

One Big Beautiful Bill – Solar and Wind PTCs and ITCs

JULY 21, 2025

On Friday, July 4, 2025, President Trump signed into law the One Big Beautiful Bill Act (the **OBBB**), making permanent many of the tax provisions enacted under the 2017 Tax Cuts and Jobs Act and enacting many of the policy objectives of the Trump administration. The following discussion summarizes at a high level some of the more significant consequences of the OBBB to the wind and solar industry—specifically, to the tech-neutral investment and production tax credits for solar and wind projects under Sections 45Y and 48E (the **PTC** and **ITC**, respectively) of the Internal Revenue Code (the **Code**). The IRS and Department of the Treasury are also expected to issue additional guidance and regulations to interpret the OBBB. Among other expected areas of additional guidance, on July 7, 2025, the Trump White House released Executive Order “Ending Market Distorting Subsidies for Unreliable, Foreign Controlled Energy Sources” (the **BOC EO**), announcing its specific intention to cause Treasury to issue new guidance relating to the Beginning of Construction rules applicable under the ITC and PTC.

SOLAR AND WIND ITCs AND PTCs GENERALLY.

Generally, applicable to wind and solar facilities that “Begin Construction” for federal income tax purposes after July 4, 2026, the OBBB repeals the PTC and ITC unless the project is “Placed in Service” for federal income tax purposes before 2028. Solar and wind facilities that Begin Construction prior to July 4, 2026, remain eligible for PTCs and ITCs under the previously applicable rules, including the requirement that “continuous progress” be made toward completion from the date “Construction Began,” which under current guidance typically is satisfied under a safe harbor if the project is Placed in Service within four years of “Begin Construction.”

Notably, these restrictions on wind and solar ITCs and PTCs do not apply to ITCs for battery and energy storage technology, including those Placed in Service at a wind- or solar-related facility. In other words, battery and energy storage projects are not subject to this accelerated phase-out, and such projects remain subject to the existing pre-OBBB rules. In addition, the OBBB did not generally revise the rules applicable to legacy production tax credits or investment tax credits for wind and solar under Sections 45 and 48 of the Code that were set to phase out for projects that Began Construction after 2024. Taxpayers should carefully determine when a project Begins Construction so that the appropriate provisions of the Code can be applied.

The OBBB created new requirements (**FEOC Rules**), discussed broadly below, relating to the involvement of foreign entities of concern in renewable-energy projects, particularly targeting China, Russia, North Korea, and Iran. The

FEOC Rules are very complicated and include multiple separate dates of applicability. Projects will need to closely evaluate both the various timing requirements and how the rules below apply to their particular facts and circumstances. For example, the FEOC Rules will require diligence and monitoring of ownership structures as well as contractual relationships and payment obligations that could involve FEOCs. Taxpayers should consider what will be the best approach for their particular circumstances and transactions (e.g., representations, covenants, diligence, risk allocation, indemnities, insurance). It is currently unclear how the overall market will react to these new requirements and related risks. The FEOC Rules generally do not apply to legacy production tax credits or investment tax credits for projects under Sections 45 and 48 of the Code.

TRANSFERABILITY.

The transferability of ITCs and PTCs under Section 6418 of the Code generally remains intact following the OBBB, subject to a prohibition against transfer in any tax year beginning after July 4, 2025, to a “specified foreign entity” under the FEOC Rules.

DOMESTIC-CONTENT ADDER.

The OBBB adjusts the domestic-content-adder rules for the ITC to match (after June 2025) the phased increases in the required domestic-content percentages that already apply to PTCs. Specifically, the OBBB provides that for projects that Begin Construction before June 16, 2025, the required domestic-content percentage remains 40%. For projects that Begin Construction from June 16, 2025, and before 2026, the percentage increases to 45%. For projects that Begin Construction during calendar year 2026, the percentage increases to 50%. For projects that Begin Construction after 2026, the percentage increases to 55%. The domestic-content-adder rules otherwise remain the same as pre-OBBB law.

LEASING RULES.

The OBBB provides specific rules for certain wind and solar leasing arrangements. Generally, no ITC or PTC will be allowed for solar-heating property and wind property that is leased to a homeowner and that qualified for the homeowner’s credit under Code Section 25D. These rules appear different from a traditional sale–leaseback structure. Taxpayers should continue to evaluate whether their specific leasing structures could be implicated.

