

Quarterly tax developments

Things to know about this quarter's tax developments and related US GAAP accounting implications

September 2022

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Welcome to our September 2022 Quarterly tax developments publication.

Here we describe certain tax developments previously summarized in Tax Alerts or other EY publications or identified by EY tax professionals or EY foreign member firms. These developments may affect your tax provision or estimated annual effective tax rate.

We compile this information because we recognize that, for many companies, the most challenging aspect of accounting for income taxes is identifying changes in tax law and other events when they occur so the accounting can be reflected in the appropriate period. However, this publication is not a comprehensive list of all changes in tax law and other events that may affect income tax accounting.

This edition covers certain enacted and effective tax legislation, as well as regulatory developments, legislative proposals and other items identified through 15 September 2022, except as noted.

We list EY publications that you can access through our [Tax News Update website](#), if you are registered. Anyone interested in registering should contact Joan Osborne at joan.osborne@ey.com.

See our [previous editions](#) for additional tax developments.

Tax developments

Legislation enacted in the third quarter

Companies are required to account for the effects of tax law changes on their deferred tax assets and liabilities in the period the legislation is enacted. Similarly, companies must reflect the effects of an enacted change in tax laws or rates in their annual effective tax rate computation in the period the changes are enacted.¹ If an interim change is significant, temporary differences may need to be estimated as of the enactment.

Federal, state and territories

Federal – On 9 August 2022, President Biden signed the CHIPS and Science Act (HR 4346) into law. The Act introduces the advanced manufacturing investment tax credit, a 25% tax credit for investments in semiconductor manufacturing. It also includes incentives for manufacturing semiconductors, as well as specialized tooling equipment required in the semiconductor manufacturing process. See Tax Alerts [2022-1144](#), dated 28 July 2022 and [2022-1192](#), dated 5 August 2022.

On 16 August 2022, President Biden signed the Inflation Reduction Act (IRA) of 2022 (H.R. 5376) into law. It includes income tax incentives designed to encourage investment in renewable and alternative energy sources, adoption of electric vehicles and improvement in the energy efficiency of buildings and communities. To finance these incentives, the law imposes a 15% corporate alternative minimum tax (CAMT) on adjusted financial statement income of corporations with profits over \$1 billion. It also introduces, among other things, a new excise tax on corporate stock buybacks of public US companies. The CAMT is effective for tax years beginning after 31 December 2022, while the excise tax applies to repurchases of stock after 31 December 2022. The effective dates of the energy-related incentives vary. See Tax Alerts [2022-1206](#), dated 8 August 2022; [2022-1236](#), dated 16 August 2022; [2022-1237](#), 16 August 2022; and [2022-1246](#), dated 17 August 2022.

Arkansas – On 11 August 2022, Arkansas enacted legislation accelerating the effective date of a previously enacted reduction in the corporate income tax rate that had been scheduled for 2025. Effective for tax years beginning on or after 1 January 2023, the corporate income tax rate decreases to 5.3% from 5.9% for corporations with net income exceeding \$25,000. See the [SALT Weekly for August 5 and August 12, 2022](#).

Idaho – On 1 September 2022, Idaho enacted legislation replacing its progressive corporate income tax with a flat income tax. Effective for tax years beginning on or after 1 January 2023, the state's corporate income tax rate will be a flat 5.8%, below the top 6% rate currently in effect for tax year 2022. See the [State and Local Tax Weekly for 2 and 9 September 2022](#).

Pennsylvania – On 8 July 2022, Pennsylvania enacted legislation reducing its corporate income tax rate to 4.99% from 9.99% over nine years. The rate will decline by one percentage point for 2023 and by half a percentage point each year from 2024 through 2031. Other changes include codifying the economic nexus rules and adopting market-based sourcing for sales of intangible property. These changes apply to tax years beginning after 31 December 2022. See [Tax Alert 2022-1085](#), dated 18 July 2022.

Virginia – On 4 August 2022, Virginia enacted legislation limiting claims for housing opportunity tax credits for tax years 2022 through 2025. Rather than claiming the credit immediately, eligible taxpayers must claim the credits ratably over 10 years. See the [State and Local Tax Weekly for 26 August 2022](#).

¹ Nonpublic business entities that have not adopted Accounting Standards Update (ASU) 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, should reflect the effects of enacted changes in tax law or rates in estimates of their annual effective tax rate in the first interim period in which the change is effective. For more information on ASU 2019-12, see our [Financial reporting developments publication on income taxes](#).

IRC conformity

The following state enacted legislation this quarter updating the date of conformity to the US IRC. The chart also includes the dates on which the new conformity date was enacted and became effective. Further information on a state's IRC conformity can be found in the cited reference.

State	Enactment date	Date of conformity	Effective date	Reference
Arkansas	11 August 2022	1 January 2022 (for IRC Section 179 only, for purposes of computing Arkansas income tax liability for property purchased in tax years beginning on or after 1 January 2022)	Tax years beginning on or after 1 January 2022	See the SALT Weekly for 5 August and 12 August 2022

International

Cyprus* – On 20 July 2022, Cyprus enacted legislation increasing the deduction for research and development expenses to 120% of research and development (R&D) expenses actually incurred. The change applies to tax years 2022, 2023 and 2024.

Hong Kong – On 22 July 2022, Hong Kong enacted an 8.25% corporate income tax rate for certain income that a qualifying shipping commercial principal (i.e., eligible ship agents, ship managers and ship brokers) derives from qualifying activities in Hong Kong. The reduced rate retroactively applies to income received or accrued on or after 1 April 2022. See [Tax Alert 2022-1127](#), dated 26 July 2022.

Mauritius** – On 2 August 2022, Mauritius enacted legislation taxing the income of a foreign business operating in the country unless its employees in Mauritius have premium visas. The change is effective upon enactment.

United Kingdom*** – On 14 July 2022, the United Kingdom (UK) enacted a temporary additional 25% tax on oil and gas profits, which applies from 26 May 2022. Companies may not offset previous losses or decommissioning expenditures against profits subject to the tax. The tax will phase out when oil and gas prices return to historically normal levels; otherwise, it will expire after 31 December 2025. Oil and gas companies may claim a new 80% investment allowance to encourage them to invest in oil and gas extraction in the UK.

