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The Impact on Tax Policy of the Inflation Reduction Act of 2022 and the EU Green Deal Industrial Plan

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The renewable energy initiatives ushered in by the Inflation Reduction Act of 2022 have transformed the U.S. renewable energy economy. Through a combination of grants, loans, tax credits, and incentives, the Inflation Reduction Act promises at least \$370 billion of investment and new mechanisms to monetize certain eligible credits that will accelerate private investment in renewable energy technology and create significant economic opportunities for U.S. workers and companies. But on the global stage, the Inflation Reduction Act is proving to be controversial, with claims that it discriminates against non-U.S. companies and threatens capital outflows from the European Union (EU) to the United States¹

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This article may be cited as Nicholas Mowbray, Alex Ruff, and Vraj Desai, *The Impact on Tax Policy of the Inflation Reduction Act of 2022 and the EU Green Deal Industrial Plan*, 52 Tax Mgmt. Int'l J. (June 2, 2023).

¹ Sam Fleming and Andy Bounds, *Joe Biden's green subsidies*

The EU, partially in response to the IRA, released the Green Deal Industrial Plan (the Plan) on February 1, 2023.² The Plan is part of the European Green Deal, which was announced in 2019 and established a framework for the EU to become climate neutral by 2050 and lead the way forward globally in net-zero technology.³ There are good reasons to doubt, however, that the Plan will be able to match the Inflation Reduction Act and stem the flow of renewable energy industry capital and investment away from the EU and into the United States. Chief among those reasons are the divisions inherent in the EU itself, with some nations willing to match the Inflation Reduction Act through their own incentives but others lacking the capacity or political will to fund such incentives. The EU could make up for this member state variation through EU-wide spending/incentives, but the Plan does not constitute an EU-wide plan similar to the IRA. Accordingly, it is unclear whether the Plan on its own will effectively counter the capital outflows from Europe and into the United States stemming from the Inflation Reduction Act.

Further complicating the impact of the Inflation Reduction Act is the interplay between the credits offered under the Inflation Reduction Act and the Organisation of Economic Cooperation and Development (OECD) Pillar 2 Global Anti-Base Erosion (GloBE) rules. While not yet definitively addressed,

may backfire, warns EU commissioner, Fin. Times (Dec. 30, 2022).

² *U.S. energy secretary offers olive branch to EU in green subsidies row*, Fin. Times (Mar. 10, 2023). See also European Commission, Communication From The Commission To The European Parliament, The European Council, The European Economic And Social Committee And The Committee Of The Regions, *A Green Deal Industrial Plan for the Net-Zero Age* (Feb. 1, 2023) (referred to herein as the “Green Deal Industrial Plan”).

³ See Paola Tamma, Eline Schaart, and Anca Gurzu, *Europe's Green Deal plan unveiled*, Politico (Dec. 11, 2019); Simon Frédéric, *EU Commission unveils 'European Green Deal': The key points*, Euractiv (Dec. 12, 2019).

there are growing concerns that the GloBE rules will treat the renewable credits provided by the Inflation Reduction Act as nonqualified refundable tax credits. The result is that, to the extent an EU-parented U.S. subsidiary's effective tax rate falls below 15% due to renewable energy credits provided by the IRA, a portion of the tax benefit could be lost to taxation by the EU parent company's country of residency. Accordingly, depending on how U.S. renewable energy credits are treated under the OECD Pillar 2 GloBE rules and their adoption by EU member states, there is a risk that the incentives provided by the Inflation Reduction Act will be reduced and that the EU may benefit through additional, top-up taxing rights.

In short, much remains to be clarified in the interaction between the Inflation Reduction Act and the GloBE rules. Furthermore, much remains to be determined with respect to the scope and effectiveness of the Plan and the wider European Green Deal. This article seeks to explain at a high level the likely impact and scope of the Inflation Reduction Act and to describe several of its most influential credit provisions. In addition, this article attempts to discuss the Plan and the OECD Pillar 2 rules and also to highlight the areas of ambiguity that will need to be resolved.

