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WHITE PAPER

Inflation Reduction Act Key Renewable Energy Tax Credit Initiatives

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Green Energy Initiatives

President Biden recently signed the Inflation Reduction Act of 2022 (the "Act"). The Act is arguably the most significant renewable energy legislation in U.S. history. The Act contains numerous provisions focused on advancing investment in green climate and energy initiatives. The Act includes a variety of tax incentives intended on boosting such initiatives, including but not limited to the following:

- Extending the solar renewable electricity production and investment credit and increased usability for such credits.
- Extending and expanding the production tax credit for onshore and offshore wind projects (including repowering) and increased usability for such credits.
- Enhanced credits for meeting certain domestic production requirements/ projects located in "energy community" locations, low-income communities or on Indian land (as defined in the Energy Policy Act).
- Expansion of investment tax credit to standalone storage technology.
- Ability to monetize and transfer tax credits for cash.
- Extension and increase of carbon capture credit and lower carbon capture requirements for qualification.
- New credits for clean electricity, zero emission nuclear power facilities, clean hydrogen, new and used electric vehicles and other fuel production.
- Ability to use certain credits to offset corporate minimum tax.

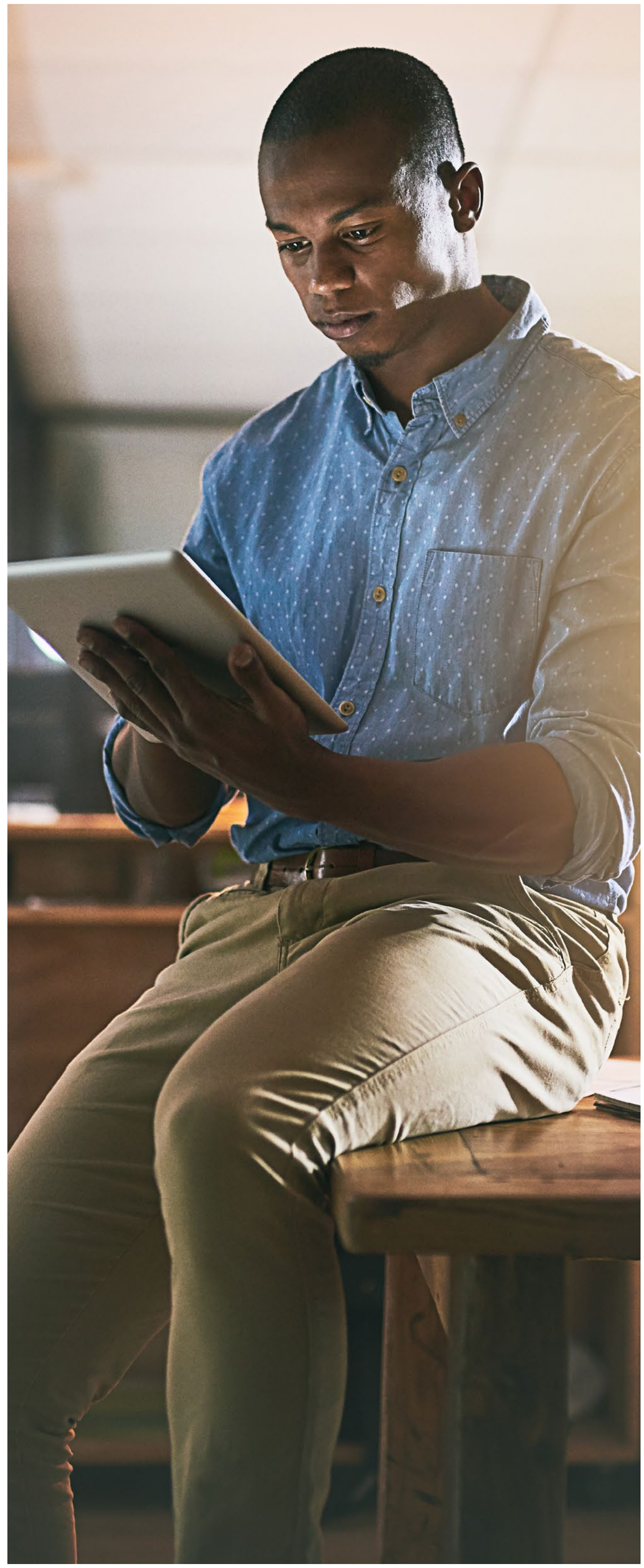
Other Tax Motivated Items

The Act also included other revenue focused items including the following:

A 15% corporate minimum tax to certain corporations (does not apply to S corporations, RICs or REITs) who have “adjusted financial statement income” over a three-year period that is in excess of $1 billion.

1% tax on corporate stock buybacks including buybacks of certain subsidiaries.

Additional $80 billion in funding to the IRS largely dedicated to tax enforcement activities and updating technology to increase audit efficiency. These enforcement activities include, among other things: (A) the determination and collection of unpaid taxes, (B) criminal investigations (including funding for investigative technology) and (C) digital asset monitoring and compliance activities.



Insurable Tax Credit Risks

- **Structure Risk** – Will the IRS respect the investment structure put in place between tax equity investor and sponsor?
- **Qualification Risk** – Will tax credits be allowed to be claimed in full – FMV/Qualifying Basis, Begin Construction Requirement, 80/20 Rule, Placed in Service Requirement and Equipment Qualification?
- **Recapture Risk** – Covers risk that the tax credits will be recaptured even if such credits were appropriately claimed initially.
