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Practice Update

President Biden Signs the Inflation Reduction Act into Law

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On August 16, 2022, President Joe Biden signed the Inflation Reduction Act of 2022 (H.R. 5376) (the IRA) into law. The key provisions that may affect the private equity sector and corporations include:

- a 15 percent corporate alternative minimum tax (AMT), imposed on adjusted financial statement income for corporations with profits over $1 billion;
- a 1 percent excise tax on publicly traded U.S. corporations that repurchase their shares; and
- a 2-year extension of the excess business loss rules under IRC Section 461(l).

The IRA also includes several provisions relating to clean energy tax incentives and increases funding for IRS tax enforcement.

Corporate AMT

The new corporate AMT applies to any corporation (other than an S corporation, RIC, or REIT) whose three-year average annual adjusted financial statement income exceeds $1 billion. The provision imposes a minimum tax equal to the excess of 15 percent of the adjusted financial statement income for a tax year over its foreign tax credit for its corporate AMT. This income is aggregated with all other persons treated as a single employer under

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IRC Section 52. Additional rules define financial statement income and provide various adjustments thereto, and provide a new definition for corporate AMT foreign tax credit. The new rules also authorize the Treasury to issue regulations or other guidance on a number of issues, including determining whether a corporation otherwise subject to the tax should be exempted. There are also special rules for short-corporate tax years and corporations that have been in existence for less than three years. The provision is effective for tax years beginning after December 31, 2022.

Excise Tax on Corporate Stock Repurchases

The IRA imposes a 1 percent excise tax on certain net stock repurchases by publicly traded corporations. A "repurchase" is defined generally as a redemption of the corporation's stock, within the meaning of IRC Section 317(b), and any other economically similar transaction. The new provision applies to repurchases of stock after December 31, 2022.

The excise tax also applies to a "specified affiliate" of a publicly traded corporation that performs the repurchase. Specified affiliates include other corporations or partnerships if the publicly traded corporation owns more than 50 percent of the stock (by vote or value), capital interests or profits interests, directly or indirectly. Special rules also apply for foreign-parented domestic corporations, which would treat a repurchase of stock by certain affiliates of publicly traded foreign corporations as if it were a repurchase by a publicly traded U.S. corporation.

Certain transactions are excluded from the excise tax, including, among others, (1) reorganizations under IRC Section 368(a) where no gain or loss is recognized on the repurchase by the shareholder, (2) repurchases during the tax year that, in the aggregate, do not exceed $1 million, (3) repurchases by RICs or REITs, and (4) repurchases treated as a dividend.