[USA]

- 주요 미국 진출 한국기업이 알아야 할 Top 7 세무 포인트
- IRA 시행 1년 이후의 동향과 전망
- 자체 최저한세(CAMT)를 시행 중인 미국과 글로벌 최저한세
- 패널토론

09:30 ~ 11:00 (90분)

최원일 (Brian) Partner, KPMG USA
김상훈 (Shawn) Managing Director, KPMG USA
Wang, David Managing Director, KPMG USA
구동근 (Alex) Partner, KPMG USA
김진관 Managing Director, KPMG USA

US Investment/Tax Seminar

November 6, 2023
GKP Conference in Seoul

Unlocking our power

Agenda

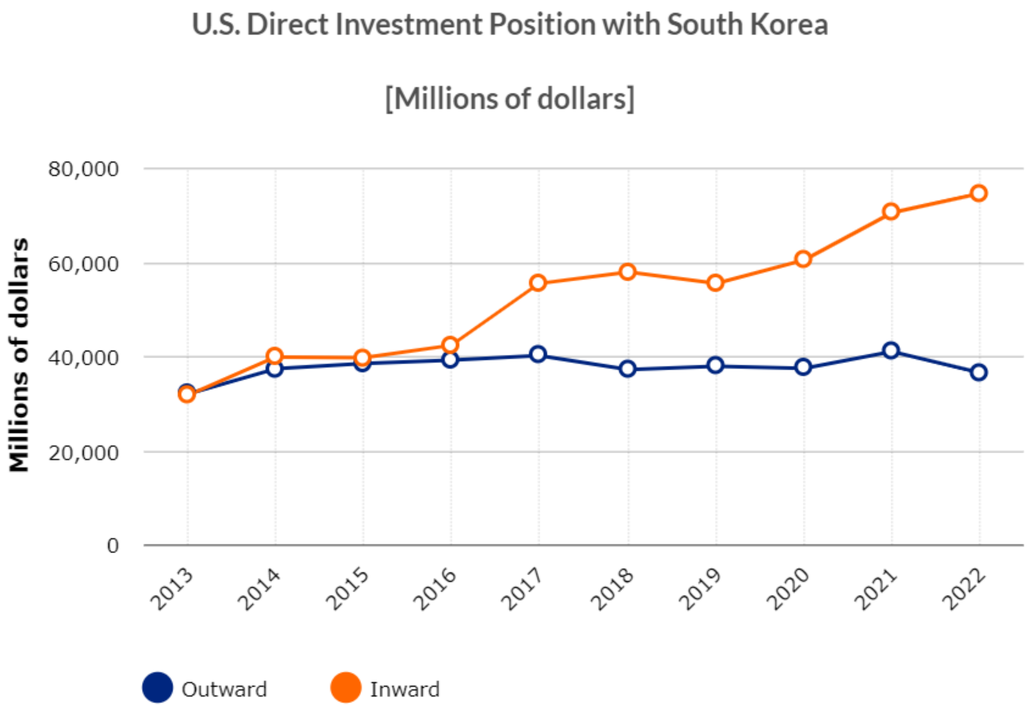
Top 7 Things You want to know

in launching new business in the US

Speakers:
David Wang - Managing Director, KPMG US – Los Angeles
Shawn Kim - Managing Director, KPMG US – New York

1. US activities and PE

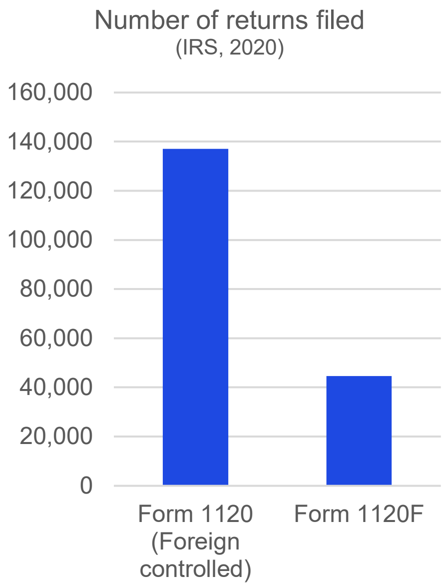
- ❖ **Determination of scope of business operation and activities in U.S.**
- ❖ **Understanding of creating permanent establishment (PE)**
  - ✓ Fixed Place of Business
  - ✓ Preparatory and auxiliary safe harbor exceptions
  - ✓ Agency PE