MADE IN AMERICA REDUX

Shortly after signing the Inflation Reduction Act into law, the Biden administration announced that its purpose was “to build a new clean energy economy, powered by American innovators, American workers, and American manufacturers, that will create good-paying union jobs and cut the pollution that is fueling the climate crisis.”⁴ The Inflation Reduction Act achieves this goal through financing the development of renewable energy technology through loans, grants, and tax credits that incentivize companies to manufacture and develop renewable energy technology in the United States. These incentives can be broken down into two groups. The first group consists of incentives directed at financing and expediting the deployment of renewable energy. The second group consists of incentives that provide significant grants, loans, and tax credits for domestic manufacturers that onshore the production of equipment and components related to renewable energy. These incentives are primarily in the form of tax credits, and they provide multipliers to the base credit amount and bonus credits when certain wage and apprenticeship requirements are met and the equipment and components are produced in the United States.

⁴ *Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action* (Jan. 2023).

FINANCING AND EXPEDITING RENEWABLE ENERGY TECHNOLOGY —INVESTMENT TAX CREDITS

The incentives directed at financing and expediting renewable energy technologies consist of a mix of credits. The credit with the greatest impact on financing activities is the investment tax credit, which predated but was modified by the Inflation Reduction Act. Thus, it is not a new credit, but several changes made to it by the Inflation Reduction Act are novel. These novel changes include the ability to increase by a multiple of five the investment tax credit, from the base level of 6% of the basis of the energy property placed in service if the project satisfies the prevailing wage and registered apprenticeship requirements. In addition, the credit can be increased by 10% if the project satisfies a domestic content requirement for steel, iron, and manufactured products that are part of the facility. The credit can be increased by another 10% if the related project is located in an energy community.

The recipients of this credit can also elect to transfer the credit to third parties one time in exchange for cash or, in the case of certain tax-exempt entities, choose to receive a “direct pay” cash payment of their credit in the form of a tax refund. Both elections are new concepts that provide alternative ways to monetize renewable energy tax credits, and thus they provide a new mechanism for financing renewable energy projects going forward. The investment tax credit applies to facilities that begin production before January 1, 2025.⁵

Given the emphasis that the investment tax credit places on domestic investment, sourcing, and workforces, it seems obvious that many of the modifications to the investment tax credit are intended to incentivize the creation of high-paying American jobs and the production of renewable energy industrial components and equipment in the United States. The new one-time transfer and the direct pay election provide new financing options to sponsors of renewable energy projects that further incentivize U.S. renewable energy investment. Unfortunately, there are still a number of open and unanswered questions relating to many of these new concepts, including but not limited to what a taxpayer needs to do in order for a transfer of investment credits for cash to be recognized as within the scope of the Inflation Reduction Act and when a taxpayer that makes a direct pay election will receive the direct payment from the government. It is anticipated, however, that the Internal Revenue Service (IRS) and the U.S. Department of the

⁵ The investment tax credit will be replaced by a clean electricity investment tax credit starting in 2025.

Treasury will eventually provide guidance that answers these questions in the coming months. Notwithstanding these open points, the United States is already experiencing what can be described as a transformational change as a result of the Inflation Reduction Act and its renewable energy credits. As this article went to press, it was reported that since the enactment of the IRA, companies had committed approximately \$204 billion in capital to large-scale projects to boost U.S. renewable energy production.⁶

MANUFACTURERS — OVERVIEW OF INCENTIVES

Two of the main incentives directed to manufacturers are tax credits for the production of certain components and tax credits or grants for the construction of a facility. These tax credits are known as the advanced manufacturing credit and the advanced energy project credit.⁷

The advanced manufacturing credit is a new production-based tax credit for domestic manufacturers of certain eligible components of solar and wind energy systems, inverters, battery components, and domestic producers of critical minerals. The credit is available when a manufacturer domestically produces these items and sells them to an unrelated person. The amount of the credit varies depending on the eligible component being produced. For example, the credit for a torque tube is equal to \$0.87 per kilogram, while the credit for a battery cell is equal to \$35 multiplied by the capacity of the battery. Recipients of the advanced manufacturing credit may elect to transfer the credits in exchange for cash or to receive a direct pay cash payment in the form of a tax refund. The credits for critical minerals are permanent, while the credits for components are available between 2023 and 2029, with a phaseout between 2030 and 2032.

