Liable for the 15% minimum tax only if tentative minimum tax exceeds regular tax plus BEAT
- Adds new corporate AMT FTC
 - Available to an applicable corporation that claims an FTC for the tax year
 - Based on sum of: (1) the foreign income taxes (within the meaning of Section 901) paid or accrued by an applicable corporation, and (2) the lesser of (a) the amount of foreign income taxes (within the meaning of Section 901) taken into account on the AFS of each CFC and paid or accrued by the CFC for federal income tax purposes, and (b) the applicable corporation's pro rata share of the CFC AFSI adjustment, multiplied by 15%
 - Five-year carryforward of the excess of the amount in 2(a) over 2(b)
- Amends the general business credit limit so that credits are not limited by tentative minimum tax; taxpayers may utilize their general business credits against both regular tax liability and the BMT up to approximately 75% of the combined tax
- Paying the BMT in a year generates a minimum tax credit, which may be carried forward indefinitely and applied against regular tax in future years (to the extent regular tax plus BEAT exceeds BMT)

Book minimum tax

International Tax Considerations – Amounts received from subsidiaries

- **Issue:**

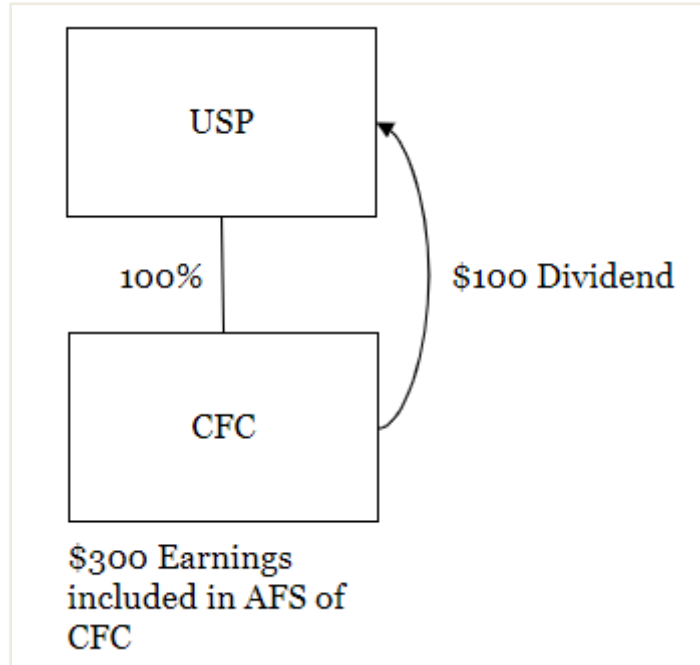
- The Inflation Reduction Act of 2022 (“IRA”) does not, by its terms, prevent from increasing a taxpayer’s CAMT liability distributions of earnings from subsidiaries that have either (i) already been included in the calculation of the CAMT, or (ii) have been repatriated and excluded from taxable income due to the dividends-received deduction (“DRD”).

- **Considerations:**

- Section 56A(c)(2)(C) provides that when a corporation is not included in a consolidated return with the taxpayer (e.g., a controlled foreign corporation (“CFC”)), the AFSI of the taxpayer with respect to such other corporation is determined taking into account only dividends received from such other corporation and other amounts that are included in the gross income or deductible as a loss (other than amounts required to be included under sections 951 and 951A) with respect to such other corporation.
- Are dividends for purposes of section 56A(c)(2)(C), dividends for tax purposes or financial statement purposes? Arguably the former.
- Section 56A(c)(3) provides that the AFSI of a taxpayer, that is a U.S. shareholder of a CFC, is adjusted to account for the taxpayer’s pro rata share of items that are taken into account in computing the net income or loss set forth on the CFC’s applicable financial statement. Accordingly, unless an adjustment is made, dividends received by a U.S. shareholder, funded from earnings that are added back to the U.S. shareholder’s AFSI under section 56A(c)(3), will be double counted for purposes of the CAMT.
- Further, in the absence of clarification the CAMT may apply to tax earnings of a subsidiary that are in excess of its financial statement earnings (e.g., through an intercompany transaction which created tax earnings that are eliminated for financial statement purposes), despite those earnings never being subject to U.S. tax due to a DRD.
- Section 56A(c)(15)(A) provides specific authority to make adjustments to prevent “duplication of items”. Inclusion of CFC income and dividends from CFCs appears to be a clear example of duplication – what is the best mechanism to rectify

