The Real Estate Roundtable

Inflation Reduction Act of 2022 Fact Sheet

Revenue Provisions

August 17, 2022

After passing the Senate and House on August 7 and August 12, respectively, the Inflation Reduction Act of 2022 (IRA) was signed into law by President Biden on August 16, 2022. The law will be paid for through various provisions including adjustments to corporate taxes as well as a stock buyback excise tax. The real estate industry encouraged lawmakers to drop proposed changes to carried interest rules that were part of the initial agreement between Senators Joe Manchin (D-WV) and Chuck Schumer (D-NY). The tax increases on carried interest were not included in the final legislation. The changes would have slowed housing production, discouraged the capital needed to reimagine buildings to meet post-pandemic business needs, and hampered job creation while creating an additional unknown in an already challenging economic environment.

The Roundtable will continue advocating for tax policies that facilitate capital formation, reward risk-taking, and bolster productive private investment. Below is our summary of key IRA revenue-raising provisions.

Corporate Book-Income Alternative Minimum Tax

The bill creates a new 15% corporate alternative minimum tax that applies when minimum tax liability exceeds regular tax liability, applicable for tax years beginning after December 31, 2022. The minimum tax has a lower rate—15% compared to the 21% corp. tax rate—but a broader base that reflects public accounting rules (GAAP or IFRS) rather than tax accounting rules. The base begins with financial statement income (book income) and includes certain adjustments. The tax applies to corporations with average annual book income, over a 3-year period, exceeding $1 billion.

REITs, S Corps, and RICs are exempt from the tax. For purposes of determining if a corporation is covered by the tax, a corporation's book income is aggregated with the income of all persons treated as a single employer under sections 52(a) or 52(b). However, a Senate floor amendment offered by Senators John Thune (R-ND) and Kyrsten Sinema (D-AZ) modified the aggregation rules to clarify that section 212 activities for the production or collection of income do not constitute a trade or business activity that requires aggregation under section 52. This amendment restricts the need to aggregate distinct portfolio companies that are owned under a private equity or other fund structure.

Certain adjustments are made in measuring book income. Perhaps most importantly for real estate, tax depreciation deductions (e.g., accelerated depreciation and immediate expensing) are permitted for purposes of calculating book income. Book income is also reduced to reflect financial statement net operating loss carryovers.

The new minimum tax allows taxpayers to claim the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), and other section 38 business credits to the same extent as allowed under the regular corporate income tax, ensuring no negative impact to the low-income housing incentive. This provision permits financial institutions and other large taxpayers to continue investing in affordable housing without generating new minimum tax liability.

Pass-Through Active Loss Limitation

The bill extends for two years a limitation on the deductibility of active pass-through business losses against other income. While the tax code has restricted the ability of taxpayers to deduct passive losses against other income since the 1980s, the Tax Cuts and Jobs Act of 2017, for the first time, included new general limits on a taxpayer's ability to deduct losses from an active business activity against other income—e.g., wage and portfolio (investment) income. The limit applies to net, aggregate losses in excess of $250K for an individual and $500K for a married couple. The CARES Act of 2020 further tightened the active loss limitation by preventing losses from carrying over into a taxpayer's net operating loss that could be deducted in subsequent years. The bill extends the limitation (section 461(l)) for two years, through 2028. The extension of the active loss limitation was added on the Senate floor in an amendment offered by Sen. Mark Warner (D-VA) to replace another revenue provision that would have extended the limitation on the deductibility of state and local taxes by one year, through 2026.

Stock Buyback Excise Tax

The bill imposes a nondeductible 1% excise tax on the value of stock that is repurchased during the tax year by a publicly traded U.S. corporation or its affiliate. The excise tax does not apply to repurchases by a REIT or a RIC, or if the repurchase is part of a tax-free reorganization. The provision applies to repurchases of stock after December 31, 2022.