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January 2013

A legal update from Dechert's International and Domestic Tax Group

# American Taxpayer Relief Act of 2012 Approved by Congress and Signed by the President

## Summary

President Obama on January 2, 2013 signed into law the American Taxpayer Relief Act of 2012 (the "Act"). The Act extends certain tax rates, tax credits, and other provisions previously enacted by other tax legislation, which were generally scheduled to expire after 2012.

The Act:

- extends the 2012 individual income tax rates for individual filers with taxable income up to $400,000, and for married couples filing jointly with taxable income up to $450,000 (the "400/450 Threshold");
- raises the top individual tax rate on taxpayers earning above the 400/450 Threshold to 39.6% (up from 35%);
- extends the 2012 individual income tax rates on long-term capital gains and qualified dividends for taxpayers earning up to the 400/450 Threshold. These rates are generally 15%;
- generally raises the tax rate on long-term capital gains and qualified dividends to 20% for taxpayers earning above the 400/450 Threshold;
- imposes phase-outs of deductions for personal exemptions and itemized deductions for individual filers with adjusted gross income above $250,000 and for joint filers with adjusted gross income above $300,000;
- extends the $5 million exemption (indexed for inflation) for estate, gift, and generation skipping transfer taxes, while raising the maximum tax rate on amounts in excess of the exemption from 35% to 40%;
- permanently extends the so-called "patch" for the individual alternative minimum tax by increasing the applicable exemption amounts and by indexing such amounts to inflation;
- extends the 28% rate for backup withholding;
- retroactively extends the ability of regulated investment companies (RICs) to pass through the character of certain U.S. source interest and net short-term capital gains to non-U.S. shareholders, through taxable years of the RIC beginning before January 1, 2014;
- retroactively extends the treatment of RICs as qualified investment entities for purposes of the FIRPTA rules, through December 31, 2013;
- expands the ability to make transfers (currently taxable but without penalties) from certain accounts under tax-qualified plans to Roth accounts, and makes other miscellaneous changes to provisions affecting employee benefits;
- extends the exclusion of gain on certain small business stock, through 2013;

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- extends the alternative deduction for state and local sales taxes, through 2013;
- extends the 20% tax credit for certain qualifying research and experimentation expenses, through 2013;
- extends certain provisions that allow an increase in the amount that may be expensed for the cost of certain qualified property, through 2013;
- temporarily extends and modifies rules that allow 50% first-year bonus depreciation for certain qualified property;
- extends certain education incentives;
- extends certain energy tax incentives;
- expands provisions relating to dependent care credits, child care credits and earned income credits;
- extends certain provisions relating to charitable contributions;
- extends certain provisions applicable to controlled foreign corporations; and
- extends certain other business tax relief.

The Act does not extend the payroll tax holiday that reduced the employee share of Social Security taxes from 6.2% to 4.2% during 2011 and 2012. As a result, the payroll tax will increase beginning in 2013 from the 2011-2012 levels.

The Act does not affect additional taxes, effective in 2013, that are imposed by the Patient Protection and Affordable Care Act. These taxes include an additional 0.9% Medicare tax on wages over $200,000 for single filers and over $250,000 for joint filers, and an additional 3.8% Medicare tax on net investment income for taxpayers earning above such thresholds.

## Individual Tax Rates, Exemptions and Itemized Deductions

### Individual Tax Rates

The Act extends the current individual tax rate brackets (10%, 15%, 25%, 28%, 33% and 35%) that were scheduled to expire after 2012 for taxpayers with taxable income up to the 400/450 Threshold.

As discussed above, the 400/450 Threshold applies to individual filers with taxable income up to $400,000, and for married couples filing jointly with taxable income up to $450,000. The threshold is $425,000 for heads of households and $225,000 for married persons filing separately. The threshold amounts will be indexed for inflation.

Because the Act does not extend rates for taxpayers with taxable income above the 400/450 Threshold, it has the effect of raising the individual tax rate to 39.6% on taxable income above the 400/450 Threshold.

