

VOLKSWAGEN

GROUP OF AMERICA



VW CREDIT, INC.

November 4, 2022

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

RE: Volkswagen Group of America's Response to IRS Notices 2022-46, 2022-47, 2022-50, and 2022-56

Dear Secretary Yellen:

Volkswagen Group of America, Inc. ("VWGoA") is a wholly owned subsidiary of Volkswagen AG ("Volkswagen Group"), one of the world's leading automobile manufacturers. VWGoA houses the U.S. operations of a worldwide family of distinguished and exciting brands, including Audi, Bentley, Bugatti, Lamborghini, and Volkswagen. Volkswagen Group of America Chattanooga Operations, LLC, a wholly owned subsidiary of VWGoA, operates a state-of-the-art assembly facility in Chattanooga, Tennessee, while VW Credit, Inc., another wholly owned subsidiary of VWGoA, provides financial services. VWGoA's headquarters are in Herndon, Virginia. Across the United States, the operations of VWGoA and our approximately 1,000 dealer partners directly support nearly 48,000 jobs.

VWGoA has a steadfast commitment to the U.S. battery electric vehicle ("BEV") market that is only strengthening. In March, Volkswagen Group unveiled a \$7.1 billion commitment to boost product line-up, research & development, and manufacturing in North America, and the brand is targeting 55% percent of U.S. vehicles sales to be fully electric by 2030. This year, production of the U.S.-assembled Volkswagen ID.4 BEV began in Chattanooga and we look forward to both the ID. Aero and ID. Buzz BEVs launching in the United States in the next few years. In all, across all brands, Volkswagen Group plans to introduce more than 25 new BEVs to American consumers by 2030. Beyond BEV assembly, Volkswagen Group aims to build up battery cell production in the United States and North America to meet the growing demand for batteries across its brands. The Group is currently assessing governance and finance models and aims to finalize decisions in the coming months.

In response to the Notices requesting public comment issued on October 5, 2022,¹ VWGoA wishes to share its perspective as the Department of the Treasury and the Internal Revenue Service (“IRS”) seek to implement the new Section 30D, Section 45W, and Section 45X tax credits.² VWGoA also fully supports the comments from the Alliance for Automotive Innovation and Autos Drive America that were separately submitted by those entities on this docket.

In particular, in **Section I** below, VWGoA addresses the implementation of the Section 30D Clean Vehicle Tax Credit given the new eligibility restrictions within the Inflation Reduction Act (“IRA”). We request that implementing guidance support a robust BEV marketplace by providing reasonable pathways to eligibility under the credit to the maximum extent provided by law. Until the IRA became law, there were 72 BEV models eligible for the EV tax credit, but after the law was signed, this number was immediately cut by approximately 70% with the entry into force of the North American final assembly provision.³ Once the IRA’s full sourcing provisions for the credit are implemented, VWGoA anticipates that *no vehicle will qualify* for the full credit unless the provision is implemented thoughtfully. While the U.S. BEV industrial capacity evolves and grows, a robust and diverse BEV market with non-discriminatory consumer supports is required to advance our collective electrification goals. However, absent Treasury guidance that takes into account the realities of the BEV marketplace, the United States risks both sacrificing the progress already made towards e-mobility and slowing consumer adoption of BEVs.

Section II then addresses a complementary recommendation VWGoA suggests that Treasury include in its guidance addressing the definition of “comparable vehicles” under Section 45W. Lastly, **Section III** addresses the need for clear implementation guidance on Section 45X and the related elective payment transfer rules as well.

In support of our dealer partners, customers, and our employees, we request your consideration of these comments when developing implementing guidance.

I. VWGoA’s Comments on Section 30D in Response to Notice 2022-46

Section 30D – North American Final Assembly⁴

Immediately upon enactment, and with no transition period, the IRA required that vehicles be assembled in North America to qualify for the Section 30D credit. This provision severely limits the number of vehicles that are eligible for any portion of the tax credit and will slow the adoption of BEVs in the United States. Moreover, the lack of a transition period ignores the current realities of the automotive industry and the complexity of its supply chain.

¹ IRS, Request for Comments on Credits for Clean Vehicles, Notice 2022-46 (Oct. 5, 2022); IRS, Request for Comments on Energy Security Tax Credits for Manufacturing Under Sections 48C and 45X, Notice 2022-47 (Oct. 5, 2022).

