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INSIGHTS

General Overview of the Inflation Reduction Act of 2022

On Tuesday, August 16, President Biden signed the Inflation Reduction Act of 2022 (the **Act**) into law, which includes material changes to various sections of the Internal Revenue Code of 1986, as amended (the **Code**). The following is a general overview of the revenue raisers and certain of the energy and climate provisions of the **Act**.

Revenue Raisers

Corporate Alternative Minimum Tax

- Generally. The Act imposes a 15 percent minimum tax (the **Corporate AMT**) on the adjusted financial statement income (**Financial Statement Income**) of a corporation (other than an S corporation, a RIC and a REIT) for a taxable year if the corporation's average annual **Financial Statement Income** for the three-taxable-year period ending with the current taxable year exceeds $1 billion (the **Financial Statement Test**). The **Corporate AMT** also applies to a group of corporations treated as a single employer under section 52 of the **Code**, subject to certain modifications, that meets the **Financial Statement Test**. The **Corporate AMT** applies to corporations for taxable years beginning during or after December 31, 2022.

- Multinational Groups with Non-U.S. Parents. The **Corporate AMT** may apply to a U.S. corporation (including, for this purpose, a U.S. trade or business in which a non-U.S. corporation is engaged) that is a member of a multinational group with a non-U.S. parent. Such a multinational group would be subject to the **Corporate AMT** only if the group, including non-U.S. members, meets the **Financial Statement Test** and the U.S. corporation's average annual **Financial Statement Income** for the three-taxable-year period ending with the current taxable year exceeds $100 million.

- Determination of Financial Statement Income. The **Financial Statement Income** of a corporation generally equals the pre-tax net income or loss reported on the corporation's financial statement for the relevant taxable year, subject to various adjustments. For purposes of the **Financial Statement Test** and for purposes of determining the amount of a corporation's **Corporate AMT**, a corporation's **Financial Statement Income** is reduced by depreciation deductions, including bonus depreciation, to the extent not already reflected on the corporation's financial statement. There is no parallel adjustment for amortization of intangibles other than for qualified wireless spectrum used in the trade or business of a wireless telecommunications carrier and acquired between 2007 and August 16, 2022 (the date of the enactment of the **Act**). Solely for purposes of determining a taxpayer's **Corporate AMT** (but not for purposes of applying the **Financial Statement Test**), a corporation may carry forward a financial statement net operating loss indefinitely, with such net operating loss available to offset up to 80 percent of the corporation's financial statement income in each carryforward year.

- Application of General Business Credits. A corporation may use the general business credit under section 38 of the **Code**, including the various renewable energy and other tax credits described below, to offset its **Corporate AMT**. The corporation's use of the general business credit is limited to the excess, if any, of the taxpayer's **Corporate AMT** over 25 percent of the taxpayer's net income tax that exceeds $25,000. The same limitation applies with respect to the taxpayers' regular federal income tax liability.

One Percent Excise Tax on Stock Buybacks

- Generally. The Act imposes a nondeductible excise tax (the **Excise Tax**) on publicly-traded U.S. corporations and certain U.S. subsidiaries of publicly-traded non-U.S. corporations equal to one percent of the fair market value of any stock that is repurchased by the corporation or its specified affiliate (generally, a corporation or

partnership in which the publicly-traded corporation owns more than 50 percent). The amount of stock treated as repurchased in a taxable year, however, is reduced by the fair market value of any new issuances of stock (including to employees) during the same taxable year. The **Excise Tax** applies to all repurchases occurring during and after 2023.

- Repurchase Transactions. For purposes of the **Excise Tax**, "repurchase" means (1) any redemption within the meaning of section 317(b) of the **Code** (generally, any acquisition by a corporation of its stock in exchange for cash or property other than the corporation's own stock or stock rights) or (2) any transaction that the Secretary of the Treasury determines to be economically similar.

- Exceptions to the Application of the Excise Tax. The **Excise Tax** does not apply to repurchase transactions (1) if and to the extent the repurchase is part of a tax-free reorganization and no gain or loss is recognized by the shareholder "by reason of" the reorganization, (2) followed by a contribution of the repurchased stock (or stock with an equivalent value) to an employee pension plan, employee stock ownership plan, or similar plan, (3) the total value of which does not exceed $1 million during the taxable year, (4) by a dealer in securities in the ordinary course of business, (5) by a RIC or REIT, or (6) that are classified as dividends for federal income tax purposes.

