

The logo for FORVIS, consisting of the word "FORVIS" in a bold, red, sans-serif font. The letters are closely spaced, and the "V" is slightly taller than the other letters. The logo is positioned on the left side of the slide, against a white background. To the right of the logo, there is a decorative graphic of several parallel, diagonal red lines that create a sense of depth and movement, extending from the top right towards the bottom left.

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Corporate & International Tax Implications of the Inflation Reduction Act of 2022

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Today's Panelists



Phil Laminack
Director | Tax Accounting Services

404.215.7504
phil.laminack@forvis.com



Justin Metcalfe
Senior Manager | International Tax

980.729.7446
justin.metcalfe@forvis.com

Agenda

- I. Corporate Alternative Minimum Tax
- II. Excise Tax on Repurchase of Corporation Stock
- III. Other Changes to Research Credits
- IV. Capitalization of §174 Research & Development Costs

Corporate Alternative Minimum Tax

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FORVIS is a trademark of FORVIS, LLP, registration of which is pending with the U.S. Patent and Trademark Office.

Overview

- Doesn't revive old corporate AMT under §55(b)(1)(B), but rather institutes new AMT framework under IRC §55(b)(2)
- Applies to Corporations other than an S-Corporation, a regulated investment company, or a REIT
- AMT is 15% of “Adjusted Financial Statement Income” of an “Applicable Corporation”
- AMT amount is zero for corporations other than applicable corporations
- AMT liability is excess of AMT over (Regular Tax + BEAT)
- Applies to tax years beginning after 12/31/2022

Adjusted Financial Statement Income (AFSI)

- Net income or loss per taxpayer's applicable financial statement for the tax year (as defined in revenue recognition §451(b)(3))
- Adjustments to be made where AFS year is different than tax year (regulations to be provided)
- AFSI to take into account the items of the members of the tax-filing group (regulations to be provided)
- For partnerships, only % owned by corp taken into account for AFSI
- Income or loss of disregarded entities included in AFSI of taxpayer
- AFSI of tax-exempt entities includes only UBTI and certain debt financed property income treated as UBTI

AFSI Continued

- Addback all federal income taxes
- Adjustments for credits for which a direct payment election made
- State taxes still deductible
- For fixed assets, take into account MACRS depreciation rather than book depreciation
- Election to deduct foreign taxes paid in lieu of foreign tax credit applies to regular tax and AMT
- Special timing rules for inclusion of income from mortgage servicing
- Special rules to disregard financial statement income or expense related to certain defined benefit pension plans (follow existing tax rules instead)

AFSI Continued

- Special rules for §1381 cooperatives (reduction for patronage dividends)
- Special rules for Alaska Native corporations (cost recovery and depletion)
- Special rules for 197 amortization of qualified wireless spectrum

AFSI – International Considerations

- Effectively Connected Income and Sec. 882 parameters
- Adjustments considered to take into account pro rata share of foreign income items from CFCs (regulations to be provided)
 - No overall negative adjustment permitted for foreign items, but negative adjustment from one year reduces the net adjustment in the succeeding tax year
- Authorizes Treasury to enact regulations and other guidance as necessary to carry out the purpose of the section

AFSI – International Considerations

- No specific consideration given by the statute to:
 - Sec. 482 transfer pricing adjustments
 - Tax limitations to deductions and losses – i.e. Sec. 163(j), Sec. 382, etc.
 - FX gain / losses sheltered in OCI (i.e. Sec. 987)
 - CFC QBAI
 - FOGEI (Foreign Oil & Gas Extraction Income) exemption to tested income
 - Sec. 250 Deduction for Foreign Derived Intangible Income (FDII)
 - Sec. 245A Dividend Received Deduction

Applicable Corporation

- Defined in new §59(k)
- Meets the average annual AFSI test for one or more prior taxable years:
 - Worldwide average AFSI for three-year period (without regard to AMT NOL) exceeds \$1 Billion
 - For multinational group, three-year average AFSI of U.S. taxpayers must also exceed \$100 Million (two-part test)
 - If not in existence for three years, then take average for period of existence
 - Short tax years are annualized for purpose of test

Applicable Corporation - Continued

- Once an applicable corporation, always an applicable corporation
 - Exclusion for corporations where secretary determines continued application not appropriate because there is:
 - A change in ownership during year
 - A specified (not yet defined) number of consecutive years not meeting threshold
- Aggregation rules tied to §52 controlled group/single-employer rules

Applicable Corporation - Continued

- For foreign-parented multi-nationals, test is on all members of the group
- Foreign corporations doing business in the U.S. treated as a domestic corporation to extent of U.S. trade or business for purposes of test

