Description of the "Build It In America Act"

June 8, 2023

Title I – Investment in America

Sec. 101. Deduction for research and experimental expenditures.

Current law provides that research or experimental costs paid or incurred in tax years beginning after December 31, 2021, are required to be deducted over a five-year period. Research or experimental costs that are attributable to research that is conducted outside of the United States are required to be deducted over a 15-year period.

The provision delays the date when taxpayers must begin deducting their research or experimental costs over these five- and fifteen-year periods until taxable years beginning after December 31, 2025. Therefore, taxpayers may deduct currently research or experimental costs that are paid or incurred in tax years beginning after December 31, 2021, and before January 1, 2026.

Sec. 102. Extension of allowance for depreciation, amortization, or depletion in determining the limitation on business interest.

For tax years beginning before January 1, 2022, the computation of adjusted taxable income (ATI) for purposes of the limitation on the deduction for business interest is determined without regard to any deduction allowable for depreciation, amortization, or depletion (i.e., earnings before interest, taxes, depreciation, and amortization (EBITDA)).

The provision extends the application of EBITDA to taxable years beginning after December 31, 2022 (and, if elected, for taxable years beginning after December 31, 2021), and before January 1, 2026. Therefore, for taxable years beginning before January 1, 2026, ATI generally is computed as EBITDA, but for taxable years beginning after December 31, 2025, ATI is computed with regard to deductions allowable for depreciation, amortization, or depletion (i.e., earnings before interest and taxes (EBIT)).

Sec. 103. Extension of 100 percent bonus depreciation.

Qualified property acquired and placed in service after September 27, 2017, and before January 1, 2023 (January 1, 2024, for longer production period property and certain aircraft), as well as specified plants planted or grafted after September 27, 2017, and before January 1, 2023, are eligible for 100-percent bonus depreciation. The 100-percent allowance is phased down by 20 percent per calendar year for qualified property acquired after September 27, 2017, and placed in service after December 31, 2022 (after December 31, 2023, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after December 31, 2022.

The provision extends 100-percent bonus depreciation for qualified property placed in service after December 31, 2022, and before January 1, 2026 (January 1, 2027, for longer production

period property and certain aircraft) and for specified plants planted or grafted after December 31, 2022, and before January 1, 2026. The provision retains 20-percent bonus depreciation for property placed in service after December 31, 2025, and before January 1, 2027 (after December 31, 2026, and before January 1, 2028, for longer production period property and certain aircraft), as well as for specified plants planted or grafted after December 31, 2025, and before January 1, 2027.

Title II – Supply Chain Security

Sec. 201. Termination of hazardous substance superfund financing rate.

The provision terminates the superfund tax on crude oil received at U.S. refineries and petroleum products entered the United States for consumption, use, or warehousing after December 31, 2022.

The provision terminates the authorization for the Hazardous Substance Superfund to borrow from the General Fund through repayable advances.

Sec. 202. Election to determine foreign income taxes paid or incurred to certain Western Hemisphere countries without regard to certain regulations.

The provision allows taxpayers to make an election to disregard specified foreign income tax regulations when determining if any Western Hemisphere tax is an income, war profits, or excess profits tax for purposes of the Internal Revenue Code.

For purposes of this section, the specified regulations are "Guidance Related to the Foreign Tax Credit; Clarification of Foreign-Derived Intangible Income" (87 Fed. Reg. 276; published on January 4, 2022", "Guidance Related to the Foreign Tax Credit" (87 Fed. Reg. 71271; published on November 22, 2022), or any other guidance published after January 4, 2022, to the extent it is substantially similar or predicated upon those regulations.

A Western Hemisphere tax means any tax paid or accrued to any possession of the United States and any foreign country (other than Cuba and Venezuela) which is located in North, Central, or South America (including the West Indies).

The provision is applicable for all taxable years beginning after December 31, 2021, and before January 1, 2027.

The provision also allows taxpayers to make a separate election that, for purposes of allocating and apportioning foreign income taxes paid or accrued by reason of any remittance made by a specified disregarded entity to its owner, any items of foreign gross income included by reason of the receipt of such remittance are assigned to a category based on current and accumulated earnings and profits of such entity in lieu of being assigned on the basis of the tax book value method.