Energy and Climate Provisions

Extension and Modification of the Investment Tax Credit

- Extension of the Credit. The **Act** extends the investment tax credit under section 48 of the **Code** (the **ITC**) at the 30 percent rate for energy property for which construction begins before 2025 (other than geothermal property, for which construction must begin before 2035). This extension generally applies to the same categories of energy property for which the **ITC** was available before the **Act**, including solar, wind, geothermal, and fuel cell property, and is available for energy property that is placed in service during or after 2022. The extension also applies to the newly-creditable properties and assets described below.

- Newly-Creditable Projects and Assets. The **Act** creates a new, standalone **ITC** for energy storage technology, qualified biogas property, and microgrid controllers. The Act also creates an **ITC** for qualified interconnection property in connection with the installment of energy property that otherwise is eligible for the **ITC**. The new **ITC** applies to newly-creditable projects and assets that are placed in service during or after 2023.

- Labor Requirements. The **ITC** that otherwise is available for an energy project is subject to an 80 percent reduction (for example, the 30 percent **ITC** would be reduced to 6 percent) unless (1) the maximum net output of the project is less than one megawatt, (2) the energy project satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement**, or (3) the construction of the energy project begins before the 60th day after the Secretary of the Treasury publishes guidance with respect to these requirements.

- Credit Enhancements. An energy project that otherwise is eligible for the **ITC** may claim an additional 10 percentage point credit if the project satisfies the requirements for the **Domestic Content Bonus** and an additional 10 percentage point credit if the project satisfies the requirements for the **Energy Communities Bonus** (provided, that, for each enhancement, the additional credit would be 2 percentage points if the project does not satisfy the **Prevailing Wage Requirements** and the **Apprenticeship Requirements**, or the project otherwise is not exempt from these requirements). Finally, a solar or wind facility that otherwise is eligible for the **ITC** may claim a 10 percentage point or 20 percentage point bonus if the facility satisfies the requirements for the **Low-Income Communities Bonus**. These credit enhancements would be available to energy projects that are placed in service during or after 2023.

- Transition to the Clean Electricity Investment Credit. The expiration of the **ITC** under the **Act** is tied to the effective date of the **CEIC**, as defined below.

Creation of Technology-Neutral Investment Credit

- Generally. The **Act** creates the technology-neutral, emissions-based clean electricity investment credit under section 48E of the **Code** (the **CEIC**) for qualified investment in qualified facilities, including qualified

interconnection property, and energy storage technology that are placed in service during or after 2025. Similar to the **ITC**, the **CEIC** will be available at the 30 percent rate.

- Scope of Credit. For purposes of the **CEIC**, a qualified facility is any facility used for the generation of electricity for which the anticipated greenhouse gas emissions rate is not greater than zero.

- Phase Out. The **CEIC** will begin to phase out in the first calendar year after the later of (1) the calendar year in which the Secretary of the Treasury determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for 2022 and (2) 2032.

- Labor Requirements and Credit Enhancements. Similar to the **ITC**, a qualified facility that otherwise is eligible for the **CEIC** will be (1) subject to an 80 percent reduction unless it satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** and (2) eligible for the **Domestic Content Bonus**, the **Energy Communities Bonus**, and the **Low-Income Communities Bonus**.

- Exclusivity. The **CEIC** will not be allowed with respect to any facility for which the **ITC**, **Section 45Q Credit**, **PTC**, or **CEPC** is allowed.

Extension and Modification of the Production Tax Credit

- Extension of the Credit. The **Act** extends the production tax credit under section 45 of the **Code** (the **PTC**) at a rate of 1.5 cents per kWh (as adjusted for inflation, currently 2.6 cents per kWh) for qualified facilities, including wind, biomass, landfill gas, and hydropower facilities, for which construction begins before 2025. The **PTC** continues to be available for electricity produced by the taxpayer and sold to unrelated parties in each of the ten years beginning in the year the qualified facility is placed in service. The extension is available for qualified facilities that are placed in service during or after 2022.

