

Reinstatement of Superfund excise taxes



After more than 25 years, two excise taxes on chemicals and imported hazardous substances were reinstated in the Infrastructure Investment and Jobs Act (Pub. L. 117-58), effective July 1, 2022. A third excise tax on crude oil and petroleum products was reinstated in the Inflation Reduction Act (Pub. L. 117-169), effective January 1, 2023. Companies should carefully review their operations to determine the impact, if any, of these taxes.

The Infrastructure Investment and Jobs Act (Pub.L. 117–58), which was signed into law on November 15, 2021, reinstated the Chemicals Superfund Tax and the Hazardous Substances Tax at twice the prior rates through 2031.

The Inflation Reduction Act (Pub. L. 117-169), which was signed into law on August 16, 2022, reinstated the Petroleum Superfund Tax at a rate of 16.4 cents per barrel.

The Joint Committee on Taxation estimates these excise taxes combined would increase revenues by over \$52 billion over a 10-year period.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) established the Hazardous Substance Superfund (Superfund) in the 1980s, to fund the cleanup of hazardous waste sites. Superfund historically was funded by three separate but interrelated excise taxes applicable to crude oil and petroleum products, certain chemicals, and imported hazardous substances. Companies in the petroleum and chemicals industries generally may have new compliance obligations with respect to the Superfund excise taxes on crude oil and petroleum products, chemicals, and hazardous substances. This additional excise tax compliance can be expected to affect multiple stakeholders in each company, from procurement to tax, environmental regulatory to information technology (IT), and leadership to customer relations. Further, given current supply chain disruptions in these industries, it is worth considering how to minimize potential internal disruption and maximize administrative efficiency.

IRC Section 4611 Excise Tax— Domestic crude and Imported petroleum products	IRC Section 4661 Excise Tax— Taxable chemicals	IRC Section 4671 Excise Tax— Hazardous substances
<p>The excise tax affects:</p> <ul style="list-style-type: none"> • Operators of U.S. refineries receiving crude oil • Importers of petroleum products for consumption, use, or warehousing • Users or exporters of crude oil on which the excise tax has not yet been paid. 	<p>The excise tax affects:</p> <ul style="list-style-type: none"> • Importers, manufacturers, or producers that sell or use any of the 42 taxable chemicals identified in the Internal Revenue Code. <p>Common taxable chemicals include: ethylene, propylene, chlorine, ammonia, and certain hydrocarbons.</p>	<p>The excise tax affects:</p> <ul style="list-style-type: none"> • Sellers or users of imported hazardous substances. <p>In addition to a statutory list, over 100 taxable substances have been identified by the IRS. Common substances include isopropyl alcohol, methanol, polypropylene, and hydrogen peroxide.</p>
<p>Before 1996, excise tax was imposed at 9.7 cents per barrel.</p>	<p>Before 1996, the excise tax rate varied by chemical ranging from \$0.22 to \$4.87 per ton.</p>	<p>Before 1996, the excise tax was imposed at the rate that would have been applicable to the taxable chemical content of the hazardous substance.</p>
<p>The new rate is 16.4 cents per barrel, and will be adjusted for inflation in years after 2023.</p>	<p>New excise tax rates are twice the prior rates, or \$0.44 to \$9.74 per ton.</p>	<p>New excise tax rates are twice the prior rates.</p>
<p>The tax is expected to be administered much like the current Oil Spill Excise Tax.</p>	<p>Exceptions and special rules include:</p> <ul style="list-style-type: none"> • Methane or butane used as a fuel or in the production of certain fuels • Acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene used in a qualified fuel use • Certain substances used in the production of fertilizer and animal feed • Substances having a transitory presence during refining and certain intermediate hydrocarbon streams • Any substance derived from coal • Refunds and credits may be allowed in certain cases, including export. 	<p>Tax-free sales may be allowed in the following situations:</p> <ul style="list-style-type: none"> • Substance sold for use or used as fuel • Substance sold for use or used in production of fertilizer • Substance sold for use or used in production of animal feed <p>Refunds and credits may be allowed for exported substances.</p>

This document does not reflect developments after [August 16, 2022].



How KPMG can help

- Identify and educate key stakeholders within the organization (supply chain, tax, EPA regulatory, IT, finance)
- Identify taxable chemicals, hazardous substances, crude oil, and imported petroleum products
- Identify and document applicable exemptions, including exemption certificates, waivers, and consents, as applicable
- Assist with drafting and filing requests to modify the list of taxable substances and computing tax rates on taxable substances
- Assess supplier and consumer invoicing issues
- Assist with internal and external communications related to the tax
- Identify data sources required to track the lifecycle of affected chemicals and products, assess potential issues, and evaluate process and configuration changes to resolve issues
- Prepare for all aspects of compliance, including filing registrations on Form 637 and filing returns on Form 720 and Form 6627



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