

Recent legislative changes – the Inflation Reduction Act and the CHIPS Act

As the U.S. entered 2022, major proposed federal legislation that sought to raise taxes on large profitable corporations and high-income individuals (the Build Back Better Act) had died in the Senate. Although not nearly as broad in terms of tax increases, the Inflation Reduction Act (IRA) was enacted on August 16, 2022. Tax-related provisions in the IRA include:

- A 15% alternative minimum tax (AMT) on the adjusted financial statement income of certain large corporations (also referred to as the “book minimum tax” or “business minimum tax”), effective for tax years beginning after December 31, 2022.
- A 1% excise tax on corporate stock buybacks, which applies to repurchases made by public companies after December 31, 2022.
- Modification of many of the current energy-related tax credits and the introduction of significant new credits, including new monetization options.
- A two-year extension of the section 461(l) excess business loss limitation rules for noncorporate taxpayers, which are now set to expire for tax years beginning after 2028.

Corporate AMT

The AMT is 15% of the adjusted financial statement income (AFSI) of an applicable corporation less the corporation’s AMT foreign tax credit. An applicable corporation is a corporation (other than an S corporation, a regulated investment company or a real estate investment trust) whose average annual AFSI exceeds \$1 billion for the prior consecutive three years. The AMT can also apply to a foreign-parented multinational group that meets the \$1 billion AFSI test and whose net income in the U.S. equals or exceeds \$100 million on average over the same three-year period.

- ☐ Large corporations that may be subject to the AMT for 2023 will need to estimate their AFSI for tax years 2020, 2021 and 2022. Once a corporation is an applicable corporation, it remains an applicable corporation for all subsequent tax years.
- ☐ The rules for determining applicable corporations and calculating AFSI are complex and require Treasury to issue regulations and/or other guidance. When calculating AFSI, special aggregation rules apply to controlled groups and trades or businesses (including partnerships or a share of partnership income) under common control.
- ☐ Corporations that are subject to the AMT should be sure to consider the tax when making tax planning decisions.

Excise tax on stock buybacks

The 1% excise tax is imposed on U.S. public companies. The tax is 1% of the fair market value of any stock repurchased by a corporation during any taxable year ending after 2022, net of the fair market value of any new stock issued by the corporation during the taxable year. The IRA provides exceptions for certain repurchases (i.e., where the repurchased amount does not exceed \$1 million or where the repurchased

amount is treated as a dividend for income tax purposes). The tax extends to certain affiliates of U.S. corporations, as well as specified affiliates of foreign corporations performing buybacks on behalf of their parent organization.

- Corporations planning taxable stock buybacks should consider executing repurchases by December 31, 2022 to avoid the 1% excise tax.

Tax credits

The IRA includes the largest-ever U.S. investment committed to combat climate change, providing energy security and clean energy programs over the next 10 years. Overall, the IRA modifies many of the current green energy credits and introduces significant new credits. Notably, the IRA also introduces new options for monetizing the credits, including the ability for taxable entities to elect a one-time transfer of all or a portion of certain tax credits to other taxpayers for cash.

The CHIPS Act, enacted on August 9, 2022, provides for a new 25% advanced manufacturing investment credit for investments in semiconductor manufacturing and for the manufacture of certain equipment required in the semiconductor manufacturing process.

For more information on the green energy credits and the advanced manufacturing investment credit, see *Claim Available Tax Credits*, below.