As discussed below, marginal tax rates on income and gains are also affected by Medicare taxes and phase-outs for personal exemptions and itemized deductions, which also affect certain taxpayers with income below the 400/450 Threshold.

Because the threshold of $450,000 for married couples is only $50,000 higher than the $400,000 threshold for single taxpayers, being married can result in higher combined taxes in certain cases.

The effect of the changes under the Act can also vary depending on whether a taxpayer is subject to the regular income tax or the alternative minimum tax.

### Payroll Taxes and Medicare Taxes

As discussed above, the Act does not extend the payroll tax holiday that reduced the employee share of Social Security taxes from 6.2% to 4.2% during 2011 and 2012. As a result, in 2013, employees will pay a 6.2% Social Security tax on all wages earned up to $113,700 and self-employed individuals will pay a 12.4% Social Security self-employment tax on their self-employment income up to the same threshold.

The Medicare tax (1.45% for each of employer/employee; 2.9% for self-employed) also continues to apply. Further, as discussed above, additional taxes effective in 2013, imposed by the Patient Protection and Affordable Care Act, include an additional 0.9% Medicare tax on wages over $200,000 for single filers and over $250,000 for joint filers, and the additional 3.8% Medicare tax on net investment income for taxpayers with adjusted gross income above such thresholds.

The Social Security payroll tax and Medicare taxes on wages and self- employment income have the result of effectively increasing the marginal tax rates on such wages and self-employment income.

The 3.8% Medicare tax on net investment income also has the result of effectively increasing the marginal tax rates on income from interest, dividends, and capital gains.

**Itemized Deduction Limitation**

Generally, taxpayers itemize deductions if the total itemized deductions exceed their standard deduction amount. The Act includes limits on itemized deductions for individual filers with adjusted gross income above $250,000 and for joint filers with adjusted gross income above $300,000 (the "250/300 Threshold").

Under the limitation, itemized deductions are reduced by 3% of the amount of adjusted gross income above the 250/300 Threshold. The reduction cannot exceed 80% of the itemized deductions. Eligible itemized deductions for medical expenses, investment interest, and casualty losses are not affected by the limitation.

The itemized deduction limitation has the result of effectively increasing the marginal tax rates on income and capital gains for taxpayers subject to the limitation.

**Personal Exemption Phase-Out**

Personal exemptions generally are allowed for a taxpayer, his or her spouse and dependents (the amount for each personal exemption is $3,900 for 2013).

The Act includes a personal exemption phase-out for taxpayers with adjusted gross income above the 250/300 Threshold.

Under the phase-out, the deductions for 2% of the total personal exemptions are phased-out for each $2,500 (or portion thereof) of adjusted gross income above the threshold amounts.

The personal exemption phase-out has the result of effectively increasing the marginal tax rates on income and capital gains for taxpayers subject to the limitation.

**Permanent Increases in the Exemption Amounts for the Individual Alternative Minimum Tax**

Under current law, an individual is potentially subject to the alternative minimum tax ("AMT") if his or her alternative minimum taxable income exceeds certain applicable exemption amounts. The Act increases the exemption amounts in 2012 to $50,600 (for individuals) and $78,750 (for married couples filing jointly), and the exemption will be indexed to inflation thereafter. The Act also allows certain nonrefundable personal credits to offset the AMT.

**Tax Relief for Families and Children**

- *Marriage penalty relief* – The Act permanently extends certain marriage penalty relief for married couples filing jointly through (i) an increase in the standard deduction, (ii) an expansion of the 15% income tax bracket, and (iii) an increase in certain earned income tax credits.

- *Expanded dependent care credit* – The Act permanently extends the increased amount of eligible expenses for child care expenses of up to $3,000 for one child and up to $6,000 for two or more children.

- *Increased adoption tax credit and the adoption assistance programs exclusion* – The Act permanently extends the adoption tax credit and adoption assistance programs exclusion, allowing a tax credit of up to $10,000 for qualified adoption expenses and the exclusion from income of up to $10,000 of adoption expenses paid by an employer.