Book minimum tax

International Tax Considerations – Example 1 – Section 245A DRD



- **Facts:**

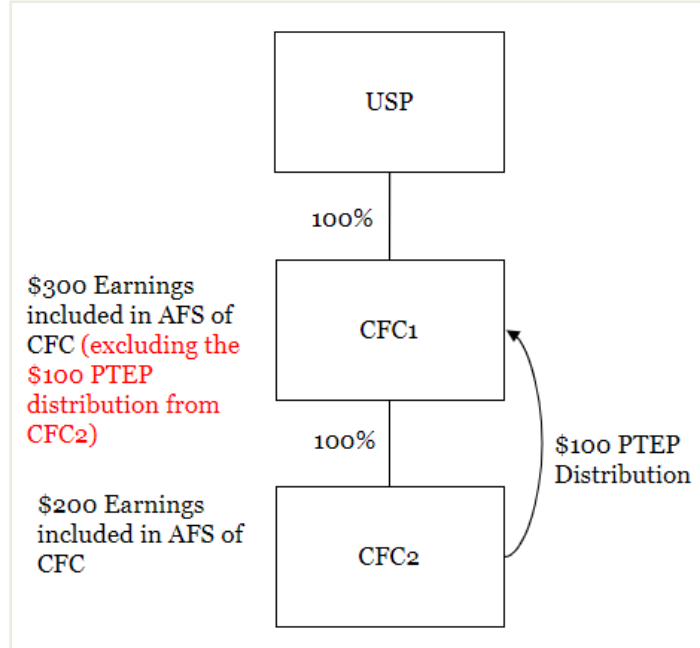
- USP, an applicable corporation under section 55(k), wholly owns a CFC.
- CFC has \$300 of net income on its AFS for the current year (that represent earnings eligible for a section 245A deduction) and distributes a \$100 dividend to USP for which USP takes a 100% DRD under section 245A.

- **Potential analysis – Without regulatory fix:**

- Under section 56A(c)(2)(C), USP increases its AFSI by the amount of the dividend received from CFC (i.e., \$100).
- Under section 56A(c)(3) USP increases its AFSI by the amount of items taken into account in computing the net income or loss set forth on CFC's AFS (i.e., \$300).
- Accordingly, as a result of USP's investment in CFC, USP includes \$400 of AFSI, despite CFC only earning \$300 of AFSI.

Book minimum tax

International Tax Considerations – Example 1 – Section 245A DRD



- **Facts:**
 - USP, an applicable corporation under section 55(k), wholly owns CFC1, which wholly owns CFC2.
 - CFC2 has \$200 of net income in its AFS. CFC1 has \$400 of net income in its AFS for the current year, \$100 of which resulted from a distribution from CFC2. For tax purposes, the \$100 distribution is excluded from the income of CFC1 under section 959(b).
- **Potential analysis – Without regulatory fix:**
 - USP increases its AFSI by \$600 (\$400 from CFC1 (including the distribution of PTEP from CFC2), and \$200 from CFC2), despite CFC1 and CFC2 jointly earning only \$500 of net income.
 - Assuming the tax definition of “dividends” applies here, unlike distributions of PTEP to a US shareholder (which are not considered “dividends” under section 959(d)), CFC-to-CFC distributions are considered dividends.