Financial Statement Net Operating Loss (FSNOL)

- Deduction is lesser of FSNOL carryforward available or 80% of AFSI before FSNOL
- Unlimited carryover, no carryback
- FSNOL calculated under AFSI rules for tax years ending after 12/31/2019

Tax Credits

- General Business Credits able to offset AMT liability (percentage and floor limits apply)
- AMT Foreign Tax Credit (FTC) Allowed
 - New §59(l) permits an AMT FTC to reduce minimum tax liability if elected
 - Foreign income taxes are taken into account when both the taxes are:
 - (a) paid or accrued and
 - (b) reflected on financial statements
 - Limits Section 960 FTCs (foreign income taxes paid or accrued by CFCs) to 15% of a US Shareholder's share of its CFC's income
 - No limitation to Section 901 FTCs (foreign income taxes paid or accrued by US corporation)
 - FTC carryover related to CFCs for AMT purposes - up to 5 years
 - Sec. 904 limitation rules NOT applicable

AMT Credit

- AMT Credit against regular tax for AMT paid
 - New provision in §53(e) differentiates old AMT credits pre TCJA from new AMT credits post 2022
 - Utilizable in future tax years to the extent regular tax liability exceeds AMT liability
 - Consideration given to the BEAT to not create additional BEAT liability in future years where carryforwards are used.

Accounting Considerations

- Framework likely similar to treatment of old AMT pre-TCJA
 - AMT is a current period expense
 - DTA for AMT Credits (pending VA)
 - No DTA for AMT NOLs
 - No deferred accounting (other than AMT Credits) for AMT rate
 - Consider impact on valuation allowance considerations

Other International Considerations

- Likely variances between Corporate AMT and international tax provisions related to the Regular US tax liability
- Components of the Corporate AMT appear to align with proposed international tax changes included in the proposed Build Back Better Act legislation (*e.g.*, 5 year *FTC* carryforward, *etc.*)
- Does not appear to conform to the OECD Framework for the Global Minimum Tax released in December 2021 relating to the BEPS Pillar Two initiative as a Qualified Income Inclusion Rule

#	Description	Inflation Reduction Act - Corporate AMT	BEPS Pillar Two - Global Minimum Tax
1	Applicability Threshold	Average annual AFSI over a three-year tax period in excess of 1B USD	Annual global consolidated revenues over 750M EUR for at least 2 of 4 fiscal years preceding tested fiscal year
2	Income	Jursidictional Blending	Country by Country Application (no cross-jurisdictional blending)
3	Carveouts	Tangible Asset Depreciation	Substance Based Income Carveouts for applicable rate on Tangible Assets and Qualified Payroll Expenses

Excise Tax on Repurchase of Corporate Stock

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Overview

- Tax is 1% of fair value of stock repurchased (new §4501)
- Covered Corporation is domestic corporation with publicly traded stock
- Rule to include repurchase by “Specified Affiliates”
 - 50% or more direct or indirect ownership
- Taxable fair value of stock repurchased is reduced by fair value of stock issued during same taxable year, including stock issued to employees
- Excise tax is considered a non-deductible federal tax
- Applicable to repurchases after 12/31/2022

Exclusions for Repurchases That Are:

- Part of a 368(a) reorganization with no gain or loss recognized by shareholder
- Contributed to an ESOP or other retirement plan
- Total value of repurchases are less than \$1M
- Repurchase by dealer in ordinary course of business
- Repurchase by regulated investment company or REIT
- Repurchase treated as dividend

International Considerations

- Special rules to include certain corporations parented by public foreign companies
 - Example: Purchase of foreign parent stock by U.S. subsidiary
- Special Rules for certain expatriated entities

Accounting Considerations

- For GAAP purposes, would not be an income tax under ASC 740
- Would be accounted for either as an above-the-line tax in the P&L, or through equity as a netted item with the redemption accounting through common stock and APIC
 - If expensed through the P&L, would see a perm book/tax difference
 - If adjusted through equity, would not see an addback for tax

R&D Credit Changes

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R&D Credits Items

- IRA increases potential R&D Credit payroll offset for small businesses from \$250,000 to \$500,000 for tax years beginning after 12/31/2022
 - Creates two \$250,000 tranches with rules for application against FICA and employer share of Medicare taxes
- CHIPS Act creates Advanced Manufacturing Investment Credit
 - For investment in qualified property used in the manufacture of semiconductors
 - Also for investment in tooling for manufacture of semiconductors
 - Property placed in service after 12/31/2022 for which construction begins prior to 1/1/2027