- *Credit for employer expenses for child care credit* – The Act permanently extends the tax credit to employers of up to $150,000 for acquiring, constructing, rehabilitating or expanding property used for a child care facility.

- *Modifications to the child tax credit* – Taxpayers with income below certain threshold amounts may claim a child tax credit for each qualifying child under the age of 17. The Act permanently extends the maximum amount of credit per child to $1,000. The Act extends for five additional years, through 2017, the amount of earnings which counts towards refundability to earnings above $3,000, and permanently extends the refundability amount to earnings above $10,000.

- *Temporary extension of the third-child earned income tax credit* – The Act extends for five additional years, through 2017, the American Recovery and Reinvestment Act of 2009 expansions that increased the earned income tax credit for families with three or more children and increased the phase-out range for all married couples filing a joint return.

**Education Incentives**

- *Coverdell Accounts* – Coverdell Education Savings Accounts are tax-exempt savings accounts used to pay certain higher education expenses of a designated beneficiary. The Act permanently extends the increased annual contribution amount from $500 to $2,000 and the expanded definition of education expenses.

- *Employer Provided Education Assistance* – The Act permanently extends the exclusion of up to $5,250 (for both income and employment tax purposes) of employer-provided education assistance. While this was originally a temporary provision that applied only to undergraduate education, the exclusion is now permanent and also encompasses graduate education assistance provided by employers.

- The Act also permanently extends various other educational incentives including:

  - the expanded student loan interest deduction, which eliminated the 60-month limit and increased the income phase-out thresholds;

  - the exclusion from gross income of amounts received pursuant to certain scholarship programs;

  - the $15 million arbitrage rebate exception for school construction; and

  - the current allowance to issue tax-exempt private activity bonds for public school facilities.

- The Act temporarily extends the following educational incentives:

  - the American Opportunity Tax Credit for up to $2,500 of the cost of tuition and related expenses paid during the taxable year, for five additional years, through 2017;

  - the $250 deduction for certain expenses of elementary and secondary school teachers, through 2013; and

  - the deduction of up to $4,000 for qualified higher education expenses, through 2013.

**Other Provisions Applicable to Individuals**

- *Deduction for state and local general sales taxes* – The Act extends for two years, through December 31, 2013, the election to take an itemized deduction for state and local general sales taxes instead of a deduction for state and local income taxes.

- *Mortgage Debt Relief* – Taxpayers who have mortgage debt canceled or forgiven may be required to pay taxes on that amount as taxable income. Under previous legislation, up to $2 million of forgiven debt was eligible to be excluded from income. The Act extends this relief through tax year 2013.

- *Premiums for mortgage insurance deductible as qualified residence interest* – The Act extends through 2013 the ability of taxpayers with income below a certain threshold to deduct the cost of mortgage insurance on a qualified personal residence.

## Investments

**Tax Rates on Long-Term Capital Gains**

The Act extends the 2012 tax rates on long-term capital gains for taxpayers with taxable income up to the 400/450 Threshold. Those rates are generally 15% (0% for taxpayers in the 15% rate bracket and lower brackets).

The Act generally raises the tax rate on long-term capital gains to 20% to the extent that taxpayers earn above the 400/450 Threshold.

The Act does not change the higher tax rates applicable to long-term gains from certain collectibles (28%) and certain unrecaptured Code section 1250 gain (25%).

As discussed above, the 3.8% Medicare tax on net investment income which begins to apply in 2013 has the effect of increasing the effective marginal rate on long-term capital gains. As a result, the effective marginal rate, including the Medicare tax, is 18.8% for taxpayers with adjusted gross income above $200,000, for single filers, or $250,000, for joint filers. Taking into account the 3.8% Medicare tax, the effective marginal rate on long-term capital gains for taxpayers earning above the 400/450 Threshold is 23.8%.

