



## 5x5 series: Insights and actions on Tax Credit Provisions and New Regulations

# Direct-pay and transferability

The Internal Revenue Service (“IRS”) issued critical guidance on the direct payment and transferability provisions of the Inflation Reduction Act of 2022 (“IRA”) on June 14, 2023. Temporary regulations setting forth mandatory information and registration requirements for the section 6417 direct payment and section 6418 transferability elections (“Temporary Regulations”) and proposed regulations under sections 6417 and 6418 (the “Proposed Regulations”). IRS FAQ further explaining the Temporary Regulations and the Proposed Regulations was also released. These were published in the Federal Register on June 21, 2023.



### 5 insights you should know

The Proposed Regulations provide that a transferee taxpayer subject to section 469 would be required to treat the eligible credits as passive activity credits (as defined in section 469(d)(2)) to the extent the portion exceeds passive tax.

The Proposed Regulations provide an exception that should allow partnerships the flexibility to sell certain partners' shares of eligible credits and allocate the tax-exempt income from that sale to the "selling" partners, while also allocating any credits that are retained (i.e., not sold) to the "non-selling" partners.

Pre-filing registration is a prerequisite to making a transfer election under section 6418. Failure to successfully pre-register and obtain the registration number renders an election ineffective.

Tax exempt entities and for-profit entities cannot form partnerships to take advantage of direct pay but can form tenancy in common relationships.

Tax credits sold or otherwise transferred to tax-exempt entities are not considered “Applicable Credits” and therefore cannot make an election to receive direct payments.

### 5 actions to take now

1

**Buyers:** Determine your tax credit appetite. **Sellers:** Consider developing strategies for monetizing the credits your projects are generating.

2

**Understand the timing considerations** of transferability and direct pay cash to your project. Identify and pursue the qualifying project or activity.

3

**Satisfy all requirements necessary to earn the eligible credit for the tax year.** For example, a solar energy project would need to be placed in service prior to earning an eligible credit.

4

#### Complete pre-filing registration with the IRS when it posts.

- **Understand & file for section 6417 Direct Pay Election of Certain Credits**  
File the required annual tax return by the due date (or extended due date) and make a valid elective payment election. This includes properly completed and attached source credit forms, Form 3800 (including registration numbers) and required return attachments.

5

- **Understand & file for section 6418 Transfer of Certain Credits**  
Provide the transferee (i.e., buyer) with the registration number and all other information necessary to claim the transferred eligible credit.

### Connect with us

**Gary Hecimovich**  
Partner, Deloitte Tax LLP  
+1.202.879.4936

**Bill Fisher**  
Managing Director, Deloitte Tax LLP  
+1.804.343.4191

*This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.*

#### About Deloitte

*As used in this document, “Deloitte” means Deloitte Tax LLP, a subsidiary of Deloitte LLP. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.*

*Copyright © 2023 Deloitte Development LLC. All rights reserved.*