² Unless otherwise indicated, all statutory section references are to the Internal Revenue Code of 1986, as amended.

³ *What if no EVs qualify for the EV Tax Credit? It could happen.*, ALLIANCE FOR AUTOMOTIVE INNOVATION (Aug. 5, 2022), <https://www.autosinnovate.org/posts/blog/what-if-no-evs-qualify-for-the-ev-tax-credit>

⁴ Notice 2022-46, Section 3.01(9).

Further, this provision is also inconsistent with the commitments the United States has made to its economic and security partners including the European Union, Japan, and the Republic of Korea, who are some of our nation's greatest allies. A robust and diverse BEV market with non-discriminatory consumer supports is required to advance our collective electrification goals – both in the United States and globally. This reality is recognized by the United States' partners and allies in Europe,⁵ Japan,⁶ and the Republic of Korea⁷ who themselves have not applied discriminatory eligibility restrictions to their consumer electric vehicle incentives.

We urge the Administration to employ all administrative flexibilities available and to work with Congress and our international partners to find a solution that addresses these significant concerns.

Section 30D - Critical Mineral & Battery Component Requirements⁸

VWGoA urges Treasury and the IRS to recognize the value of U.S. battery assembly and allied nation supply chains as qualifying content under the definition of “free trade agreement” through the implementation guidance. The critical mineral supply chain is complex – and currently largely led by China – meaning the United States and our allies will need to build up new supply chains, including mining and processing, from scratch in order to compete. According to the Mineral Commodity Summaries 2022 from the U.S. Geological Survey:

⁵ For example, Germany, France, Spain and Italy offer purchase grants for EVs without distinguishing between the origin of the vehicle or its components. See for Germany: Richtlinie zur Förderung des Absatzes von elektrisch betriebenen Fahrzeugen (Umweltbonus) vom 21. Oktober 2020 in der Fassung der Änderung vom 24. November 2021; France: Décret n° 2022-1151 du 12 août 2022 relatif aux aides à l'acquisition ou à la location de véhicules peu polluants; Spain: Real Decreto 569/2020, de 16 de junio, por el que se regula el programa de incentivos a la movilidad eficiente y sostenible (Programa MOVES II) y se acuerda la concesión directa de las ayudas de este programa a las comunidades autónomas y a las ciudades de Ceuta y Melilla and Real Decreto 266/2021, de 13 de abril, por el que se aprueba la concesión directa de ayudas a las comunidades autónomas y a las ciudades de Ceuta y Melilla para la ejecución de programas de incentivos ligados a la movilidad eléctrica (MOVES III) en el marco del Plan de Recuperación, Transformación y Resiliencia Europeo; and Italy: CIRCOLARE 19 ottobre 2022 OGGETTO: Incentivi per l'acquisto di veicoli non inquinanti ai sensi del decreto del Presidente del Consiglio dei Ministri 4 agosto 2022, recante “Modifiche al decreto del Presidente del Consiglio dei Ministri 6 aprile 2022 - Riconoscimento degli incentivi per l'acquisto di veicoli non inquinanti”, pubblicato nella Gazzetta Ufficiale della Repubblica italiana - Serie Generale n. 232 del 4 ottobre 2022.

⁶ See, e.g., FY2022 Clean Energy Automobile Introduction Promotion Subsidy Grant Rules, Arts. 4(2) and (3) and FY2022 Clean Energy Automobile Introduction Promotion Subsidy Implementing Rules, Art. 5(2) (providing for eligibility and rebates amounts for a purchase of a new BEV determined based on non-discriminatory factors including, for example, new purchase; type of battery; clear indication of battery capacity; performance warranty of battery; driving range on a single charge; whether the vehicle is equipped with a function to supply power externally; and whether the vehicle is equipped with certain advanced technology that support safe driving); Act on Special Measures Concerning Taxation (Act No. 26 of 1957, as amended), Art. 90-12(1)(i) and Local Tax Act (Act No. 226 of 1950, as amended), Art. 149(1)(i) and Supplementary Provision Article 12-3(2)(i) (providing for exemption or preferential treatment for vehicle purchase tax and vehicle property tax applied to all BEVs, regardless of the place of manufacture of the vehicle).