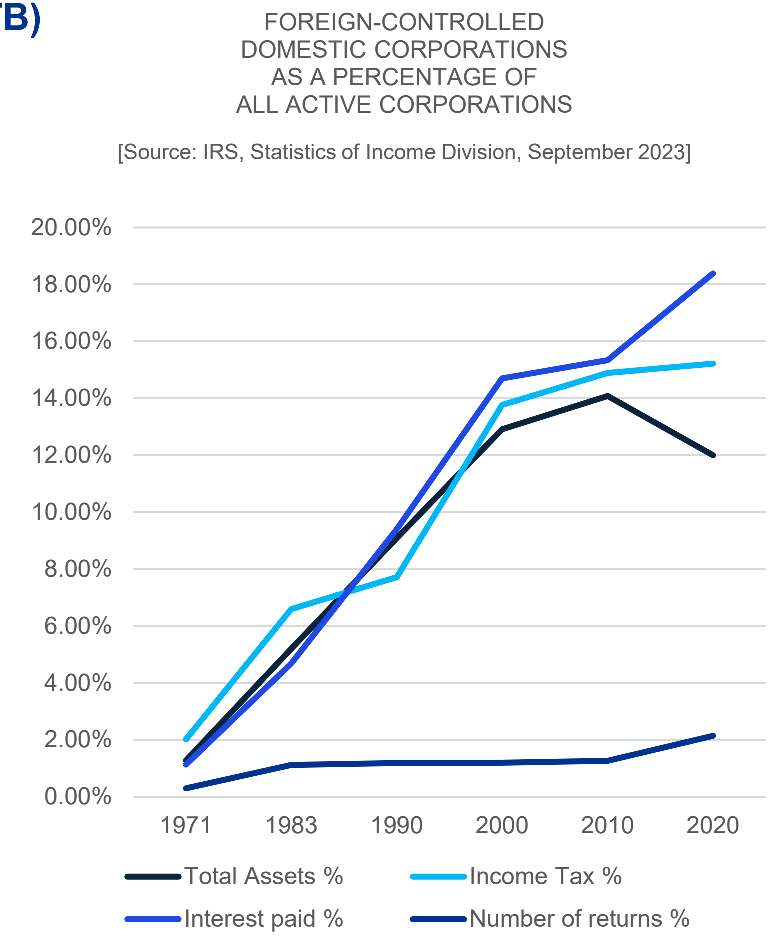


U.S. Bureau of Economic Analysis

2. Branch vs. US business entity

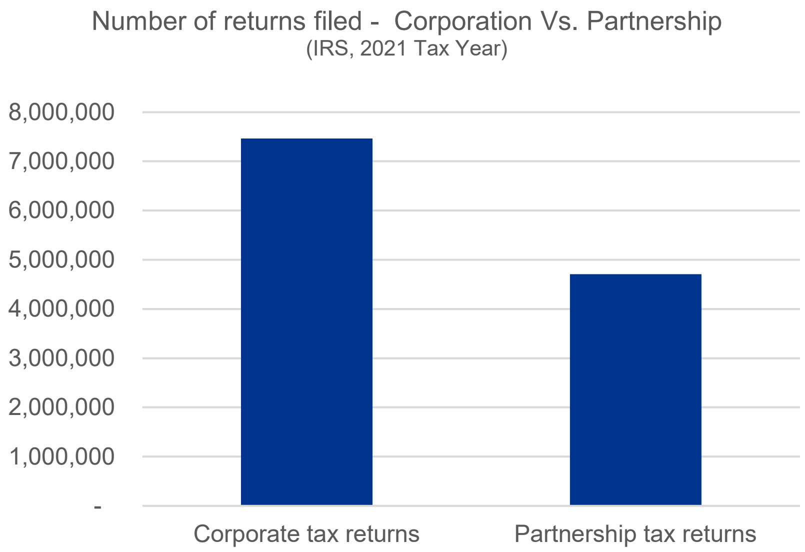
- **U.S. tax rules for a foreign entity engaged in a U.S. Trade or business (USTB)**
  - ✓ Effectively connected income (ECI)
- **Compliance issues for foreign corporations engaged in a USTB**
  - ✓ Form 1120-F, U.S. Income Tax Return of a Foreign Corporation

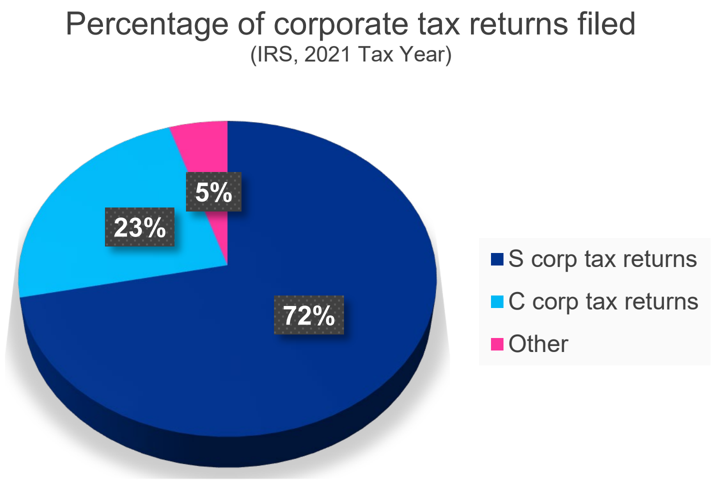




3. Establishing a U.S. business entity

- **Choice of business entity and general structure of U.S. tax system**
  - Corporation
  - Pass-through entities (S Corp, Partnership, LLC, etc)
- **Elections to change the U.S. Tax treatment of a business entity** (Check-the-box rule)