As discussed above, the phase-outs of personal exemptions and itemized deductions, applicable to taxpayers with adjusted gross income above the 250/300 Threshold also has the effect of raising the effective marginal rates on long-term capital gains for such taxpayers. When such phase-outs are also taken into account, the effective marginal rate on long-term captial gains can, in certain cases, exceed 20% for taxpayers with adjusted gross income above the 250/300 Threshold and such effective marginal rate can, in certain cases, exceed 25% for taxpayers above the 400/450 Threshold.

**Tax Rates on Qualified Dividends**

The Act extends the 2012 tax rates on qualified dividends for taxpayers with taxable income up to the 400/450 Threshold. Those rates are generally 15% (0% for taxpayers in the 15% rate bracket and lower brackets).

The Act generally raises the tax rate on qualified dividends to 20% for taxpayers earning above the 400/450 Threshold.

Qualified dividend income generally includes dividends received from domestic corporations and qualified foreign corporations. The term "qualified foreign corporation" includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States which the Treasury Department determines to be satisfactory and which includes an exchange of information provision. In addition, a foreign corporation is treated as a qualified foreign corporation for any dividend paid by the corporation with respect to stock that is readily tradable on an established securities market in the United States. Dividends received from a corporation that is a passive foreign investment company in either the taxable year of the distribution, or the preceding taxable year, are not qualified dividends.

As under prior law, shareholders must also satisfy certain holding period requirements with respect to qualified dividends. As an example, a shareholder must hold a share of common stock for more than 60 days during the 121-day period beginning 60 days before the ex-dividend date in order for the dividend to be eligible for the reduced tax rates on qualified dividends.

RICs are generally able to flow through to their shareholders the character of qualified dividend income that the RIC receives and distributes to shareholders. In such a case, the RIC and the shareholder would both need to satisfy applicable holding period requirements.

As discussed above, the 3.8% Medicare tax on net investment income which begins to apply in 2013 has the effect of increasing the effective marginal rate on dividends. As a result, the effective marginal rate on qualified dividends, including the Medicare tax, is 18.8% for taxpayers subject to the Medicare tax. Taking into account the 3.8% Medicare tax, the effective marginal rate on qualified dividends for taxpayers earning above the 400/450 Threshold is 23.8%.

As discussed above, the phase-outs of personal exemptions and itemized deductions, applicable to taxpayers with adjusted gross income above the 250/300 Threshold may also have the effect of raising the effective marginal rates on qualified dividends for such taxpayer. When such phase-outs are also taken into account, the effective marginal federal rate on qualified dividends can exceed 20% for taxpayers above the 250/300 Threshold and such effective marginal federal rate can exceed 25% for taxpayers above the 400/450 Threshold.

**Tax Rates on Interest, Non-Qualified Dividends and Short-Term Capital Gains**

Income from taxable interest, non-qualified dividends and short-term capital gains is taxed at the rates applicable to ordinary income.

As raised by the Act, the marginal ordinary income rate for taxpayers above the 400/450 Threshold is now 39.6%. The 3.8% Medicare tax on net investment income has the effect of increasing the effective marginal federal rate on such income to 43.4%. The phase-outs for itemized deductions can have the effect of increasing the maximum effective marginal federal rate to approximately 44.6%.

**Extension of Backup Withholding Rate**

The 28% rate for backup withholding in 2012 was scheduled to increase to 31% in 2013. The Act has the effect of permanently extending the 28% rate.

**Extension of Certain Provisions Related to Foreign Investors in RICs**

The Act extends a provision allowing RICs, under certain circumstances, to pass through the character of certain U.S. source interest income and net-short term capital gains on distributions of such items to non-U.S. shareholders. In such a case, U.S. tax withholding generally does not apply with respect to such distributions. Although the provision expired for tax years of RICs beginning on or after January 1, 2012, the Act extends the provision retroactively to taxable years of RICs beginning before January 1, 2014.

The Act also extends the inclusion of a RIC within the definition of a "qualified investment entity" under the FIRPTA rules in Section 897 of the Code, through December 31, 2013.