⁷ See, e.g., Act on the Promotion of Development and Distribution of Environment-Friendly Automobiles, Law No. 18323 (July 27, 2021), Article 10; Enforcement Decree of Act on the Promotion of Development and Distribution of Environment-Friendly Automobiles, Decree No. 32361 (Jan. 25, 2022), Article 18; Clean Air Conservation Act, Law No. 18469 (Sept. 24, 2021), Article 58(2); Enforcement Decree of Clean Air Conservation Act, Decree No. 992 (June 30, 2022), Article 79(3) (providing for BEV tax incentive eligibility based on non-discriminatory factors, such as the vehicle's performance (e.g., fuel efficiency), classification, and MSRP).

⁸ Notice 2022-46, Section 3.01(2) and (3).

The United States was 100% net import reliant for 14 of the [32] listed critical minerals or mineral groups. Despite not having mine production or refining, the United States did have secondary production for four critical minerals and thus net import reliance was less than 100%. Additionally, there was secondary production for another nine critical minerals that supplemented primary production (table 4). China was the leading producing nation for 16 of the 32 listed critical minerals.⁹

To support the transition of the supply chain, the definition of “free trade agreement” should recognize the importance of our allies in Europe, Japan, and the Republic of Korea by ensuring that the critical mineral supply chains within these nations are deemed qualifying content. Not only are nations such as these Members of the World Trade Organization, including a number of plurilateral agreements of like-minded Members under its auspices, but they also share our economic and political values, and are also party to a United States collective defense arrangement. To the extent that the U.S. government wishes to exclude Chinese, Russian, or other non-allied countries and their entities from qualification, this should be achieved by expanding the “foreign entity of concern” list, as opposed to an overly-restrictive reading of the phrase “free trade agreement.” Accordingly, we recommend the Treasury Department’s guidance on defining what constitutes a “free trade agreement in effect” under section 30D(e)(1) be as follows:

The term ‘free trade agreement’ means any agreement or program listed in General Note 3(c)(i) of the Harmonized Tariff Schedule of the United States.”

“The term ‘country with which the United States has a free trade agreement in effect’ includes all parties to or beneficiaries of a free trade agreement as defined herein, including the member states of a customs union party or beneficiary, but does not include any party that is a territory of a state.

Further, implementation guidance on Section 30D’s battery component content provisions should recognize the intricacies of the BEV industry’s value chain and ensure that batteries assembled in North America can reasonably qualify for at least this portion of the new tax credit. In particular, VWGoA supports demarcating Section 30D(e)(1) critical mineral extraction and processing activities from Section 30D(e)(2) battery component manufacturing activities at the point when cathode and anode material is applied onto a metal foil acting as a current collector. Such an interpretation is not only supported by recent administrative rulings by U.S. Customs and Border Protection (CBP),¹⁰ but it will allow for ease of

⁹ U.S. Geological Survey, 2022, Mineral commodity summaries 2022: U.S. Geological Survey, 202 p., <https://doi.org/10.3133/mcs2022>.

¹⁰ For example, CBP has determined that once cathode material has been applied and dried on metal foil, it is considered a “part” of a battery, such that it is to be classified in the parts provision for batteries at Harmonized Tariff Schedule of the United States (“HTSUS”) 8507.90.8000, which provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Parts: Other.” NY N303974 (Apr. 18, 2019). Batteries used for BEV propulsion are properly classified in HTSUS 8507.60.0010, which provides for “Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof: Lithium-ion batteries: Of a kind used as the primary source of electrical power for electrically powered vehicles of subheadings 8703.40, 8703.50, 8703.60, 8703.70 or 8703.80.” By contrast, CBP has concluded that cathode active material and its precursor materials are classified in HTSUS 3824.99.3900 and 2825.90.9000 (respectively), which in contrast are HTSUS provisions that are independent from and unrelated to the HTSUS provisions for batteries in Chapter 85. *E.g.*, NY N324313 (Mar. 4, 2022); NY N321599 (Sep. 28, 2021).

compliance and enforcement while shifting supply chains towards the United States, our allies, and our partners. Thus, VWGoA proposes the following language for the Treasury guidance to clarify the activities that fall within the scope of Section 30D(e)(1) compared to Section 30D(e)(2):

For purposes of Section 30D(e), the division between activities relating to critical minerals mining, processing, or recycling described in Section 30D(e)(1) and activities relating to battery component manufacturing described in Section 30D(e)(2) should be drawn at the point of production at which cathode and anode slurries are applied onto metal foils. This point marks the beginning of the battery component manufacturing process, and any subsequent processes in manufacturing shall be subject to Section 30D(e)(2), whereas any preceding processes shall be subject to Section 30D(e)(1).