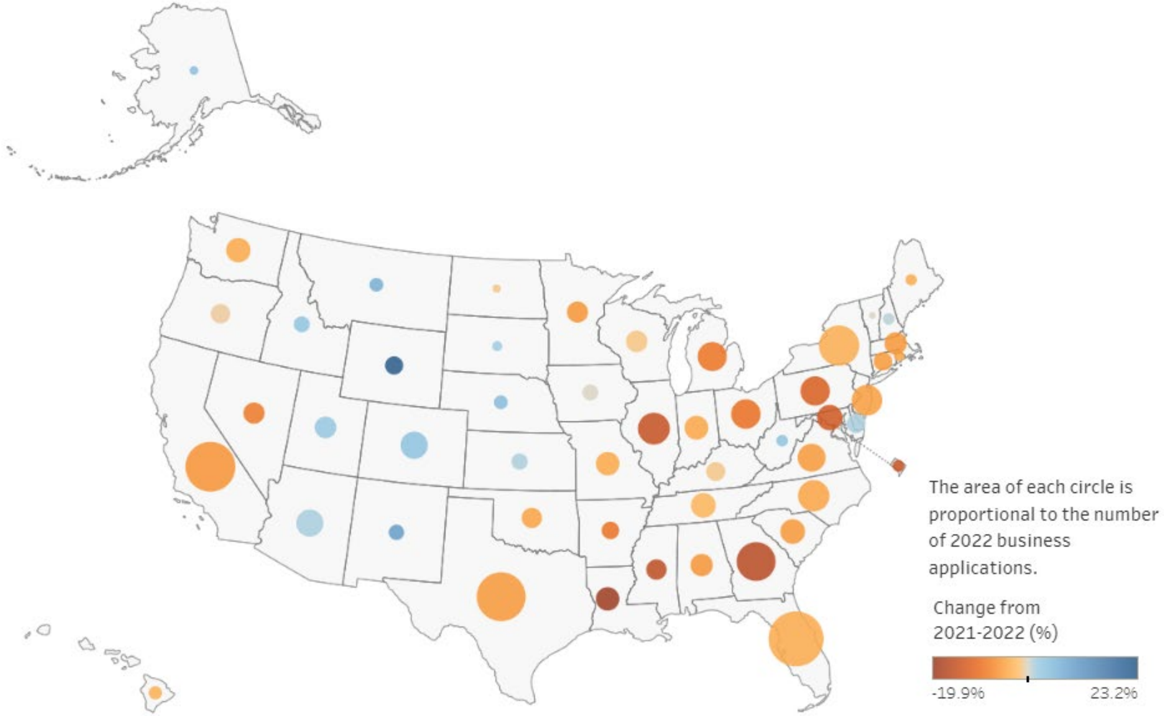




4. Location of a business entity and State Tax

Annual Business Application by State

- Site selection
- State Nexus and state-level income and franchises taxes
- Apportionment
- Sales & Use Tax



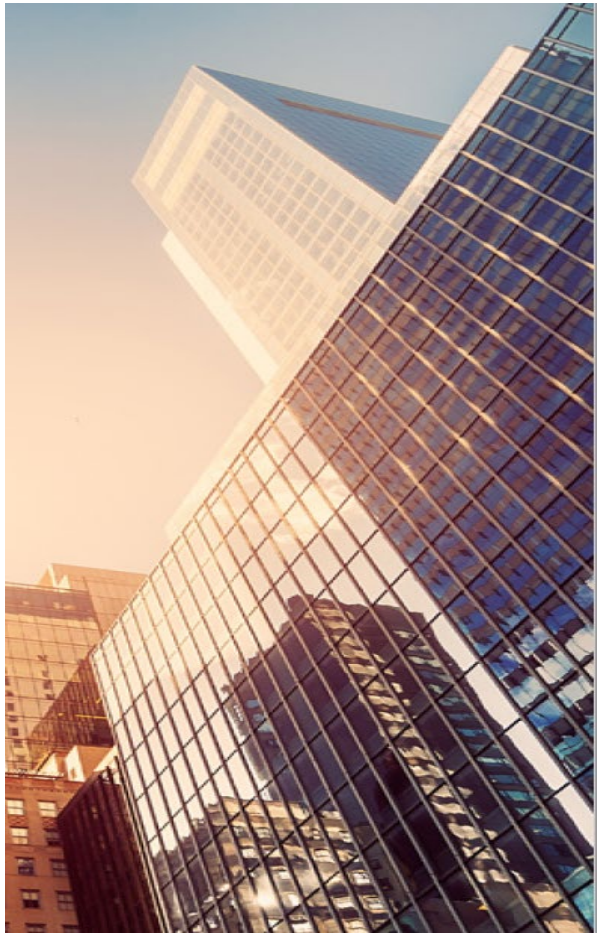
United States Census Bureau, June 2023

5. Employees vs. Expats

- Taxation of U.S. Residents or citizens
- Taxation of non-U.S. Individuals.
- Payroll taxes
- Withholding tax issues

6. U.S. Transfer Pricing Consideration-1

- **Related parties**
- **Arm's-length standard**
- **Transfer pricing methods**
- **Transfer pricing adjustment & penalty**
- **Transfer pricing documentation**



7. U.S. Transfer Pricing Consideration-2

- **Profits attributable to PE**
- **Total costs / allocation of costs / pass-through costs**
- **Intercompany loan / loan guarantee**
- **Purchase of products for resale**
- **Manufacturing**

