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What's new?

Summary of updates/Changes to R&D and government incentives from 1 January 2019 through 31 October 2020

Qualified Opportunity Zones (QOZ): A new incentive to defer and reduce capital gains subject to federal income tax for taxpayers who invest the capital gains into a fund that purchases QOZ property (i.e., land, new personal property, or businesses in pre-designated low-income areas). The incentive is available to all taxpayers that have capital gains and wish to invest them in a qualified fund. The Department of Treasury issued two sets of proposed regulations and final regulations were issued 19 December 2019. The final regulations are taxpayer favorable and provide multiple safe harbors that clarify in which operating businesses QOZ funds may invest.

Featured government incentives

Incentive name	Description	Maximum percentage	Qualification standards	Key exclusions or issues
R&D tax credit	A nonrefundable federal tax credit that can be applied to reduce income taxes. In addition, many states offer research tax credits to offset state income tax that are refundable or may be sold	The federal credit has a maximum value of 7.9% under the traditional method or 9.1% under the alternative simplified credit method for tax years beginning after 31 December 2017	Qualifying expenditure includes internal labor, supplies used in the research process, and 65% of contract research	Qualifying expenditure does not include overhead and capital expenditure. The activities must be performed in the US and the taxpayer must incur the related qualifying cost
New markets tax credit financing	Taxpayers can receive loans to finance the expansion of operations in pre-designated low-income areas These loans need not be repaid because the lender receives tax credits greater than the amount loaned to the taxpayer by investing into a fund that makes the loan to the taxpayer These "principal free loans" are canceled after a seven-year period	For each investment of USD 10 million at a qualified location, a taxpayer can receive a benefit of approximately USD 2 million (thus lowering the taxpayer's investment cost to USD 8 million)	Any investment in capital assets associated with a qualified business (in a previously determined low-income area) where there is an associated community benefit, ideally in the form of job creation, job retention, or expanded services	Community Development Entities (CDEs) are the organizations that have the authority to designate an investment as tax-credit generating for the lender/investor Investments in "sin businesses" (e.g., massage parlors, casinos, golf courses, etc.) do not qualify There is a pre-determined amount of tax credit allocation authority awarded to the CDEs each year This currently is a temporary incentive (but it has historically been renewed each time it expired) Cancellation of indebtedness income generally is recognized by the taxpayer after the loan is canceled seven years after its issuance

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Featured government incentives

Incentive	Description	Maximum percentage	Qualified Expenditure	Key exclusions or issues
Qualified Opportunity Zones (QOZ)	Taxpayers can elect to defer and partially reduce capital gains tax that otherwise would result from the sale or exchange of property. To defer and reduce the capital gains tax, a taxpayer must invest the capital gains in a QOZ through a qualified opportunity fund (QOF). More significantly, a taxpayer may elect to step-up its basis in the QOF to fair market value at any point after maintaining its investment in a QOF for at least 10 years. This effectively excludes any appreciation of the QOF before the election from capital gains tax	For each re-investment of capital gains into a QOF, taxpayer may elect a (i) deferral of gain until 31 December 2026; (ii) a partial step-up in basis equaling 10% of the gain if investment is held for five years before 31 December 2026; (iii) a partial step-up in basis equaling an additional 5% of the capital gain if investment is held for two additional years (seven years total) before 31 December 2026; and (iv) permanent exclusion of the appreciation of the QOF investment through a full basis step-up to the fair market value of the QOF (if elected at any point after holding the fund for 10 years in total)	Any capital gains derived from the sale or exchange of an asset that is reinvested in a QOZ through a QOF during the 180-day period, generally beginning on the date of the sale or exchange At least 90% of the QOFs assets must be QOZ property such as new tangible personal property first put to use in a QOZ, real property in a QOZ (if substantially improved), or interests in QOZ businesses	QOZ property and interests in QOZ businesses must be purchased or acquired after 31 December 2017 The QOZ business property must be new or, in the case of real property, substantially improved QOZ business are subject to restrictions (e.g., a QOZ business must derive 50% or more of its total gross income from activity in the QOZ and must not be a "sin" business, such as a liquor store or a casino) Related party restrictions apply to the purchase of QOZ business property. The program uses a stricter 20% (compared to the normal 50%) ownership or control standard to determine whether parties are related

Industries most often affected by government incentives in country

	Technology, Media & Telecom		**Financial Services**
●	Telecom, Media & Entertainment	●	Banking & Capital Markets
●	Technology	●	Insurance
	Consumer	●	Investment Management
●	Consumer Products	●	Real Estate
●	Retail, Wholesale & Distribution		**Life Sciences & Health Care**
●	Automotive	●	Health Care
●	Transportation, Hospitality & Services	●	Life Sciences
	Energy, Resources & Industrial		**Government & Public Services**
●	Power & Utilities	●	Health & Social Care
●	Mining & Metals	●	Defense, Security & Justice
●	Oil, Gas, & Chemicals	●	Civil Government
●	Industrial Products & Construction	●	International Donor Organizations
		●	Transport