Legislation effective in the third quarter

Federal, state and territories

Puerto Rico – Effective 1 July 2022, companies may elect to pay a 10.5% tax on industrial development income from sales of goods and services instead of the 4% excise tax on foreign corporations, which is likely not creditable under the US foreign tax credit regulations. Companies electing the 10.5% rate, or the automatically triggered 15% income tax rate, may also exempt 20% to 90% of their industrial development income from tax for Puerto Rico tax purposes. Exemption percentages will depend on certain conditions, such as the level of industrial development income, number of employees, capital investments made and the number of municipalities in which the business operates.

Other changes include:

- ▶ Reducing the withholding tax rate for certain royalties to 7.5% from 12% under certain circumstances
- ▶ Allowing certain companies to exempt 37.5% of their royalties from the 12% withholding rate
- ▶ Modifying Puerto Rico's definition of "being engaged in trade or business in Puerto Rico" to prevent remote workers in Puerto Rico from creating nexus for nonresident businesses for income tax purposes

* A Tax Alert has not been published on this development.

** A Tax Alert has not been published on the enactment of this legislation. For discussion of the legislation, see [Tax Alert 2022-1217](#), dated 11 August 2022.

*** A Tax Alert has not been published on the levy's enactment. For details about the proposed levy, see [Tax Alert 2022-0846](#), dated 26 May 2022.



The changes were enacted 30 June 2022. See Tax Alerts [2022-9005](#), dated 1 July 2022, and [2022-1289](#), dated 24 August 2022.

International

South Sudan – Effective 18 July 2022, a flat 30% tax applies to business profits, rather than the prior progressive rates for the business profit tax (BPT). A 10% BPT applies to profits of insurance companies, which were previously exempt from the BPT. Except for exemptions under the *Taxation Act, 2009* and income tax treaties between South Sudan and other countries, BPT exemptions no longer apply.

Other changes include increasing the withholding tax rate on technical service fees, consulting fees and part-time work to 20% from 15%. The changes were enacted 9 June 2022. See [Tax Alert 2022-1141](#), dated 29 July 2022.

Tanzania – Effective 1 July 2022, a 10% withholding tax applies to royalties paid to residents (15% for nonresidents) for the use of, or right to use, cinematography film, videotape, sound recording or any like medium. Income tax, however, does not apply to certain gains from a transfer of mineral rights, mineral information, carried interest shares or other shares to a joint venture with the Government. Other changes include:

- ▶ Expanding the definition of interest income to include margin payable on a cost-plus margin alternative financing arrangements that the Bank of Tanzania has approved
- ▶ Modifying the CFC rules to address the treatment of certain distributions by a resident financial institution to a nonresident associate
- ▶ Defining corporate tax residency as exercising management and control of a corporation's affairs in Tanzania, whether physically or electronically

See [Tax Alert 2022-1058](#), dated 14 July 2022.

Other considerations

Court decisions, regulations issued by tax authorities and other events may constitute new information that could trigger a change in judgment in recognition, derecognition or measurement of a tax position. These events also may affect your current or deferred tax accounting.

Federal, state and territories

Federal – In technical corrections to final regulations on foreign tax credits, the Treasury Department revised the cost recovery requirement, a key element for determining the creditability of a foreign tax under IRC Section 901. The technical corrections also:

- ▶ Revise rules for allocating and apportioning foreign taxes paid or accrued on certain sales of property that are disregarded for US federal tax purposes
- ▶ Limit the foreign taxes taken into account for purposes of the high-tax exclusion for global intangible low-taxed income

See [Tax Alert 2022-1179](#), dated 3 August 2022.

In a notice, the Internal Revenue Service (IRS) announced that it will again delay the effective date of temporary and final regulations under IRC Section 987 for an additional year. The regulations, which are now scheduled to take effect 1 January 2024 for calendar-year taxpayers, address income and currency gains or losses with respect to a qualifying business unit, as well as the recognition and deferral of foreign currency gains or losses. See [Tax Alert 2022-1248](#), dated 17 August 2022.

The Court of Federal Claims held that a generic drug manufacturer could deduct, under IRC Section 162, its legal expenses for defending against a patent infringement lawsuit. See [Tax Alert 2022-1313](#), dated 30 August 2022.

The Sixth Circuit held that the IRS had the burden of proving that it had grounds, under contract-law principles, to cancel its Advance Pricing Agreement with a taxpayer and failed to do so. See [Tax Alert 2022-1334](#), dated 1 September 2022.

On remand from the Eighth Circuit Court of Appeals, the US Tax Court again rejected the transfer pricing methods proposed by the IRS and initially used by the taxpayer, a medical device manufacturer, to determine arm's-length royalty rates for license agreements between the manufacturer and its Puerto Rican subsidiary. Instead, the Tax Court applied an alternative, unspecified method proposed by the manufacturer, which increased the wholesale royalty rate applied to the transaction. See [Tax Alert 2022-1288](#), dated 24 August 2022.

New York – The New York State Division of Tax Appeals held that a consolidated group must include an affiliate's deferred intercorporate profits in the group's entire net income (ENI, a modified form of its federal taxable income) when calculating the group's corporate state tax liability. The Court rejected the group's argument that New York State regulations required its combined ENI to be calculated "as if" it filed separate federal returns, which meant that the affiliate would have recognized the entire \$2.8 billion gain in 1999, before it became a New York State taxpayer. The Court concluded, however, that the consolidated group could deduct bad debt claimed on its federal income tax return for the tax years at issue. See [Tax Alert 2022-1154](#), dated 29 July 2022.

Texas – The Comptroller of Public Accounts, for the second time, amended the requirements that companies must satisfy to claim credits for R&D activities under the Texas franchise tax rules.

The latest amendments:

- ▶ Explain, through the use of examples, which federal Treasury Regulations apply to the 2011 federal income tax year
- ▶ Modify the definition of computer software for purposes of internal use software
- ▶ Remove current restrictions on credit carryforwards

- ▶ Describe how to determine a credit carryforward when the membership of the combined reporting group changes

The amendments are effective retroactively for Texas franchise tax reports originally due on or after 1 January 2014. See [Tax Alert 2022-1173](#), dated 2 August 2022.

Tax amnesties

This table shows tax amnesties that were announced or went into effect in the third quarter of 2022.