- Revived PTC for Solar. The **Act** revives the solar **PTC**, available at the full rate described above, for qualified facilities that begin construction before 2025. The previous solar **PTC** expired in 2006.

- Elimination of 50 Percent Reduction for Water Technologies. The **Act** eliminates the 50 percent reduction in the applicable **PTC** rate for qualified hydropower facilities and marine and hydrokinetic renewable energy facilities. The 50 percent reduction continues to be applicable to, among other qualified facilities, open-loop biomass facilities, and landfill gas facilities.

- Labor Requirements. The **PTC** that otherwise is available for a qualified facility is subject to an 80 percent reduction (for example, the **PTC** rate of 2.6 cents per kWh would be reduced to 0.52 cents per kWh) unless (1) the maximum net output of the project is less than one megawatt, (2) the qualified facility satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement**, or (3) the construction of the qualified facility begins before the 60th day after the Secretary of the Treasury publishes guidance with respect to these requirements.

- Credit Enhancements. A qualified facility that otherwise is eligible for the **PTC** may claim a 10 percent increase to the **PTC** rate if it satisfies the requirements for the **Domestic Content Bonus** and an additional 10 percent increase (applied before any increase for the **Domestic Content Bonus**) if the project satisfies the requirements for the **Energy Communities Bonus**. A qualified facility would not be eligible for the **Low-Income Communities Bonus**.

- ITC Election and Exclusivity. As under prior law, taxpayers may continue to elect to claim the **ITC** in lieu of **PTC** for qualified facilities. However, a taxpayer is not permitted to claim both the **ITC** and **PTC** for a single qualified facility.

- Transition to the Clean Electricity Production Credit. The expiration of the **PTC** under the **Act** is tied to the effective date of the **CEPC**, as defined below.

Creation of Technology-Neutral Production Credit

- Generally. The **Act** creates the technology-neutral, emissions-based clean electricity production credit under section 45Y of the **Code** (the **CEPC**) for electricity produced at a qualified facility that is placed in service during or after 2025. Like the **PTC**, the **CEPC** will be available at a rate of 1.5 cents per kWh (to be adjusted for inflation) of electricity produced by the taxpayer and sold to unrelated parties in each of the ten years beginning in the year such facility is placed in service.

- Scope of Credit. Like the **CEIC**, a qualified facility for purposes of the **CEPC** is any facility used for the generation of electricity for which the anticipated greenhouse gas emissions rate is not greater than zero.

- Phase Out. Like the **CEIC**, the **CEPC** will begin to phase out in the first calendar year after the later of (1) the calendar year in which the Secretary of the Treasury determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for 2022 and (2) 2032.

- Labor Requirements and Credit Enhancements. Similar to the **PTC**, a qualified facility that otherwise is eligible for the **CEPC** will be (1) subject to an 80 percent reduction unless it satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** and (2) eligible for the **Domestic Content Bonus** and the **Energy Communities Bonus**. A qualified facility will not be eligible for the **Low-Income Communities Bonus**.

- Exclusivity. The **CEPC** will not be allowed with respect to any facility for which the **PTC**, **Section 45Q Credit**, **ITC**, or **CEIC** is allowed.

Extension and Modification of the Credit for Carbon Capture and Sequestration

- Extension of the Section 45Q Credit. The **Act** extends the credit under section 45Q of the **Code** (the **Section 45Q Credit**) to qualified facilities for which construction begins before 2033.

- Reduction of the Minimum Capture Threshold. The **Act** reduces the capture requirement under section 45Q of the **Code**, expanding the scope of qualified facilities to include a facility that (1) in the case of a direct air capture facility, captures not less than 1,000 metric tons of qualified carbon oxide during the taxable year, (2) in the case of an electricity generating facility, (a) captures not less than 18,750 metric tons of qualified carbon oxide during the taxable year and (b) with respect to any carbon capture equipment for the applicable electric generating unit at such facility, has a capture design capacity of not less than 75 percent of the baseline carbon oxide production of such unit, or (3) in the case of any other facility, captures not less than 12,500 metric tons of qualified carbon oxide during the taxable year.