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Type	National incentive?	State, provincial, regional or local incentives?[1]	Filing deadlines imposed?	Is the claim made in advance or arrears?[2]	Nature of incentive	Maximum benefit available to large enterprises	Maximum benefit available to small and medium-sized enterprises
Innovation							
Research & development (R&D)	Permanent incentive	Limited applicability	Permanent incentive Permanent incentive	Arrears	Tax credit	Up to 15.8% of qualifying research expenditure	Up to 15.8% of qualifying research expenditure, but certain small businesses can offset payroll taxes
R&D grant (national)	Permanent incentive	Limited applicability	Permanent incentive Permanent incentive	Varies	Grant	Varies	Varies
Investment							
Capex: Qualified Opportunity Zones (QOZ)	Temporary incentive	Limited applicability	Permanent incentive	Advance & Arrears	Taxpayers may defer and partially reduce capital gains tax due on the disposition of property where gains are reinvested in a QOZ through a qualified opportunity fund (QOF). For each re-investment of capital gains into a QOF, the taxpayer may elect to defer tax until the earlier of sale or exchange of the QOF investment or 31 December 2026. If investment in QOF is held for five years before 31 December 2026, the taxpayer will receive a partial step-up in basis equaling 10% of the gain and, if held for seven years before 31 December 2026, the taxpayer will receive an additional 5% step-up in basis. If held for 10 years in total, the taxpayer will receive a permanent exclusion of the appreciation of the QOF investment through a full basis step-up to the fair market value of the QOF.	Incentive is uncapped	Incentive is uncapped

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Notes:

1. Green means that this incentive is currently in effect. Yellow means that the incentive has limited applicability, i.e., the requirements for this incentive limit its value to most companies. Red means that there is no incentive.
2. If the response is advance, this means that the government must approve the award of the incentive prior to the commencement/completion of the project/activity. If the response is arrears, this means that the award of the incentive is determined at the end of the tax period or after the completion of the qualifying project or activity. Most tax incentives are considered to be claimed in arrears because they are reported on tax returns.

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Investment (continued)							
Capex: New Markets Tax Credit (NMTC)	Temporary incentive	Limited applicability	Permanent incentive / No	Advance & Arrears	The NMTC program is intended to incentivize companies to invest in low-income communities. At the borrower (project) level, NMTC financing provides upfront cash in the form of a low-rate, interest only loan. The loan is held by the borrower and forgiven at the end of a seven-year term. All industries, aside from "sin businesses" (e.g., massage parlors, casinos, golf courses, etc.), qualify for the program if the project is located within a pre-determined low income area.	Typically, USD 3.5 Billion of NMTC allocation awarded annually. Lender: 39% tax credit over seven years Borrower: Approximately 17% of borrower's capital in the form of a forgivable loan	Lender: 39% tax credit over seven years Borrower: Approximately 20% of borrower's capital in the form of a forgivable loan
Employment: Disaster Relief Tax Credit	Temporary incentive	No	Permanent incentive	Arrears	A general business tax credit of up to USD 2,400 per employee for certain employers that continue to pay wages to employees during periods that their primary place of employment is deemed inoperable after being affected by qualified natural disasters	Tax credit up to USD 2,400 per employee based on wages paid	Tax credit up to USD 2,400 per employee based on wages paid
Employment: COVID-19 Employee Retention Credit	Temporary incentive	No	Permanent incentive	Arrears	Eligible employers are entitled to a refundable payroll tax credit equal to 50% of wages paid while employees are "not providing services" from 13 March 2020 through 31 December 2020. To qualify as an eligible employer, the taxpayer must either experience (1) a full or partial suspension of trade or business operations due to orders from an appropriate government authority limiting commerce, travel, or group meetings related to COVID-19, or (2) a significant decline in gross receipts (i.e., over a 50% decline from corresponding quarter in prior year; ends when gross receipts are greater than 80% of corresponding quarter in prior year).	Tax credit up to USD 5,000 per employee based on qualified wages paid	Tax credit up to USD 5,000 per employee based on qualified wages paid

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Investment (continued)							
Employment: FMLA Credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	Between 12.5% and 25% for employers that pay between 50% and 100% of employee pay during family and medical leave (FML)	Between 12.5% and 25% for employers that pay between 50% and 100% of employee pay during FML
Employment: Work Opportunity Tax Credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	Up to USD 9,600 per employee	Up to USD 9,600 per employee
Training	Permanent incentive	Limited applicability	Permanent incentive	National: Varies Local:	Varies	Varies	Varies
Capex: Low Income Housing	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	4%-9% of qualified basis per year for 10 years, depending on other financing utilized	4%-9% of qualified basis per year for 10 years, depending on other financing utilized
Capex: Historical Rehabilitation	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	20% of investment for rehabilitation of certified historic structures	20% of investment for rehabilitation of certified historic structures
Environmental sustainability							
Carbon capture credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	For tax year 2020, USD 31.77 per metric ton of qualified carbon oxides disposed of in secure geological storage, and USD 20.22 per metric ton of qualified carbon oxides injected or utilized; 12-year credit period	For tax year 2020, USD 31.77 per metric ton of qualified carbon oxides disposed of in secure geological storage, and USD 20.22 per metric ton of qualified carbon oxides injected or utilized; 12-year credit period
Production tax credit (wind, geothermal, and close-loop biomass) (PTC)	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	USD 2.5 cents per kilowatt hour (kWh) produced (for tax year 2020); 10-year credit period; 60% phase-down of benefit applies to wind Election to claim 18% investment tax credit (ITC) in lieu of PTC Must begin construction before 1 January 2021	USD 2.5 cents per kWh produced (for tax year 2020); 10-year credit period; 60% phase-down of benefit applies to wind Election to claim 18% investment tax credit (ITC) in lieu of PTC Must begin construction before 1 January 2021

