



CLIENT ALERT:

EXTENSION OF THE PRODUCTION TAX CREDIT & INVESTMENT TAX CREDIT FOR WIND AND SOLAR

ONSHORE WIND PROJECTS HAVE BEEN GIVEN UNTIL THE END OF 2021 TO BEGIN CONSTRUCTION IN ORDER TO QUALIFY FOR A 60% PRODUCTION TAX CREDIT (“PTC”) UNDER SECTION 45 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”). IN ADDITION, SOLAR PROJECTS HAVE BEEN GIVEN A TWO-YEAR EXTENSION UNTIL THE END OF 2022 TO BEGIN CONSTRUCTION TO QUALIFY FOR A 26% INVESTMENT TAX CREDIT (“ITC”) UNDER SECTION 48 OF THE CODE.

In general, the owner of a qualified wind facility may claim the PTC only on electricity generated and sold to unrelated persons for the first ten years after the facility is placed in service. A taxpayer may claim 100% of the value of the PTC on a qualified facility only if construction of the facility began before January 1, 2017 – which was phased down for facilities beginning construction in each subsequent year, until the PTC phased out completely for facilities that began construction after December 31, 2019. Under the tax extenders package passed by Congress on December 19, 2019, a qualified facility that began construction in 2020 was eligible for a 60% PTC. On December 21, 2020, Congress provided a last-minute boost for onshore wind projects by extending the 60% PTC for wind facilities that begin construction by the end of 2021.¹

As it relates to solar, the owner of a solar project may claim the ITC on its cost in the energy property in the year in which the project is placed in service. For solar projects that began construction prior to January 1, 2020, a taxpayer may claim a 30% ITC on its basis in the energy property. Under prior law, the value of the ITC phased down for projects beginning construction in each subsequent year, until the ITC phased out completely or significantly reduced after December 31, 2021. On December 21, 2020, Congress provided additional support to renewable energy by providing a two-year extension of the ITC so that solar projects that begin construction prior to 2023 are eligible for a 26% ITC.

These extensions create new incentives for developers, financial sponsors, and tax equity investors. For example, taxpayers are now enticed to structure their transaction so that, for tax purposes, onshore wind projects begin construction in 2021

rather than 2020 – resulting in additional time to place the project in service.

In general, a taxpayer may satisfy the begun construction requirement if the taxpayer proves that it commenced “physical work of a significant nature” on the facility or incurred at least 5% of the total cost of the facility. Determining when a taxpayer begins construction is a surprisingly and deceptively nuanced task. Did the actions of the developer cause the facility to have begun construction in 2020 or 2021? Will a developer racing to begin construction in 2021 fail to satisfy the begun construction requirement?

Because the determination of when construction of a renewable energy project began is intensely factual and subject to extensive IRS guidance, tax insurance is an effective risk management tool to transfer the uncertainty from the sponsor and tax equity investor to the insurance market. Tax insurance is available to backstop or replace a sponsor’s tax indemnification obligation to the tax equity investor for any tax loss resulting from the reduction in or elimination of the amount of anticipated PTC or ITC allocable to the tax equity investor. By utilizing tax insurance, a sponsor will efficiently and economically allocate the economic risk of a tax loss to the insurance market – thus offering liquidity to the sponsor while avoiding the negative cash flow arising from an indemnification obligation to the tax equity investor.

Further information about tax insurance can be found [here](#).

¹ It is also worth noting that offshore wind projects have been given until the end of 2025 to begin construction to qualify for a 30% ITC.



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