- Increase in the Rate of the Section 45Q Credit. The **Act** increases the rate of the **Section 45Q Credit** available for qualified facilities and carbon capture equipment to (1) $85 per metric ton of qualified carbon oxide captured from an industrial source and disposed of in secure geological storage, (2) $60 per metric ton of qualified carbon oxide captured from an industrial source and injected for enhanced oil or gas recovery or utilized in the manner described in section 45Q(f)(5) of the **Code**, (3) $180 per metric ton of qualified carbon oxide captured from a direct air capture facility and disposed of in secure geological storage, and (4) $130 per metric ton of qualified carbon oxide captured from a direct air capture facility and injected for enhanced oil or gas recovery or utilized in the manner described in section 45Q(f)(5) of the **Code**.

- Labor Requirements. The **Section 45Q Credit** that otherwise is available for a qualified facility and carbon capture equipment is subject to an 80 percent reduction unless (1) the qualified facility or the carbon capture equipment, as the case may be, satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** or (2) construction of the carbon capture equipment begins before the 60th day after the Secretary of the Treasury publishes guidance with respect to these requirements and such equipment is installed at a qualified facility the construction of which begins before such date.

Creation of Production Tax Credit for Hydrogen

- Generally. The **Act** creates a new production tax credit for hydrogen technology under section 45V of the **Code** (the **Hydrogen PTC**), which is calculated based upon the kilograms of clean hydrogen produced by the taxpayer at a qualified clean hydrogen production facility for which construction begins before 2033.

- Amount of Credit. The available **Hydrogen PTC** is equal to the product of (1) the kilograms of clean hydrogen produced during the taxable year at a qualified clean hydrogen production facility in each of the ten years beginning in the year such facility is placed in service and (2) the product of (a) $3.00 (to be adjusted for inflation) and (b) the applicable percentage (the **Applicable Percentage**). The **Applicable Percentage** is based upon the lifecycle greenhouse gas emissions rate for the process and ranges from 20 percent if the emissions rate is not greater than four kilograms CO2e per kilogram of hydrogen to 100 percent if the emissions rate is less than 0.45 kilograms of CO2e per kilogram of hydrogen.

- Election to Claim Hydrogen ITC. A taxpayer may elect to treat qualified property that is part of a clean hydrogen production facility placed in service during or after 2023 as energy property and therefore eligible for the **ITC** (the **Hydrogen ITC**). In such an election is made, the **Hydrogen ITC** would be available at a rate of up to 30 percent, based on the facility's emission rate per kilogram of hydrogen and certain other criteria. Taxpayers that elect to claim the **Hydrogen ITC** cannot claim the **Hydrogen PTC** or **Section 45Q Credit** with respect to the same facility.

- Labor Requirements. The **Hydrogen PTC** or **Hydrogen ITC** that otherwise is available for a clean hydrogen production facility is subject to an 80 percent reduction unless (1) the facility satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** or (2) construction of the facility begins before the 60th day after the Secretary of the Treasury publishes guidance with respect to these requirements.

- Credit Enhancements. Unlike the **PTC**, the **Hydrogen PTC** is not eligible for the **Domestic Content Bonus** or the **Energy Communities Bonus**. It appears that the **Hydrogen ITC** also is not eligible for these credit enhancements.

- Exclusivity. The **Hydrogen PTC** is not allowed with respect to any qualified clean hydrogen produced at a facility which includes carbon capture equipment for which a **Section 45Q Credit** is allowed. By contrast, electricity from renewable resources used to produce clean hydrogen will be treated as sold to an unrelated person, and potentially eligible for the **ITC** or **PTC**, even if such electricity is used by the taxpayer, or a related person, at a qualified clean hydrogen production facility.

Expansion of the Advanced Energy Project Credit

- Scope of the Expansion. The **Act** extends the advanced energy project credit under section 48C of the **Code** (the **AEPC**). Prior to the **Act**, the **AEPC** was available for qualified investments in projects that equip or expand manufacturing facilities that produce, among other things, renewable energy equipment related to solar and wind. Under the **Act**, the AEPC is available at the 30 percent rate and is expanded to include qualified investments in, among other things, manufacturing facilities that produce energy storage systems and components and electric grid modernization equipment.