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Environmental sustainability							
Production tax credit (open-loop biomass, municipal solid waste, hydropower, marine/ hydrokinetic renewables)	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	USD 1.3 cents per kWh produced (for tax year 2020); 10-year credit period Election to claim 18% ITC in lieu of PTC Must begin construction before 1 January 2021	USD 1.3 cents per kWh produced (for tax year 2020); 10-year credit period Election to claim 18% ITC in lieu of PTC Must begin construction before 1 January 2021
Solar investment tax credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	Tax credit of 26% of eligible costs for property where construction begins before 1 January 2022; ultimately phases down to 10% beginning on or after 1 January 2022	Tax credit of 26% of eligible costs for property where construction begins before 1 January 2022; ultimately phases down to 10% beginning on or after 1 January 2022
Fuel cell investment tax credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	Tax credit of 26% of eligible costs for property where construction begins before 1 January 2022; ultimately phases down to 0% beginning on or after 1 January 2022	Tax credit of 26% of eligible costs for property where construction begins before 1 January 2022; ultimately phases down to 0% beginning on or after 1 January 2022
Combined heat and power investment tax credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	10% of qualified basis placed in service where construction started before 1 January 2022	10% of qualified basis placed in service where construction started before 1 January 2022
Biomass investment tax credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	30% of qualified basis placed in service where construction started before 1 January 2021	30% of qualified basis placed in service where construction started before 1 January 2021
Alternative fuel vehicle refueling property credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	30% of qualified costs, up to USD 30,000 for business use property, per location	30% of qualified costs, up to USD 30,000 for business use property, per location
Electric vehicle Credit	Permanent incentive	Limited applicability	Permanent incentive	National: Arrears Local:	Tax credit	Up to USD 7,500 per vehicle subject to various requirements	Up to USD 7,500 per vehicle subject to various requirements

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Country background

US federal corporate taxable income is subject to a flat rate of 21% for tax years beginning after 31 December 2017. Most states also impose an income tax at rates ranging from 4.6% to 12%. The average combined federal/state corporate tax rate currently is 25.1%.

Innovation Incentives

R&D tax incentives

Nature of incentives

The US offers a nonrefundable research tax credit that can be applied to reduce income taxes. There is a limited exception for qualified small businesses and start-ups to apply the research credit to reduce alternative minimum taxes (AMT) and payroll taxes with tax years beginning after 31 December 2015. The AMT for corporations is abolished for tax years beginning after 31 December 2017.

Many states offer a research tax credit that is similar to the federal tax credit, but generally at a lower credit rate. However, a few states offer refundable credits and some states offer sales and use tax refunds or exemptions for property purchased to be used in the R&D process.

The research tax credit is a credit computed on an increment of qualified research spending exceeding a base amount. Taxpayers can elect to report one of the following research tax credits:

Traditional research tax credit

The "traditional credit" is equal to 20% of the amount of qualified research expenses (QREs) exceeding a "base amount." The base amount is computed by: (i) first determining the ratio of QREs to gross receipts for the period 1984–1988. This ratio, called the "fixed base percentage," reflects the proportion of QREs to gross receipts that a company had during the 1984–1988 period.[1] The fixed base percentage then is multiplied by the average annual gross receipts of the taxpayer for the four years preceding the credit year. The product of this calculation is the base amount, i.e., reflecting the amount of QREs a company would expect to commit to qualified research. There is, however, a minimum base amount of 50% of the current year QREs, thereby limiting the incremental QREs to 50% of the determined amount. The base amount must be adjusted for acquisitions and dispositions, i.e., adjusting for the acquired/disposed companies' QREs or gross receipts in the base amount calculation. This can be challenging considering that records dating back to the early 1980s often are not readily available. For this reason, and the complex base amount rules, few companies elect to report the traditional research credit.

Alternative Simplified Credit (ASC)

The ASC is equal to 14% of the excess of the QREs over 50% of the average of the previous three years' QREs. The ASC base amount, therefore, is easier to determine than under the traditional method and most taxpayers elect the ASC.

Targeted Research Credits

There are other research credits targeting specific types of research, including the following: (i) a 20% basic research credit (i.e., for funding research undertaken by universities and research organizations that have no commercial objective); (ii) a 20% credit for payments to energy research consortia; and (iii) a 25% research credit for clinical testing relating to orphan drugs (providing a credit equal to 25% of the amount spent on clinical research) for tax years beginning after 31 December 2017. These additional credits cannot be taken on the same QREs included for the regular research credit.

