

November 4, 2022

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U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

RE: Hyundai Motor Group Comments to U.S. Department of the Treasury Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50)

Hyundai Motor Company (“HMC”), which includes Hyundai and Genesis, and Kia Corporation (“Kia”) (collectively, “Hyundai Motor Group” or “HMG”) hereby submit their comments on the U.S. Department of the Treasury’s (“Treasury”) request for comments. Specifically, these comments request that Treasury provide guidance that will help facilitate HMG’s utilization of the elective payment and transfer of tax credits under § 6417 and § 6418.

Hyundai Motor Group’s Commitment to an Electrified Future

HMG is an innovation-driven multinational corporation headquartered in South Korea with worldwide value chains in automotive, steel, construction, engineering, finance and other sectors. It employs over 250,000 people worldwide across its 57 affiliates. Its automobile brands Hyundai, Kia and HMG’s luxury brand Genesis are global leaders in sustainable mobility. Currently, HMG offers 13 electric vehicle (“EV”) models globally with Hyundai offering six models, Kia offering five models and Genesis offering two models. By 2031, HMG plans to accelerate its efforts to supply EVs by increasing the number of global EV models to 31.

In 2021, HMG senior executives met with Secretary of Energy Jennifer Granholm, Secretary of Commerce Gina Raimondo, and Secretary of Transportation Pete Buttigieg as well as White House National Climate Advisor Gina McCarthy to confirm HMG’s intent to rapidly transition to EV production in the United States. The Administration strongly supported these efforts. In April of 2022, Hyundai Motor America (“HMA”) signed a Letter of Intent with the State of Georgia to build a dedicated EV manufacturing facility (“Georgia project”) and a separate joint venture battery manufacturing plant (jointly referred to as “EV and battery manufacturing plants”) in Bryan County, Georgia.

In May of 2022, well before the introduction and enactment of the Inflation Reduction Act (“IRA”), the parties officially announced HMG’s binding and irrevocable commitment to invest \$5.54 billion in the new EV and battery manufacturing plants as well as to create 8,100 new full-time jobs during a public ceremony attended by Georgia Governor Brian Kemp, HMC President Jay

Chang, and HMC Global Chief Operating Officer José Muñoz. Simultaneously, U.S. President Joe Biden and HMG Executive Chair Euisun Chung held a joint press event in South Korea to announce HMG's new EV and battery manufacturing plants in Georgia.

HMG, like the Biden Administration, is committed to emissions reduction and supports a number of clean energy provisions in the IRA, like Sections § 48C and § 45X, that will help accelerate and incentivize domestic production of zero-emission technologies. However, in order for HMG to make better use of the credits received under § 48C and § 45X through the utilization of elective payment and transfer, some of the requirements under § 6417 and § 6418 need to be clarified in Treasury's upcoming guidance.

Comments on Treasury Notice 2022-50

In response to Treasury's request for comments on questions arising from the IRA amendments to § 6417 and § 6418, HMG offers the following:

.01 Elective Payment of Applicable Credits (§ 6417)

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(a) What, if any, issues could arise when an entity makes an election under §6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues?

(d) Is guidance needed to clarify the prohibition of a transfer described in § 6418(a) by a taxpayer who has made an election under § 6417(d)(1)(B), (C), or (D)? If so, what clarification is needed?

As one of the business credits listed in § 38, § 6417(d)(1)(D), advanced manufacturing production credits are subject to the limitation set out in § 38(c). Due to this limitation, a taxpayer may easily assume that the amount of credit available for election is limited to the extent to which the above limitation is applied. Although § 6417 contains some explanation of § 38(c), such explanation is ambiguous and thus may pose challenges to taxpayers utilizing this Section. Therefore, HMG requests that Treasury issue guidance to further clarify this section. If the election under § 6417 is available only within the scope of the limitation of the business credit, a taxpayer would face substantial limitations in the use of the various credits introduced under the IRA. Accordingly, it is necessary to exclude the application of the limitation under § 38 once the election is made, thereby giving taxpayers an incentive to make the most use out of the above system.

