



## For CFOs, the full impact of the Inflation Reduction Act is still coming into focus

Some groups know exactly what they like or dislike about the Inflation Reduction Act (IRA), which was passed by Congress on August 12 and signed into law by President Biden four days later. But the shape it takes for CFOs may still be somewhat blurry, given the complexity of some of its relevant provisions.

For example, environmentalists applaud the legislation's commitment to sustainability—offering consumers tax credits for purchasing electric cars, solar panels, biomass heaters, and other clean-energy technologies for the home and encouraging more production of

renewable sources of energy.<sup>1</sup> CFOs, however, are probably more focused on the complex new corporate taxes, notably a 15% minimum tax on certain companies' book income and a 1% excise tax on stock buybacks, as well as on an array of new and expanded tax credits, for which their companies may qualify.

For the finance function, the indirect impacts of the new law may prove almost as important as the direct ones. For example, the new 1% excise tax on stock buybacks for some companies may prove to be a nuisance, given that companies still need to account for the excise tax in

their financial reports.<sup>2</sup> Similarly, even if relatively few companies wind up paying the new corporate alternative minimum tax (AMT)—the Joint Committee on Taxation estimates there will be only 150 who do<sup>3</sup>—large public companies will still have to devote substantial time and resources to determining whether they're required to pay it. Moreover, the new law ties the corporate AMT to adjusted financial statement income (AFSI)—that is, income based on generally accepted accounting principles or GAAP—thereby adding another complication.

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In this edition of *CFO Insights*, we examine the provisions of the IRA likely to be most important to CFOs. (For more on what Congress may still consider this year, tax-wise, see accompanying Q&A, “A lame duck preview—plus what to expect on taxes in 2023”). Keep in mind, though, that the IRA is a 730-page document loaded with new taxes and new tax credits, and many of the provisions still need to be clarified via regulations and other guidance from the IRS and the Treasury Department. On October 5th, for instance, Treasury issued six notices for one-month public comment periods on just some of the climate and clean-energy tax incentives in the IRA.<sup>4</sup> While key features of the IRA take effect in 2023, it could be well into next year or beyond before Treasury and the IRS issue final guidance on key IRA provisions.

**Lingering questions**

The easiest way to understand the IRA is to break it up into its component parts. Below are key questions for CFOs to consider tied to each of those parts.:

**1. Which companies will have to pay the new corporate AMT?**

The stated goal of the new book minimum tax is to make sure large corporations are paying their “fair share” of taxes.<sup>5</sup> US-based companies are potentially subject to the new tax if their adjusted financial statement

income (AFSI) averages \$1 billion or more over three years (different thresholds apply to US subsidiaries of foreign-parented companies).

For eligible companies that meet the \$1 billion threshold, their tentative corporate AMT is equal to 15% of their AFSI. AFSI is the net income or loss on a taxpayer’s applicable financial statement taking into account certain adjustments (see below for more on those adjustments). However, they only pay corporate AMT if their regular tax is less than that 15% of AFSI. Their final corporate AMT tax bill would be any amount by which the corporate AMT exceeds the sum of the corporation’s regular tax for the year plus the corporation’s Base Erosion and Anti-Abuse Tax (BEAT) liability under section 59A.<sup>6</sup> (The latter is a tax enacted in 2017 and designed to discourage companies from shifting profits to foreign jurisdictions.)

In other words, if a company with \$1 billion in annual profits—as measured by AFSI—had been paying \$140 million a year in taxes under the old tax law, it could now be paying an additional \$10 million if it is subject to the corporate AMT.

Excluded from the corporate AMT are S corporations, regulated investment companies, and real estate investment trusts. Plus, there are those previously mentioned adjustments, which include the

exclusion from AFSI of income and costs associated with defined benefit pension plans, depreciation deductions for certain tangible assets, and amortization deductions for qualified wireless spectrum used in the business of a wireless telecom carrier.<sup>7</sup>

There are also a myriad of green-energy tax credits in the IRA that can reduce a company’s corporate AMT liability even more. (For a broader view of the IRA, see Figure 1.)