Computational adjustments

There are several computational adjustments that significantly reduce the true value of US R&D tax credits.

While qualifying R&D expenses currently are deductible, taxpayers must reduce the current deduction by the amount of the gross tax credit. Alternatively, taxpayers may elect to forgo the reduction to their current deduction and report the traditional credit at 15.8% (13% for tax years beginning before 1 January 2018) or the ASC at 11.06% (9.1% for tax years beginning before 1 January 2018). This election must be made annually on a timely filed original income tax return.

There is a minimum base amount applicable to the traditional credit equal to 50% of QREs. The cumulative effect of limiting deductions (or electing a reduced credit rate of 13% or 15.8% for tax years beginning after 31 December 2017) and the minimum base amount is that the maximum value of the traditional credit is 6.5% (7.9% for tax years beginning after 31 December 2017) of QREs.

Where there is no minimum base amount for the ASC, if there is no qualified research spending in any one of the previous three years, the credit is equal to 6% of qualified research spending in the current tax period.

The cumulative effect of limiting deductions (or electing a reduced credit rate of 9.1% or 11.06% for tax years beginning after 31 December 2017) for the ASC and the base calculation rules is that the maximum value of the ASC is less than 9.1% (11.06% for tax years beginning after 31 December 2017) of current qualified R&D

1. A special start-up company rule applies in determining the fixed base percentage if the company was not in existence during the 1984-1988 base period.

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spending. If qualified research spending is consistent year-over-year, the maximum value of the ASC is approximately 4.55% (5.53% for tax years beginning after 31 December 2017) of qualified R&D spending.

The US offers tax credits to offset current, prior, and future income tax liability. Unused research credits may be carried back one year and carried forward 20 years. While there is no cap on the amount of credits that can be utilized, certain general business credit limitations apply.

Small Businesses and Startups

For tax years beginning after 31 December 2015, qualified small businesses can utilize research credits to reduce payroll taxes. This law applies to very small start-up companies that: (i) have gross receipts for the credit year of less than USD 5 million; and (ii) have no gross receipts for any taxable year before the five-taxable-year period ending with the current taxable year, i.e., for the sixth year preceding the credit year and any years before the sixth year.

Eligible industries and qualifying costs

Qualified Expenses

The incentive is intended to benefit all industries conducting qualifying research. Consequently, all industries are eligible for the research credit.

Qualifying costs include wages for in-house labor, 65% of contract research, and supplies used in the research process. Overhead and capital expenditure are excluded.

Supply Regulations

Final regulations issued in 2014 address the treatment of prototype supplies used in research. The regulations provide that the costs incurred to construct a "pilot model" are qualified research expenses. A "pilot model" is any representation or model of a product that is produced to evaluate and resolve uncertainty concerning the product during the development or improvement of the product. The term includes a fully functional representation or model of the product or a component of a product.

The regulations further provide that it is irrelevant whether R&D results in a product that ultimately is sold or used in the taxpayer's trade or business. Consequently, the cost of supplies used to construct a pilot model for design testing generally will qualify as a QRE even if the research is successful and the product developed through the R&D process is ultimately sold or the production equipment is placed into service.

The supply regulations generally apply to the taxpayer's current tax year and the preceding three years. These regulations govern the deduction for R&D expenses, and also impact research tax credits because one of the requirements for the research tax credit is that the expenses qualify under the law that allows a current deduction for R&D expenses.

Internal Use Software Final Regulations

Before the issuance of final regulations in 2016, the legal standard for qualifying internal use software was unclear. Expenses incurred for developing software that is primarily intended for internal use can qualify for the research credit only if the software is highly innovative, which is an additional test to qualify for eligible R&D. The final regulations define software developed primarily for internal use to include only software developed to perform general and administrative (G&A) functions. Importantly, the final regulations provide that software is not developed primarily for internal use if "[t]he software is developed to enable a taxpayer to interact with third parties or to allow third parties to initiate functions or review data on the taxpayer's system." Examples of this type of software include: software developed for third parties to execute banking transactions, track the progress of a delivery of goods, search a taxpayer's inventory for goods, store and retrieve a third party's digital files, purchase tickets for transportation or entertainment, and receive services over the internet. In other words, most software developed for use in e-commerce is no longer regarded as internal use software. The government specified that this guidance is intended to expand the opportunities for taxpayers to claim research credits for software-related expenses.

The final regulations apply to tax years beginning on or after 4 October 2016. The Internal Revenue Service (IRS) also will permit taxpayers to rely on the proposed regulations or the final regulations, which are similar in all critical respects, for tax years ending on or after 20 January 2015.

IP and jurisdictional restrictions

There is no restriction on the location of any resulting IP. Qualifying activities must be performed within the US and a US taxpayer must incur the related qualifying costs (although such costs may be reimbursed by a foreign affiliate).