It should be noted, however, that the Act did not extend a favorable rule in applying the U.S. estate tax provisions to investments in RIC stock by non-U.S. shareholders. Although stock issued by a domestic corporation generally is treated as property within the United States for purposes of the U.S. estate tax, under prior legislation that expired after 2011, stock of a RIC that was owned by a nonresident non-citizen was not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC were certain debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock"). Because the Act does not extend the estate tax look-through rule, the U.S. estate tax could apply to shares of stock in RICs for non U.S. individuals dying after December 31, 2011 if the total amount of RIC shares and other U.S. situs property exceeds the exemption amount (which is currently $60,000). The U.S. has estate tax treaties with certain countries, which could modify or eliminate the application of the estate tax for residents of such countries.

#### Transfers to Roth Accounts

As discussed further below, the Act liberalizes the rules under which accounts held by certain tax-qualified retirement plans (including 401(k) plans) may effectively be converted to Roth accounts (if the plan is amended accordingly). The transfer to a Roth would be currently subject to federal income tax (and any applicable state income tax), but would not be subject to any otherwise applicable early withdrawal penalties or the 3.8% Medicare tax. It is noted that the additional income inclusion could result in (i) the individual's being taxed at higher marginal rates, (ii) greater phase-outs on personal exemptions and itemized deductions and (iii) the application of the Medicare tax to other investment income, if the applicable income-related thresholds are reached by virtue of the inclusion.

#### Exclusion of Gain on Certain Small Business Stock

Generally, individual taxpayers may exclude 50 percent of the gain from the sale of certain small business stock acquired at original issue and held for more than five years. Prior to the Act, for stock acquired after February 17, 2009 and on or before September 27, 2010, the exclusion is increased to 75 percent. For stock acquired after September 27, 2010 and before January 1, 2012, the exclusion is 100 percent and the AMT preference item attributable to the sale is eliminated. The Act extends the 100 percent exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2014 and held for more than five years.

Qualifying small business stock is stock of a C corporation whose gross assets do not exceed $50 million (including the proceeds received from the issuance of the stock) and which meets a specific active trade or business requirement. The amount of gain eligible for the exclusion is limited to the greater of ten times the taxpayer's basis in the stock or $10 million of gain from stock in that corporation.

## Estate, Gift and Generation Skipping Transfer Tax Provisions

The Act extends the $5 million exemption (indexed for inflation) for estate, gift and generation skipping transfer taxes, while raising the maximum tax rate on amounts in excess of the exemption from 35% to 40%.

In addition, the Act extends other rules applicable to the estate tax, including the portability of the estate tax exemption amount between spouses.

## Employee Benefits

#### Transfers to Roth Accounts

The Act liberalizes the rules under which accounts held by certain tax-qualified retirement plans (including 401(k) plans) may effectively be converted to Roth accounts (if the plan is amended accordingly). In general terms, under a Roth account, contributions are currently taxable, but increases in the value of the account over time and qualified withdrawals and other qualified distributions are not taxable.

Under prior law, transfers to Roth accounts were allowed only for those amounts eligible for distribution from the plan (e.g., to participants who have attained age 59½). Employers can now allow employees to transfer (or "convert") any portion of their plan accounts to a Roth account, regardless of whether the amount is currently distributable.

The transfer to a Roth account would be currently subject to federal income tax (and any applicable state income tax), but would not be subject to any otherwise applicable early withdrawal penalties or the 3.8% Medicare tax. It is noted that the additional income inclusion could result in (i) the individual's being taxed at higher marginal rates, (ii) greater phase-outs on personal exemptions and itemized deductions and (iii) the application of the Medicare tax to other investment income, if the applicable income-related thresholds are reached by virtue of the inclusion.

**Employer-Provided Educational Assistance**

As noted above, the Act permanently extends the exclusion of up to $5,250 (for both income and employment tax purposes) of employer-provided education assistance. While originally this was a temporary provision that applied only to undergraduate education, the exclusion is now permanent and also encompasses graduate education assistance provided by employers.