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IRA Tax Credits – At Year 1

Speaker:
Brian Choi - Partner, KPMG US – New York

IRA: Corporate tax credit extensions/modifications

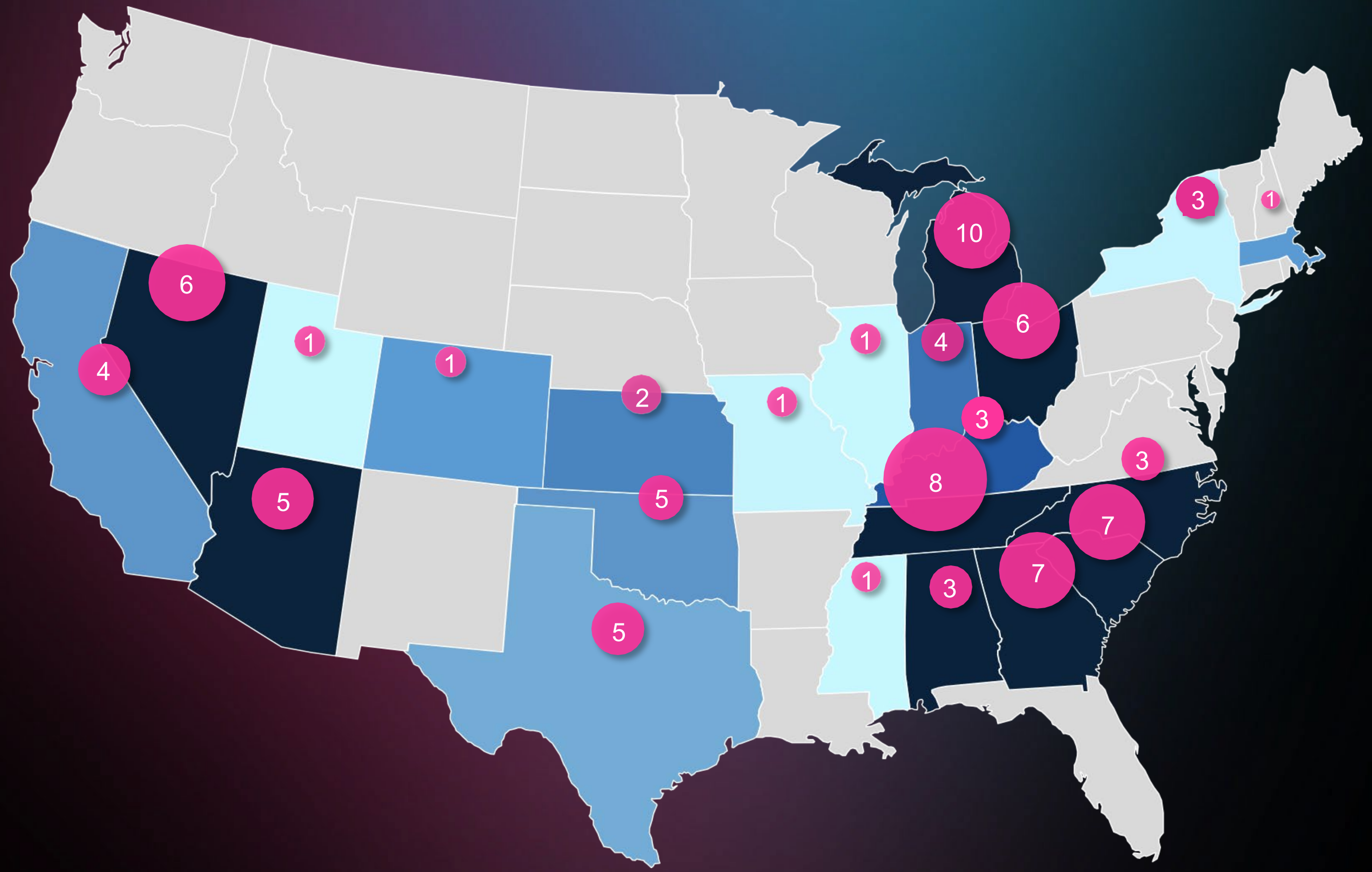
Renewable energy	Advanced manufacturing	Transportation	Alternative fuels	Carbon capture
§ 45 Production tax credit and § 48 Investment tax credit (wind, solar, geothermal, etc.) § 179D Energy efficient commercial buildings deduction	§ 48C Credit for manufacturing energy property (EV components, fuel cells, electric grids, etc.)	§ 30D Clean vehicle credit § 30C Credit for EV charging stations	§ 40 Second-generation biofuel credit § 40A and § 6426 Biodiesel and renewable diesel; biodiesel mixture credit; alternative fuel credit	§ 45Q Credit for carbon oxide sequestration (increased rates)
Producer or property investor	**Property investor**	**Property investor**	**Producer**	**Property investor**

IRA: Corporate new tax credits

Renewable energy	Advanced manufacturing	Transportation	Alternative fuels
§ 45U Zero-emission nuclear power production credit § 45Y and 48E Technology neutral clean electricity production and investment tax credits	§ 45X Advanced manufacturing production credit for solar & wind components, batteries, and critical minerals	§ 45W Qualified commercial clean vehicles § 25E Previously owned clean vehicle credit	§ 40B Sustainable aviation fuel § 45V Clean hydrogen production credit § 45Z Clean fuel production tax credit
Producer or property investor	**Producer**	**Property investor**	**Producer**

The US is a powerhouse in EV investment with the IRA (e.g.45X Tax Credit)