Other concerns

Taxpayers may amend prior year returns to claim tax credits if the tax year is open for assessment of tax (generally the three prior tax years). Before 2015, the ASC had to be elected on a timely filed original return. Final regulations issued in 2015, however, provide that the ASC may be claimed on amended returns provided no other

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research credit was reported for the tax year that is being amended. This rule generally can be applied to the three tax years preceding the current tax year.

While the US offers prefiling agreements to resolve whether taxpayers are entitled to research credits prior to the filing of the return, such agreements are rarely used.

In 2015, then-president Barack Obama signed into law the first permanent research tax credit. This adds certainty to the US tax law that will likely enhance the intended incentive effect of the law.

IRS Directive

The IRS issued a directive in 2017, which states that it would not challenge QREs that are equal to or less than certain R&D costs currently expensed on certified audited financial statements (prepared in accordance with the ASC 730 US GAAP standards). The amount of QRE that the IRS will not challenge is referred to as the "safe harbor amount."

The directive provides that taxpayers must make numerous adjustments to the R&D expenses reported on their audited financial statements to determine the safe harbor amount. The adjustments are intended to align R&D expenses reported on financial statements with the rules applicable to determining QRE for research tax credit purposes. Companies wishing to take advantage of the safe harbor must file a form with the IRS stipulating that they made all of the appropriate adjustments to the R&D expenses reported on the audited financial statements in arriving at the safe harbor amount.

Taxpayers also must stipulate that they have the documentation needed to prove that they made all appropriate adjustments. Taxpayers can claim a research credit for QRE that exceeds the safe harbor amount, although the additional QRE will fall outside of the scope of the safe harbor directive and, therefore, will be subject to risk assessment by the IRS to determine whether an examination is warranted. The directive applies to original returns timely filed (including an extension) on or after 11 September 2017 for taxpayers that choose to follow the terms of the directive.

Federal grants

There are over 900 programs offered by the US federal government that provide grants for: (i) developing commerce and business; (ii) improving food and nutrition, health, and environmental quality; (iii) improving, promoting, and assisting agriculture and agricultural activities; (iv) improving energy resources; (v) training, employment, and labor management; and (vi) development and/or implementation of science and technology.

Investment Incentives

Low income housing (LIHTC)

Section 42 of the Internal Revenue Code (IRC) provides a credit over a 10-year period for the acquisition, construction, and rehabilitation of affordable rental housing. The project must follow income eligibility standards and affordability requirements, generally below market rent, referred to as use restrictions. Developers have a choice of two use restrictions: (1) greater than 20% of the units must be occupied by tenants with income lower than 50% of the area median income (AMI), or (2) greater than 40% of the units must be occupied by tenants with income lower than 60% AMI. The IRS distributes a fixed amount of tax credits annually among the states through the respective states' housing finance authorities (HFAs) based on the states' populations. The state HFAs allocate the credits to developers based on a competitive application process pursuant to goals and priorities outlined within the state's qualified allocation plan (QAP), which is based on federal guidance. The LIHTC program has two types of tax credits. Each has different award processes, investor benefits, and financing structures:

- 9% tax credit (competitive application process through HFA); and
- 4% tax credit (all projects that receive state tax-exempt bond financing for at least 50% of the project funding may claim the credit without an allocation from the HFA).

The credit is comprised of two parts: (i) a 30% subsidy (known as the automatic 4% tax credit) covering new construction that uses additional subsidies or the acquisition cost of existing buildings; and (ii) the 70% subsidy (9% tax credit), which supports new construction without any additional federal subsidies. The credit is claimed over a period of 10 years and the actual credit rate for each year is set by the Department of Treasury to approximate the net present value of either the 30% or 70% subsidies as noted above.

Historic rehabilitation

IRC section 47 provides a 20% tax credit for the rehabilitation of certified historic building listed in the Federal Register (HTC) with respect to costs that constitute qualified rehabilitation expenditures. The Tax Cuts and Jobs Act (TCJA) signed into law on 22 December 2017 repealed the 10% tax credit for the rehabilitation of pre-1936 non-historic buildings. Pursuant to the TCJA, the 20% HTC is claimed ratably over a five-year period starting with the year the rehabilitated building is placed into service rather than fully in the first year. Certain transition rules apply related to pre-TCJA credits.

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New Markets Tax Credit (NMTC)

IRC section 45D provides an incentive for investor banks to invest in projects in low-income communities in exchange for tax credits earned over seven years (5% to 6% annually). At the project level, NMTC financing provides upfront cash in the form of a low-rate, interest only loan equal to approximately 20% of the project investor's equity in the transaction. The loan is held by the taxpayer and forgiven at the end of the seven-year term (i.e., purchased for a nominal amount of USD 1,000). A project must be located within a pre-designated low-income area and expect to generate community benefits such as job creation, job retention, and/or expanded community services. The US Treasury selects private organizations, known as Community Development Entities (CDEs), which are awarded the right to decide which project investments in low-income communities will generate tax credits for the investor banks. The NMTC program is available for one more allocation round, and thus projects that have started in 2020 or are expected to start in 2021 may be eligible.

