

Benefits-Related Provisions of the Inflation Reduction Act of 2022

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On August 16, President Biden signed into law the *Inflation Reduction Act of 2022* (P.L. 117-169; the “Act”). Although the Act differs considerably from the wide-ranging domestic economic package Democrats had initially envisioned under the *Build Back Better* moniker, the Act nevertheless includes a number of significant initiatives addressing the climate, healthcare, and tax issues. The measure passed the House and Senate with only Democratic votes, with Vice President Harris breaking the tie in the Senate under budget reconciliation instructions.

We highlight below key benefits and tax provisions in the Act and include comments on the IRS funding package.

Health Provisions

Extension of ACA Subsidies

The Act extends by three years — until 2025 — the expanded Affordable Care Act (“ACA”) premium tax credit that was included on a temporary basis as part of the American Rescue Plan Act (P.L. 117-2). Specifically, it extends the ACA premium tax credits to those above 400% of the federal poverty line and increases the amount of the credits for eligible individuals. Without this extension, the enhanced premium tax credit would have expired at the end of 2022.

Medicare Prescription Drug Pricing Negotiations

The Act allows Medicare to negotiate the price of certain high-cost prescription drugs with no generic or biosimilar competition, and imposes an excise tax on drug manufacturers that do not comply with the negotiated price. The Act limits the number of negotiated drugs to 10 Part D drugs in 2026, 15 Part D drugs in 2027, 15 Part B and Part D drugs in 2028, and 20 Part B and Part D drugs in 2029 and later years.

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

Jon Breyfogle
jbreyfogle@groom.com
(202) 861-6641

Michael Kreps
mkreps@groom.com
(202) 861-5415

Louis Mazawey
lmazawey@groom.com
(202) 861-6608

Diana McDonald
dmcDonald@groom.com
(202) 861-6650

Brigen Winters
bwinters@groom.com
(202) 861-6618

The Act also institutes a \$2,000 cap on out-of-pocket, annual prescription drug costs for Medicare Part D beneficiaries beginning in 2025.

Manufacturer Rebates Under Medicare

Beginning in 2023, the Act requires prescription drug manufacturers to pay a rebate to Medicare if certain Medicare Part B prices rise faster than inflation as measured under the consumer price index for urban consumers (“CPI-U”). Manufacturers that fail to comply are subject to civil monetary penalties. Advocates had attempted to extend the price caps and the inflation rebates to private plans, but the Senate parliamentarian ruled that the provisions failed to satisfy the budget reconciliation rules.

HSA Safe Harbor for Insulin

The Act creates a new statutory safe harbor that allows health savings account-compatible, high deductible health plans (“HDHPs”) to provide pre-deductible coverage for insulin products. The safe harbor applies to “selected insulin products” in any dosage form (e.g., vial, pump or inhaler) of any type (e.g., rapid-acting, short-acting, intermediate-acting, long-acting, ultra-long-acting, and pre-mixed). The new safe harbor builds on relief previously provided by the IRS in Notice 2019-45, which provides that insulin and other glucose lowering agents are “preventive care” when prescribed for individuals with diabetes if certain other requirements are met. It is effective for plan years beginning after December 31, 2022.

The Act also caps the price of insulin for Medicare beneficiaries at \$35 per month. A provision that would have capped the price of insulin in the private market was removed from the Act after failing to get the 60 votes needed to waive the budget reconciliation rules.

Tax Provisions

15% Minimum Tax on Corporate “Book Income”

The Act imposes a 15% corporate minimum tax on the “adjusted financial statement income” (“AFSI”) of taxpayers with more than \$1 billion of such income, effective for tax years beginning after December 31, 2022. Because “book income” could sweep income and asset changes in tax-qualified pensions and other post-retirement funds into the calculations for corporate employers, the calculation of AFSI (Code section 56A) would –

- disregard costs in connection with a “covered benefit plan,” which includes Code section 401(a) defined benefit plans, qualified foreign plans (Code sec. 404A(e)), and “any other defined benefit plan which provides post-employment benefits other than pension benefits;”
- be reduced by deductions allowed with respect to such covered benefit plans; and
- be increased by income included in the gross income of the corporation under any other income tax provisions.

While this structure is rather complex, it essentially means that pension amounts would be ignored in computing AFSI, unless otherwise taken into taxable income. (One limited exception is the ESOP dividend deduction, which would not reduce AFSI.) An example of the latter would be a reversion from a qualified plan upon its termination. Such amounts are included in taxable income and subject to excise tax under Code section 4980.

The new minimum tax also would apply to “tax-exempt entities,” including qualified plan trusts and voluntary employees’ beneficiary association (“VEBA”) trusts, but would be appropriately adjusted to only take into account the adjusted financial statement income –

- (A) of an unrelated trade or business (as defined in section 513) of such organization, or
- (B) derived from debt-financed property (as defined in section 514) to the extent that income from such property is treated as unrelated business taxable income.

Based on the above formulation – and in view of the fact that individual tax rates generally apply to UBIT – it appears unlikely that the tax would be payable by such exempt trusts. However, IRS guidance in this and other areas would be very helpful.

1% Excise Tax on Corporate Stock Repurchases

For some time, corporate “watchdogs” have been highly critical of corporate stock buybacks. The key concern raised by these advocates has been that companies should be using their funds to improve wages and overall business operations, rather than boosting their stock prices.

New Code section 4501 imposes a 1% excise tax on the fair market value of repurchases of stock after December 31, 2022. The law generally defines “repurchase” by reference to the definition of stock redemptions under Code section 317. However, to the extent that a corporate taxpayer contributes repurchased stock (or an amount of stock of equivalent value) to an “employer-sponsored retirement plan, employee stock ownership plan, or similar plan,” the tax would not apply. This exception should prove helpful to companies that continue to provide stock-based compensation to their employees.

Additional IRS Funding

The Act includes \$80 billion in supplemental IRS funding that the Congressional Budget Office estimates will increase federal tax receipts by \$204 billion over 10 years. Of the \$80 billion in new funding, roughly 50% would be allocated to enforcement and the other 50% to services and systems modernization. Overall, it is projected that IRS could increase the size of its workforce by as much as 50% over the next 10 years, with some increased staffing expected to support greater examination and collection activity. The funds for enforcement are intended for –

- determining and collecting owed taxes,
- providing legal and litigation support,
- conducting criminal investigations (including investigative technology),
- providing digital asset monitoring and compliance activities, and
- enforcing criminal statutes related to violations of internal revenue laws and other financial crimes.

On August 17, Treasury Secretary Janet Yellen sent a memorandum to IRS Commissioner Charles Rettig directing that the additional IRS enforcement funding not be used to increase audits of small businesses or individuals with incomes under \$400,000, but instead should be used “to end the two-tiered tax system, where most Americans pay what they owe, but those at the top of the distribution often do not.” Needless to say, some observers disagree that the increased enforcement funding will not also lead to increased audits of small businesses and lower income individuals.

Of course, how much this increased funding will improve IRS' efficiency in various areas also remains to be seen.

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