Book minimum tax

International Tax Considerations – Timing of tax accrual differences

- **Issue:**

- In many circumstances, the timing of accrual of foreign income taxes will differ for financial statement and U.S. federal income tax purposes. It is unclear when these taxes are taken into account in calculating the CAMT foreign tax credit.

- **Considerations:**

- The CAMT has two timing requirements for foreign taxes to qualify for the foreign tax credit: (i) the tax must be “taken into account” on the AFS of the CFC and (ii) the tax must be paid or accrued for U.S. federal income tax purposes. In many fact patterns, these two events will not occur within the same U.S. taxable year (including the first taxable year the CAMT is effective).

3

Stock buybacks

New Section 4501 – 1% Excise Tax On Share Repurchases

- Section 4501 imposes a **1% excise tax** on the fair market value of any stock that is repurchased by a **covered corporation** or its **specified affiliate** (generally, corporations or partnerships of which the corporation owns more than 50%) during the tax year (subject to an annual \$1 million threshold).
 - Effective for stock repurchases occurring after **December 31, 2022**
 - The excise tax is not deductible for federal income tax purposes
- **Covered Corporation**: The following entities are treated as a covered corporation: (i) a U.S. corporation the stock of which is traded on an established securities market, (ii) a “specified affiliate” of an applicable foreign corporation, and (iii) certain non-U.S. corporations treated as domestic corporations under the inversion rules.
- **Specified Affiliate Example**: US Pubco owns 100% of the stock of US1. US Pubco’s class A common stock is traded on the New York stock exchange. In 2023, US1 purchases \$150 million of US Pubco’s class A common stock. There are no stock issuances by US Pubco in 2023.
 - The 1% share repurchase excise tax base amount for 2023 would be \$150 million, and the excise tax would be \$1.5M.

New Section 4501 – 1% Excise Tax On Share Repurchases

- **Repurchase:**
 - A redemption within the meaning of section 317(b).
 - Any transaction determined by the Treasury Secretary to be “economically similar” to a redemption.
- **Established Securities Market:** Defined in Treas. Reg. section 1.7704-1(b) to include:
 - A national securities exchange that is registered under section 6 of the Securities Act of 1934 (e.g., NYSE and Nasdaq);
 - Non-U.S. security exchanges that satisfy regulatory requirements analogous to the regulatory requirements under the Securities Exchange Act of 1934 (such as the London Stock Exchange and the Tokyo Stock Exchange);
 - Regional or local exchanges; and
 - Interdealer quotation systems that regularly disseminate firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.

New Section 4501 – 1% Excise Tax On Share Repurchases

- In general, the tax due is determined on a net basis by reducing the base amount of the fair market value of the stock repurchased by the covered corporation by the fair market value of any stock issued by the covered corporation during the taxable year, including the fair market value of any stock issued or provided to employees of the covered corporation or a specified affiliate.
- The amount of the excise tax generally equals: 1% multiplied by the net of the fair market value of the repurchased stock less the fair market value of stock issued by such corporation during the same year, including compensatory stock issuances.
- **Example:** If US Pubco repurchases \$120 million worth of its stock in 2023, and issued its stock for cash or compensatory purposes in the amount of \$20 million during that same year, the 1% share repurchase excise tax base amount for 2023 would be \$100 million, and the 1% share repurchase excise tax amount would be \$1 million. $1\% \times (\$120M - \$20M)$.

Exceptions

The provision would not apply:



to the extent the repurchase is part of a reorganization under Section 368(a) and no gain or loss is recognized on the repurchase by the shareholder



if the repurchased stock or its value is contributed to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan



if the total value of stock repurchased during the tax year does not exceed \$1 million



if the repurchase is by a dealer in securities in the ordinary course of business



to repurchases by a regulated investment company or real estate investment trust, or



to the extent the repurchase is treated as a dividend

New Section 4501 – Where Else Might It Apply?