The advanced energy project credit is a credit for investments in advanced energy projects. The credit requires the filing of an application with the IRS and the Department of the Treasury. Projects that reequip, expand, or establish an industrial or manufacturing facility that produces or recycles green energy equipment and vehicles or that process, refine, or recycle critical minerals are eligible. The Inflation Reduction Act allocated \$10 billion for the credit, which is administered by the IRS and the Department of Energy

through a process that entails the submission of an application and a concept paper that will be evaluated by the Department of Energy. The first round of the program begins on May 31, 2023, with applications and concept papers due by July 31, 2023. The base rate of the credit is 6% of the qualified property's basis. Similar to the investment tax credits, the base credit amount of the advanced energy project credit is increased by a multiple of five if the prevailing wage and apprenticeship requirements are satisfied. Accordingly, it appears that a common thread through both the investment credit on the one hand and the advanced energy project credit on the other is that they are meant to foster the creation of high-paying, U.S.-based jobs. Certain tax-exempt organizations may elect to receive the advanced energy project credit through a direct payment (refund) of cash. The credit can also be transferred one time to third parties in exchange for cash. A taxpayer that claims the advanced energy project credit for a facility cannot also claim an advanced manufacturing credit for property produced at the same facility.

STATE-MADE AND STATE AID IN THE EU

The EU first announced the European Green Deal in 2019. As mentioned above, the European Green Deal was originally intended to transform the EU into a modern, resource-efficient, and competitive economy that would achieve zero emissions of greenhouse gases by 2050 and economic growth decoupled from resource use. It eventually evolved into an economic investment/stimulus plan to address the economic toll of the COVID-19 pandemic on the economies of the member states of the EU. Since 2019, the European Commission has adopted proposals, such as the Green Deal Industrial Plan, that advance the goals set forth in the European Green Deal.

The Plan seeks to increase the technological development, production, and installation of net-zero products and energy supplies within the member states of the EU. It also serves, in part, as a response to the EU's historical reliance on Russian fossil fuels, which the EU is attempting to break in light of Russia's invasion of Ukraine. The Plan has four pillars: (1) a predictable and simplified regulatory environment, (2) faster access to sufficient funding, (3) skills, and (4) open trade for resilient supply chains. A discussion of any one of these pillars could fill a series of articles, so for brevity's sake, this article will focus on the second pillar, which is the most analogous to the tax credit incentives provided by the IRA.

The second pillar attempts to address the strong pressures that the EU is currently facing as a result of generous subsidies offered by non-EU nations for the

⁶ Amanda Chu and Oliver Roeder, *Transformational change: Biden's industrial policy begins to bear fruit*, Fin. Times, (Apr. 17, 2023).

⁷ The IRA also features loan programs that seek to guarantee loans for projects related to energy infrastructure and appropriations under the Defense Production Act to accelerate the production of green energy technology.

development and enhancement of renewable energy technology.⁸ The Plan's discussion of the funding pillar cites already existing, EU-wide funding as partially addressing this gap, citing in particular the 27 national recovery and resilience plans organized under the "NextGenerationEU" plan funded by the Recovery and Resilience Facility, which makes available €250 billion for green measures, including investments supporting the decarbonization of industry, and the Horizon Europe funding plan, which dedicates €40 billion to Green Deal research and innovation.⁹ The Plan also states that the EU's cohesion policies (i.e., the investment policies in place to support job creation and competitiveness throughout the EU) make around €100 billion available for the green transition.¹⁰ The Plan notes, though, that the EU-wide funding currently available is focused on research and innovation and deployment of renewable energy and related infrastructures, akin to the IRA's production- and investment-focused credits, rather than attempting to directly stimulate manufacturing capacity of green energy technology.¹¹

