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# President Biden Signs the Bipartisan Infrastructure Investment and Jobs Act

**PRACTICE AREAS**

Tax

**INDUSTRIES**

Affordable Housing

Healthcare & Life Sciences

High Net Worth Individuals and Family Offices

Law Firms

Manufacturing, Retail & Distribution

Media & Entertainment

Nonprofit Organizations

Private Equity & Investment Advisory

Professional Services Firms

Real Estate & Hospitality

Technology

November 15, 2021

On November 15, 2021, President Biden signed into law the bipartisan $1.2 trillion Infrastructure Investment and Jobs Act (IIJA) which had previously been approved by both the Senate and the House of Representatives.

The focus of major tax provisions on the Biden Administration's agenda would be included in the Build Back Better Act, which is still under consideration by the House and the Senate. However, the IIJA contains not only significant federal investments in America's infrastructure over the next five years, but also several significant provisions affecting taxpayers.

**Employee Retention Tax Credit**

The IIJA terminates the Employee Retention Tax Credit (ERTC) for most employers. This likely will require companies that funded the fourth quarter credit by reducing employment tax deposits to repay these amounts. It is unclear whether the IRS will impose late deposit penalties and interest; normally, the IRS claims it lack the power to abate interest, but it can abate penalties based on reasonable cause. The IRS will provide guidance on a penalty waiver procedure for this situation.

The ERTC will not be allowed after the third quarter of 2021 for employers other than Startup Recovery Businesses. A Startup Recovery Business is defined as an entity that began conducting business or trade after February 15, 2020; had average annual gross receipts less than $1 million; and does not otherwise qualify for the ERTC either by full or partial closure, or by significant decline in gross receipts requirements. For the fourth quarter 2021, a company that would qualify under prior rules should be eligible if it can otherwise satisfy the Startup Recovery Business rules.

### Brokers to Report Digital Asset Transfers

The IIJA contains a provision for any broker to report digital asset transfers, generally known as cryptocurrency transactions. “Broker” is broadly defined in the IIJA to include those who regularly provide services in connection with the transfer of such assets. Failure to report digital asset transfers would subject the taxpayer to civil penalties without reasonable cause.

This provision applies to returns and statements that must be filed after December 31, 2023. The Treasury Department will issue detailed guidance on this provision and the delayed effective date indicates there may be legislative changes to this rule over the next few years.

### Extension of Interest Rate Stabilization Table for Pension Smoothing

Many companies follow the practice of “pension smoothing” which allows the use of higher future interest rates to establish their future pension liability. The IIJA extends for another five years the interest rate stabilization table issued within the Internal Revenue Code, which was scheduled to expire at the end of the 2025 plan year. This rule is expected to generate higher tax revenue by reducing the level of current contributions and, correspondingly, a reduction of deductions in determining taxable income.

### Contribution to Capital Rule Modified

Certain regulated public water and sewage disposal utilities may exclude from income contributions made to the capital of these corporations. This rule is effective for contributions made after December 31, 2020, and also provides certain automatic extensions of filing deadlines related to federal disasters, including “significant fires.”

If you have questions on the IIJA and its tax provisions, please contact your HCVT tax professional.