With respect to the factors that should be considered to determine the value of the North American manufacturing and assembly of battery components, VWGoA notes that the automotive rules of origin in the United States-Mexico-Canada Agreement (“USMCA”) encourage battery manufacturing and assembly in North America. Ensuring that the implementation of the IRA leads to consistent results with the USMCA rules of origin is essential for the success of both laws. Therefore, VWGoA suggests that the following formula, which recognizes the value of North American production and aligns with the USMCA tariff shift rule of origin option for batteries of HTSUS subheading 8507.60, be used in Treasury’s guidance:

$$\text{North American value} = \frac{(V_{\text{pack}} + V_{\text{modules}} + V_{\text{cells}} + V_{\text{electrodes}}) \text{ North America}}{(V_{\text{pack}} + V_{\text{modules}} + V_{\text{cells}} + V_{\text{electrodes}}) \text{ Total}}$$

Where,

V_{pack} = Value of the battery pack, including manufacturing and assembly production costs

V_{modules} = Value of the battery modules, including manufacturing and assembly production costs

V_{cells} = Value of the battery cells, including manufacturing and assembly production costs

$V_{\text{electrodes}}$ = Value of the battery electrodes, including manufacturing and assembly production costs

Lastly, in support of advancing e-mobility, the Administration should consider developing and implementing a waiver request process for the critical mineral and battery component requirements in Sections 30D(e)(1) and (2) if there is no adequate qualifying extraction, processing, refining, recycling, manufacturing, or assembly capacity in the United States, North America, or in any country with which the United States has a free trade agreement, as applicable.

Section 30D - De Minimis Standard for Input from Foreign Entities of Concern¹¹

The guidance on excluded entities should reflect the standard canon of statutory interpretation that the law does not concern itself with trifles,¹² such that a *de minimis* amount of content contributed to a BEV battery by a foreign entity of concern would not result in ineligibility for Section 30D. Precedent from U.S. free trade agreements would support a *de minimis* threshold of 10 percent of the value of the

¹¹ Notice 2022-46, Section 3.01(5).

¹² See, e.g., *Alcan Aluminum Corp. v. United States*, 165 F.3d 898 (Fed. Cir. 1999) (holding that the presence of a small amount of non-originating grain refiner used in the production of aluminum ingots did not preclude the ingots from qualifying for preferential treatment under the United States-Canada Free Trade Act of 1988).

battery.¹³ This commonsense approach will better incentivize compliance and accelerate the deployment of BEVs in the U.S. marketplace while still supporting the goal of excluding content produced by or in a foreign entity of concern. Accordingly, VWGoA recommends that the following language be included in the Treasury guidance:

For purposes of Section 30D(d), if a “new clean vehicle” for which the applicable critical minerals or components contained in the battery manufactured or assembled by a foreign entity of concern is *de minimis*, i.e., not more than 10 percent, the vehicle should not be considered ineligible for the Section 30D tax credit.

Section 30D - MSRP and Income Limitations: Base MSRP Definition, Annual Inflationary Adjustment¹⁴

The MSRP and income limitations in the IRA exclude a significant portion of the U.S. vehicle market and consumer base. A static limitation on MSRP and income over the 10-year credit window is a further concern, especially as inflation continues to drive all prices and costs – including those of cars – upward.

To address these concerns and support consumers, VWGoA recommends that Treasury’s guidance provide for annual inflationary adjustments to these limitations based on the Consumer Price Index as reported by the U.S. Bureau of Labor Statistics. Such inflation adjustments are made annually for more than 60 tax provisions.¹⁵

In addition, the guidance should clarify that MSRP¹⁶ is to be referenced from the base MSRP as listed on the Monroney Label without charges for optional equipment, such as advanced safety equipment, as well as taxes, title, or registration fees. This definition will support consumers and alleviate confusion by streamlining compliance and by providing customers certainty on credit eligibility when considering which vehicle to purchase.

