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U.S. Tax Reform – Provisions Impacting the Renewable Energy Industry

Below is a brief summary of certain provisions of the "Tax Cuts and Jobs Act" (the "Conference Agreement") released by Republicans in the House and Senate that will impact taxpayers in the renewable energy industry. In sum, the Conference Agreement bears good news for renewables, particularly as it retains existing rules on tax credits applicable to the renewables industry, and it also significantly curtails the negative impact that the "base erosion anti-abuse tax" initially proposed by the Senate (as described below) would have had on tax equity transactions.

Corporate Income Tax Rate Reduction and Repeal of Corporate Alternative Minimum Tax

The Conference Agreement reduces the corporate income tax rate to 21% and repeals the corporate alternative minimum tax. The Senate version of the tax reform bill would have retained the corporate alternative minimum tax, which in turn could have eliminated any tax benefits from the PTC (defined below).

If enacted, the foregoing is effective for taxable years beginning after December 31, 2017.

Availability of Tax Credits

Investment Tax Credits.

The Conference Agreement leaves intact existing legislation governing the investment tax credit (the "ITC"). Specifically, for technologies that are eligible for the ITC (e.g., solar facilities), the following rules apply:

If construction begins after	And before	Deadline to place in service	Tax credit amount
Dec. 31, 2015	Jan. 1, 2020	Dec. 31, 2023	30% of eligible basis
Dec. 31, 2019	Jan. 1, 2021	Dec. 31, 2023	26% of eligible basis
Dec. 31, 2020	Jan. 1, 2022	Dec. 31, 2023	22% of eligible basis
Dec. 31, 2021			10% of eligible basis

Production Tax Credits

The Conference Agreement leaves intact existing legislation governing the production tax credit ("PTC"). Specifically, for technologies that are eligible for the PTC (e.g., wind) the following rules apply:

Deadline to begin construction	Tax credit amount
Dec. 31, 2016	2.3 cents per kilowatt hour
Dec. 31, 2017	1.8 cents per kilowatt hour
Dec. 31, 2018	1.4 cents per kilowatt hour
Dec. 31, 2019	0.9 cents per kilowatt hour

The Internal Revenue Service has provided guidance with respect to (1) when construction is deemed to begin for purposes of the PTC rules, and (2) progress a taxpayer must make with respect to construction and placement in service in order to be eligible for the PTC. This guidance is not impacted by the Conference Agreement and remains in effect.

100 Percent Expensing

The Conference Agreement allows for full expensing of qualified property placed in service after September 27, 2017 and before January 1, 2023. Thus, tax equity transactions sized by taking into account the value of depreciation deductions will also be able to take into account the tax benefits based on the total capital spend at the time property is placed into service. This provision may also simplify the modeling of the financial components of an overall tax equity transaction. Separately, used property is also eligible for expensing. Thus, although used property is unlikely to qualify for a renewed ITC, its eligibility for full expensing may provide additional value for parties seeking to invest in well-established projects that are no longer eligible for the ITC/PTC.

Base Erosion Anti-Abuse Tax

The Conference Agreement adopts a base erosion anti-abuse tax (the "BEAT") that targets earnings stripping transactions whereby companies with foreign operations reduce their tax liability via deductible cross-border payments. The BEAT provision, as adopted in the Conference Agreement, requires such companies to pay a 10 percent (5 percent for 2018) minimum tax based on the amount by which their modified taxable income for the year exceeds their regular tax liability (which tax liability is decreased by certain amounts, including tax credits). As initially proposed in the Senate version of the tax reform bill, the reduction of regular tax liability by all credits would have in turn effectively reduced the value of PTCs and ITCs, because modified taxable income subject to the BEAT would in turn have been increased, thus increasing the likelihood of the imposition of the BEAT. Significantly, the Conference Agreement does not follow the Senate version, and does not require a reduction to the regular tax

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liability with respect to (1) the research credit, and (2) 80 percent of the PTC and ITC. This essentially means that 80 percent of ITC and PTC values will be retained. Note, however, that beginning January 1, 2026, the 10 percent minimum tax under the BEAT provision will be increased to 12.5%, and all credits will be treated as reducing a taxpayer's regular tax liability.

As a result of the Conference Agreement, taxpayers in the energy industry should generally see a less onerous impact to the value of their energy tax credits in computing the BEAT, given that 80 percent of energy tax credit values will be retained through 2025 for purposes of this computation. Moreover, because the full value of tax credits will be subject to the BEAT beginning in 2026, taxpayers should have an adequate transition period to effectively understand and implement the BEAT's impact to their business operations and tax planning. Ultimately, the computation of the cross border payments that give rise to the BEAT consists of numerous elements and will impact each taxpayer differently depending on how it is structured and the line of business in which it engages.

If enacted, the foregoing is effective for taxable years beginning after December 31, 2017.

Interest Expense Deduction

The Conference Agreement contains provisions that limit the deductibility of business interest. Specifically, the deduction for business interest is limited to the sum of (1) business interest income; (2) 30 percent of the adjusted taxable income of the taxpayer for the taxable year (computed without regard to deductions allowable for depreciation, amortization, or depletion for taxable years beginning after December 31, 2017 and before January 1, 2022), and (3) the floor plan financing interest (i.e., interest incurred on indebtedness used to finance the acquisition of motor vehicles held for sale to retail customers and secured by the inventory so acquired) of the taxpayer for the taxable year. Disallowed interest may be carried forward indefinitely.

The Conference Agreement further provides that the business interest limitation is applied at the partnership level for purposes of determining each partner's distributive share of bottom line net income. It further provides a formula for allocating to each partner a share of the business interest subject to the limitation that the partner is eligible to carry forward.

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If enacted, the foregoing is effective for taxable years beginning after December 31, 2017, and may impact the cost of capital on renewable energy projects to the extent any interest expense is suspended under this provision. Partners in tax equity partnerships will have to analyze the financial impact of this provision in the context of the financial projections associated with the entire deal to understand how it will impact their investment.

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