



MULTISTATE INDIRECT TAX

## Treasury and the IRS issue guidance on new sustainable aviation fuel credits

### Tax Alert

### Overview

On December 19, 2022, the Treasury Department and Internal Revenue Service (“IRS”) issued [Notice 2023-06](#) (the “Notice”), which provides guidance on the new sustainable aviation fuel credits under Internal Revenue Code (“IRC”) sections 40B and 6426(k).

This Tax Alert summarizes some of the IRS guidelines outlined in the Notice.

### Sustainable aviation fuel tax credit

After a company produces a sustainable aviation fuel (“SAF”) qualified mixture, the entire mixture becomes taxable under IRC section 4081. On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022 (“IRA”), which includes an excise tax credit under IRC section 6426 and a nonrefundable income tax credit under section 40B (collectively, “SAF credit”) for the producer of a fuel mixture containing SAF sold or used after December 31, 2022, and before January 1, 2025. For more information on tax credits that were enacted or extended under the IRA, please see this [Tax Alert](#) from August 25, 2022.

The SAF credit is available for the production of a qualified mixture, which is a mixture of SAF and kerosene. The SAF must meet the requirements of (i) American Society for Testing and Materials (“ASTM”) International Standard D7566 (“ASTM D7566”), or (ii) the Fischer Tropsch provisions of ASTM International Standard D1655, Annex A1 (“ASTM D1655”).

The Notice states that Treasury and the IRS understand that no jet fuel is currently produced in the United States under ASTM D1655 that would qualify for the SAF credit. Therefore, the Notice primarily addresses the SAF credit requirements applicable to a qualified mixture produced under ASTM D7566.

The credit is equal to the following: (1) the number of gallons of SAF in a qualified mixture, multiplied by (2) the sum of \$1.25 plus the “applicable supplementary amount.”

The “applicable supplementary amount” is \$0.01 for each whole percentage point by which the “lifecycle greenhouse gas emissions reduction percentage” of the SAF exceeds 50 percent.

## Lifecycle greenhouse gas emissions reduction percentage

The “lifecycle greenhouse gas emissions reduction percentage” means the percentage reduction in lifecycle greenhouse gas (“GHG”) emission achieved by the SAF as compared with petroleum-based jet fuel. The Notice provides that until further notice, the lifecycle GHG emissions of petroleum-based jet fuel will be treated as equal to 89 gCO<sub>2</sub>e/mj as the baseline.

The Notice directs taxpayers to the International Civil Aviation Organization’s most recent publications of the following to determine lifecycle emissions value (LSf) for purposes of calculating a lifecycle GHG emissions reduction percentage:

1. [CORSIA Default Life Cycle Emissions Values for CORSIA Eligible Fuels](#); or
2. [CORSIA Methodology for Calculating Actual Life Cycle Emissions Values](#)

The IRS will accept the percentage calculated from either of the above publications. In short, the lifecycle GHG emissions reduction percentage is as follows:

$$\frac{LC-LSf}{LC} \times 100\%; \text{ or } \frac{89-LSf}{89} \times 100\%$$

## How to claim the SAF credit

A taxpayer eligible to claim the SAF credit may do so in one of two ways:

- Claim an excise tax credit against a taxpayer’s IRC section 4081 excise tax liability for the quarter, with any excess as a payment; or
- Claim a nonrefundable IRC section 38 general business income tax credit, with the amount of the credit included in gross income.

A company claiming the SAF credit as an excise tax credit against its IRC section 4081 liability must first make the claim on Form 720, Quarterly Federal Excise Tax Return. Any excess over the taxpayer’s excise tax liability that will be claimed as a payment may be claimed using the following forms, as applicable: (1) Form 720; (2) Form 720X, Amended Quarterly Federal Excise Tax Return; (3) Form 8849, Schedule 3, Certain Fuel Mixtures and the Alternative Fuel Credit; (4) or Form 4136, Credit for Federal Tax Paid on Fuels.

A taxpayer will be able to file an amended return (Form 720X) to claim a credit with respect to the qualified mixture beginning on January 1, 2023, once the registration is completed and the requirements of the Notice are met.

To claim the SAF credit as a nonrefundable general business income tax credit, a taxpayer must file Form 8864, Biodiesel, Renewable Diesel, and Sustainable Aviation Fuels Credit.

Each claim must contain an original Certificate for SAF Synthetic Blending Component, Declaration for SAF Qualified Mixture, and Statement(s) of SAF Synthetic Blending Component Reseller (if applicable).

## IRC § 4101 registration

IRC section 40B(f) provides that no SAF credit is allowed unless the producer or importer of the fuel is registered under IRC section 4101. This registration is made on IRS Form 637, Application for Registration (For Certain Excise Tax Activities), under Activity Letter "SA." Consistent with section 5.01(2) of the Notice, the IRS Form 637 provides a set of additional information that must be included for the producer or importer of the SAF. The Notice provides a sample or model form for the following required information: (i) a declaration for SAF qualified mixture; (ii) a certificate for SAF synthetic blending component; and (iii) statement of a SAF synthetic blending component reseller.

## Request for comments

The Notice requests comments to assist Treasury and the IRS in developing additional guidance on the SAF credit. Written comments must be submitted by February 17, 2023.

## Considerations

Companies currently producing SAF or with plans to produce SAF should review the Notice to determine their eligibility for the credit, and in particular, to understand the following:

- How to compute the lifecycle GHG emissions reduction percentage;
- How to register as a producer or importer of SAF; and
- How to claim the excise tax credit or the general business tax credit.

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