- Leveraged buy out acquisitions of covered target corporations, which generally result in the target corporation borrowing money and redeeming a significant amount of stock in connection with the transaction.
- Retirements of a class of preferred stock upon the maturity thereof, if issued by a corporation whose common shares (or any other class of stock issued by such corporation) are traded on an established securities market.
 - Note there is no grandfathering exception in the statute. For example, the mandatory redemption in 2023 of a preferred class of US Pubco's stock originally issued in 2003 would still be subject to the excise tax.
- Reorganizations involving boot, where gain or loss is recognized by the shareholder.
- A tax-free section 355 split-off – it's technically a redemption under section 317(b).
- Taxable liquidations
- Other transactions?

Polling question #3

Will this new excise tax change your companies position on stock buybacks?

1 The tax will not have a material effect on the business decision to buy back stock

2 The tax likely will suppress the willingness of my business to buy back stock

3 My business is still analyzing the effects of the tax

4 N/A or other



4

Credits and incentives

Inflation Reduction Act - overview



Overview

- Largest federal investment in clean energy in US history
- Reinstates and significantly expands current incentives providing an estimated \$370 billion of new energy related tax credits over the next 10 years
- In addition to significant energy or 'E' provisions, the bill also aims to advance the economy further into the social 'S' and governmental 'G' space, by promoting growth in targeted areas
- Many credits continue until end of 2032 (with some transition dates)



Major themes:

- Decarbonizing power generation and transportation
- Promoting lower-carbon manufacturing
- Building energy efficiency
- Promoting US Jobs
- Creating options for financing

Inflation Reduction Act - key highlights

Tiered credit system

Many new and existing incentives now have a two-tiered system with a 'base rate' and a 'bonus rate.' The bonus rate would equal five times the base rate and would apply to projects that meet certain wage and apprenticeship requirements. Some of the credits also include additional rate enhancements based on the domestic content of the property as well as where the projects are located (i.e., low income communities, energy communities, etc.).

Decarbonizing power generation

Extends and expands the current system of tax credits through 2024 and then transitions those incentives into 'technology-neutral' credits beginning in 2025. Solar is now eligible for the PTC, and new credits support nuclear energy and other lower-carbon technologies, such as biogas and stand alone battery storage.

Carbon capture

Enhances the existing tax credits for carbon capture and storage or utilization. Taxpayers would be eligible to receive up to \$60 - \$180 per metric ton of carbon captured depending on the method by which the carbon is captured and the way it is sequestered.

Energy credits and incentives - key highlights

Decarbonizing transportation

Extends the income and excise tax credits for biodiesel, renewable diesel, and alternative fuels, and provides new credits for sustainable aviation fuel as well as clean hydrogen. Extends and expands the tax credits for Electric Vehicles, and promotes US jobs by including content and assembly requirements for some credits.

Building energy efficiency

Extends and expands the energy efficient commercial buildings deduction, the new energy efficient home credit, and provides enhanced benefits for individuals.

Lower-carbon manufacturing and green jobs

Revives the qualified advanced energy project credit, allowing the Secretary to allocate an additional \$10 billion of tax credits to qualifying projects. Credit requirements are similar to the original credit, yet eligibility is expanded to include industrial facilities. The credit is expanded to include projects that reduce GHG emissions at existing industrial facilities by at least 20%. Creates a new advanced manufacturing production credit for each eligible component that is produced in the US and sold to an unrelated party. Eligible components include qualified solar and wind components, inverters, battery components and critical minerals.