The second pillar of the Plan notably calls for the enhancement of EU member state funding of renewable technology development, in addition to the currently available EU-wide support for research and development and renewable energy infrastructure, to catch up with other players in the space, such as the United States and China.¹² This call runs contrary, however, to other EU policies that prevent state aid. These prohibitions on state aid have historically served to preserve the integrity of the EU's single market by prohibiting member states from offering advantages to their own citizens and corporations through tax policies that exclude the citizens and corporations of other member states. Notwithstanding that contradiction, the second pillar of the Plan calls for the EU Commission to allow flexibility to member states and temporary relief of state aid restrictions in the hope that member states will be able to counter

the IRA's effect by adopting domestic policies that will enhance investment and support schemes for the production of renewable energy technology.¹³ Specifically, European Commission rules announced on March 6, 2023, state that it would permit member states to at least match the aid offered under the IRA.¹⁴

In addition to the proposed rule changes for state aid and the already existing EU-wide support for renewable energy projects, the second pillar of the Plan also calls for additional funding from the EU to avoid a fragmentation of the EU single market due to disparities among the EU member states.¹⁵ Thus, member states that may not otherwise be able to provide domestic support through tax credits or subsidies will have a source of EU funding that they can draw on to offer incentives to companies that want to develop renewable energy technology in their country. This funding is proposed to take form in one of several methods. First is tax breaks or other means of support for green net-zero technology investments undertaken by businesses, taking the form of either a tax credit, accelerated depreciation, or a subsidy linked to the acquisition or improvement of green investment assets.¹⁶ Second is the offering of loans and public-private partnerships to directly finance investments.¹⁷ Third and finally, it is proposed that approximately €40 billion be set aside under an "Innovation Fund" that will support the development and first-of-a-kind deployment of technologies and solutions that decarbonize energy-intensive industries; boost renewable energy and energy storage, including batteries and hydrogen; and strengthen net-zero supply chains by supporting the manufacturing of critical components for batteries, wind and solar energy, electrolyzers, fuel cells, and heat pumps.¹⁸

STATUS OF INDIVIDUAL MEMBER STATES

As of the date of this writing, it is not clear what the final form of support the EU member states will pass to counter the IRA. It is also not clear whether every EU member state will have the financial resources or political will to offer tax credits or subsidies absent support from the EU or an EU-wide funding strategy. There is currently, by the European Commission's own admission, a wide discrepancy in state

⁸ See the *Green Deal Industrial Plan*, p. 2. Important examples of subsidies provided by non-EU nations specifically cited within the Plan include the United States, IRA, India's Production Linked Incentive Scheme, Japan's green transition bonds, China's state support for its green energy industry, and broadly referenced UK and Canadian investment plans. Note that Chinese state support for renewable energy technology is particularly generous with China's investments in renewable energy technology, making up approximately half of the world's low-carbon spending in 2022. See Sara Schonhardt, *China Invests \$546 Billion in Clean Energy, Far Surpassing the U.S.*, *Scientific America* (Jan. 30, 2023).

⁹ See the *Green Deal Industrial Plan*, p. 7.

¹⁰ *Id.*, pp. 7-8.

¹¹ *Id.*

¹² *Id.*, p. 8.

¹³ *Id.*, pp. 8-10.

¹⁴ Reuters, Foo Yun Chee, *EU companies can get as much in EU aid as U.S. subsidies under looser rules* (Mar. 9, 2023).

¹⁵ *Id.*, p. 10.

¹⁶ *Id.*, pp. 10-11.

¹⁷ *Id.*, pp. 10-14.

¹⁸ *Id.*, pp. 12-13.

support for renewables, so there is some ground to cover before a uniform EU response akin to the Inflation Reduction Act or other vehicles of state support for renewables will come into being.¹⁹ Two examples of states within the EU that have or are considering enacting significant subsidies for their domestic renewable energy industries are Germany and France.