- Increased Allocation. The total dollar amount of the **AEPC** may not exceed $10 billion (of which no more than $6 billion may be allocated to investments which are not located in **Energy Communities**). To be eligible for an allocation, a taxpayer must apply for certification from the Treasury and place the project in service within 2 years of certification.

- Labor Requirements and Credit Enhancements. The **AEPC** (1) is subject to an 80 percent reduction unless it satisfies the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** and (2) is not eligible for any credit enhancements.

- Exclusivity. The **AEPC** is not available for any investment if the **ITC**, **CEIC**, **Section 45Q Credit**, or **Hydrogen PTC** is allowed for such investment.

Creation of the Advanced Manufacturing Project Credit

- Scope of the Credit. The Act creates the advanced manufacturing production credit under section 45X of the **Code** (the **AMPC**). The **AMPC** provides a credit for the production of certain eligible components, including for the production of certain components including, among other things, photovoltaic cells, photovoltaic wafers, solar-grade polysilicon, polymeric backsheets, solar modules, wind energy components, and battery cells and battery modules, in each case, that are produced by the taxpayer in the United States and sold to an unrelated person. The **AMPC** rate varies depending on the type of eligible component.

- Phase Out. The **AMPC** will begin to phase out with respect to components sold during 2030 and will not be available for components sold after 2032.

- Labor Requirements and Credit Enhancements. The **AMPC** (1) is not subject to reduction in connection with failure to satisfy the **Prevailing Wage Requirement** and the **Apprenticeship Requirement** and (2) is not eligible for any credit enhancements.

Description of the Labor Requirements

- The Prevailing Wage Requirement.

  - To satisfy the labor requirement relating to prevailing wages (the **Prevailing Wage Requirement**), laborers and mechanics employed by contractors and subcontractors in connection with a project or facility must be paid prevailing wages (in accordance with federal wage rate requirements).

  - The **Prevailing Wage Requirement** must be satisfied during the construction of the project and (1) in the case of the **PTC** and **Hydrogen PTC**, for any alteration or repair made during the 10-year period following the original placed-in-service date, (2) in the case of the **ITC** and **Hydrogen ITC**, for any alteration or repair made during the 5-year period following the original placed-in-service date, and (3) in the case of the **Section 45Q Credit**, for any alteration or repair made during the 12-year period following the original placed-in-service date.

- The Apprenticeship Requirement.

  - To satisfy the labor requirement relating to participation by apprentices (the **Apprenticeship Requirement**), an amount equal to or greater than the **Applicable Percentage** of total labor hours in connection with the construction of a project or facility must be performed by qualified apprentices.

  - The **Applicable Percentage** is (1) 10 percent for projects or facilities that begin construction in 2022, (2) 12.5 percent for projects or facilities that begin construction in 2023, and (3) 15 percent for projects or facilities that begin construction during or after 2024.

  - The **Apprenticeship Requirement** also requires that each contractor or subcontractor that employs four or more individuals to perform construction on a project or facility employ at least one qualified apprentice to perform the relevant work.

Description of Credit Enhancements

- The Domestic Content Bonus.

  - To receive the bonus for domestic content (the **Domestic Content Bonus**), a taxpayer must certify that any steel, iron, or manufactured product which is part of an otherwise creditable project is produced in the United States.

  - Manufactured products are considered to be produced in the United States if the **Adjusted Percentage** of the total cost of the components of the product are mined, produced, or manufactured in the United States.

  - The **Adjusted Percentage** is (1) in the case of the **CEPC**, (a) 45 percent for projects or facilities for which construction begins in 2025, (b) 50 percent for projects or facilities for which construction begins in 2026, and (c) 55 percent for projects or facilities for which construction begins during or after 2027, (2) in the case of the **ITC**, **PTC** and **CEIC**, 40 percent, and (3) in the case of offshore wind facilities, 20 percent.

  - The **Domestic Content Bonus** is available for projects or facilities that are placed in service during or after 2023.