Section 30D - Transition Rule: Protect Consumers with Existing EV Reservations

Pursuant to Section 3.01(13) of Notice 2022-46, VWGoA also suggests that Treasury and the IRS consider extending the transition rule to include relief for consumers with existing BEV reservations on the date of IRA enactment, to the maximum extent of the law. In this regard, VWGoA notes that Treasury has ample authority to issue guidance expanding the scope of the existing transition rule in Section 13401(l) of the IRA to effectively delay the critical mineral and battery component requirements pursuant to the broad grant of regulatory authority at Section 30D(e)(3).

Thousands of VWGoA customers hold reservations for BEVs for which they are awaiting delivery, and they have been patient as semiconductor and supply chain disruptions impacted automotive production. These consumers placed reservations with an understanding that the full EV tax credit

¹³ *E.g.*, U.S.-Mexico-Canada Agreement, Art. 4.12; Dominican Republic-Central America Free Trade Agreement, Art. 4.6. *See also, e.g.*, Rev. Proc. 2021-43 (establishing a *de minimis* threshold of 10 percent for claims of certain credits).

¹⁴ Notice 2022-46, Section 3.01(10)(c).

¹⁵ *See, e.g.*, Rev. Proc. 2021-45.

¹⁶ This comment relates to the “manufacturer’s suggested retail price” references in both Sections 30D(f)(11) and 30D(g)(2)(B)(i).

would be available to support their purchase, and we believe that implementing guidance should honor these reservations as the United States transitions to the new tax credit structure.

We request that Treasury thereby expand upon the guidance issued on August 16, 2022¹⁷ to protect all consumers that held reservations on electric vehicles on or prior to the date of enactment by allowing such consumers to be eligible for the credit as formerly implemented prior to that date. In this regard, VWGoA suggests that guidance defining “written binding contract” in the transition rule in Section 13401(l) of the IRA be modified.

The IRA did not define “written binding contract.” Instead, lawmakers remained silent on that point, affirmatively choosing not to limit the relief to cases where a written binding contract exists as defined in Treasury Regulations.¹⁸ That silence gives Treasury and the IRS an opening to interpret the transition rule in a way that would extend relief to all reservation holders as described above and not simply to those who satisfy the “written binding contract” construct adopted from other contexts.

The August 16, 2022 guidance filled the silence by interpreting “written binding contract” in a restrictive fashion such that only those customers who, for example, “made a non-refundable deposit or down payment of 5 percent of the total contract price” could potentially benefit from the transition rule relief. Further, by leaving this as a facts and circumstances analysis, the August 16, 2022 guidance potentially fails to provide the level of certainty that would facilitate broader use of the transition rule. The average American consumer will not have the requisite knowledge regarding the history of “written binding contract” under Treasury Regulations and should not be burdened with undertaking such a sophisticated tax analysis to determine their eligibility.

Both the potential limitation and the uncertainty that would result from leaning so heavily on the concepts of Treas. Reg. §1.168(k)-1(b)(4)(ii) are unnecessary and inconsistent with the Administration’s stated goal to maximize the climate and economic benefits of EV tax credits to consumers while acknowledging the supply chain realities that manufacturers face as they respond to the policy choices reflected in the IRA.

Therefore, VWGoA asks that future guidance interpret “written binding contract” more liberally in this limited context, providing that:

For purposes of Section 30D, a taxpayer who held a reservation secured by a monetary deposit for a vehicle prior to August 16, 2022 will be treated as having entered into a written binding contract to purchase the vehicle notwithstanding the fact that the reservation may not be enforceable under State law, may not involve a non-refundable deposit or down payment, and may not limit damages.

II. VWGoA’s Comment on Section 45W in Response to Notice 2022-56

¹⁷ Treasury, Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act (Aug. 16, 2022) (<https://home.treasury.gov/news/press-releases/jy0923>); IRS, Plug-in Electric Drive Vehicle Credit at a Glance (last reviewed or updated Aug. 17, 2022 (<https://www.irs.gov/credits-deductions/individuals/plug-in-electric-drive-vehicle-credit-section-30d>); Treasury, Frequently Asked Questions on the Inflation Reduction Act’s Initial Changes to the Electric Vehicle Tax Credit (Aug. 16, 2022) (<https://home.treasury.gov/system/files/136/EV-Tax-Credit-FAQs.pdf>).