Jurisdiction	Amnesty period	Taxes covered	Reference
El Salvador	24 August 2022 through 1 November 2022	Income taxes and other taxes administered by the General Directorate of Internal Taxes and the General Directorate of Customs	Tax Alert 2022-1312 , dated 30 August 2022

International

Australia – In a Tax Alert (TA), the Taxation Office (TO) has expressed concern regarding treaty shopping arrangements entered into to obtain reduced withholding tax rates on royalty and dividend payments. The TA provides examples of treaty shopping arrangements that the TO views as higher-risk arrangements, which will warrant increased scrutiny. The examples focus on arrangements that seek to obtain a treaty benefit by interposing one or more related parties between an Australian resident company and the ultimate recipient of the royalty or dividend. Typically, the interposed party resides in a treaty-partner jurisdiction, while the ultimate recipient resides in a jurisdiction that either does not have an income tax treaty with Australia or has a treaty with less favorable tax benefits. See [Tax Alert 2022-1150](#), dated 29 July 2022.

Denmark – The Tax Board ruled that a sales manager employed by the Danish subsidiary of a German company would not create a Danish permanent establishment (PE) for the German parent. The Tax Board reasoned that the sales manager could not negotiate prices or enter into contracts or other legal obligations on behalf of the German company. See [Tax Alert 2022-1217](#), dated 11 August 2022.

In a separate case, the Tax Board ruled that a managing director employed by a foreign multinational company would not create a Danish PE by working from his home office in Denmark. The Tax Board reasoned that the foreign employer did not have a place of business in Denmark, did not require the managing director to work from Denmark and did not control the managing director's remote workplace. It also noted that the managing director would not be involved in the employer's sales. See [Tax Alert 2022-1353](#), dated 9 September 2022.

In another case, the Tax Board analyzed whether a warehouse in Denmark created a PE for its Irish owner and concluded that it could not confirm that the warehouse did not create a PE. Although the Irish company handled all of the sales work and none of the purchasing, logistics or monitoring of the warehouse's storage capacity, the Tax Board noted that the combined activities were a significant part of the company's business, which might mean a PE existed under the anti-fragmentation rule of the Multilateral Instrument of the Organisation for Economic Co-operation and Development (OECD). See [Tax Alert 2022-1353](#), dated 9 September 2022.

Germany – The Ministry of Finance outlined criteria for determining when a 15.8% withholding tax applies to payments for software development services sold to German customers from outside Germany. See [Tax Alert 2022-1276](#), dated 22 August 2022, and [Tax Alert 2022-1353](#), dated 9 September 2022.

Ireland – The Revenue Commissioners published guidance clarifying that Irish companies may be able to deduct, for Irish corporation tax purposes, certain digital services taxes incurred in Austria, France, Italy, Kenya, Spain, Turkey and the UK, under certain circumstances. Irish companies may also deduct India's equalization levy. See Tax Alerts [2022-1194](#), dated 5 August 2022, and [2022-1357](#), dated 9 September.



Netherlands – The State Secretary of Finance updated a transfer pricing decree and a decree on PE profit allocation. The updated decrees reflect the latest requirements under the OECD’s project on base erosion and profit shifting (BEPS) and contain information on various positions of the Dutch Tax Administration. The transfer pricing decree also includes new guidance on financial transactions. See Tax Alerts [2022-1027](#), dated 11 July 2022, and [2022-1083](#), dated 18 July 2022.

OECD – The following jurisdiction deposited its instrument of ratification for the multilateral convention to implement tax treaty related measures to prevent BEPS this quarter:

- ▶ Lesotho (enters into force 1 November 2022)

See [Tax Alert 2022-1217](#), dated 11 August 2022.

Uruguay – The Administrative Contentious Court held that companies operating in a free trade zone (FTZ) could promise to sell goods and services outside an FTZ if they conducted complementary activities outside the FTZ. The Court reasoned that Uruguayan law did not authorize an administrative decree’s prohibition against promising to sell goods and services outside an FTZ. See [Tax Alert 2022-1078](#), dated 15 July 2022.

In a consultation, the tax authority concluded that the Uruguay-Belgium income tax treaty precluded Uruguay from imposing nonresident income tax on profits that a PE in Uruguay repatriated to its Belgium head office. The tax authority noted that the profits were not attributable to the PE. See [Tax Alert 2022-1196](#), dated 5 August 2022.

Things we have our eyes on

National, state and local governments continue to seek to increase their revenues. Companies should continue to monitor developments in this area. Some of these potential tax law changes are summarized here.

Federal, state and territories

Foreign currency contracts – In proposed regulations, the IRS would prohibit mark-to-market treatment under IRC Section 1256 for over-the-counter foreign currency options. The proposed regulations would not affect foreign currency options that would otherwise qualify as IRC Section 1256 contracts, such as foreign currency options that qualify as nonequity options (e.g., foreign currency options listed on certain exchanges). See [Tax Alert 2022-1060](#), dated 14 July 2022.

New York – The Department of Taxation and Finance made “final updates” to its draft apportionment regulations, which include general apportionment provisions and rules on sourcing receipts from sales of digital products and services for corporate franchise tax purposes. The changes include:

- ▶ Introducing a billing-address safe harbor for receipts from digital products/services and services, as well as other business receipts
- ▶ Clarifying items included in the business apportionment factor
- ▶ Addressing the apportionment of lump-sum payments
- ▶ Adding rules for net gains from the sale of tangible personal property and real property
- ▶ Adding new examples for sourcing sales of tangible personal property, royalties, advertising receipts, and receipts from digital products/services
- ▶ Clarifying that cryptocurrency falls under the definition of digital product
- ▶ Revising the rule for provision of services to passive investment customers

See [Tax Alert 2022-1062](#), dated 14 July 2022.

International

Australia – In a consultation paper, the Treasury requested comments on a proposal to amend Australia’s thin capitalization rules to limit deductions for net interest expense to 30% of earnings before interest, tax, depreciation and amortization (EBITDA). The proposal, which would replace the current safe harbor debt limit, is intended to align with the OECD’s BEPS project. Other proposals include limiting a multinational enterprise’s ability to deduct payments for intangibles and royalties if they lead to insufficient tax paid. See [Tax Alert 2022-1191](#), dated 5 August 2022.