KPMG US EV INVESTMENT MAP AS OF MAY 2023



Total Number of locations	96+
Investments in US ($) Billion: >8, >4.9, >1.6	177B+

IRA Tax Credits – At Year 1

EV Plant investments & partnerships by state

Alabama
Mercedes
Hyundai Motor Group (2)

Total Investment: $9.5 B

Arizona
Lucid Plant
KORE Power
LG Energy Solution
American Battery Factory
Ampcera

Total Investment: $10 B

California
Statevolt
Tesla
South 8 Technologies
Tyfast Energy

Total Investment: $4.0 B

Georgia
Hyundai + SK On
Anovion Technologies Hyundai + LG Energy Solution Rivian plant
Ford + SK On
Kia

Total Investment: $20.8 B

Illinois
Rivian plant

Total Investment: $1.0 B

Indiana
GM + LG Energy Solutions
Stellantis + Samsung SDI
Stellantis EV Plant

Total Investment: $5.3 B

Texas
Tesla + Expansion
Tesla Li refinery GM
: MP Materials
Cabot Corporation
Zeta Energy

Total Investment: $2.8 B

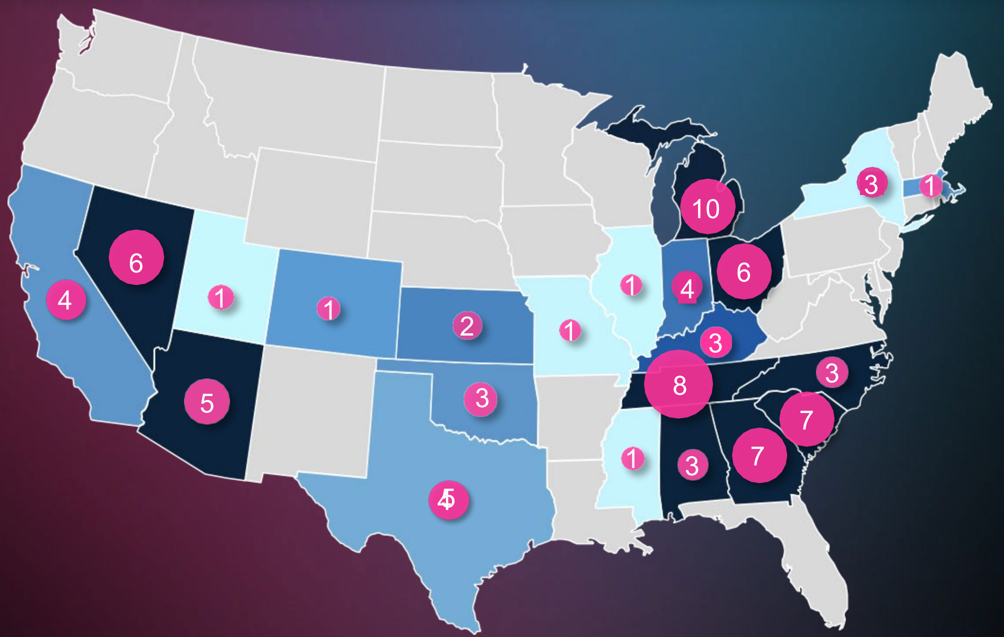
Tennessee
State Incentives

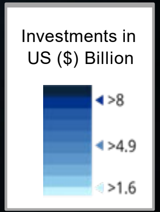
Ford + SK On
VW plant
GM plant
Denso
Nissan Plant
Envision AESC
Nissan [EV components]
GM + LG Energy Solution

Total Investment: $15.7B

South Carolina
BMW + Envision AESC
BMW plant
Redwood Materials Albemarle Corp.;BorgWarner Cirba Solutions
Scout Motors

Total Investment: $8.9 B





Kansas
Panasonic Energy
Tesla Plant

Total Investment: $4.0 B

Kentucky
Ford + SK On BMW
Envision AESC

Total Investment: $7.8 B

Michigan
GM + LG Energy Solutions
GM Plant
Our Next Energy (ONE)
Gotion High Tech
BorgWarner
Ford + CATL
Nel Hydrogen

Total Investment: $16.4 B

Oklahoma
Panasonic
Panasonic + Canoo
Tesla: Panasonic

Total Investment: $5.7 B

Ohio
Honda Motor + LG Energy Solution
GM + LG Energy Solution
Lordstown + Foxconn Ford Plant
GM

Total Investment: $13.9 B

North Carolina
Toyota + Panasonic
Toyota
Vinfast

Total Investment: $8.8 B

New York
Electrovaya
Imperium3NY
GM

Total Investment: $1.0 B

Nevada
Panasonic + Tesla
Tesla plant
GM: Lithium Americas Corp
Redwood Materials Rhyolite Ridge

Total Investment: $8.5 B

Missouri
Ford Plant

Total Investment: $1.0 B

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Section 48C credit program timing

2023

2/13
Notice 2023-18 issued with initial guidance

5/31
Notice 2023-44 issued with initial guidance

6/27 2pm ET
DOE/Treasury host virtual info. webinar

6/30 (not later)
DOE Exchange portal opens for registration and concept paper submission

7/31 (no later)
DOE posts final list of critical materials

7/31 (by 12pm ET)
Concept paper due

Fall 2023
DOE encouragement or discouragement notifications

2023/2024

Fall 2023 - TBD
48(e) full application due

TBD
DOE recommendations to IRS regarding acceptance or rejection of application and ranking