¹⁸ *E.g.*, Treas. Reg. §1.168(k)-1(b)(4)(ii).

With Section 45W, the IRA established a new tax credit for qualified commercial clean vehicles. The credit amount available varies based on the incremental cost of the vehicle over the price of a “comparable vehicle.” For this section, the IRA currently defines “comparable vehicle” solely as “any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in size and use to such vehicle.”¹⁹

Clearer guidance than that provided by the statutory text is needed for manufacturers to understand how to identify a comparable vehicle, so that they may definitively determine and publically articulate the available credit available per model under Section 45W. VWGoA thus recommends that Treasury follow previous IRS guidance for Heavy Duty Hybrid vehicles,²⁰ which allows for manufacturers to identify their comparable vehicle, and to apply these rules for light and medium duty vehicles as well. Accordingly, VWGoA suggests that Treasury adopt the following language in its guidance:

In general. For purposes of Section 45W, “comparable vehicle” means, with respect to any qualified commercial clean vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in size and use to such vehicle. For this purpose--

- (i) a vehicle produced by the same manufacturer as the new clean vehicle is comparable in use only if it is manufactured in the same model year as the new clean vehicle; and
- (ii) a vehicle produced by a person other than the manufacturer of the new clean vehicle is comparable in use only if it is manufactured in the same 12-month period as the new clean vehicle.

Manufacturer to choose among multiple comparable vehicles. If more than one model of vehicle is comparable in weight, size, and use to the qualified commercial clean vehicle, the manufacturer of the qualified commercial clean vehicle may choose a vehicle of any model that is comparable in weight, size, or use and treat that vehicle as the comparable vehicle for purposes of determining the available credit.

III. VWGoA’s Comment on Section 45X in Response to Notice 2022-47 and Notice 2022-50

In Section 6417, Congress created a new monetization opportunity (“direct-pay”), which if administered favorably, would enhance and facilitate the deployment of capital into domestic clean energy manufacturing. In particular, Treasury should eliminate uncertainty regarding taxpayer’s ability to fully realize the benefits provided in Section 45X by confirming one of the following treatments will apply for the purposes of the Base-Erosion Anti-abuse Tax (“BEAT”) in Section 59A. Treasury should provide guidance that taxpayers making a direct-pay election to treat credits as a payment against tax under Section 6417 will either (1) be considered as a “credit that does not reduce tax regular tax liability” as prescribed in Treas. Reg. Section 1.59A-5(b)(3) or (2) not be considered as an “allowable credit” for purposes of Section 59A(b)(1)(B)(i) and Treas. Reg. Section 1.59A-5(b)(2)(ii)(A). The absence of such guidance would create a chilling effect whereby taxpayers would hesitate to make the necessary investments to accelerate the roll-out of domestic clean energy manufacturing as taxpayers may be subject to forfeiting up to the entire benefit of Section 45X otherwise available by incurring additional tax under Section 59A.

¹⁹ I.R.C. § 45W(b)(3).

²⁰ Section 4 item 5 of [N-07-46](#).

BEAT is an alternative minimum tax regime that subjects certain corporations claiming deductions and other tax benefits for payments to certain foreign related-parties (“Base Erosion Benefits”) in excess of a specified threshold to additional taxes. Taxpayers determine the extent of their additional liability (Base Erosion Minimum Tax Amount, “BEMTA”) by calculating the excess of (1) the product of the applicable BEAT rate multiplied by “Modified Taxable Income” over (2) their “Regular Tax Liability” (Section 59A“RTL”).²¹ Modified Taxable Income is determined by adding the amount of Base Erosion Benefits claimed by the taxpayer to the taxpayer’s regular taxable liability.²² Section 59A RTL functions to determine the taxpayer’s U.S. federal income tax liability without the benefit of most otherwise permissible credits.²³ Section 59A RTL is determined by subtracting (1) the excess of (A) all credits allowed under chapter 1 of subtitle A of the Code over (B) the sum of (i) certain preferred credits²⁴ and (ii) other “credits” under Sections 33, 37, 53 from (2) the taxpayers regular tax liability calculated per Section 26(b).²⁵

Notably, the asymmetric treatment of non-preferred tax credits between the two calculations (i.e., non-preferred tax credits solely reduce Section 59A RTL) serves to increase the delta between the two calculation outputs and thus generally increase a taxpayer’s BEAT liability. As such, taxpayers subject to BEAT may as a practical matter lose 100% of the benefits otherwise available per Section 45X.