- The Energy Communities Bonus.
    - To receive the energy communities bonus (the **Energy Communities Bonus**), an otherwise creditable project must be located within an **Energy Community**.
    - **Energy Community** means (1) a brownfield site, (2) a statistical area that has, or had any time from and after 2010, (a) at least 0.17 percent direct employment or at least 25 percent local tax revenues related to the extraction, processing, transport or storage of coal, oil or natural gas and (b) an unemployment rate at or above the national average, or (3) a census tract, or a directly adjoining census tract, in which (a) a coal mine has closed after 1999 or (b) a coal-fired electric generating unit has been retired after 2009.
    - The **Energy Communities Bonus** is available for projects or facilities that are placed in service during or after 2023.
- The Low-Income Communities Bonus.
    - A solar or wind project otherwise eligible for the **ITC** or **CEIC** would be eligible for an additional credit (the **Low-Income Community Bonus**) if the project (1) has a maximum net output of less than 5 megawatts and (2) receives an allocation of the Environmental Justice Solar and Wind Capacity Limitation.
    - The **ITC** (in the case of a solar or wind project) or **CEIC** would be increased by (1) 10 percentage points if the project is located in a **Low-Income Community** or on Indian land or (2) 20 percentage points if the project is part of a **Qualified Low-Income Residential Building Project** or a **Qualified Low-Income Economic Benefit Project**. Property eligible for the increased **ITC** and **CEIC** would include **Energy Storage Technology** related to the applicable project.
    - A **Low-Income Community** is defined as a population census tract for which (1) the poverty rate is at least 20 percent, (2) in the case of a tract not located within a metropolitan area, the median family income does not exceed 80 percent of statewide median family income, or (3) in the case of a tract located within a metropolitan area, the median family income does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income.
    - A project is treated as part of a **Qualified Low-Income Residential Building Project** if it is installed in a rental building that participates in certain affordable housing programs and the financial benefits of the electricity are allocated equitably among the occupants of the building.
    - A project is treated as part of a **Qualified Low-Income Economic Benefit Project** if at least 50 percent of the financial benefits of the electricity produced by the facility is provided to households with income of less than (1) 200 percent of the applicable poverty line or (2) 80 percent of the area median gross income.
    - The **Low-Income Communities Bonus** is available during and after 2023.

Limitation on Tax-Exempt Financing

- For a project or facility financed with tax-exempt bonds, the Act reduces the **ITC**, **PTC**, **CEIC**, **CEPC**, **Section 45Q Credit**, **Hydrogen PTC**, and **Hydrogen ITC** for the project or facility by the lesser of (1) 15 percent and (2) the percentage of the capital expenditures of the project or facility that is financed by the proceeds of tax-exempt bonds.

Credit Monetization

- Direct Pay Election.
  - The **Act** permits tax-exempt entities and super tax-exempt entities (i.e., governmental entities and their instrumentalities) (**Tax-Exempt Entities**) to make an election (the **Direct Pay Election**) with respect to the **ITC**, **PTC**, **CEIC**, **CEPC**, and **AEPC**.
  - Taxpayers other than **Tax-Exempt Entities** are eligible to make a **Direct Pay Election** with respect to the **Section 45Q Credit**, **Hydrogen PTC**, **Hydrogen ITC**, and **AMPC** for the five years beginning in the year the facility is placed in service and ending before 2033.
  - The amount of the direct cash payments generally would equal 100 percent of the applicable credit. However, in the case of the **PTC**, **ITC**, **CEIC**, and **CEPC**, the amount of the direct cash payment would be reduced in the case of any project or facility (1) the maximum net output of which is one megawatt or greater and (2) that does not satisfy the requirements described above for the applicable renewable energy tax credit under **Domestic Content Bonus**.
  - The **Act** imposes a tax of 120 percent on any payment deemed to be excessive.
  - The **Direct Pay Election** is available for taxable years beginning during or after 2023.
- Credit Transfer Election.
  - The **Act** permits taxpayers, other than taxpayers eligible to make the **Direct Pay Election** with respect to a particular credit, to make an election (the **Transfer Election**) to sell the credit to an unrelated buyer for cash. Cash consideration would not be included in the taxable income of the party selling the applicable credit and the cash consideration would not give rise to a deduction to the party buying the credit.
  - The **Act** permits any transferable credit to be eligible for a 3-year carryback rather than the 1-year carryback that generally applies to general business credits under current law.
  - The **Act** imposes a tax of 120 percent on any payment deemed to be excessive.
  - The **Transfer Election** is available for taxable years beginning during or after 2023.