Shortly after the announcement of the Plan, senior German government officials proposed tax credits similar to those introduced under the Inflation Reduction Act to boost Germany's transition away from both fossil fuels and its dependency on China for the key components that are needed for renewable energy production.²⁰ Specifically, the Economic Ministry of Germany announced a new instrument that would match subsidies and tax credits from the United States.²¹ This effort comes on the heels of substantial public spending projects already undertaken by Germany. As a result of spending related to the COVID-19 pandemic, Germany had already suspended its constitutionally required limit on net new borrowing in 2020. In addition, Germany has already spent €200 billion to assist businesses and households with rising energy costs caused by the war in Ukraine, and it recently announced plans to subsidize up to 80% of the electricity cost for energy-intensive companies, which would cost between €25 billion and €30 billion per year.²² Taken together, this substantial public spending suggests that there are significant questions (and concerns) about how Europe's largest economy will fund its proposed new green energy credits.

France has also made attempts to move forward with legislation enacting new green energy credits.²³ So far, though, this has only resulted in proposals for tax credits and subsidies that target manufacturers of batteries, critical metals, heat pumps, next-generation nuclear plants, photovoltaic and wind generators, and

carbon capture and storage technologies.²⁴ The proposals will be the subject of a public consultation before any legislation is introduced. France's attempts are therefore still in the preliminary stages, with considerable work remaining, including how to pay for the credits.

While neither France's nor Germany's policies can be used to definitively forecast policy to be adopted by the rest of the EU member states, they are bellwethers given that they are the two largest EU members in terms of gross domestic product (GDP). Therefore, the significant differences in their enacted renewable energy subsidization policies — given that Germany has already taken steps to match the IRA, while France is still considering its policy — demonstrate that there is still considerable uncertainty about how EU member states will carry forward the second pillar of the Plan.

GLOBAL MINIMUM TAX — OECD'S PILLAR 2 INITIATIVE

Despite the obvious benefit provided to investors, manufacturers, and producers of renewable energy technology, there remains significant uncertainty about how the credits will be treated under the global minimum tax rules introduced by the OECD in 2021. The GloBE rules operate by introducing a 15% global minimum corporate tax for corporations with gross receipts above €750 million. The purpose of the GloBE rules is to ensure that all corporation profits of large multinational enterprises are subject to a minimum level of taxation regardless of how the taxes are allocated among the members' multinational enterprises. As such, the GloBE rules impact the corporate tax incentives offered by countries, including the tax credits offered under the IRA.

One of the ways that the GloBE's minimum tax will be achieved is through an income inclusion rule under domestic law that requires the ultimate parent of the multinational group to pay a top-up tax on its proportionate share of the income of any low-taxed constituent entity (i.e., a subsidiary) in which it has a direct or indirect ownership interest. The top-up tax operates by analyzing whether the income of the constituent entity was subject to tax at an effective tax rate below 15%. The rule is applied in the jurisdiction of the ultimate parent or an intermediate parent entity. Thus, constituent entities in a jurisdiction that have effective tax rates below 15% are identified and subject to a top-up tax in the ultimate parent entity's or intermediate parent entity's jurisdiction regardless of whether the jurisdiction of the relevant undertaxed constituent entity enacted the GloBE rules.

¹⁹ *Id.*, p. 10. The Green Deal Industrial Plan specifically notes that “[i]mportant disparities exist within the EU in terms of support by Member States. For example, while in 2020, 0.57% of EU GDP was allocated to support renewable energy sources, one country allocated almost 1% of its GDP and ten others spent less than half the EU average.”

²⁰ *Germany eyes tax credits for renewable energy companies* AP News (Feb. 21, 2023).

²¹ *Germany Wants Tax Credits for Green Energy to Counter US IRA*, Energy Connects (Feb. 21, 2023).