A specified disregarded entity is an entity that is disregarded from its owner for the purposes of chapter 1 of the Internal Revenue Code and any trade or business that is created or organized in a

possession of the United States or any foreign country (other than Cuba and Venezuela) which is located in North, Central, or South America (including the West Indies).

This election shall be applicable for tax years beginning after December 31, 2019, and before January 1, 2027.

Sec. 203. Excise tax on purchase of farmland by citizens of countries of concern.

The provision imposes a 60 percent excise tax on buyers of United States farmland when the buyer is a citizen of a country of concern or a private business entity that is 10 percent or more owned by a citizen or business entity domiciled in a country of concern (disqualified persons). During the real estate closing process, the buyer is required to disclose to the seller or the seller's agent whether they are a disqualified person or 10 percent controlled by a disqualified person. Farmland protected by this provision includes agricultural land within the meaning of the Agricultural Foreign Investment Disclosure Act of 1978 and ranchland, either of which is used as a farm or ranch at the time of the acquisition. Special rules would apply to buyers that are publicly traded in the United States.

In the case of a business entity owned less than 50 percent by a country of concern parent entity, the tax is pro-rated based on percentage ownership. The term "country of concern" is defined as any country, the government of which is engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States and would initially be defined to include the People's Republic of China (not including Taiwan), the Russian Federation, Iran, North Korea, Cuba, and the regime of Nicolas Maduro in Venezuela. The excise tax would not apply to farmland in a U.S. territory or possession.

Title III – Repeal of Special Interest Tax Provisions

Sec. 301. Repeal of clean electricity production credit.

The provision returns the Electricity Production Credit to its treatment prior to P.L.117-169. Since it was created in P.L. 117-169, the provision repeals the credit.

Sec. 302. Repeal of clean electricity investment credit.

The provision returns the Clean Electricity Investment Credit to its treatment prior to P.L.117-169. Since it was created in P.L. 117-169, the provision repeals the credit.

Sec. 303. Modification of clean vehicle credit.

The provision returns the clean vehicle credit to the new qualified plug-in electric drive motor vehicle credit with a base credit of $2,500 increasing up to $7,500 depending on KWhr battery capacity. The credit returns to a 200,000 vehicle per manufacturer limitation, including previously qualifying vehicles.

The provision limits the credit to individuals with adjusted gross income less than $150,000 and married fliers with adjusted gross income less than $300,000. The section limits the credit to cars

with a manufacturer's suggested retail price (MSRP) of $55,000 or less and vans, SUVs, and pickup trucks with a MSRP of less than $80,000.

No credit is allowed under the provision for vehicles which have batteries that contain less than 80 percent critical minerals extracted or processed in the United States or in any country which the United States has a free trade agreement. The provision defines Free Trade Agreement as an international agreement approved by Congress that eliminates duties and other restrictive regulations of commerce on substantially all the trade between the United States and one or more other countries.

No credit is allowed under the provision for vehicles which less than 100 percent of the value of the components contained in the battery were manufactured or assembled in North America.

No credit is allowed under the provision for vehicles placed in service after December 31, 2024 that contain critical minerals extracted or processed by a foreign entity of concern.

Sec. 304. Repeal of credit for previously owned clean vehicles.

The provision returns the credit for previously owned clean vehicles to its treatment prior to P.L. 117-169. Since it was created in P.L. 117-169, the provision repeals the credit. A transition rule is provided such that the changes in the provision will not apply to any vehicle acquired by a taxpayer pursuant to a binding contract prior to the date of introduction and placed in service within a year of the date of introduction.

Sec. 305. Repeal of credit for qualified commercial clean vehicles.

The provision returns the credit for qualified commercial clean vehicles to its treatment prior to P.L. 117-169. Since it was created in P.L. 117-169, the provision repeals the credit. A transition rule is provided such that the changes in the provision will not apply to any vehicle acquired by a taxpayer pursuant to a binding contract prior to the date of introduction and placed in service within a year of the date of introduction.