Energy credits and incentives - Direct pay & transferability



Direct pay:

- Taxpayers that fall within the definition of ‘applicable entities’ (i.e., tax-exempt entities, state & local governments, etc.) can elect to be treated as having made a payment of tax equal to the value of the credit they were eligible for
- The limitation on applicable entities does NOT apply to credits for:
 - Carbon capture and sequestration (Section 45Q)
 - Clean hydrogen (Section 45V)
 - Advanced manufacturing production credit (Section 45X)



Transferability:

- Generally, entities that are not applicable entities under the direct pay rules may transfer tax credits to third parties
- Transfer may be for all or a portion of a credit
- No re-transfers allowed, and no deduction for buyer or income inclusion for seller










Treasury and IRS Request Comments on Implementing the Inflation Reduction Act's Clean Energy Tax Incentives


















Issued October 5, 2022










Responses requested by November 4, 2022, though comments will be accepted thereafter

1. Energy Generation Incentives: Production Tax Credit, Investment Tax Credit, ZeroEmission Nuclear Credit, Clean Electricity Production Credit, Clean Electricity Investment Credit, Low Income Community Adder to Investment Tax Credit
2. Credit Enhancements: Prevailing Wage, Apprenticeship, Domestic Content, Energy Communities provisions that increase the value of multiple credits
3. Incentives for Homes and Buildings: Energy Efficient Home Improvement Credit, Residential Clean Energy Credit, New Energy Efficient Home Credit, Energy Efficient Commercial Building Deduction
4. Consumer Vehicle Credits: Clean Vehicle Credit, Credit for Pre-Owned Clean Vehicles
5. Manufacturing Credits: Advanced Energy Project Credit, Advanced Manufacturing Production Tax Credit
6. Credit Monetization: Direct Pay, Transfer of Certain Credits

Technology/Activity Incentivized	Incentive/Benefit	Direct Pay for "Applicable Entities"	Expanded Direct Pay Option	Transferable
<p>Advanced Energy Project Credit (Reducing Carbon Emissions at Industrial Facilities) *Section 48C</p>	<p>Projects receive a base credit rate of 6 percent of qualified investments in qualified advanced energy projects. To receive a bonus rate of 30 percent, taxpayers must satisfy the prevailing wage and apprenticeship requirements. This includes projects to establish, expand, or re-equip facilities for the production, manufacturing, or recycling of advanced grid, energy storage, and fuel cell equipment; equipment for the production of low-carbon fuels, chemicals, and related products; renewable energy and energy efficiency equipment; equipment for the capture, removal, use, or storage of carbon dioxide; and advanced light-, medium-, and heavy-duty vehicles and related components and infrastructure. The credit also would be allowed for projects that reduce carbon emissions at existing industrial facilities by at least 20% through the installation of low carbon process heat systems, carbon capture, transport, utilization and storage systems, and other energy efficiency measures. Treasury would determine allocations to projects each year with a requirement that property is placed in service within four years of the date of the allocation. A rule denies a double benefit for any qualified investment for which a credit is allowed under section 48B, 48E, 45Q, or 45V. An application process is required.</p>			
<p>Advanced Manufacturing Production Credit *Section 45X</p>	<p>A credit for each eligible component that is produced in US and sold. Eligible components include solar polysilicon, wafers, cells, modules, backsheets, longitudinal purlins, and structural fasteners; wind blades, nacelles, towers, and offshore foundations; inverters; battery electrode active materials, cells, and modules; and critical minerals. The credits are provided based on mass, watt-capacity, sales price, or production cost. Credits start to phase out in FY30, and are unavailable starting FY33 (i.e., with the exception of critical minerals). The credit cannot be claimed for the production and sale of any component manufactured at a facility for which an advance energy property credit under Code Sec. 48C.</p>			
<p>CHIPS and Science Act Adv. Manufacturing Investment Credit - Semiconductors & Equipment *Section 45D</p>	<p>A 25% tax credit for investment in a facility for which the primary purpose is the manufacturing of semiconductors or semiconductor manufacturing equipment. The investment tax credit is based on the cost of a) qualified manufacturing equipment (tangible property) AND b) qualified buildings and structural components (excluding portions used for admin, office support, or other functions unrelated to manufacturing), so long as the costs are for property integral to the operation of the advanced manufacturing facility. The credit applies to qualified property placed in service after December 31, 2022, for which construction begins before January 1, 2027. For property for which construction begins before January 1, 2023, the credit applies only to the basis of the property attributable to construction, reconstruction, or erection of the property after the date of enactment of the CHIPS Act (August 9, 2022). General ITC 5 year recapture rule applies (100% if the property is disposed of in the first year after being placed in service, reduced by 20% for each succeeding year). Also, a taxpayer that engages in an eligible transaction within 10 years of placing in service credit-eligible property is subject to 100% recapture of the credit.</p>			