Canada – In a consultation document, the Department of Finance identified issues with Canada’s general anti-avoidance rule (GAAR) and requested input on possible approaches for addressing those issues. Potential changes include:

- ▶ Specifying what will not qualify as a “bona fide purpose” for purposes of defining “avoidance transaction” (generally, a transaction undertaken primarily for bona fide purposes is not an avoidance transaction)
- ▶ Broadening the definition of avoidance transaction to include transactions with a prominent tax planning element, as well as transactions that have a tax benefit as one of the purposes for undertaking them
- ▶ Requiring taxpayers to prove that the tax benefit sought is consistent with the tax law’s underlying purpose (currently, the Government must prove the misuse or abuse)
- ▶ Requiring transactions to have economic substance
- ▶ Introducing a penalty based on a percentage of the tax benefit when the GAAR applies

See [Tax Alert 2022-1235](#), dated 16 August 2022.

In draft legislation, the Department of Finance proposed technical amendments to the Income Tax Act and accompanying regulations. The proposed amendments include:

- ▶ Narrowing eligibility for an exception to the shareholder loan rules, which generally deem a non-repaid loan from a Canadian company to a nonresident shareholder to be a dividend to which withholding tax applies
- ▶ Allowing mining companies to deduct certain provincial and territorial mining taxes (and related interest) that correspond to income reported in a prior tax year that is closed for filing an amended return
- ▶ Extending specific anti-avoidance rules denying a deduction for certain dividends received by specified financial institutions (e.g., bank, insurance company) from a Canadian company
- ▶ Strengthening the foreign affiliate rules by preventing Canadian companies from avoiding current taxation of their foreign affiliates' undistributed profits from passive businesses

See [Tax Alert 2022-1283](#), dated 24 August 2022.

Chile – In a tax reform bill, the Executive Power proposed decreasing the corporate income tax rate to 25% from 27%. It also proposed increasing the 10% tax rate on gains from stock sales to 22% and introducing a 1.8% tax on the retained earnings of certain companies. Other changes include:

- ▶ Prohibiting certain domestic and foreign shareholders from claiming credits for taxes paid by companies and requiring them to apply a 22% corporate tax rate to profits distributed by the company
- ▶ Limiting certain tax benefits, the use of foreign tax credits, and loss deductibility
- ▶ Extending R&D incentives, which are set to expire 31 December 2025, indefinitely
- ▶ Expanding R&D incentives by increasing the percentage of R&D expenses that can be used as a tax credit against corporate income taxes to 50% from 35% for certain projects and increasing the yearly tax credit cap from US\$ 880,000 to USD 2.65 million
- ▶ Treating payments related to the generation of income over more than one period as deferred expenses and requiring them to be amortized during the period the revenue is received
- ▶ Strengthening anti-avoidance rules

See [Tax Alert 2022-1212](#), dated 10 August 2022.

Colombia – In a tax reform bill, the new Government proposed eliminating reduced corporate income tax rates for certain taxpayers (e.g., hotels, theme parks, ecotourism services, publishing companies, international shippers), so the standard 35% rate would apply instead. The Government also proposed making permanent the 3% surtax on financial institutions, which currently expires after 2024. Other proposals include:

- ▶ Eliminating the possibility of claiming 50% of the industry and commerce tax as an income tax credit, while continuing to allow taxpayers to deduct 100% of the tax for income tax purposes
- ▶ Eliminating several income tax exemptions (e.g., those applicable to some entrepreneurial activities and construction of low-income housing), the mega-investment regime, the special economic and social development zones regime, and certain benefits for the film and publishing industries
- ▶ Requiring industrial and service users of free trade zones to meet certain export thresholds to continue qualifying for the 20% corporate income tax rate
- ▶ Characterizing certain dividends and gains from the transfer of shares on the Colombian stock exchange as taxable income, rather than non-taxable income
- ▶ Basing a foreign company's effective place of management (a criterion for determining tax residence of companies for Colombian tax purposes) on where day-to-day activities are carried out, rather than where strategic and executive decisions are made
- ▶ Treating foreign companies with "significant economic presence" in Colombia as if they have a PE in Colombia and taxing the income related to that presence

- ▶ Eliminating income tax deductions for royalties paid to the Government for the exploitation of non-renewable natural resources
- ▶ Repealing accelerated five-year amortization for oil companies investing in certain exploratory activities
- ▶ Repealing tax credits for new investments in oil, gas and mining

See [Tax Alert 2022-1243](#), dated 17 August 2022.

European Union (EU) – In a joint statement issued 9 September 2022, the finance ministers of France, Germany, Italy, the Netherlands and Spain committed to implementing a global minimum tax under Pillar 2 of the OECD’s BEPS 2.0 rules “by any possible legal means,” even if the EU fails to reach unanimous agreement on the issue. The Czech presidency of the EU Council is aiming for unanimous agreement on the global minimum tax Directive, which has been opposed by Hungary, during the 4 October meeting of the Economic and Financial Affairs Council. See [Tax Alert 2022-1367](#), dated 13 September 2022.

The European Commission proposed a temporary “solidarity contribution” (effectively, a windfall tax) of at least 33%, which would apply across the EU to the “surplus taxable profits” of companies in the oil, gas, coal and refinery sectors. See [Tax Alert 2022-1382](#), dated 15 September 2022.

Germany – In draft legislation, the Ministry of Finance proposed eliminating taxation of certain royalty income and capital gains received by nonresident licensors of intellectual property registered in Germany. The proposal would be effective 1 January 2023, for intercompany transactions. For royalties and capital gains received from unrelated parties, the tax would be permanently repealed. Other proposals include exempting certain bonds from withholding tax. See [Tax Alert 2022-1149](#), dated 29 July 2022.

Hong Kong – The Secretary for Financial Services and the Treasury (SFST) confirmed that Hong Kong will delay its implementation of the income inclusion rule (IIR) under Pillar Two of the OECD’s BEPS 2.0 project to 2024, at the earliest, rather than 2023. The SFST did not mention specific implementation dates for other Pillar Two rules. See [Tax Alert 2022-1247](#), dated 17 August 2022.

OECD – In a consultation document, the OECD provided new information on the possible design of profit allocation rules under Pillar One of the BEPS 2.0 project and requested additional comments on various aspects of the rules. It also indicated that the Pillar One rules would not be effective until 2024, a year later than previously proposed. See Tax Alerts [2022-1042](#), dated 12 July 2022, and [2022-1071](#), dated 15 July 2022.