Apart from the above mentioned policy considerations, Treasury should, pursuant to its legislative mandate in Section 6417(h), provide guidance that a credit for which a direct pay election is made is not forfeited via the operation of the BEMTA calculation. First, a taxpayer making an election under Section 6417 is constructively treated as “making a *payment* against the tax imposed by subtitle A” equal to the amount of such credit. Accordingly, a Section 6417 credit subject to a direct pay election is more analogous to an overpayment under Section 37/Section 6401. Notably, per existing Treasury guidance such Section 37 credits lower the total amount of credits subtracted from the taxpayer’s Section 59A RTL.²⁶ Therefore, by providing such guidance, Treasury will effectuate legislative intent for taxpayers making such election to fully realize the value provided by Section 45X. Alternatively, Treasury could issue guidance on Section 6417 is not treated as a “credit allowed under [Chapter 1] against such regular tax liability.” Section 6417 explicitly provides that the “credit shall be reduced to zero and shall, for any other purposes under this title, be *deemed* to have been allowed to such entity for such taxable year.” Therefore, because these credits are deemed allowed, and not actually allowed, in the current year, they should not be included as a “credit allowed under [Chapter 1] against such regular tax liability.”

VWGoA’s commitment to the U.S. market is strong, but to achieve President Biden’s and our shared electrification goals, we, our dealer partners, and our customers need clear implementing guidance articulating reasonable interpretations of the EV industrialization incentives provided under the IRA. We would welcome discussing these issues further with you and your staff, and look forward to working with you to ensure these incentives are implemented in a manner that supports a robust U.S. BEV marketplace.

²¹ Section 59A(b)(1).

²² Section 59A(c)(1).

²³ Section 59A(b)(1)(B).

²⁴ R&D credits and 80% of certain applicable section 38 credits (including low-income housing, renewable energy production, and energy investment tax credit).

²⁵ Treas. Reg. §1.59A-5(b)(2).

²⁶ Treas. Reg. §1.59A-5(b)(2)(ii)(A).

In closing, VWGoA thanks the Department and the IRS for their consideration of these comments. It would be an honor to welcome you to our headquarters in Herndon, Virginia or our manufacturing plant in Chattanooga, Tennessee so that we may further discuss VWGoA's investment in the United States and our plans to advance e-mobility.

Best regards,



Anna-Maria Schneider
Senior Vice President, Industry and Government Relations
Volkswagen Group of America, Inc.

cc:

Lily Batchelder, U.S. Department of the Treasury
John Morton, U.S. Department of the Treasury
Damian Richardson, U.S. Department of the Treasury
Thomas West, U.S. Department of the Treasury
Shelley Leonard, U.S. Department of the Treasury
Jarrett Jacinto, U.S. Department of the Treasury
Matthew Aks, Department of the Treasury
Ali Zaidi, White House
Austin Butterworth, White House
Brian Deese, National Economic Council
Sameera Fazili, National Economic Council
David Kovatch, National Security Council
Jennifer Mahalingappa, National Security Council
Michael Berube, U.S. Department of Energy
Kara Podkaminer, U.S. Department of Energy
Carlos Monje, U.S. Department of Transportation
Laura Schiller, U.S. Department of Transportation
Perrin Bradley, U.S. Department of Transportation
Sophie Shulman, U.S. Department of Transportation
Ann Carlson, U.S. Department of Transportation
Grant Harris, International Trade Administration
Elizabeth Clark, International Trade Administration
Elizabeth Couch, International Trade Administration
Joseph Goffman, U.S. Environmental Protection Agency
Dan Utech, U.S. Environmental Protection Agency
Alex Schroeder, National Renewable Energy Laboratory