Capitalization of §174 Research & Development Costs

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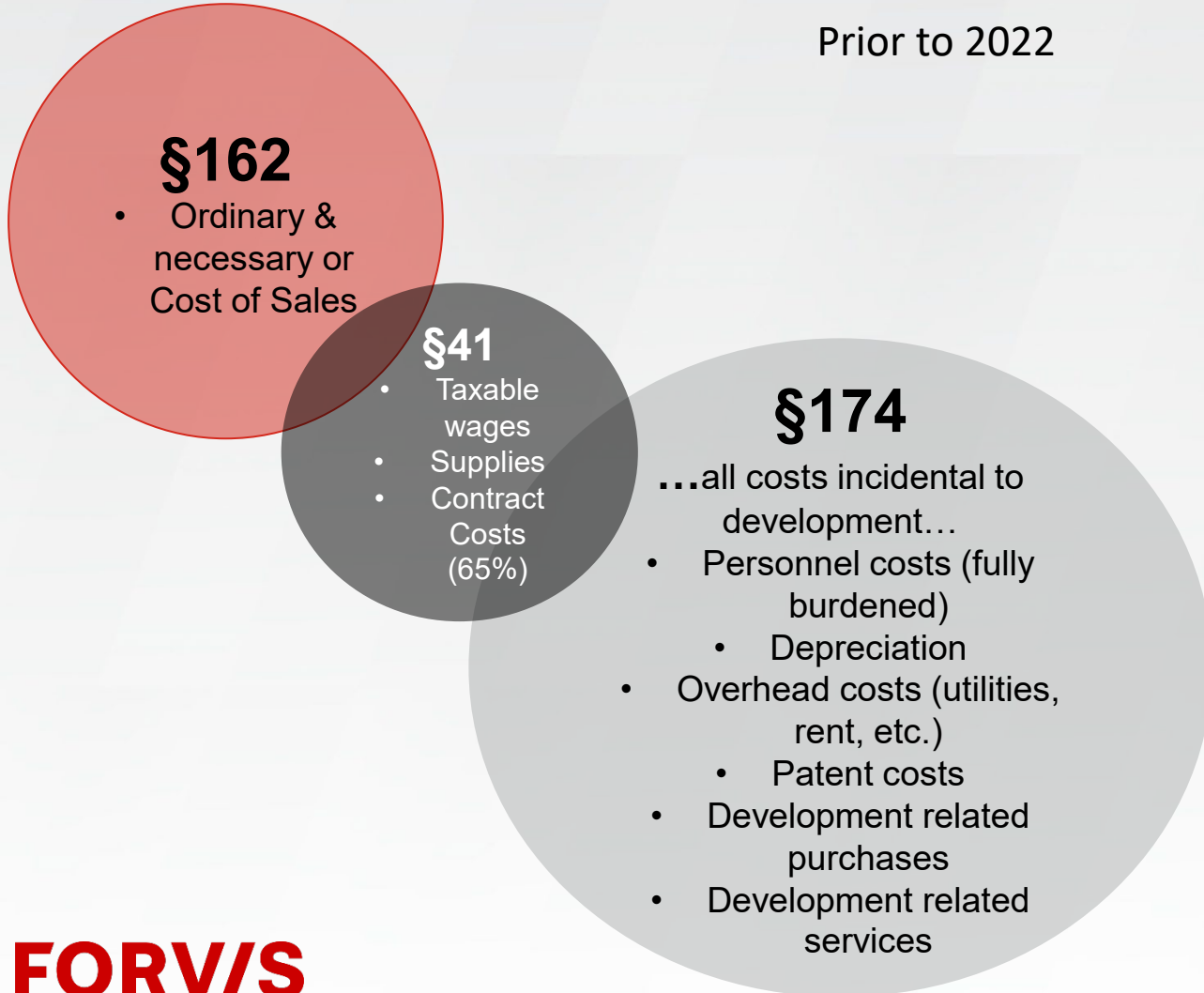
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Section 174 – Post-TCJA What Has Changed?