In a report prepared for the 15-16 July meeting of the G20 Finance Ministers and Central Bank Governors, the OECD outlined its progress on Pillars One and Two of the BEPS 2.0 project, noting that most countries are planning for the Global Anti-Base Erosion Model Rules under Pillar Two to be effective in 2024. The report also noted a newly proposed effective date of 2024 for the Pillar One rules.

At the meeting’s conclusion, the G20 Finance Ministers and Central Bank Governors reaffirmed their support for swift implementation of the Pillar One and Pillar Two rules, calling on the OECD to finalize the Pillar One rules in the first half of 2023 and for implementation in 2024. See [Tax Alert 2022-1093](#), dated 19 July 2022.

In an updated peer review of preferential tax regimes, the OECD identified Armenia’s free economic zones and information technology projects as “potentially harmful,” as well as Pakistan’s export regime on information technology. Costa Rica’s free trade zones, Greece’s tax patent incentives and Kazakhstan’s Astana International Financial Centre and special economic zones were classified as “not harmful” because they took the substance requirements under BEPS Action 5 into account.

In an updated peer review of “no or only nominal tax” jurisdictions, the OECD identified Anguilla, the Bahamas, Barbados and the Turks and Caicos Islands as areas needing substantial improvement by the next annual monitoring. Bahrain, Bermuda, the British Virgin Islands and the Cayman Islands were identified as jurisdictions for focused monitoring in specific areas. No issues were identified for Guernsey, Jersey, the Isle of Man and the United Arab Emirates. See Tax Alerts [2022-1155](#), dated 29 July 2022, and [2022-1175](#), dated 3 August 2022.

New Zealand – In a tax bill, the Government proposed allowing some dual-resident companies to claim various New Zealand tax benefits, such as forming a consolidated tax group, offsetting income tax losses against the profits of other group companies and retaining their imputation credit account (ICA) balances (i.e., credits that are received in proportion to income taxes paid in New Zealand and typically apply to dividends to prevent double taxation of corporate income). The proposals would be retroactively effective from 15 March 2017. Other changes include exempting certain “build-to-rent” developers from the limit on interest expense deductions, provided they meet specific criteria. See [Tax Alert 2022-1337](#), dated 6 September 2022.

Poland – The Government submitted to the Sejm (lower house of Parliament) legislation that would significantly modify Poland’s corporate income tax. Proposed changes include:

- ▶ Eliminating limits on deductions for “hidden dividends,” which were supposed to take effect 1 January 2023
- ▶ Postponing the effective date of a minimum tax until 1 January 2024
- ▶ Allowing companies to choose between two methods of calculating the minimum tax
- ▶ Clarifying the scope of the 19% shifted profits tax as of 2023 (current rules remain in force for 2022 settlements)
- ▶ Clarifying that the limit on deductions for debt financing costs should be at the higher of PLN3m or 30% of tax EBITDA
- ▶ Increasing the exemption for dividends received from qualified subsidiaries under the Polish holding company regime to 100% from 95% and easing of some of the conditions required to benefit from the regime
- ▶ Clarifying the rules for Tax Capital Groups (i.e., Polish consolidated groups).
- ▶ Amending the regime for controlled foreign corporations

See Tax Alerts [2022-1346](#), dated 7 September 2022, and [2022-1366](#), dated 13 September 2022.

South Korea – The Ministry of Economy and Finance announced various tax reform proposals, including:

- ▶ Decreasing the top corporate income tax rate to 22% from 25%
- ▶ Introducing a 10% income tax rate on taxable income of KRW500 million or less for qualified small and midsize enterprises (SMEs) and medium-scale companies
- ▶ Increasing the annual deductibility limit for net operating losses to 80% of taxable income (currently 60%) for domestic corporations
- ▶ Repealing the accumulated earnings tax regime following its sunset clause expiration on 31 December 2022
- ▶ Deferring, until 1 January 2025, the imposition of withholding taxes on gains from the disposal of virtual assets by nonresidents (withholding tax currently applies beginning 1 January 2023)
- ▶ Exempting withholding taxes on interest and capital gains derived from government bonds and certain monetary stabilization bonds by nonresidents or foreign corporation
- ▶ Introducing new global minimum tax rules, which align with the minimum tax rule under Pillar Two of the OECD’s BEPS 2.0 project

See Tax Alerts [2022-1162](#), dated 1 August 2022, and [2022-1164](#), dated 2 August 2022.

Switzerland – In an ordinance, the Federal Council introduced rules for implementing the global minimum tax under Pillar Two of the OECD’s BEPS 2.0 project, including provisions for a Swiss top-up tax and an international top-up tax (IIR and undertaxed payments rule). See [Tax Alert 2022-1259](#), dated 18 August 2022.



United Kingdom – In draft legislation, the Government would implement the IIR in Pillar Two of the OECD’s BEPS 2.0 project by introducing a new multinational top-up tax. The IIR is expected to apply to tax years beginning on or after 31 December 2023. The Government maintains that there are strong arguments in favor of a UK domestic minimum tax (DMT), but has not yet committed to introducing one.

Other proposed changes include:

- ▶ Broadening the scope of expenses for which companies may claim the R&D credit to include data and cloud computing costs
- ▶ Restricting credit claims for R&D conducted overseas
- ▶ Broadening eligibility for the new tax regime for UK asset holding companies

See Tax Alerts [2022-1107](#), dated 21 July 2022, and [2022-1111](#), dated 22 July 2022.

On 23 September, the UK Chancellor announced proposals to repeal previously enacted rate increases in the corporate income tax and the diverted profits tax. Rather than increasing to 25% and 31%, effective 1 April 2023, the rates would remain at 19% and 25%, respectively. Other proposals include:

- ▶ Amending the operation of the rules for the 130% “super deduction” to account for the corporate rate remaining at 19%
- ▶ Creating investment zones, which offer 100% first-year allowances for plant and machinery capital and enhanced allowances for structures and buildings, which would allow businesses to reduce their taxable profits by 20% of the cost of qualifying nonresidential investment per year, relieving 100% of their cost of investment over five years
- ▶ Setting the annual investment allowance permanently at £1 million, which allows companies to claim 100% of qualifying expenditure on plant and machinery, up to this annual limit

The upcoming Finance Bill is expected to include the proposed repeal of the previously enacted increase in the corporate income tax rate. The Bill, however, is unlikely to be enacted for US GAAP purposes before Q1 2023 and could be enacted even later in 2023. See [Tax Alert 2022-1444](#), dated 26 September 2022.