3/31/2024
IRS Allocation Decision Notification (Allocation or Denial letter)

Within 2 years from date of receiving Allocation letter (EST 3/31/2026)
Provide DOE evidence that requirements of certification are met

Within 2 years from date of receiving Certification letter (EST 3/31/2028
Provide DOE property place in service requirements

2024	2025	2026	2027	2028

March 31, 2024
IRS Allocation Decision Notification (Allocation letter or Denial letter)

Two years
(EST March 31, 2026) post acceptance by IRS
Taxpayer must prove certification criteria met

Four years
(EST March 31, 2026) post acceptance
Taxpayer prove placed In service deadline

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Section 48C credit Concept paper content requirements

Project Overview

At a minimum include:

- Company Overview
- Project Summary

Commercial Viability

At a minimum include:

- Project Plan
  - Timeline
  - Siting and Permitting
  - Risk Management Plan
- Business Plan
  - Financial Information
  - Market Information
  - Cost Information
- Management Plan
  - Key Team Members
  - Corporate Health Indictors

Greenhouse Gas Emission Impacts

At a minimum include:

- End Product Impacts
- Product Performance
- GHG Emissions from the Facility
  - Direct Emissions
  - Facility Performance
  - Mitigation Efforts

Strengthening U.S. Supply Chains and Domestic Manufacturing for Net-Zero Economy

At a minimum include:

- Facility Output
- Facility Inputs
- Supply Chain Resilience
- End-Use Applications

Workforce and Community Engagement

At a minimum include:

- Job Creation and Workforce Community
- Ensuring Timely Project Completion Through Workforce and Community Engagement
- Energy Community Transition
- Local Environmental Impacts

New tax credit requirements

Prevailing wage and apprenticeships

- Signficantly higher credit rates available for projects which satisfy certain wage and workforce requirements during the construction and operation of the projects
- Generally, projects that begin construction prior to 60 days after the date (November 30, 2022) that guidance on prevailing wages and apprenticeship requirements is issued are eligible for bonus rates even if they do not satisfy the prevailing wage and apprenticeship requirements
- Curing process

Domestic content

- Additional credits available in some cases if projects are constructed using domestically sourced steel and iron as well as manufatured products
- Effective for projects placed in service after 2022

New tax credit requirements (con't.)

Other targeted credit enhancements

- Additional credit amounts available in some cases for projects located in low-income communities, brownfield sites, and communities formerly reliant on coal and fossil fuel industries
- Effective for projects placed in service after 2022

New credit monetization options

Direct pay

- § 45Q Credit for carbon oxide sequestration
- § 45V Clean hydrogen production tax credit
- § 45X Advanced manufacturing production tax credit for solar & wind components, batteries, and critical minerals
- Tax-exempt entities, states, and political subdivisions thereof

Transferable

- Annual election
- Eligible credit sold to unrelated third party
- Transfer shall be required to be paid in cash
- Transfer shall not be includible in gross income of the transferor
- Amount paid by the transferee shall not be deductible
- Eligible credit can only be transferred once

The marketplace for IRA tax credits Is quickly evolving

The Inflation Reduction Act of 2022 (“IRA”) created a unique environment for tax credit transferability

What We See

- Numerous tax credit transfer opportunities with both buyers and sellers
- Due diligence, prevailing wage and apprenticeships, accounting treatment, structuring, etc.
- Active transfer marketplace market calls for market insight and knowledge
- KPMG, as an intermediary, is focused on delivering reputable, high-quality counterparties for the purchase and sale of tax credits

~$1 trillion+

Total tax credit needs (from 2023 to 2032)

Tax credit market is poised for a clear evolution post-IRA with participation from a wider array of players

New credit monetization options: transferability considerations

Transferability considerations

- Quality of credit claim
- Substantiation needs
- Opinion memorandum
- Risk of recapture
- Loss of tax depreciation attributes
- Indemnification clauses
- Going rate for the sale/purchase of credits

So, what about tax equity, then?

Key valuation drivers for tax-related investments

Key Valuation Drivers

ESG Considerations
Ability to utilize credit purchases in marketing and PR. Select projects to bundle green / decarb credits. Participate in the clean energy transition

Investment Tax Credit ("ITC") vs Production Tax Credit ("PTC")
Investor preference may differ, given associated risks, credit availability, and timing

Tax Credit Horizon
Multi-year credit opportunities may create transaction efficiencies

Indemnifications & Insurance
Strength of indemnifications and comprehensive insurance coverage

Documentation / Due Diligence
Thoroughness of documentation package on qualifications

Developer Track Record
Significance of historical project development

Type of Credit
Many purchasers pursuing specific types of credits / projects

Financial Strength of Developer
Investors are likely to prefer issuers with strong credit

Summary Timeline: IRA Tax Credit Transfer Process (6-8 weeks)

Activity / Week	1	2	3	4	5	6	7	8
Initial discussion between buyer & seller	1 to 2 weeks							
Exchange and negotiate term sheet		1 to 2 weeks						
Begin due diligence on projects / credits			3 to 4 weeks					
Begin insurance discussions (if needed)			3 to 4 weeks					
Understand & finalize accounting treatment and any structural considerations			2 to 3 weeks					
Exchange definitive documents				1 to 2 weeks				
Finalize due diligence on projects / credits						1 week		
Finalize insurance discussions (if needed)						1 week		
Finalize definitive documents						1 to 2 weeks		
Close transaction							1 to 2 weeks	

