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Superfund excise tax on chemicals and imported taxable substances

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SUPERFUND EXCISE TAX ON CHEMICALS AND IMPORTED TAXABLE SUBSTANCES

On Nov. 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act, which reinstated the Superfund excise taxes imposed on chemicals and imported taxable products effective July 1, 2022, through Dec. 31, 2031. Manufacturers and importers of chemicals and substances containing chemicals may be liable for federal excise tax, and purchasers of these chemicals may see increased prices.

Chemical excise tax

The Superfund excise tax applies to a manufacturer or importer's sale or use of certain listed chemicals. Each chemical has its own tax rate, listed in the following table.

Taxable chemical	Tax rate per ton (\$)	Taxable chemical	Tax rate per ton (\$)
Acetylene	9.74	Chromite	3.04
Benzene	9.74	Potassium dichromate	3.38
Butane	9.74	Sodium dichromate	3.74
Butylene	9.74	Cobalt	8.90
Butadiene	9.74	Cupric sulfate	3.74
Ethylene	9.74	Cupric oxide	7.18
Methane	6.88	Cuprous oxide	7.94
Naphthalene	9.74	Hydrochloric acid	0.58
Propylene	9.74	Hydrogen fluoride	8.46
Toluene	9.74	Lead oxide	8.28
Xylene	9.74	Mercury	8.90
Ammonia	5.28	Nickel	8.90
Antimony	8.90	Phosphorus	8.90
Antimony trioxide	7.50	Stannous chloride	5.70
Arsenic	8.90	Stannic chloride	4.24
Arsenic trioxide	6.82	Zinc chloride	4.44
Barium sulfide	4.60	Zinc sulfate	3.80
Bromine	8.90	Potassium hydroxide	0.44
Cadmium	8.90	Sodium hydroxide	0.56
Chlorine	5.40	Sulfuric acid	0.52
Chromium	8.90		

Imported substance excise tax

Imported taxable substances sold or used by the importer are also subject to tax. To be taxable, the substance must be produced from taxable chemicals that are imported into the United States where taxable chemicals constitute more than 20% of the weight (or more than 20% of the value) of the material used to produce the substance.

Imported substances subject to tax

The initial list of taxable substances, provided in the table below, is drawn from the statute or from Treasury Department Notice 2021-66. Both importers and exporters await further guidance from the Treasury on whether they will be permitted to file a petition with the IRS to add or remove substances from the published list.

Imported substance		
1,3-Butylene glycol	Ethylenebistetrahydrophthalimide	Poly(Propyleneoxy) glycerol
1,4-Butanediol	Ferrochrome ov 3 pct. carbon	Poly(Propyleneoxy) sucrose
1,5,9-Cyclododecatriene	Ferrochromium nov 3 pct.	Poly(Propyleneoxy/ethyleneoxy) benzenediamine
2,2,4-Trimethyl-1,3-Pentanediol diisobutyrate	Ferronickel	Poly(Propyleneoxy/ethyleneoxy) diamine
2,2,4-Trimethyl-1,3-Pentanediol monoisobutyrate	Formaldehyde	Poly(Propyleneoxy/ethyleneoxy) glycerol
2-Ethyl hexanol	Formic acid	Poly (Propyleneoxy/ethyleneoxy)sucrose
2-Ethylhexyl acrylate	Glycerine	Polyalphaolefins
Acetic acid	Hexabromocyclododecane	Polybutadiene
Acetone	Hexamethylenediamine	Polybutene
Acetylene black	Hydrogen peroxide	Polybutylene
Acrylic and methacrylic acid resins	Isobutyl acetate	Polybutylene/ethylene
Acrylonitrile	Isophthalic acid	Polycarbonate
Adipic acid	Isopropyl acetate	Polyethylene resins, total
Adiponitrile	Isopropyl alcohol	Polyethylene terephthalate pellets
Allyl chloride	Linear alpha olefins	Polypropylene
Alpha-methylstyrene	Maleic anhydride	Polypropylene resins
Ammonium nitrate	Melamine	Polystyrene homopolymer resins
Aniline	Methanol	Polystyrene resins and copolymers
Benzaldehyde	Methyl acrylate	Polyvinylchloride resins
Benzoic acid	Methyl chloroform	Propanol
Bisphenol-A	Methyl isobutyl ketone	Propylene glycol
Butanol	Methyl methacrylate	Propylene oxide
Butyl acrylate	Methylene chloride	Sodium nitriolotriacetate monohydrate
Butyl benzyl phthalate	Monochlorobenzene	Styrene
Carbon tetrachloride	Monoethanolamine	Styrene-butadiene, latex
Chlorinated polyethylene	Monoisopropanolamine	Styrene-butadiene, snpf
Chloroform	Nickel oxide	Synthetic linear fatty alcohol ethoxylates
Chromic acid	Nickel powders	Synthetic linear fatty alcohols
Cumene	Nickel waste and scrap	Synthetic rubber, not containing fillers
Cyclododecanol	Normal butyl acetate	Terephthalic acid
Cyclohexane	Normal propyl acetate	Tetrabromobisphenol-A
Decabromodiphenyl oxide	Nylon 6/6	Tetrachlorophthalic anhydride
Di-2 ethyl hexyl phthalate	Ortho-dichlorobenzene	Tetrahydrofuran
Diethanolamine	Ortho-nitrochlorobenzene	Texanol benzyl phthalate
Diglycidyl ether of bisphenol-A	Para-dichlorobenzene	Toluene diisocyanate