Uruguay – In a draft bill, the Ministry of Economy proposed changing its criteria for sourcing income to Uruguay, to comply with EU requirements. The new criteria would tax the following income from foreign assets or rights of companies that are part of a multinational group:

- ▶ Income derived from immovable property
- ▶ Dividends
- ▶ Interest
- ▶ Royalties
- ▶ Other income from movable property
- ▶ Income from patents or software registered, transferred or used outside of Uruguay by multinational companies operating in Uruguay

See [Tax Alert 2022-1181](#), dated 4 August 2022.



Appendix

Accounting for the effects of the Inflation Reduction Act and the CHIPS and Science Act

Revised 29 September 2022

Overview

President Biden signed into law the Inflation Reduction Act of 2022 (the IRA) on 16 August 2022. The Act includes climate and energy provisions, extends the enhanced Affordable Care Act (ACA) subsidies, increases Internal Revenue Service (IRS) enforcement funding and allows Medicare to negotiate prescription drug prices. The IRA introduces a 15% corporate alternative minimum tax (CAMT) for corporations whose average annual adjusted financial statement income (AFSI) for any consecutive three-tax-year period ending after 31 December 2021 and preceding the tax year exceeds \$1 billion and a 1% excise tax on stock repurchases made by publicly traded US corporations.

President Biden also signed into law the CHIPS and Science Act of 2022 (CHIPS Act) on 9 August 2022. The CHIPS Act includes \$280 billion in spending that aims to build a domestic supply chain for semiconductor chips in the face of foreign competition, while also funding scientific and technological research to keep US industries competitive. The CHIPS Act provides funding for subsidies and loans to semiconductor manufacturers and a 25% investment tax credit for investments in semiconductor manufacturing, including investments in specialized tooling equipment required in the semiconductor manufacturing process.

Key provisions of the IRA

Companies need to consider the accounting and disclosure implications of the IRA, which, among other provisions:

- ▶ Creates a 15% CAMT on a corporation's AFSI. The CAMT applies to any corporation (other than an S corporation, regulated investment company or real estate investment trust) whose average annual AFSI for any consecutive three-tax-year period ending after 31 December 2021 and preceding the tax year exceeds \$1 billion. The CAMT is effective for tax years beginning after 31 December 2022.
- ▶ Establishes a 1% excise tax on stock repurchases made by publicly traded US corporations. The excise tax is effective for stock repurchases after 31 December 2022.

In addition, eligible companies may need to consider the accounting and disclosure requirements related to government assistance provided under both the IRA and the CHIPS Act. Companies will need to determine the nature of the government assistance they receive to determine the appropriate accounting guidance to be applied.

Overview of the new corporate alternative minimum tax

The CAMT applies to an "applicable corporation," which is defined as any corporation (other than an S corporation, a regulated investment company or a real estate investment trust) with average annual AFSI exceeding \$1 billion over any consecutive three-tax-year period ending after 31 December 2021 and before the current tax year. Once a corporation is an applicable corporation, it remains an applicable corporation, even if its average AFSI is less than \$1 billion, unless an exception applies.

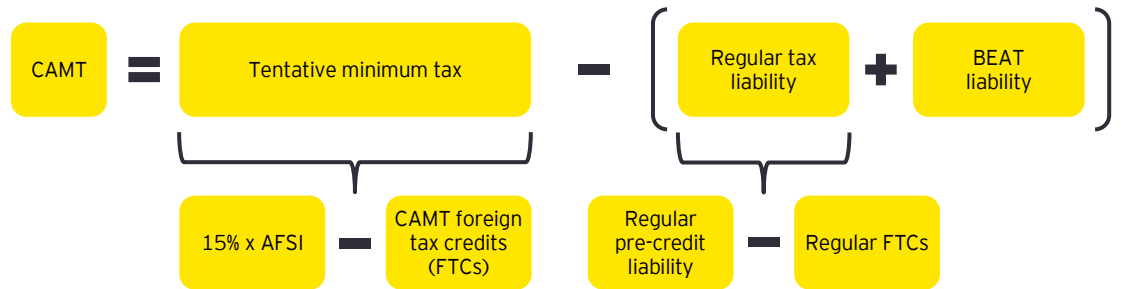
A corporation that is a member of an international financial reporting group with a foreign parent is considered an applicable corporation if its average annual AFSI exceeds the \$1 billion threshold and its average annual US-related AFSI (i.e., income of the US corporation(s), income of controlled foreign corporations and effectively connected US income) is \$100 million or more.

A taxpayer's AFSI is generally the net income or loss reported on its annual financial statements (e.g., annual financial statements included in Form 10-K filed with the Securities and Exchange Commission (SEC)), with certain adjustments. The calculation of AFSI starts with a company's financial statement net income or loss attributable to members of the taxpayer's US consolidated tax return group. Adjustments are then made to increase or decrease AFSI, including an adjustment to conform income and expense items related to pensions to those for regular federal income tax, accelerated tax basis depreciation for tangible assets and amortization on certain assets (i.e., qualified wireless spectrum) and financial statement net operating losses (NOLs) carryforwards, which are limited to 80% of AFSI. Financial statement NOLs are the amount of net loss reported in the entity's consolidated financial statements for tax years ending after 31 December 2019. Financial statement NOLs can be carried forward indefinitely.

Calculating the CAMT

The CAMT is calculated by first determining the tentative minimum tax (TMT), which is done by multiplying AFSI by 15% and reducing that amount by CAMT foreign tax credits. The TMT is compared to an applicable corporation's regular tax liability, plus its base erosion and anti-abuse tax (BEAT) liability. The applicable corporation's regular tax liability is the tax liability before consideration of tax credits other than foreign tax credits.

If the CAMT liability is greater than the regular tax liability plus the BEAT liability, the applicable corporation pays the CAMT. After determining the CAMT, a company will then determine the amount of general business credits (GBCs) to be used in a particular tax year, since the IRA amends the limitation on GBCs to include the amount of CAMT paid.