Other considerations of IRA tax credits

Other credit considerations

- Extended credit carryover periods: carry forward/back from 1/20 to 3/22 years, respectively
- Credits can be used to offset the new 15% corporate Alternative Minimum Tax (AMT), subject to the general business credit limitation rules
  - General business credits may offset up to 75% of a taxpayer’s combined regular federal income tax and new corporate AMT
- Impact of direct pay or refundable credits on general business credit limitation rules

Pillar II & CAMT

Speakers:
Alex Koo - Partner, KPMG US – Los Angeles
Jin Gawn Kim - Managing Director, KPMG US – Atlanta

Pillar Two - What is the policy objective? How is it achieved?

Policy objective: Pillar Two is designed to ensure that large internationally operating businesses pay a 15% minimum level of tax in every jurisdiction (described interchangeably by OECD Inclusive Framework members as "ending the race to the bottom in CIT rates" and "addressing remaining BEPS risks").

Three methods of achieving the policy objective (in order):

01

Qualified Domestic Minimum top-up tax (QDMTT)

Local country measure

Allows the local jurisdiction to collect any top-up tax that would otherwise be paid to another jurisdiction under Pillar Two

Tax paid under a QDMTT reduces top-up tax payable under IIR/UTPR.

02

Income Inclusion Rule (IIR)

"Parent" country measure

Triggers top-up at the level of the Parent where the income of a constituent entity (aggregated at the jurisdictional level) is taxed at a rate less than 15%

03

Undertaxed profits rule (UTPR)

Backstop measure

UTPR is a backstop; it only applies where Group income is not already subject to IIR.

It operates by denying deductions (or an "equivalent adjustment").

Applies to ultimate parent jurisdiction, including the U.S., with equal force

Pillar Two – Global overview

Legislation passed / approved

- EU Directive (December 2022)
- Japan (March 2023)
- South Korea (December 2022)
- United Kingdom (June 2023)

Draft legislation released

- Czech Republic (May 2023)
- Denmark (June 2023)
- Germany (March 2023)
- Ireland (March 2023)
- Liechtenstein (March 2023)
- Netherlands (May 2023)
- New Zealand (May 2023)
- Norway (June 2023)
- Sweden (March 2023)
- Switzerland (May 2023)

IIR (2024)

- Australia
- Canada
- EU – potential deferrals where few UPEs
- Japan
- South Korea
- Liechtenstein
- New Zealand
- Norway
- Switzerland
- United Kingdom

IIR (2025)

- Channel Islands (Guernsey and Jersey) and Isle of Man
- Hong Kong (SAR), China
- Singapore
- Thailand

UTPR (2024)

- **South Korea(?)**

UTPR (2025)

- Australia
- Canada
- EU –potential deferrals where few UPEs
- Hong Kong (SAR), China
- Liechtenstein
- New Zealand
- Norway (?)
- Singapore
- Switzerland (?)
- Thailand
- United Kingdom

Intention to apply IIR and UTPR (timing uncertain)

- Indonesia
- Japan (UTPR)
- Malaysia
- Mexico
- Qatar
- South Africa
- UAE

QDMTT (2024)

- Australia
- Canada
- Czech Republic
- Denmark
- Germany
- Ireland
- Liechtenstein
- Netherlands
- Norway
- Sweden
- Switzerland
- United Kingdom

QDMTT (2025)

- ChanJersey) and Isle of Man
- Hong Kong (SAR), China
- Singapore
- Thailand

Intention to apply QDMTT (timing uncertain)

- EU (optional)
- Indonesia
- Japan
- Malaysia
- Mauritius
- Qatar

Other related announcements

- Bahamas – consulting on policy measures to introduce Pillar Two compliant CIT system
- Bahrain – Considering the introduction of a CIT as part of its commitment to the OECD minimum tax
- Bermuda – policy measures to address impact of Pillar Two under consideration
- Colombia 2022 tax reform – 15% minimum tax
- Kenya – plans to review DST and to adopt two-pillar solution
- Nigeria – policy measures to address impact of Pillar Two under consideration
- UAE new corporate tax 9%
- **U.S. corporate alternative minimum tax enacted 15% (not Pillar 2 compliant)**

Pillar Two – Global overview - Recent Development in Korea

글로벌최저한세 제도의 시행시기 조정(국조법 부칙 § 1)

현행	개정안
글로벌최저한세의 시행시기	**소득산입보완규칙의 시행시기 유예**
▪ 소득산입규칙: '24.1.1. ▪ 소득산입보완규칙: '24.1.1	▪ (좌동) ▪ '25.1.1

<개정이유> 주요국의 시행시기 감안

Pillar Two - How are the IRA credits treated?