Table 4.—Salient Critical Minerals Statistics in 2021¹

(Metric tons, mine production, unless otherwise specified)

Critical mineral	United States			Net import reliance as a percentage of apparent consumption	World				
	Primary production	Secondary production	Apparent consumption		Primary import source (2017–20)	Leading producing country	Production in leading country	World production total	Percentage of world total
Aluminum (bauxite)	W	—	—	>75	Jamaica	Australia	110,000,000	3,900,000,000	28
Antimony	—	4,100	3,600,000	84	China	China	60,000	110,000	55
Arsenic	—	—	28,000	100	China	Peru	5,277,000	59,000	46
Barite	W	—	6,800	>75	China	China	2,800,000	7,300,000	38
Beryllium	170	NA	200	16	Kazakhstan	United States	170	280	65
Bismuth ²	—	80	810	90	China	China	16,000	19,000	84
Chromium	—	120,000	590,000	80	China	South Africa	18,000,000	41,000,000	44
Cobalt	700	1,600	6,700	76	Norway	Congo (Kinshasa)	120,000	170,000	71
Fluorspar	NA	—	450,000	100	Mexico	China	5,400,000	8,600,000	63
Gallium	—	—	216	100	China	China	420	430	98
Germanium ²	—	W	530	>50	China	China	95	140	68
Graphite (natural)	—	—	45,000	100	China	China	820,000	1,000,000	82
Hellium ⁸	71	NA	40	E	Qatar	United States	71	160	44
Indium ²	—	NA	5,170	100	China	China	530	920	58
Lithium	W	W	52,000	>25	Argentina	Australia	55,000	1,100,000	55
Magnesium ²	W	98,000	250,000	<50	Canada	China	800,000	3,950,000	84
Manganese	—	—	640,000	100	Gabon	South Africa	7,400,000	20,000,000	37
Nickel	—	NA	7,000	100	Brazil	Brazil	66,000	75,000	88
Palladium (platinum-group metal)	14	42	90	37	Russia	South Africa	80	200	40
Platinum (platinum-group metal)	4	7	37	70	South Africa	South Africa	130	160	72
Polish	480,000	—	7,400,000	93	Canada	Canada	14,000,000	46,000,000	30
Rare-earth elements ⁹	43,000	—	16,100	>90	China	China	168,000	280,000	60
Rhenium	9	NA	32	72	Chile	Chile	29	59	49
Scandium	—	—	NA	100	China	China	49	NA	NA
Strontium	—	—	4,800	100	Mexico	Spain	NA	NA	NA
Tantalum	—	NA	710	100	China	Congo (Kinshasa)	150,000	360,000	42
Tellurium ²	—	—	W	>85	Canada	China	700	2,100	33
Tin	W	—	W	>85	China	China	340	3,580	59
Titanium ²	—	10,000	45,000	78	Indonesia	China	91,000	300,000	30
Tungsten	W	W	2W	>80	Japan	China	120,000	2,110,000	57
Vanadium	—	W	W	>50	China	China	66,000	79,000	84
Zirconium	—	NA	3,600	100	Canada	China	73,000	110,000	66
Zirconium	11,200,000	—	130,000	<25	South Africa	Australia	400,000	1,200,000	33

¹ Net exporter. NA: Not available. W: Withheld to avoid disclosing company proprietary data. —: Zero.

² Critical minerals as published in the Federal Register on May 18, 2018 (83 FR 23295). Not all critical minerals are listed here. Those not shown include mineral commodities for which not enough information is available regarding U.S. or world production. The critical minerals cesium, hafnium, and rubidium are not listed in the table because it is thought there is no U.S. production for these commodities.

³ Reported consumption.

⁴ Excludes U.S. production.

⁵ Antimony in oxide and unwrought metal, powder.

⁶ Estimated consumption.

⁷ Arsenic trioxide.

⁸ Refinery production.

⁹ Million cubic meters.

¹⁰ Data include lanthanides and yttrium but exclude most scandium.

¹¹ Compounds and metals. The United States is a net exporter of mineral concentrates.

¹² Rounded to one significant digit to avoid disclosing company proprietary data.

U.S. Geological Survey, 2022, Mineral commodity summaries 2022: U.S. Geological Survey, 2022 p., <https://doi.org/10.3133/mcs2022>.