Technology/Activity Incentivized	Incentive/Benefit	Direct Pay for "Applicable Entities"	Expanded Direct Pay Option	Transferable
<p>Wind, Biomass, Geothermal, Solar, etc. *Section 45</p>	<p>The PTC provides a tax credit for each kilowatt of electricity produced from qualifying facilities and sold to an unrelated party over a 10-year period from the placed-in-service date. Alternatively, taxpayers are able to elect to the ITC. Qualifying resources are generally sources of renewable electricity, including wind, biomass, municipal solid waste (including landfill gas and trash), geothermal, hydropower, and marine and hydrokinetic energy.</p> <p>The Act extends the current-law section 45 PTC, for facilities that begin construction before January 1, 2025, and extends the provisions to solar facilities. The bill provides taxpayers the option of a base credit rate of 0.3 cents/kilowatt hour, or a bonus credit rate of 1.5 cents/kilowatt hour (indexed to inflation) for facilities that meet the prevailing wage and apprenticeship requirements. If a facility meets the domestic content requirements, the credit rate is increased by 10%. The credit rate may also be increased by locating the facility in a "low income" or "energy community." The prevailing wage and apprenticeship requirement is deemed satisfied if construction begins within 60 days after the IRS releases guidance or if the facility's maximum net output is less than 1 MW.</p>			
<p>Solar, Geothermal Heat Pumps, Battery Storage, Biogas Fuel Cells, Waste Energy Recovery Property, etc. *Section 48</p>	<p>The ITC allows taxpayers to claim a tax credit based on the eligible cost of energy property. The ITC in a one time credit that is received when the taxpayer places the asset in service. The Act provides a base credit rate of 2% or 6% or a bonus credit rate of 10% or 30% of the basis of energy property placed in service after December 31, 2021. To claim the bonus credit rate, taxpayers must satisfy the prevailing wage and apprenticeship requirements. The 6% and 30% bonus rates would be provided for solar energy property, geothermal property, fiber-optic solar property, fuel cell property, microturbine property, small wind property, offshore wind property, combined heat and power property, and waste energy recovery property that begins construction before January 1, 2025. The ITC would be extended with 6% base and 30% bonus rates for geothermal heat pump property that begins construction before January 1, 2033.</p> <p>The ITC is extended with 2% base and 10% bonus rates for microturbine property that begins construction before January 1, 2025. The ITC would be expanded to include energy storage technology, biogas property, microgrid controllers, dynamic glass, and linear generators. These technologies would be eligible for a 6% base credit rate or a 30% bonus credit rate for any property that begins construction before January 1, 2025.</p> <p>Taxpayers may claim an increased credit with respect to energy property placed in service after December 31, 2022, if such property meets the domestic content requirements. The increase would be 2 percentage points (or 10 percentage points if the taxpayer meets the prevailing wage and apprenticeship requirements). For any energy property that is placed in service within an energy community, the credit percentage would be increased by 2 percentage points (or 10 percentage points if the taxpayer meets the prevailing wage and apprenticeship requirements). This bill would provide an enhanced incentive for solar and wind facilities qualifying for the section 48 ITC with respect to which Treasury makes an allocation of environmental justice solar and wind capacity limitation. The prevailing wage and apprenticeship requirement is deemed satisfied if construction begins within 60 days after the IRS releases guidance on these requirements or if the facility's maximum net output is less than 1 megawatt.</p>			