²² *Germany's Debt Dilemma Tempts Financial Chief Into Bending Rules*, The Start Magazine (Jan. 16, 2023); Laura Pitel and Guy Chazan, *Germany eyes energy aid for industry*, Fin. Times (May 5, 2023).

²³ *French lawmakers propose tax credits, subsidies for green industry*, Reuters (Apr. 3, 2023).

²⁴ *Id.*

The GloBE rules are applied by first calculating the effective tax rate for each jurisdiction in which the multinational entity operates. To do so, the multinational entity first must determine the income or loss of the constituent entity, with adjustments (positive or negative) for permanent and temporary differences between financial and tax accounting rules. From this calculation, the GloBE tax base is determined. Next, the amount of taxes that are attributable to the income or loss is determined by calculating, based on taxes paid, the adjusted covered taxes. The effective tax rate is then calculated by dividing the sum of the adjusted covered taxes by the net GloBE income of that jurisdiction. If the effective tax rate is below 15%, the jurisdiction is a low-tax jurisdiction and a top-up tax percentage must be calculated. The top-up tax can thus operate to reduce tax incentives provided in a constituent entity's jurisdiction unless the tax incentives result in an adjustment of net GloBE income or adjusted covered taxes.

Under the GloBE model rules, certain “qualified refundable tax credits” are treated as income in the computation of GloBE income or loss and an increase in covered taxes of a constituent entity, and therefore, they do not adversely impact the calculation of a constituent entity's effective tax rate. Nonqualified refundable tax credits are treated as a reduction of tax expense, therefore driving down a constituent entity's effective tax rate.²⁵ A qualified refundable credit is defined as a tax credit that must be paid as cash or available as cash within four years of when a constituent entity satisfies the conditions for receiving the credits under the laws of the jurisdiction granting the credit. In contrast, a nonqualified refundable tax credit is any tax credit for which there is no certainty that the credit will be paid as cash within four years of satisfying the conditions of the credit. Based on these definitions, credits under the Inflation Reduction Act that are received through direct-pay elections or through traditional tax equity structures would appear to qualify as qualified refundable tax credits. Nevertheless, the OECD stopped short of stating this when, on February 1, 2023, it introduced additional interpretative guidance regarding Pillar 2 and its interplay with tax credits.²⁶

This additional guidance discusses specific tax credits such as the U.S. low-income housing credit, labeling such credits “qualified flow-through tax ben-

efits.”²⁷ However, the additional guidance fails to address whether credits under the Inflation Reduction Act qualify as qualified refundable credits or also as qualified flow-through tax benefits, or if a direct pay or one-time transfer election disqualify credits under the Inflation Reduction Act from constituting a qualified flow-through tax benefit. Further, according to the guidance, the rule only applies (1) when, at the time of the investment, the investor's expected return on investment interest would not be positive in the absence of the expected nonrefundable credits, and (2) to the extent the qualified flow-through tax benefits constitute a return of all or part of the investor's investment.²⁸ Thus, there is significant uncertainty regarding whether credits under the Inflation Reduction Act will receive the same beneficial treatment as qualified flow-through tax benefits or qualified refundable tax credits or, instead, the detrimental treatment of unqualified refundable tax credits. If credits under the Inflation Reduction Act are treated in an unfavorable way by a jurisdiction and the applicable U.S. constituent entity's effective tax rate is reduced below 15%, at least a portion, if not all, of the benefits resulting from the Inflation Reduction Act credits will disappear as the result of a foreign country's adoption of a top-up tax.²⁹

EU'S ADOPTION OF PILLAR 2

On December 12, 2022, the EU reached an agreement to implement the GloBE rules.³⁰ Under the EU's legislative instrument, rules similar to the GloBE rules with respect to qualified refundable tax credits and nonqualified refundable tax credits were adopted.³¹ There is significant uncertainty regarding how EU member states will ultimately enact the GloBE rules, with the possibility remaining that they will treat credits under the Inflation Reduction Act as nonqualified refundable tax credits that could, in certain situations, result in a transfer of taxable income from the jurisdiction of the United States to European member states. While such a scenario seems unlikely,

²⁷ *Id.*, §2.9.1, §11. Such qualified flow-through tax benefits are allowed as an increase to adjusted covered taxes.