COVID-19 Retention Credit (CRC)

The programs and initiatives in the Coronavirus Aid, Relief, and Economic Security (CARES) Act were passed by Congress to assist business owners. The CARES Act provides a refundable tax credit of 50% of qualified wages paid (up to USD 5,000 per employee) for eligible employers that continue to pay qualified wages from 13 March 2020 through 31 December 2020 to eligible employees after being affected by COVID-19. Eligible employers include (1) any employer carrying on a trade or business in calendar year 2020 whose business is fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19, or (2) any employer whose gross receipts for the calendar quarter are less than 50% of gross receipts for the same calendar quarter in the prior year. Qualified wages for employers with over 100 employees are wages and health plan expenses paid for time the employee is not providing services. Employees that were furloughed and thus not paid any wages can still be claimed for health plan expenditures.

Employee Retention Credit—Credit for Wages Paid Following Certain Natural Disasters (ERC)

The Employee Retention Credit is broadly applicable to employers with eligible employees assigned to work locations within federally designated disaster zones that have been affected by natural disasters. Qualified wages are wages paid or incurred between 1 January 2018 and 19 January 2020 (up to USD 6,000 per employee) for an eligible employee beginning on the date the trade or business first became inoperable during or after the incident period (described below) at the employee's principal place of employment, and continues until the earlier of the date that significant operations resume at that location, 150 calendar days after the last day of the incident period, or 19 January 2020.

Importantly, direct damage to a facility or the principal place of employment due to a qualified disaster is not a prerequisite for qualification. Rather, to satisfy the inoperability requirement, an employer must merely demonstrate that the location where it conducts its trade or business became physically inaccessible to employees, raw materials, utilities, or customers as a result of the damage sustained. The credit is equal to 40% of qualified wages for each eligible employee (up to a maximum of USD 6,000 in qualified wages per employee for all taxable years where claiming the credit under the Taxpayer Certainty and Disaster Tax Relief Act of 2019).

Qualified Opportunity Zone Incentives

Taxpayers may defer and partially reduce capital gains tax due on the disposition of property where gains are reinvested in a qualified opportunity zone (QOZ) through a qualified opportunity fund (QOF). For each re-investment of capital gains into a QOF, the taxpayer may elect to defer tax until the earlier of sale or exchange of the QOF investment or 31 December 2026. If investment in the QOF is held for five years before 31 December 2026, the taxpayer will receive a partial step-up in basis equaling 10% of the gain. If held for 10 years in total, the taxpayer will receive a permanent exclusion of the appreciation of the QOF investment through a full basis step-up to the fair market value of the QOF.

Employment—Work Opportunity Tax Credit (WOTC)

The WOTC is a federal tax credit for companies that hire and retain qualified employees from a variety of targeted groups. The credit is equal to 25% or 40% of a new employee's first-year wages, up to the maximum for the target group to which the employee belongs. Employers will qualify for a 25% credit if the employee works at least 120 hours and 40% if the employee works at least 400 hours. The maximum tax credit amounts depend on the new employee's target group and the number of hours worked during the first year of employment. There are 14 targeted groups, and a company can receive up to USD 9,600 per hire.

Employment—Credit for Family and Medical Leave Act (FMLA)

The FMLA is a federal tax credit for companies that pay employees when taking FMLA leave. The credit allows eligible employers to claim a general business credit equal to between 12.5% and 25% of the amount of wages paid to qualifying employees during any period (with a minimum of two weeks and a maximum of 12 weeks) in which such employees are on qualifying family and medical leave if the wages paid

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are between 50% and 100% of the employee's normal wages. This credit is only available for wages paid between 1 January 2018 and 31 December 2020. An eligible employer must have a written leave policy on the later of the policy's adoption date or effective date. The policy must provide for at least two weeks of paid leave for full-time employees and a prorated amount for part-time employees.

Environmental Sustainability Incentives

Enhanced Oil Recovery Credit

IRC section 43 provides an enhanced oil recovery (EOR) credit up to a maximum of 15% of the qualified EOR costs incurred in a tax year. The EOR credit phases out once oil prices rise above USD 28 per barrel, as adjusted for inflation. Although the credit is permanent, it has been phased out and has been unavailable for several years due to high commodity prices (in tax years 2006 through 2015, 2019, and 2020). A partial credit of 13.931% was available for tax year 2018. Based on depressed hydrocarbon prices in calendar year 2020, there is a good chance the credit will be reinstated in 2021. Qualified costs include certain designated expenses associated with an EOR project, including:

- Amounts paid for depreciable tangible property;
- Intangible drilling and development expenses;
- Tertiary injectant expenses; and
- Construction costs for certain Alaskan natural gas treatment facilities.

An EOR project generally is a project that involves increasing the amount of recoverable domestic crude oil through the use of one or more tertiary recovery methods defined by IRC section 193(b)(3), including steam recovery methods, gas flood recovery methods, chemical flood recovery methods, and mobility control recovery methods.

Marginal Well Tax Credit

IRC section 45I provides a marginal well tax credit (MWC) available when commodity prices for crude oil or qualified natural gas fall below specified thresholds. The credit is not available if the reference price exceeds USD 18 for crude oil or USD 2 for natural gas, adjusted for inflation. The credit is reduced proportionately by the same percentage that the reference price for either crude oil or natural gas exceeds USD 15 and USD 1.67, adjusted for inflation, compared to USD 3 and USD 0.33, adjusted for inflation, respectively.