- Coverage can be tailored to help protect against some or all of these potential losses and can include advances of taxes required to be paid or deposited with a tax authority.

Benefits of Tax Insurance

- Guarantee of tax credit for investors.
- Allows tax equity investors to make additional investment due to lower risk profile associated with insured tax positions.
- May backstop an indemnification obligation:
  - With new transferability of credits, tax insurance can become even more powerful financial tool; creating additional balance sheet liquidity to support coverage ratios and indemnity obligations.
- Free up capital (allows parties to remove reserves associated with insured tax position).

Increased IRS enforcement allows the IRS to increase the number of audits it performs and provides the IRS the ability to litigate more of the tax positions it reviews

Tax insurance can cover legal and accounting fees incurred in defending a challenge as well as pay a “gross up,” which is a payment made to cover any tax due on the insurance proceeds paid to the policyholder.

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> **Tax insurance is designed to provide certainty for insureds relating to a renewable energy project’s tax credits and reduces or eliminates the adverse financial impact associated with an Internal Revenue Service (IRS) challenge to the project’s eligibility for the tax credits.**

Costs and Expenses

Premium

Tax credit insurance premiums are generally between 2% and 3% of the limit purchased. Depending on the nature of the risk, premiums may be higher (or lower). Tax insurance premiums for other non-credit type risks generally fall between 2% and 5%.

Due Diligence Fee

Insurers also charge a due diligence or underwriting fee that is utilized to offset its own cost of performing independent analysis of the tax position that is typically between $40k and $50k.

Self-Insured Retention

Policies often also contain a self-insured retention that vary depending on the underwriter's confidence in the specific tax position. Retentions generally only apply to contest costs; NIL retentions are available for certain risks.

Surplus Line Taxes & Fees

Each state charges "surplus lines" taxes and fees, which are generally between 3% and 5% of the premium.

Scope of Coverage

Covered Losses

- Gross-up amounts to offset additional tax payments on the insured's recovery under the tax insurance policy
- Federal, state and local taxes (can include loss of future use of tax attributes such as NOLS and tax credits) resulting from a successful challenge by the IRS of the insured's tax position
- Interest charges
- Imposed penalties (other than criminal/fraud)
- Claim and defense expenses (attorneys/ accountants/ advisory fees used to defend an audit or challenge from a tax authority)

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