A CAMT credit will be earned for taxes paid on the CAMT basis and carried forward indefinitely. It will be used to reduce the regular tax liability in future years if the regular tax liability exceeds the CAMT liability.

The IRA directs the Treasury Department to issue regulations² or other guidance relating to the CAMT, including clarifying the definition of an applicable corporation, and providing guidance on the starting point for, and adjustments to, AFSI. Regulations and additional guidance may also address additional AFSI adjustments to prevent duplication or omission of items, treatment of financial statement NOLs and determination of the CAMT foreign tax credit.

Accounting considerations related to the CAMT

To determine its US federal income tax liability, a company will need to compute taxes under both systems – the regular tax system and the CAMT system. The company then will pay the larger amount as its tax liability in any given year.

Accounting Standards Codification (ASC) 740-10-25-42 through 44 and ASC 740-10-30-10 through 12 provide guidance on the income tax accounting treatment for alternative minimum taxes (AMTs). This guidance requires a company to measure its deferred taxes using the regular tax rate, not the AMT rate, even if the company anticipates being subject to an AMT system in the foreseeable future. The amount of the AMT is recognized as a current period tax expense in the period incurred, and a company should recognize a deferred tax asset for any AMT credit carryforwards allowed. As with other deferred tax assets, a valuation allowance is recognized against recorded tax benefits of AMT credit carryforwards, if necessary, to reduce the net deferred tax asset to the amount that is more likely than not to be realized.

² Additional US federal regulations are expected that may change the CAMT. Companies should continue to monitor developments.

We believe this guidance should be applied when accounting for the CAMT. Because this guidance results in a company measuring deferred taxes using the regular tax rate (e.g., 21%), the effects of CAMT should not be considered in measuring deferred taxes in the period of enactment.

Valuation allowance considerations in the period of enactment (Updated 29 September 2022)

Questions have arisen about whether a company should consider the effects of being subject to the new CAMT in the future when they assess the realizability of tax benefits from deductible temporary differences and carryforwards, as well as tax credits.

In response to a technical inquiry, the FASB staff said because ASC 740 does not specifically address this issue, a company could make an accounting policy election to either consider the effect of the CAMT system when evaluating the need for, and the amount of, a valuation allowance or account for the effects on deferred tax assets and carryforwards and tax credits in the period they arise. The policy elected should be consistently applied. The FASB staff said the application of this view is limited to the accounting for the new US CAMT, and a company should have transparent disclosures about its policy election.

Companies that elect to account for the future effects the CAMT may have on the realizability of deferred tax assets, carryforwards, and other tax credits under the regular tax system will need to determine whether changes to their valuation allowances are necessary in the period of enactment.

In addition, under the CAMT, a company can reduce its CAMT tax liability by certain general business tax credit carryforwards (e.g., research and development, energy-related credits, work opportunity credits). If a company elects an accounting policy to consider the effects of the CAMT when assessing the need for a valuation allowance and had recorded a valuation allowance previously for these business tax credits, it may need to reassess its valuation allowance conclusion in the period of enactment. This is because when a company expects to be subject to the CAMT in the future, it will generally be able to use more credits, or use them sooner, than it was able to use them to offset its regular tax liability alone.

Valuation allowance considerations after the effective date of the CAMT

Companies that are subject to the CAMT will need to assess the realizability of CAMT credit carryforwards that arise after the effective date. In assessing the need for a valuation allowance for CAMT credit carryforwards, ASC 740-10-55-33 states a valuation allowance is not necessary if the deferred tax asset can be realized in one of the following ways: (1) by reducing a deferred tax liability from the amount of regular tax on regular tax temporary differences to not less than the amount of TMT on AMT temporary differences; (2) by reducing taxes on future income from the amount of regular tax on regular taxable income to not less than the amount of TMT on AMT income; (3) by employing a tax-planning strategy, such as changing from tax-exempt to taxable interest income; or (4) by loss carryback.

Companies that generate CAMT credit carryforwards need to carefully analyze the realizability of those carryforwards to determine whether a valuation allowance should be recorded.

Timing of accounting for enacted tax law changes

ASC 740 requires companies to recognize the effect of changes in tax laws on deferred tax balances in the period in which the legislation is enacted. For changes in US federal income tax law, the enactment date is the date the bill becomes law, which generally is upon presidential signature.

Except for changes to existing valuation allowances as discussed above, the IRA will not affect the recognition or measurement of deferred tax assets. As a result, the financial statement consequences related to the CAMT will generally not be recognized earlier than the effective dates of the provisions.

Companies that change an existing valuation allowance as a result of the enactment of the IRA will need to recognize the related tax consequence discretely as a component of income tax expense from continuing operations in the interim period that includes the enactment date.

Accounting for CAMT in interim period at its effective date

For interim reporting purposes, a company will need to determine whether it expects to meet the average annual AFSI test for 2023 during the first interim period after the CAMT is effective (i.e., for 31 December 2022 taxpayers, the first quarter of 2023). If a company determines it is subject to the CAMT in 2023, it will need to consider the effects of the CAMT in its estimated annual effective tax rate (EAETR). A company is required at the end of each interim reporting period to make its best estimate of the annual effective tax rate for the full fiscal year and use that rate to provide for income taxes on a current year-to-date basis.

In the period of enactment, companies that expect to be subject to the CAMT in future periods will need to elect a policy to account for the potential effects the CAMT might have on the realizability of deferred tax assets.

Companies that determine they do not meet or expect to meet the average annual AFSI thresholds at the effective date should establish processes and controls to monitor when future changes in the business could result in it being subject to CAMT. This is particularly important for those entities that approached the AFSI thresholds but did not meet them initially.

In addition, if being subject to the CAMT results in a significant variation in the customary relationship between income tax expense and pretax income in the interim period financial statements, a company should disclose the reasons in its interim financial statements if they are not otherwise apparent from the financial statements or from the nature of the company's business.

How we see it

The CAMT will be accounted for as a period cost when the related tax consequences arise, rather than through adjustments to deferred taxes. Therefore, for many taxpayers subject to the CAMT, the tax accounting consequences of the CAMT will be not recognized in their financial statements until the first period after the effective date (i.e., tax years beginning as early as 1 January 2023). However, depending on a company's accounting policy election, if the CAMT changes a company's conclusion regarding an existing valuation allowance because it changes expectations of future taxable income, the related tax consequences should be accounted for in the period of enactment.