The MWC provides a USD 3 per-barrel credit for the production of crude oil and a USD 0.50 per-1,000 cubic feet (MCF) credit for the production of qualified natural gas from a "qualified marginal well." A qualified marginal well generally includes a domestic oil well: (1) with production of not more than 15 barrels per day; (2) producing heavy oil; or (3) whose average production is not more than 25 barrels a day of oil and produces not less than 95% water. Marginal gas wells are those producing not more than 90 per 1,000 MCF per day.

The maximum amount of production on which a credit may be claimed is 1,095 barrels or barrel-of-oil equivalent per year, per well. There is no limitation on the number of wells on which a taxpayer can claim the credit. There is a limitation for wells not capable of production during each day of a taxable year. Unlike most federal credits, the MWC contains a special carryback provision that allows unused credits to be carried back for five years (rather than the generally applicable carryback period of one year).

For tax years beginning in 2019, a taxpayer can claim the credit for natural gas production only, per Notice 2020-34 (the part of the credit for crude oil production remains completely phased out). The credit rates for tax years beginning in 2020 and the credit amount, if any, have not yet been determined.

Section 45Q Carbon Sequestration Credit

The Bipartisan Budget Act of 2018 significantly enhanced the credit under IRC section 45Q, which provides a credit based on the amount of qualified carbon oxides (CO/CO2) from a qualified facility (minimum thresholds apply) that meets the two requirements below over a 12-year period beginning on the date the carbon capture equipment is placed into service. The CO/CO2 must be: (1) captured from a qualified facility, and (2) be subject to one of the following:

- Disposal: Disposed of in secure geological storage;
- Injection: Used as a tertiary injectant and disposed of in secure geological storage; or
- Utilization: Utilized for any other purpose for which a commercial market exists.

For tax year 2020, the credit is USD 31.77 per metric ton (MT) of qualified CO/CO2 that is captured and disposed of in secure geological storage, and USD 20.22 per MT of qualified CO/CO2 that is captured and injected or utilized, over a 12-year period. For tax year 2026, the credit amounts are USD 50 and USD 35 per MT, respectively, and will be adjusted based on inflation for tax years thereafter. Owners of carbon capture equipment may make a timely annual election to transfer the 45Q credit to the party that disposes of or utilizes the captured CO/CO2.

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Production Tax Credit

IRC section 45 provides a 10-year production tax credit (PTC) of either USD 1.3 cents or 2.5 cents per kilowatt hour (kWh) of electricity generated by certain renewable resources that is sold to a third party. Renewable resources include wind, geothermal, and closed-loop biomass for the 2.5 cents per kWh, and open-loop biomass, municipal solid waste, hydropower, and marine and hydrokinetic renewables for the 1.3 cents per kWh. Construction must begin before 1 January 2021. The PTC for wind is in a phase-out period where a taxpayer may qualify for 60% of the full benefit. The credit is claimed beginning in the year the property is placed into service. A taxpayer may elect to claim the investment tax credit (ITC) under IRC section 48(a)(5) in lieu of the PTC, in which case the electricity does not have to be sold to a third party.

Investment Tax Credit

IRC section 48 provides an investment tax credit (ITC) for the installation of certain renewable and traditional energy technologies equal to an energy percentage of the capitalized cost associated with energy property placed into service during such taxable year. The energy percentage varies (from 10% to 30%) depending on the type of energy property placed into service. Qualified technologies include solar, fuel cell, small wind, microturbine, combined heat and power (CHP), geothermal heat pump, and geothermal electric. Such property must meet beginning of construction requirements. The credit is claimed in the year the property is place into service.

Solar ITC

IRC section 48(a)(2)(A)(i) provides a 30% ITC for solar energy property. The solar ITC is in a phase-down period where the full 30% credit is only available for property where construction begins before 1 January 2020; 26% for solar energy property where construction begins in calendar year 2020; and 22% for solar energy property where construction begins in calendar year 2021. In all instances, such solar energy property must be placed into service before 1 January 2024. For solar energy property where construction begins on or after 1 January 2022 or is placed into service after 1 January 2024, the credit rate is 10%.

Fuel Cell ITC

IRC section 48(a)(2)(A)(i) provides a 30% ITC for qualified fuel cell property where construction begins before 1 January 2022 and the property is to be placed into service before 1 January 2024. Qualified fuel cell property must have a nameplate capacity of at least 0.5 kilowatt of electricity using an electrochemical process and an electricity-only generation efficiency greater than 30%. The fuel cell ITC is in a phase-down period where the full 30% credit is only available for property where construction begins before 1 January 2020; 26% for qualified fuel cell property where construction begins in calendar year 2020; 22% for qualified fuel cell property where construction begins in calendar year 2021; and 0% thereafter. There is a credit limitation of USD 1,500 per 0.5 kW of capacity.