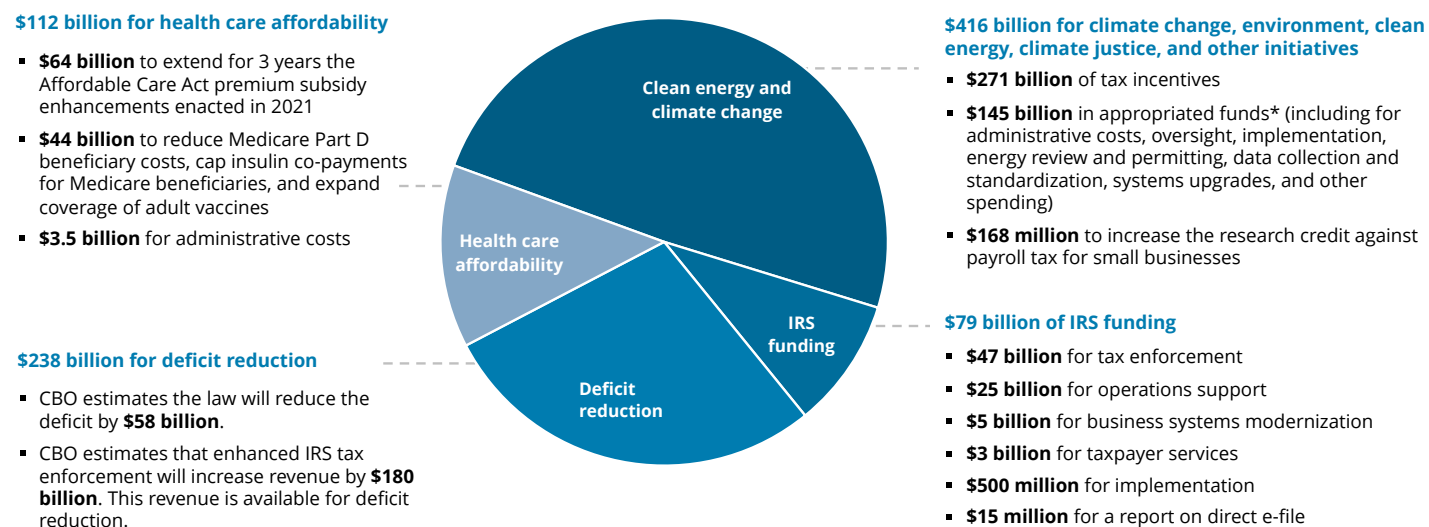
Finally, keep in mind that the \$1 billion threshold is not indexed for inflation, which means more companies will likely be paying corporate AMT in the future.

**2. If the new corporate AMT is tied to GAAP income, does that mean changes in GAAP accounting rules could change companies’ tax liabilities?**

It depends. There may be some changes that just impact the timing of when something is recognized in the financial statements, and that may—or may not—impact the tax liability.

This will make it more imperative than ever that CFOs stay on top of developments at the Financial Accounting Standards Board (FASB)—the keeper of GAAP— and model out how new standards could impact their company’s liability under the new 15% minimum tax on book income.

**Figure 1. IRA Overview: Tax incentives, spending, and deficit reduction (FY 2022-23)**



\*Appropriated amounts may differ from actual budget outlays. Source: *Policy & Government Relations: Inflation Reduction Act*, Deloitte Development LLC, August 2022.

### 3. Does the new law mean that every time companies buy back stock, they'll have to pay a 1% excise tax on each share that is repurchased?

As with the corporate AMT, the answer is complicated.