In addition, if a taxpayer has already received a full amount of credit through its election, it is not clear whether the taxpayer is prohibited from using § 6418 because the remaining credit will be zero (i.e., there is no credit left for the taxpayer to transfer). HMG requests that Treasury clarify the above situation, in a way that supports a taxpayer's ability to easily and actively utilize § 6417.

(13) Please provide comments on any other topics that may require guidance.

It would be helpful if Treasury adds a list of taxpayers that may be treated as or deemed an applicable entity in its guidance, even if they are not applicable entities pursuant to § 6417(d)(1)(A) (as in the subsequent subsections (d)(1)(B)(C) and (D)). For example, in the case of provisions of significant public interest, such as § 48C, taxpayers should be encouraged to actively take advantage of § 6417. In particular, § 6417(d)(1)(D) acknowledges that a taxpayer eligible for credit under § 45X should be treated as an applicable entity. Given that § 45X and § 48C seek to achieve similar goals and are potentially available to similar types of taxpayers, increasing the scope of applicable entities is consistent and aligns with the overall legal purpose of the Code.

.02 Transfer of Certain Credits (§ 6418).

(1) What, if any, guidance is needed to clarify the meaning of certain terms in § 6418, such as eligible credit, eligible taxpayer, and excessive credit transfer? Is there any term not defined in § 6418 that should be defined in guidance? If so, what is the term and how should it be defined?

HMG requests that Treasury further specify the definition of "eligible credit." For example, if a taxpayer receives \$1,000 in a qualified advanced energy project credit under § 48C, and the net income tax for that year is zero because net income is negative that year, clarification is needed on whether the entire \$1,000 of tax credit can be transferred to eligible taxpayers. In addition, it would be helpful to clarify a situation in which a taxpayer receives \$1,000 of tax credit but can only utilize \$500 of the credit. Pursuant to the general business credit limit under § 38(c)(1), it is unclear whether the remaining \$500 can be transferred to others. In other words, HMG requests Treasury's clarification as to whether a taxpayer, who receives one of the credits in the list stipulated under § 6418(f)(1)(A) but does not use the credit in its full amount, can transfer such remaining credit to others.

(2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under § 6418(a) with respect to such credit.

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(a) and what, if any, guidance is needed with respect to such issues?

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

The term “partnership” needs to be clarified, as it is not defined in detail in § 6418, nor does it incorporate a definition from another statute. For example, it could mean a broad partnership as defined by the Internal Revenue Service (“IRS”), or it could refer to another form of partnership. Accordingly, HMG requests that Treasury further clarify the term and concept of “partnership” through its guidance.

(4) What, if any, guidance is needed with respect to parameters or limitations on a transferee taxpayer’s eligibility to claim the credit?

Under § 6418(a), the transfer of credit may only be made to an unrelated person. However, HMG considers that such scope of the transferee is too narrow. In particular, considering that the purpose of this section is to encourage the transfer of unused tax credits to others, it does not appear necessary to limit the scope of the transferee to unrelated persons. Accordingly, through its guidance, Treasury should allow affiliated persons per § 267(b) and § 707(b)(1) to be eligible as transferees if they meet certain specified requirements. In addition, Treasury should include in its guidance a regulation, as in § 45X(3)(B), that allows the transferor to elect a related transferee as an unrelated transferee.

(5) For purposes of § 6418(d), what, if any, guidance is required to determine the proper taxable year in which to claim any credit that was transferred pursuant to an election made under § 6418(a)?

(6) In determining the amount of eligible credit transferred under § 6418(a), is guidance needed to clarify the application of any other Code provision? If so, what is the Code provision and what clarification is needed?

(7) Is guidance needed to clarify how any other Code provision applies to an eligible taxpayer or a transferee taxpayer when an election is made under § 6418? If so, what is the Code provision and what clarification is needed?