**Mass Transit and Parking**

The Act extends through the end of 2013 the increased exclusion for certain qualified transportation fringe benefits. The allowable exclusion for transportation passes and van pools (commuter highway vehicles) remains at $240 per month, thereby continuing the parity with the exclusion for qualified parking. Employers can continue to give commuters both the transit and parking benefits.

## Charitable Contributions

**Contributions of Real Property for Conservation Purposes**

The Act extends for two years, through December 31, 2013, the increased contribution limits and carryforward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes.

**Tax-free Distributions from IRA for Charitable Purposes**

The Act extends the exclusion from income tax for qualified charitable distributions made directly to certain qualified charitable organizations from an individual retirement arrangement ("IRA") by someone age 70½ or older, of up to $100,000 per taxable year, beginning after December 31, 2011 and before January 1, 2014. The Act contains a transition rule under which an individual can make a qualified charitable distribution during January 2013 and have it count as a 2012 distribution. The Act also permits an individual who took a distribution in December 2012 to contribute that amount to a charity and count it as a qualified charitable distribution even though it was not transferred directly to a qualified charitable organization, provided it meets the other requirements for a qualified charitable distribution.

**Enhanced Charitable Deduction for Contributions of Food Inventory**

The Act extends for two years, through December 31, 2013, the enhanced charitable deductions for contributions of food inventory, but does not extend the enhanced charitable deductions for contributions of book inventories to public schools or corporate contributions of computer inventory for educational purposes.

**Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property**

The Act extends for two years, through December 31, 2013, a provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions exceed such shareholder's adjusted basis in the S corporation.

## Business Tax Incentives

**Tax Credit for Research and Experimentation Expenses**

As extended by the Act, through December 31, 2013, taxpayers can claim a research credit equal to 20% of the amount by which the taxpayer's qualified research expenses exceeds its "base amount" for that taxable year or an alternative simplified credit of 14%. The Act also modifies rules for taxpayers under common control and rules for computing the credit when a portion of a trade or business is acquired or disposed.

**Extension of Increase in the Maximum Amount and Phase-out Threshold under Section 179**

Subject to certain limitations, a taxpayer may elect under Section 179 of the Code to expense the cost of certain qualifying property placed in service for the year rather than recovering such costs over time through depreciation deductions. For taxable years beginning in 2010 and 2011, the maximum amount that a taxpayer may expense is $500,000 of the cost of qualifying property placed in service. The $500,000 amount is reduced by the amount by which the cost of qualifying property placed in service during the tax year exceeds $2 million.

Under the Act, the maximum amount of $500,000 and phase-out threshold of $2 million are extended until the end of 2013. At the end of 2013, these amounts will revert to $25,000 and $200,000 in the absence of further Congressional action.

**Extension of Certain Provisions Applicable to Controlled Foreign Corporations**

The Act extends for two years (for taxable years beginning before 2014) the temporary exceptions from subpart F foreign personal holding company income, insurance income and foreign base company services income, for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business. The Act also extends to the end of 2013 the look-thru treatment under Section 954 of the Code for certain payments between related controlled foreign corporations under the foreign personal holding company rules, for taxable years of foreign corporations beginning before January 1, 2014.

**Extension of Reduction in S Corporation Recognition Period for Built-In Gains Tax**

When a taxable C corporation elects to be a S corporation, it may be subject to a corporate-level "built-in gains" tax under Section 1374 of the Code on the taxable disposition or deemed disposition of assets. Following such a conversion, an S corporation must hold its assets for a certain period in order to avoid a tax on any built-in gains that existed at the time of the conversion. The required holding period was originally 10 years but had been shortened to 5 years. The Act extends the reduced holding period of 5 years for sales occurring in 2012 and 2013. In addition, the Act clarifies rules on carryforwards and installment sales.