For starters, the 1% excise tax only applies to share repurchases that occur after December 31, 2022. Additionally, real estate investment trusts are exempt from the new tax, as are mutual funds and other regulated investment companies. (In other words, if your corporate treasurer sells shares of the short-term bond fund where your company has been parking some of its cash, the fund manager will not have to pay a tax on the shares it repurchased.)<sup>8</sup>

Also exempt from the new tax are companies that repurchase less than \$1 million in stock during a given tax year as well as companies that repurchase shares for the purpose of contributing shares to an employer-sponsored retirement plan, employee stock ownership plan, or similar plan. (Treasury has yet to provide the expected guidance on the latter exemption, particularly as to what may constitute a "similar plan.")<sup>9</sup>

There's some uncertainty surrounding the tax-treatment of buybacks of preferred shares, many of which are issued with mandatory redemption terms. The

statutory language does not explicitly exempt a repurchase or redemption of preferred stock, even pursuant to its terms, but does grant Treasury the authority to issue guidance dealing with special classes such as preferred stock. So, absent guidance, a reasonable current assumption may be that a redemption of preferred stock is subject to the 1% buyback tax, though, once again, tax professionals are awaiting guidance from Treasury.

Here's something else to keep in mind: The repurchase amount subject to the excise tax is a net fair market value (FMV) figure, not a gross amount and not based on net changes in the share count. So if a company sells \$20 million in new shares in January and then buys back \$50 million in December, the FMV of the repurchased shares—i.e., the amount to which the 1% excise tax would be applied—would be \$30 million. In addition, absent guidance, it does not appear that net issuances in a year can be carried forward or back to offset the tax impact of prior or future repurchases.<sup>10</sup>

A related issue is how the tax on that \$30 million should be accounted for. Because the tax is not based on a measure of income, the excise tax is not an income tax and therefore is not within the scope of ASC 740, according to a [Deloitte tax alert](#).

GAAP does not specifically address taxes paid in connection with the repurchase of stock. Given this, entities may consider the guidance in AICPA Technical Questions and Answers 4110.09, *Costs Incurred to Acquire Treasury Stock*. That guidance indicates that direct and incremental legal and accounting costs associated with the acquisition of Treasury stock may be added to the cost of Treasury stock. Therefore, it is acceptable to account for an excise tax obligation that results from the repurchase of common stock classified within permanent equity as a cost of the Treasury stock transaction. Any reductions in such excise tax obligation arising from share issuances would also be recognized as part of the original Treasury stock transaction regardless of the nature of such share issuances.<sup>11</sup>

One final point: Generally, expectations are that we will see minimal, if any, reduction in stock buybacks on account of the 1% excise tax. The tax looks as though it will function as a revenue raiser, not a behavior changer. The tax rate appears to be set low enough so as not to dissuade most companies from doing buybacks that were otherwise attractive.

### 4. Are the clean-energy incentives and tax credits likely to impact big business?

Probably. There are tax credits for renewable energy (wind, solar, hydro, biomass, etc.), for carbon capture and sequestration, for hydrogen fuels, and for nuclear energy. There are also credits designed to spur manufacturing of renewable energy components. The list goes on and on. (For a detailed breakdown of the clean-energy related incentives and tax credits, see Deloitte's ["Advancing energy security: Sustainability-related tax provisions in the Inflation Reduction Act."](#)<sup>12</sup>)

From a CFO's perspective, an interesting feature of the green-energy credits is a provision in the law that makes the credits transferable one time (there cannot be a subsequent resale of the same tax credits). Consider a small company that earns green-energy tax credits but does not have the taxable income to benefit from them. The law allows the small company to sell its credits to larger companies that can use





them. The large company making payment to purchase the credits cannot deduct this payment but the smaller company receiving payment can exclude it from gross income. Ironically, this transferability provision could conceivably allow larger companies to reduce additional taxes imposed under the IRA's corporate AMT by purchasing IRA green-energy tax credits at a reduced price, since it is all but certain these tax credits would sell at some discount.<sup>13</sup>

### Maximizing the benefits

Here are actions CFOs can take now to maximize the tax benefits of the new law and minimize the tax liabilities:

- If your company is planning a stock buyback, consider whether it can be done before year-end when the excise tax kicks in.
- Review the green-energy tax credits with tax advisors, and then have finance staff and business partners perform an inventory of credits for which your company may already be eligible and for which it may become eligible in the future.
- Calculate whether your company will be subject to AMT with the assistance of tax advisors. If your company does have corporate-AMT liability, you may be able to use green-energy tax credits, whether internally derived or purchased on the secondary market, to reduce the tax bill.