Disclosure considerations related to the CAMT (Updated 29 September 2022)

Companies need to carefully consider how aspects of the IRA may affect each of the income tax disclosures required under ASC 740. In the period that includes the enactment date, this may include disclosure about the effects on income tax expense (benefit) related to the reassessment of a valuation allowance. Companies subject to the CAMT should also disclose the accounting policy they elected for considering the future effects of being subject to the CAMT when assessing the need for a valuation allowance. In the periods after the effective date, companies that are subject to the CAMT may need to make additional disclosures.

Additional SEC disclosure considerations

If the effects of the tax law changes are, or will be, material to a registrant, the registrant should consider the disclosure implications in preparing its management's discussion and analysis (MD&A) under Item 303 of Regulation S-K, including its discussion of results of operations and liquidity and capital resources. For example, the reassessment of the realizability of deferred tax assets may have a material effect on a registrant's income tax provision.

In addition, if the effect of the tax law changes on a company's effective tax rate is reasonably likely to be material, the company may need to start providing disclosures about that effect when the IRA provisions become effective.

Overview of new excise tax on stock repurchases (Updated 31 August 2022)

The IRA creates a new excise tax on stock repurchases of more than \$1 million by publicly traded US corporations. The excise tax equals 1% of the fair market value of the stock repurchased during the tax year, reduced by the fair market value of stock issued during the tax year, including stock issued to employees of the corporation or its subsidiaries. The excise tax also applies to repurchases of stock of a publicly traded foreign corporation by the foreign corporation's domestic affiliate.

The excise tax applies to repurchases of stock made after 31 December 2022.

Accounting considerations related to the excise tax on stock repurchases

The new excise tax is a cost associated with the repurchase of a reporting entity's stock. Since the excise tax is not based on income, it is outside of the scope of the income tax accounting guidance in ASC 740.

Therefore, an entity could generally record the excise tax as a cost in treasury stock if it determines that the tax is a direct cost associated with repurchasing its common stock. That accounting would align with AICPA Technical Questions and Answers – Costs Incurred to Acquire Treasury Stock (TQA 4110.09), which states that costs associated with the acquisition of treasury stock may be added to the cost of the treasury stock in a manner similar to stock issuance costs. Additional considerations may be necessary for the accounting of excise tax incurred to redeem preferred stock or for stock classified outside of permanent equity. Refer to section 3.5.1.1, *Treasury shares*, of our FRD, [Issuer's accounting for debt and equity financings](#), for further detail.

Government assistance

The IRA and the CHIPS Act contain funding designed to provide assistance to taxpayers to support the objectives of the laws discussed earlier. To receive assistance under these laws, companies may be required to agree to certain conditions.

Each government program established under these laws has its own specific requirements that need to be carefully assessed to determine both the eligibility and the proper accounting treatment of any government assistance a company receives. The accounting and disclosure implications (e.g., timing of recognition, financial statement presentation) vary significantly, for example, depending on whether the assistance is considered a loan, a grant, a payment for goods or services, a contribution or an income tax credit.

How we see it

A company's accounting for and disclosures about government assistance depend on the type of government assistance it receives. Legislation providing assistance may use terms such as "grant" or "credit" to describe the form of the assistance, but companies will need to carefully evaluate the substance of the legislation to determine the appropriate accounting.

Determining whether government assistance relates to income taxes

We generally believe that a company that receives government assistance in the form of an income tax credit should account for it in accordance with ASC 740.

ASC 740 applies to all federal, foreign, state and local (including franchise) taxes based on income. That is, any tax levied on (or credited to) a company based on the company's income (or income tax liability) is generally subject to the provisions of ASC 740. Companies need to evaluate the provisions of assistance provided under the IRA and the CHIPS Act to determine whether the assistance is provided based solely on the company's income (or income tax liability).

For example, refundable tax credits may not be subject to the provisions of ASC 740, since receipt of such credits is not dependent on having taxable income. In contrast, government assistance subject to the provisions of ASC 740 that is determined to be an investment tax credit would be accounted for using either the deferral or the flow-through method, depending on the company's accounting policy election.

Refer to section 4.2.8, *Government assistance received (investment tax credits and government grants)*, of our FRD, [Income taxes](#), for additional information on the accounting for government assistance that is within the scope of ASC 740.

A credit from a government entity that isn't based on taxable income would generally be considered a government grant and would, therefore, be outside of the scope of ASC 740. A company receiving assistance from a government entity that isn't based on taxable income must consider whether the payment represents revenue in accordance with ASC 606,³ a loan in accordance with ASC 470,⁴ a contingency in accordance with ASC 450,⁵ or a government grant in accordance with other GAAP by analogy (e.g., IAS 20,⁶ ASC 958-605⁷). A company receiving assistance will need to carefully evaluate the scope of the assistance received before concluding that the assistance is a government grant that should be accounted for by analogy to other GAAP.

ASC 832⁸ requires business entities that account for transactions with a government by analogizing to a grant or contribution accounting model (e.g., IAS 20, ASC 958-605) to make certain annual disclosures. That is, the disclosure requirements don't apply to transactions with a government that are accounted for in accordance with existing US GAAP (e.g., ASC 450 on contingencies, ASC 740 on income taxes, ASC 606 on revenue from contracts with customers, ASC 470 on debt).

³ ASC 606, *Revenue from Contracts with Customers*.

⁴ ASC 470, *Debt*.

⁵ ASC 450, *Contingencies*.

⁶ International Accounting Standards 20, *Accounting for Government Grants and Disclosure of Government Assistance*.

⁷ ASC 958-605, *Not-for-Profit Entities – Revenue Recognition* (before the adoption of ASC 606), or ASC 958-605, *Not-for-Profit Entities – Revenue Recognition – Contributions* (after the adoption of ASC 606).

⁸ ASC 832, *Government Assistance*.

Refundable tax credits may not be subject to the provisions of ASC 740 since receipt of such credits is not dependent on having taxable income.

How we see it

A company receiving assistance in the form of one of the credits under either the IRA or the CHIPS Act will need to consider the facts and circumstances of the assistance when determining how to account for any payment received in its financial statements.

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