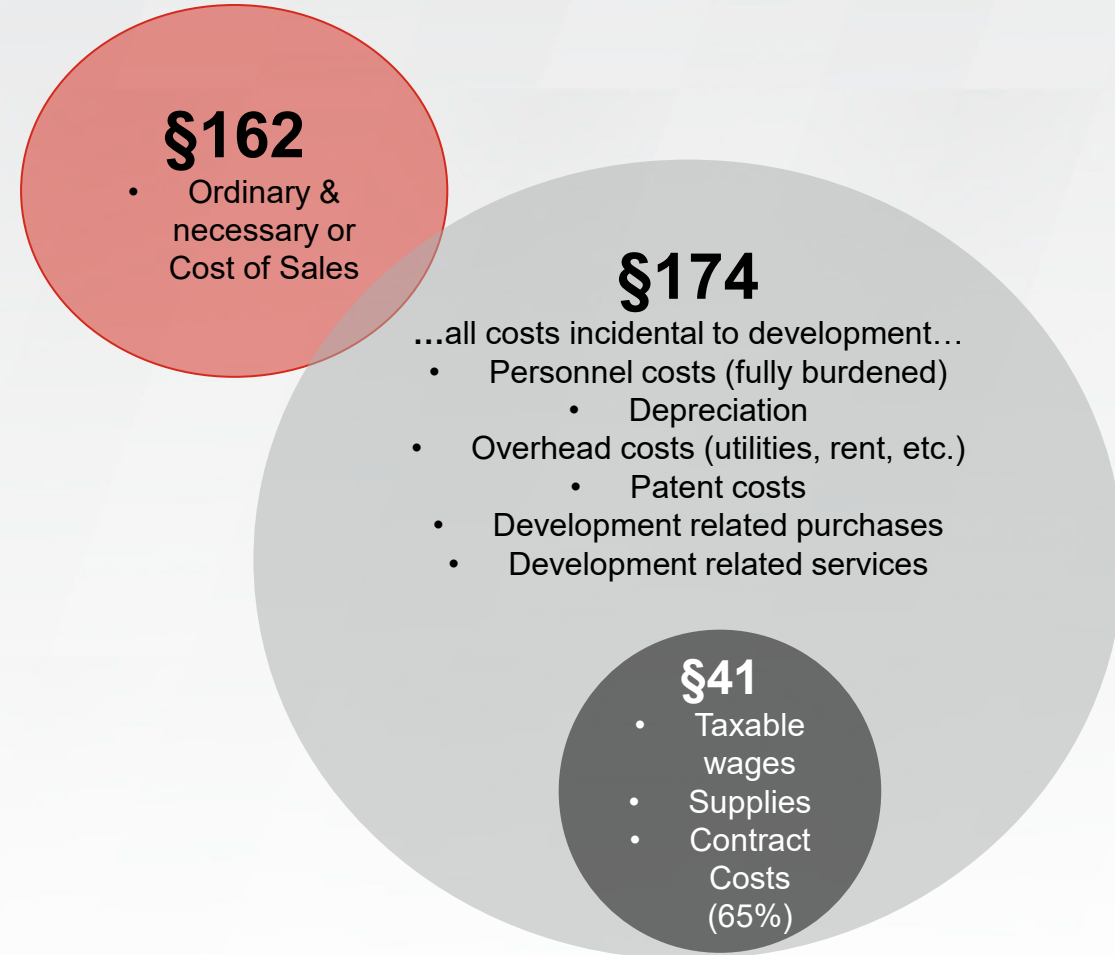
	Prior to 2022	Future (for tax years starting after 1/1/22)
R&E Expenditures	<ul style="list-style-type: none"> • May deduct as incurred, under 174(a) OR • Elect to capitalize & amortize over 60 months after being PIS, under 174(b) OR • Elect to amortize R&E expenditures over 10 years under 59(e) 	Shall be amortized over 5 years.
Foreign Research	Same treatment	Amortize over 15 years for foreign research
Recovery of costs	Write-off when abandoned/disposed	TP cannot recover costs of disposed/abandoned R&D earlier than end of the required amortization period
Amortization Convention	Amortization begins with the month that the TP realizes benefit from expenditures	Mid-year in which the specified R&D expenditure is paid or incurred
Software Development	Utilized 2000-50 to expense immediately, OR Amortize for: <ul style="list-style-type: none"> - 5 years starting when development is completed, or - 36 months from date software is placed in service 	Specifically included in definition of 174 expenditure, therefore must be capitalized

Interplay Between Section 174 & 41

Prior to 2022



2022 & Later



Legislative Update - The Elusive “Technical Fix”

- Broad bi-partisan support for permanent fix or deferral
 - Challenge is finding the right vehicle
 - Number of failed potential vehicles – American Rescue Plan (2021), American Innovation and R&D Competitiveness Act (2021), American Innovation & Jobs Act (2021), America Competes Act/U.S. Innovation and Competition Act (2021/2022), Chips & Science Act (2022), Inflation Reduction Act (2022)
- Current Hope: Tax extenders bill might be introduced post mid-term elections in December during lame duck session that could reverse mandatory capitalization at least temporarily
 - Tax departments will be dealing with changes to provision calculations and increased estimated payments for the remainder of the year

Thank you!

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