²⁸ See *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, §2.9.1 (11).

²⁹ See Aime Williams and Stephen Foley, *Global minimum tax could eat up US green subsidies, say companies*, Fin. Times (Mar. 6, 2023).

³⁰ <<https://data.consilium.europa.eu/doc/document/ST-15349-2022-COR-1/en/pdf>>.

³¹ *Council of the European Union, Interinstitutional File: 2021/0433(CNS)*, Articles 16(5) and 21(2) (noting that qualified refundable taxes are treated as increases to income and increases to covered taxes).

²⁵ See OECD, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules: Inclusive Framework*, Section 3.2.4.

²⁶ *Tax Challenges Arising from the Digitalisation of the Economy – Administrative Guidance on the Global Anti-Base Erosion Model Rules (Pillar Two)*, OECD (2023).

it cannot be ruled out, given the outflows of capital and investment from EU member states as a result of the IRA.

RESPONSE BY THE UNITED STATES

Further complicating the interaction between the Inflation Reduction Act and the EU is that, on May 25, 2023, H.R. 3665, the Defending American Jobs and Investment Act (DAJIA) was introduced in the U.S. House of Representatives Ways and Means Committee by Republican Party members.³² The purpose of the DAJIA is to dissuade countries from adopting and implementing “extraterritorial taxes and discriminatory taxes” such as the OECD Pillar 2 taxes affecting U.S. entities by implementing an additional 5% tax on the U.S. income of investors and corporations in countries that have adopted OECD Pillar 2 top-up taxes affecting U.S. corporations.³² That 5% would be increased annually by an additional 5% per year until reaching 20% if the nation does not withdraw its extraterritorial or discriminatory taxes impacting U.S. corporations. The additional taxes would be withdrawn when the offending country withdraws its top-up tax provisions. If the United States were to implement retaliatory taxes on countries that adopt OECD Pillar 2 top-up taxes affecting U.S. corporations, U.S. subsidiaries of EU nations that adopt such top-up taxes may find themselves paying additional taxes in both the United States and the EU, more than

³² See Committee on Ways and Means, *Ways and Means Republicans Introduce Bill to Combat Biden’s Global Tax Surrender*. See also Defending American Jobs and Investment Act, H.R. 3665, 118th Cong. §1 (2023).

³² The statutory text does not specify the kinds of taxes that would be in scope, but the release accompanying H.R. 3665 references the undertaxed profit rule that is part of Pillar 2.

completely negating any benefit to those entities from the Inflation Reduction Act. Therefore, while the likelihood of passing the DAJIA is currently limited, the potential passage of the DAJIA through the U.S. House of Representatives could play a role in how countries approach their implementations of OECD Pillar 2 and whether the OECD will accord beneficial treatment to the credits provided for under the Inflation Reduction Act.

CONCLUSION

The potential impact on the U.S. renewable energy industry of the renewable energy incentives provided under the Inflation Reduction Act and the potential impact on the EU renewable energy industry of the Green Deal Industrial Plan cannot be understated. However, without careful planning and cooperation between countries, much of the value to U.S. entities from the renewable tax credits introduced by the Inflation Reduction Act may be wiped out due to the GloBE rules. This result could discourage capital outflow from the EU into the U.S. renewable energy industry, but it would not necessarily further the growth of the EU’s own renewable energy industry. Furthermore, without cooperation and the exercise of political will within the EU to enact incentives for investment in its own renewable energy industry, similar to those enacted in the United States or other nations, the EU renewable energy industry may not be able to support the EU’s ambitious climate goals or even compete on a global scale. To facilitate the growth of the nascent renewable energy industry and to prevent wasteful competition, tax and political authorities and elected officials worldwide should agree to come together to enable, not hinder, the ambitious and transformative renewable energy goals of their respective government.