Imported substance		
Diisopropanolamine	Paraformaldehyde	Toluenediamine
Dimethyl terephthalate	Para-nitrochlorobenzene	Trichloroethylene
Dimethyl-2, 6-naphthalene dicarboxylate	Para-nitrophenol	Triethanolamine
Di-N-Hexyl adipate	Pentaerythritol	Triisopropanolamine
Diphenyl oxide	Perchloroethylene	Trimethylolpropane
Diphenylamine	Phenol	Unwrought nickel
Epichlorohydrin	Phenolic resins	Urea
Ethyl acetate	Phosphorous pentasulfide	Vinyl acetate
Ethyl acrylate	Phosphorous trichloride	Vinyl chloride
Ethyl alcohol for nonbeverage use	Phthalic anhydride	Vinyl resins
Ethyl chloride	Poly (69/31 ethylene/ cyclohexylenedimethylene terephthalate)	Vinyl resins, NSPF
Ethyl methyl ketone	Poly (96.5/3.5 ethylene/ cyclohexylenedimethylene terephthalate)	Wrought nickel rods and wire
Ethylbenzene	Poly (98.5/1.5 ethylene/ cyclohexylenedimethylene terephthalate)	
Ethylene dibromide	Poly 1,4 butyleneterephthalate	
Ethylene dichloride	Poly(ethyleneoxy)glycerol	
Ethylene glycol	Poly(propylene)glycol	
Ethylene oxide	Poly(propylene/ethylene)glycol	

Exemptions, credits and refunds

Certain tax exemptions may apply. For the chemical tax, exemptions include use of methane or butane as a fuel and use of chemicals in the production of fertilizer or animal feed. Exemptions from the imported substance tax apply to substances taxed under other provisions. Refunds of both types of tax may be available, depending on the use of the chemical or substance. Export credits may be claimed by exporters of taxable chemicals or listed imported substances.

Compliance requirements

Superfund excise taxes will be reported on Form 720, Quarterly Federal Excise Tax Return. Returns will be due quarterly and semimonthly deposits will be required. Excise tax registrations may be needed to engage in certain transactions. Documentation in the form and manner prescribed by the IRS will be required for tax-free sales and claims for refund.

What should companies do to prepare for Superfund excise taxes?

- Assess chemicals subject to tax under IRS definitions and identify gap areas
- Calculate potential tax exposure
- Develop excise tax compliance procedures and a reporting process; perform data analysis
- Evaluate transactions that may qualify as tax free or exempt
- Evaluate transactions for which a credit may be claimed
- Evaluate export transactions
- Prepare excise tax registrations
- Consider preparation of comments to the Treasury Department on areas of uncertainty
- Evaluate customer contracts and set pricing for July 2022

Reinstatement of the Superfund excise taxes on chemicals and imported substances after 25 years will pose challenges for industrial manufacturers, importers and exporters. RSM can assist you in understanding the excise tax rules and compliance requirements for these taxes. Our professionals can navigate the complexities of excise tax exemptions, credits and refunds, as well as the filing of imported substance petitions to the government.

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