Combined Heat & Power (CHP)/Cogeneration ITC

IRC section 48(a)(2)(A)(ii) provides a 10% ITC for CHP system property where construction begins before 1 January 2022. The CHP system must use the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy, where at least 20% of the useful energy is used for thermal applications, and at least 20% of the useful energy must be used to generate electricity and/or mechanical shaft power. Furthermore, the CHP system must be at least 60% efficient based on the fuel's lower heating value and cannot have a capacity of more than 50 megawatts (or 67,000 horsepower).

Alternative Fuel Vehicle Refueling Property Credit

IRC section 30C provides a credit equal to 30% of costs for any qualified alternative fuel vehicle refueling property (predominately in the US) placed into service during the taxable year before 1 January 2021. The credit is limited to the following amounts with respect to all qualified property placed into service during the taxable year at a particular location: (1) USD 30,000 in the case of a property of a character subject to an allowance for depreciation (e.g., business or investment use property), and (2) USD 1,000 in any other case (e.g., personal use property). Qualified alternative fuel vehicle refueling property is property that is used for storage or dispensing of alternative fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle propelled by that fuel. The following are alternative fuels:

- Any fuel where at least 85% of the volume consists of one or more of the following: ethanol, natural gas, compressed natural gas, liquified natural gas, liquefied petroleum gas, or hydrogen;
- Any mixture which consists of two or more of the following: biodiesel, diesel fuel, or kerosene, and at least 20% of the volume of which consists of biodiesel determined without regard to any kerosene in such mixture; and
- Electricity.

Plug-In Electric Drive Vehicle Credit

IRC section 30D provides a credit for the purchase of new qualified plug-in electric drive motor vehicles. The credit amount varies with

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battery capacity from USD 2,500 to USD 7,500. There is a one-year phase-down when total EV production of the specific vehicle exceeds 200,000 units.

Other Incentives

State grants and incentives

State and local governments offer tax credits and financial incentives aimed at increasing employment and attracting new investment in their communities. From a business perspective, credits and incentives, such as job creation and investment tax credits, capital grants, property tax exemptions, and infrastructure improvement grants offer companies a potential opportunity to reduce or offset operational expenses and increase profitability.

The below are the primary categories of state and local credits and incentives:

- Discretionary incentives: State and local jurisdictions offer "discretionary" tax and financial offsets when another jurisdiction is competing for the investment.
- Statutory credits/exemptions: Tax-based offsets authorized by statute and administered usually by a department of revenue. The offsets are typically based on the amount of the investment, jobs, and the location of the business activity.
- Employment-related incentives: Federal and state off-sets (cash or tax credit) for employment-related activities such as creating jobs, hiring eligible employees, and training.

A variety of past, current, and prospective operational factors may provide taxpayers with credit and incentive (C&I) opportunities. Common triggers for C&I opportunities include, but are not limited to:

- Real estate transactions;
- Capital investment;
- Innovation/Research and development;
- Employment projections; and
- Energy/Sustainability initiatives.

Sample state discretionary incentives

Alabama
- Jobs Act Incentives
- Reinvestment & Abatement Act

Arizona
- Competes Fund
- Quality Jobs Tax Credit

California
- CA Competes Tax Credit

Florida
- Urban Job Tax Credit Program
- Qualified Target Industry Refund Program

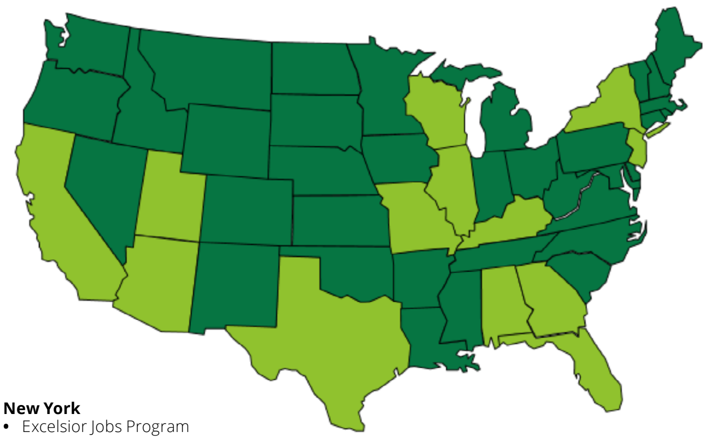
Georgia
- REBA Grant
- Job Tax Credit

Illinois
- EDGE

Kentucky
- Business Investment Program

Missouri
- MO Works Program

New Jersey
- Grow NJ



New York
- Excelsior Jobs Program

Texas
- Enterprise Zone Program

Utah
- EDTIF

Wisconsin
- Business Development Tax Credit

Sample state statutory tax credits

California
- R&D Credit

Connecticut
- Fixed Capital Investment Credit

Georgia
- R&D Tax Credit

Illinois
- R&D Credit

Massachusetts
- Investment Tax Credit

Mississippi
- Investment Tax Credit

New York
- Investment Tax Credit
- Employment Incentive Credit

Oklahoma
- Investment Tax Credit

South Carolina
- Capital Investment Credit

Tennessee
- Industrial Machinery Credit