The administrative guidance released on July 17, 2023 ("July AG") established and / or clarified GloBE treatment for (i) qualified refundable tax credits (QRTCs), (ii) non-qualified refundable tax credits (non-QRTCs), (iii) marketable transferable tax credits (MTTCs), (iv) non-marketable transferable tax credits (non-MTTCs), and (v) other tax credits (OTCs):

Categories introduced by July AG

QRTCs	Non-QRTCs	MTTCs	Non-MTTCs	OTCs
• Refundable (paid cash / cash equivalents) within 4 years of CE being eligible for credit • Face value of credit generally treated as GloBE income in the year entitlement accrues • May be recognized as deferred income over useful life of assets consistent with accounting treatment	• Refundable (in whole or in part) but do not meet QRTC requirements • Treated as a reduction to covered taxes.	• Can be used by holder to reduce covered taxes in *issuing jurisdiction AND* • Meets legal and transferability standards in the hands of the holder (based on whether originator or purchaser) • Broadly treated as GloBE income	• Does not meet the MTTC requirements in the hands of the originator and / or the purchaser. • Treated as reduction to covered taxes to the extent that the non-MTTC is used to satisfy tax liability. Reduction equal to amount of credit less purchase price.	• Not refundable and non-transferable credits that can only be used to offset the covered tax liability of the CE (e.g.: U.S. R&D credit) • Treated as a reduction to covered taxes.

Pillar Two - How are the IRA credits treated?

As a practical matter, tax credits, when treated as a reduction to adjusted covered taxes (numerator), would reduce the jurisdictional ETR to a greater extent than when treated as an increase to the GloBE income (denominator).

This means that OTCs may increase exposure to top-up tax to a greater extent than QRTCs:

QRTCs and MTTCs

Pre-credit PTBI:	100
Credit:	10
Post-credit PTBI:	110
Book Tax Expense:	21
After Tax Profit:	89

QRTCs and MTTCs are treated as an increase in GloBE income

U.S. Jurisdictional ETR:

GloBE Income = 110
Adjusted Covered Taxes = 21
ETR = 19%
Top-up tax = 0

Other Tax Credits

PTBI:	100
Pre-credit BTE:	21
Credit:	10
Post-credit BTE:	11
After Tax Profit:	89

OTCs are treated as reduction to Originator's Adjusted Covered Taxes (for transferred credits, amount of credit less purchase price)

U.S. Jurisdictional ETR:

GloBE Income = 100
Adjusted Covered Taxes = 11
ETR = 11%
Top-up tax = 4

Pillar Two Recent Developments – Safe Harbours

	Description	When is it available?	Which jurisdictions does it apply to?	Which rules does it provide protection from?
Transitional CBCR Safe Harbor	Deems the top-up tax to be zero in respect of an eligible jurisdiction for the relevant year and provides streamlined compliance	2024 – 2026, with a one strike and you're out rule *not available in the UPE jurisdiction if the taxpayer elected Transitional UTPR Safe Harbor	All	QDMTT, IIR and UTPR
Transitional UTPR Safe Harbor	Deems top-up tax under the UTPR to be zero in respect of the UPE jurisdiction if the nominal tax rate in that jurisdiction is at least 20%	2024 – 2025	UPE Jurisdiction	UTPR
QDMTT Safe Harbor	Deactivates the IIR and UTPR in the presence of a QDMTT if that QDMTT is also eligible for the QDMTT Safe Harbor	Permanent	Jurisdictions with a QDMTT	IIR and UTPR

What is CAMT?

CAMT is designed to ensure that "applicable corporations" (large multinationals) pay a 15% minimum level of tax in the U.S.

applies to corporations with

$1 billion

of "adjusted financial statement income" (AFSI)

If there is an applicable corporation…

- Special rules apply to foreign-parented multinational groups
- In-scope status, once attained, is hard to shake
- Limited safe harbor available

then

There is a potential CAMT liability

- Capped at 15% of AFSI
- Payable if the CAMT liability is greater than the taxpayer's regular tax liability plus BEAT
- Taxpayers will receive a credit when the CAMT liability is paid, which may be carried forward to offset future regular tax liability, subject to limitations

!

Even if a company is not an applicable corporation, or it does not owe the CAMT liability, there is still a significant amount of work required to prove it!

Corporate AMT and Pillar 2 comparison

- **CAMT isn't a QDMTT**
- **CAMT may not "immunize" US profits from additional charge under Pillar 2 (i.e., an MNE paying CAMT could still be subject to additional taxation under Pillar 2) due to, among other things:**
  - Different treatment of general business credits, and
  - lending with foreign branches
- **Nevertheless, under the CAMT:**
  - Tax paid on US income is apparently treated as a US covered tax
  - But…unclear if (or how) CAMT tax paid on foreign/CFC income would be pushed down to offshore entities
  - Where do "excess taxes" go?

More Detail… How do these two regimes compare?

	Corporate AMT	Pillar 2
Scope	>$1b of global adj. financial statement income	>€750m of global revenue
Rate	15%	15%
Tax blending	Global	Country-by-country
Base	Financial statement net income with adjustments	Financial statement net income with adjustments;
Substance carve-out	None	Fixed return on payroll + tangible assets

More Detail... How do these two regimes compare?

	Corporate AMT	Pillar 2
General business credits	Generally OK	Could trigger Pillar 2 tax
Foreign Tax credits	Could trigger Corporate AMT liability, but limited.	Could trigger Pillar 2 tax
Corporate AMT credits	N/A	Could trigger Pillar 2 tax (unless treated as a prepayment of regular income taxes)

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