As with all new tax laws, whether you are talking about new and higher taxes or expanded tax incentives, one message remains evergreen: stay tuned, stay focused, be thoughtful— and consult your tax advisors.

## Q&A: A lame-duck preview—plus what to expect on taxes in 2023

Between the Inflation Reduction Act and the CHIPS ACT—which created tax credits for domestic manufacturers of semiconductors—Congress has already had a busy year when it comes to tax legislation. But according to Deloitte Tax LLP's Jonathan Traub, managing principal of the Tax Policy Group in the Washington National Tax office, Congress may not yet be done.

*CFO Insights* recently sat down with Traub to discuss tax legislation that could get introduced in a lame-duck session, as well what might be in the tax-policy pipeline for 2023.

**CFO Insights:** Do you expect any important tax bills to get taken up by the lame-duck Congress?

**Jonathan Traub:** Starting this year, companies have to capitalize their R&D costs over multiple years. They can no longer immediately deduct them in the year incurred. That can lead to some cash flow difficulties for R&D-intensive companies. There's been hope this year that Congress would pass legislation to delay what's known as the Section 174 rules. It's something a lot of CFOs care a lot about, and they keep thinking Congress is going to change it because there's tremendous bipartisan support in both the House and the Senate to do so.

**CFO Insights:** So why hasn't it happened?

**Traub:** There's never been the appropriate vehicle to attach it to. And I think we're all a little bit concerned that there may not be much of an appetite for a big lame-duck session this year.

**CFO Insights:** Obviously the outlook for 2023 depends on the outcome of the midterm elections. What are your expectations if Democrats retain control of Congress versus if Republicans win back the House and/or the Senate?

**Traub:** If Democrats pick up seats in the Senate and keep the majority in the House, then lots of things that weren't on the table this year—corporate tax rates, capital gains rates increases, changes affecting private equity—could be back on the table next year.

**CFO Insights:** And if Republicans win? As you know, Republicans are already on record saying they would like to repeal the extra \$79 billion in IRS funding included in the Inflation Reduction Act.<sup>14</sup>

**Traub:** If Republicans take over the House or the Senate, obviously the universe of legislation that could both get through the Congress and be signed by the President is a lot smaller.

But in any configuration, Treasury will be able to write rules that look a whole lot like policymaking in many cases. I think CFOs need to be very much attuned to what policies are being effectively enacted via the rule-making process. There's the implementation of the Inflation Reduction Act, for starters. There's just a lot to pay attention to, even if you're not necessarily watching a bill on Capitol Hill go through the traditional committee and floor consideration process.

## End notes

- 1 "Policy & Government: Inflation Reduction Act," Deloitte Development LLC, August 2022.
- 2 "Emerging ASC 740 issues—recent tax legislation," Deloitte Tax LLP, August 16, 2022; "Financial Reporting Implications of Recent Tax Legislation," Deloitte Tax LLP, September 30, 2022.
- 3 "Explainer: How could the new US corporate minimum tax affect companies?" Reuters.com, August 12, 2022.
- 4 "Treasury seeks public input on implementing the Inflation Reduction Act's clean energy tax incentives," US Department of the Treasury, October 5, 2022.
- 5 "How policy got done in 2022," *The American Prospect*, September 26, 2022.
- 6 "Corporate AMT included in Inflation Reduction Act of 2022," Deloitte Tax LLP, August 10, 2022.
- 7 "Policy & Government: Inflation Reduction Act."
- 8 "Excise tax on repurchases of stock," Deloitte Tax LLP, August 12, 2022.
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- 11 "Emerging ASC 740 issues—recent tax legislation."
- 12 "Advancing energy security: Sustainability-related tax provisions in the Inflation Reduction Act." Deloitte Tax LLP, August 18, 2022.
- 13 "Clean energy credits and incentives in the Inflation Reduction Act of 2022 – details and observations," Deloitte Tax LLP, August 12, 2022.
- 14 "Kevin McCarthy, other top Republicans vow to scrap IRS hiring plans if they win House majority," *Marketwatch.com*, September 23, 2022.

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