§ 6418(f)(1)(B) stipulates that a credit carryforward or carry backward is not transferable, but there is no provision on whether the transferee can carryforward or carry backward the

transferred credit under § 39. Treasury should clarify through its guidance whether the credit transferred can be carried forward or carried backward if it meets the requirements under § 39.

(8) For purposes of preventing duplication, fraud, improper payments, or excessive credit transfers under § 6418, what information, including any documentation created in or out of the ordinary course of business, or registration, should be required by the IRS as a condition of, prior to, or after any transfer of any portion of an eligible credit pursuant to § 6418(a)? What factors should the Treasury Department and the IRS consider as to when documentation or registration should be required? Should the IRS require the same documentation or registration for all eligible credits? If not, how should the information or registration differ between eligible credits? What other processes could be implemented by the IRS to prevent duplication, fraud, improper payments, or excessive credit transfers under § 6418?

First, Treasury and IRS should receive documents from a transferor containing the following information: the transferee's personal information, amount of credit transferred, the tax year in which the credit occurred, and the signature of the transferor. The transferor should be considered to have made an election by submitting such documents. In addition, Treasury and IRS should endeavor to establish a system that can track the transfer of all tax credits, thereby making the transfer of tax credits accessible and transparent, and establish a tax market for credit transfers. Treasury should consider including such points in its guidance.

(9) What, if any, guidance is needed to clarify the application of the excessive credit transfer provisions of § 6418? What factors should be taken into account in determining whether reasonable cause exists for purposes of § 6418(g)(2)(B)? What guidance is needed to calculate the excessive credit transfer amount?

It appears that the concept of excessive transfer is not clear based on the legislative text alone. Accordingly, Treasury guidance should clarify in which circumstances the excessive transfer occurs through examples with numbers and figures. In addition, the scope of reasonable cause should be more specific. In other words, Treasury should provide specific examples of which kinds of cause are "reasonable."

(12) Please provide comments on any other topics that may require guidance.

Treasury should clarify in its guidance whether cash paid as consideration for the transfer under § 6418(b) should exactly match the amount of the tax credit. In particular, Treasury should clarify whether a transfer without consideration (i.e., a gift) is possible. In addition, Treasury should clarify whether cash received in return can be used freely like the transferor's general cash income, or whether there are any special rules as to its accounting and use.

§ 6418(e)(2) is interpreted as a provision prohibiting a transferee's transfer of the already transferred credit (i.e., a double transfer). However, considering that the purpose of this section is to promote the transfer of unused tax credits to others, the provision appears to be an excessive restriction that does not conform to its general goal. Accordingly, in its guidance, Treasury should include provisions that guarantee the transparency of double transfer and allow such transfers upon satisfaction of certain requirements.

Lastly, it should be clarified whether there is a limit on the amount of credit that can be transferred by a single transferor. For example, if there is a circumstance in which a transferor accrues a large amount of tax credits and fails to use them all, it should be clarified whether such remaining tax credits can be transferred entirely, regardless of the amount.

Conclusion

HMG has made significant long-term investments in the United States, including the most recent announcement of the new EV and battery manufacturing facilities in Georgia. All of HMG's projects in the United States not only contribute to the development of the domestic economy but also have a significant impact on the creation of quality jobs throughout the country. In addition, many of HMG's current manufacturing facilities, as well as the upcoming EV and battery manufacturing facilities in Georgia, are eco-friendly facilities that comply with the RE100 Convention.

For HMG to effectively pursue the IRA's emissions reduction goals, guidance from Treasury should contain clear and detailed criteria with regard to § 6417 and § 6418. HMG looks forward to continued cooperation with the federal government in the pursuit of our shared goals.

Thank you for the opportunity to provide these comments. Please contact Hyundai Motor Company at 202-629-1555 or Kia Corporation at 202-803-2417 with any questions or for additional discussion.

Robert R. Hood
Vice President, Government Affairs
Hyundai Motor Company

Christopher Wenk
Vice President, Government Affairs
Kia Corporation