Technology/Activity Incentivized	Incentive/Benefit	Direct Pay for "Applicable Entities"	Expanded Direct Pay Option	Transferable
<p>Clean Electricity - Technology Neutral *Section 45Y</p>	<p>Taxpayers can choose between a PTC under Section 45Y or an ITC under Section 48E that is provided based on the carbon emissions of the electricity generated. This is a "technology-neutral" incentive so that any innovative technologies for producing or storing electricity could qualify for the credits, so long as the facility's carbon emissions are at or below zero. Taxpayers electing the PTC would receive a credit equal to up to 1.5 cents per kilowatt hour of electricity produced and sold in the 10-year period after a qualifying facility is placed in service. The credit is set to phase out the latter of 2032 or when emission targets are achieved: when the electric power sector emits 75% less carbon than 2022 levels, the incentives will be phased out over 3 years. Facilities will be able to claim a credit at 100% value in the first year, 75% in the second year and then 50% in the third year. This provision applies to facilities placed in service after December 31, 2024.</p>			
<p>Clean Electricity - Technology Neutral *Section 48E</p>	<p>Taxpayers can choose between a PTC under Section 45Y or an ITC under Section 48E that is provided based on the carbon emissions of the electricity generated. This is a "technology-neutral" incentive so that any innovative technologies for producing or storing electricity could qualify for the credits, so long as the facility's carbon emissions are at or below zero. Taxpayers electing the ITC would receive a credit worth up to 30% of the investment in the year the facility is placed in service. Standalone energy storage property also would be eligible for the full 30% ITC. Clean energy projects smaller than 5 megawatts would be allowed to include the costs of interconnection under the clean electricity ITC. The credit is set to phase out the latter of 2032 or when emission targets are achieved: when the electric power sector emits 75% less carbon than 2022 levels, the incentives will be phased out over 3 years. Facilities will be able to claim a credit at 100% value in the first year, 75% in the second year and then 50% in the third year. This provision applies to property placed in service after December 31, 2024.</p>			
<p>Carbon Capture *Section 45Q</p>	<p>For carbon capture facilities or equipment placed in service after December 31, 2022 and the construction of which begins before December 31, 2032. Credit is available for a 12-year period from the placed in service date. To qualify for the credit, direct air capture facilities must capture no less than 1,000 metric tons of carbon oxide per year; electricity generating facilities must capture no less than 18,750 metric tons of carbon dioxide and 75% of the baseline carbon emissions from each generating unit on which carbon capture equipment is installed; and other facilities must capture no less than 12,500 metric tons of carbon dioxide per year.</p> <p>The Act provides a base credit rate of \$17 or a bonus credit rate of \$85 per metric ton of carbon oxide captured and sequestered in geological storage and a base credit rate of \$12 or a bonus credit rate of \$60 per metric ton of carbon oxide captured and utilized in an enhanced oil recovery project or for a commercial use that results in permanent sequestration. The bill also would provide an enhanced credit for direct air capture facilities at a base rate of \$36 or a bonus rate of \$180 per metric ton of carbon oxide captured for geological storage and a base rate of \$26 or a bonus rate of \$130 per metric ton of carbon captured and utilized for an allowable use by the taxpayer.</p>			