**Bonus Depreciation**

Businesses are allowed to take an additional depreciation deduction equal to 50% of the cost of certain types of depreciable property placed in service between January 1, 2008 and December 31, 2010. The Act extends this bonus depreciation for qualifying property purchased and placed in service before January 1, 2014 (or before January 1, 2015 for certain longer-lived and transportation assets). The Act also allows taxpayers to elect to accelerate some alternative minimum tax credits in lieu of bonus depreciation. For regulated utilities, the provision clarifies that it is a violation of the normalization rules to assume a bonus depreciation benefit for ratemaking purposes when a utility has elected not to take bonus depreciation.

**Hiring Incentives**

Current tax credits for hiring certain qualified veterans or activated military reservists are extended for two years, through 2013. The work opportunity tax credit of 40% of the first $6,000 of wages paid to new hires of certain targeted groups is also extended through 2013.

**Cost Recovery for Qualified Leasehold Improvements, Qualified Restaurant Buildings and Improvements, and Qualified Retail Improvements**

The Act extends through 2013 the temporary 15-year straight-line cost recovery period for certain leasehold, restaurant, and retail improvements, and new restaurant buildings.

**Other Business Tax Incentives**

The Act extends (generally through 2013 or applicable to taxable years beginning before January 1, 2014, as the case may be) various business-related credits and deductions, including:

- the provision that allows a 50% immediate expensing for certain advanced underground mine safety equipment;
- the mine rescue team training credit;
- the provision that allows film and television producers to expense the first $15 million of production costs incurred in the United States;
- the tax treatment of certain payments to controlling exempt organizations;
- the Qualified Zone Academy Bonds tax credit bond;
- the designation of certain economically depressed census tracts as Empowerment Zones, in which businesses and individuals are eligible for special tax incentives;

- the time for issuing New York Liberty Zone bonds, effective for bonds issued after December 31, 2009;
- the temporary increase in limit on cover over of rum excise tax revenues to Puerto Rico and the Virgin Islands;
- the possessions tax credit available to certain domestic corporations operating in Samoa;
- the domestic production activities deduction for activities in Puerto Rico;
- the special 7-year cost recovery period for property used for land improvements and support facilities at motorsports entertainment complexes;
- the low income housing tax credit;
- the exclusion of military basic housing allowance for purposes of calculating whether the individual qualifies for the low-income housing credit;
- the new markets tax credit encouraging investment in businesses in low-income communities;
- the business tax credit for employers of qualified employees that work and live on or near an Indian reservation;
- the accelerated depreciation for qualified Indian reservation property; and
- the railroad maintenance credit for short-line and regional railroads.

## Energy Tax Incentives

The Act extends (generally through 2013, or applicable to taxable years beginning before January 1, 2014, as the case may be) various energy credits and deductions, including:

- the credit for energy-efficient improvements to existing homes;
- the 30% investment tax credit for alternative vehicle refueling property;
- the individual income tax credit for certain highway-capable 2- or 3-wheeled plug-in electric vehicles, but golf carts and other low-speed vehicles no longer qualify for the credit;
- the production tax credit for qualified cellulosic biofuel, which now includes algae-based fuel;
- the $1.00 per gallon tax credit for biodiesel and the small agri-biodiesel producer credit of 10 cents per gallon;
- the production tax credit for coal produced on land owned by an Indian tribe;
- the production tax credit (2.2 cent per kilowatt hour) for wind;
- the 10-year credit for renewable energy facilities, but commonly recycled paper is excluded from the production tax credit;
- a 30% investment tax credit that may be elected by certain electric facilities in lieu of the certain production tax credits;
- the credit for the construction of energy-efficient new homes;
- the tax credit for U.S.-based manufacturers of energy-efficient appliances;
- the bonus depreciation for facilities producing cellulosic biofuel, which now includes algae-based fuel;
- the deferral of gain on sales of transmission property by vertically integrated electric utilities to Federal Energy Regulatory Commission approved independent transmission companies; and
- the 50 cent per gallon alternative fuel tax credit and alternative fuel mixture tax credit.

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