Technology/Activity Incentivized	Incentive/Benefit	Direct Pay for “Applicable Entities”	Expanded Direct Pay Option	Transferable
<p>Electric Vehicles *Section 45W</p>	<p>New tax credit for qualified commercial electric vehicles placed into service by the taxpayer. The amount of the credit allowed is equal to 30 percent of the cost of the vehicle, up to \$7,500 in the case of a vehicle that weighs less than 14,000 pounds, and up to \$40,000 for all other vehicles.</p> <p>A qualified commercial electric vehicle means any vehicle the original use of which commences with the taxpayer; acquired for use or lease by the taxpayer and not for resale; made by a qualified manufacturer; treated as a motor vehicle for purposes of title II of the Clean Air Act or mobile machinery for purposes of section 4053(8); propelled to a significant extent by an electric motor that draws electricity from a battery which has a capacity of not less than 15 kilowatt hours (seven kilowatt hours for vehicles that weigh less than 14,000 pounds) and is capable of being recharged from an external source of electricity; and is of a character subject to the allowance for depreciation.</p>			
<p>Zero emissions charging and refueling infrastructure *Section 30C</p>	<p>The Act extends the 30C credit through 2022 and starting in 2023, would expand the credit for zero-emissions charging and refueling infrastructure by providing a base credit of 6% and a bonus credit level of 30% for expenses up to \$100,000 for each charging station or refueling pump installed. Additionally, starting in 2023, charging or refueling property would be eligible only if it is placed in service within a low-income or rural census tract.</p>			
<p>Clean Hydrogen *Section 45V</p>	<p>New tax credit for the production of clean hydrogen produced by a taxpayer at a qualified clean hydrogen facility during the 10-year period beginning on the date such facility is placed in service. The amount of the credit is equal to the applicable percentage of the base rate of \$0.60 or the bonus rate of \$3.00, indexed to inflation, multiplied by the volume (in kilograms) of clean hydrogen produced by the taxpayer at a qualified facility during the taxable year. The applicable percentage is determined by the lifecycle greenhouse gas emission rate achieved in producing clean hydrogen. A taxpayer may elect to treat a qualified clean hydrogen facility as energy property for purposes of the Section 48 ITC</p>			

Technology/Activity Incentivized	Incentive/Benefit	Direct Pay for “Applicable Entities”	Expanded Direct Pay Option	Transferable
<p>Sustainable Aviation Fuel *40B</p>	<p>Applies to fuel <i>sold or used</i> after December 31, 2022.through December 31, 2024</p> <ul style="list-style-type: none"> ●Credit is for the producer/blender. ● Comprised of any sale or use of a qualified mixture which occurs during the tax year. ●An amount equal to the product of the number of gallons of sustainable aviation fuel in such mixture multiplied by the sum of (1) a base credit amount of \$1.25 plus (2) the applicable supplementary amount <ul style="list-style-type: none"> ○<i>Applicable supplementary amount</i> - \$0.01 for each percentage point above 50% for which the aviation fuel is certified to reduce emissions as in comparison with petroleum jet fuel. The maximum applicable supplementary amount is 50 cents. 	✘	✘	✘
<p>Clean Fuel Production *45Z</p>	<p>Applies to transportation fuel produced after December 31, 2024. The credit amount is equal to the product of the emissions factor and the applicable amount per gallon produced at a qualified facility and sold in a qualified manner. The applicable amount per gallon for fuel other than sustainable aviation fuel is \$0.20, but can be increased to \$1.00 if prevailing wage and apprenticeship requirements are met. These amounts are \$0.35 and \$1.75, respectively, in the case of sustainable aviation fuel, which must meet certain ASTM standards and not be derived from palm oil.No credit shall be allowed at a facility that is taking a credit for 45V (or a corresponding ITC), or 45Q. The credit is not available for fuel sold after December 31, 2027.</p>	✔	✘	✔
<p>Energy Efficiency *Section 179D</p>	<p>An accelerated deduction, up to \$1.00 per square foot (base deduction), or a bonus deduction up to \$5.00 per square foot, is available for certain energy efficient building expenditures, including interior lighting systems, HVAC/ hot water systems and building envelope costs, that reduce the building's total energy and power cost by 25% or more (in comparison to a building meeting minimum requirements set by ASHRAE Standards). Companies that own or lease commercial buildings are eligible.</p>	✘	✘	✘

Key takeaways



- **Potential for end-of-year tax extenders bill**
- **BMT effective in 2023; without more guidance taxpayers should take reasonable positions**
- **Reassess your ESG goals and strategies and apply a tax lens**
- **Complexity of the BMT & international tax / M&A**
- **Consider the impact of the excise tax when assessing the cost of the stock buyback**