PUBLICLY TRADED ENTITIES.

Various specific rules are also provided applicable to certain publicly traded entities that have foreign ownership/involvement. A discussion of these rules is beyond the scope of this summary.

FEOC RULES.

- **No ITC or PTC for “specified foreign entities” or “foreign-influenced entities.”** These prohibited categories (as described below) include both specifically enumerated categories of entity, as well as complicated rules that can cause otherwise non-FEOC taxpayers to be classified as prohibited “foreign influenced” entities because of certain payments to and contractual arrangements with specified foreign entities. These rules deem such contracts or arrangements to give a specified foreign entity power to “exercise effective control” over the taxpayer, including pursuant to licenses (including IP licenses), long-term services agreements, and warranties among other arrangements. Taxpayers must pay close attention to these rules, and to the additional guidance that is expected to be released regarding them, to avoid inadvertent or unexpected disqualification.
- **No Material Assistance from Prohibited Foreign Entities.** A project that Begins Construction after 2025 cannot receive the ITC or PTC if it receives “material assistance” (defined below) from prohibited foreign entities. This rule generally restricts the percentage of components produced, manufactured or mined by Prohibited Foreign Entities that may be included in a Project eligible for the ITC or PTC, but many details on how the rule will be applied remain unclear and require additional guidance from the administration.
- **FEOC ITC Recapture Rule.** The ITC recapture rules under Section 50 of the Code are amended to recapture 100% of the ITC claimed if, during the 10-year period beginning on the Placed in Service date, certain payments

are made to specified foreign entities by or from the project. This rule applies to ITCs claimed for any taxable year beginning after July 4, 2027.

- **Beginning of Construction Codification.** For purposes of determining when a project Begins Construction for federal income tax purposes under the ITC and PTC when applying the FEOC Rules, the OBBB codifies “rules similar to” IRS guidance under Notice 2013-29 and Notice 2018-59 as in effect on January 1, 2025. These Notices contain the long-standing guidance that has applied to determine when construction begins (e.g., 5% safe harbor, physical work test, continuity safe harbor, etc.). It is not clear yet what impact the BOC EO or any forthcoming additional guidance will or can have on these rules. Taxpayers should continue to monitor these developments closely and refamiliarize themselves with the existing rules. Taxpayers should also continue to document their particular facts surrounding Begin Construction.
- **Important Defined Terms and Concepts under the FEOC Rules.**
 - A “prohibited foreign entity” is an entity that is either a “specified foreign entity” or a “foreign-influenced entity.”
 - A “specified foreign entity” means:
 - i. a foreign entity of concern described in subparagraph (A), (B), (D), or (E) of section 9901(8) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 15 U.S.C. § 4651);
 - ii. an entity identified as a Chinese military company operating in the United States in accordance with section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 13 U.S.C. 113 note);
 - iii. an entity included on a list required by clause (i), (ii), (iv), or (v) of section 2(d)(2)(B) of Public Law 117–78 (135 Stat. 1527);
 - iv. an entity specified under section 154(b) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31; 10 U.S.C. note prec. 4651); or
 - v. a foreign-controlled entity.
 - A “foreign-influenced entity” means an entity (I) with respect to which, during the taxable year, (aa) a specified foreign entity has the direct authority to appoint a covered officer of such entity, (bb) a single specified foreign entity owns at least 25% of such entity, (cc) one or more specified foreign entities own in the aggregate at least 40% of such entity, or (dd) at least 15% of the debt of such entity has been issued, in the aggregate, to one or more specified foreign entities, or (II) that, during the previous taxable year, made a payment to a specified foreign entity pursuant to a contract, agreement, or other arrangement that entitles such specified foreign entity (or an entity related to such specified foreign entity) to exercise effective control over (aa) any qualified facility or energy storage technology of the taxpayer (or any person related to the taxpayer) or (bb) with respect to any eligible component produced by the taxpayer (or any person related to the taxpayer), (AA) the extraction, processing, or recycling of any applicable critical mineral or (BB) the production of an eligible component that is not an applicable critical mineral.
 - A “foreign-controlled entity” means
 - i. the government (including any level of government below the national level) of a covered nation;
 - ii. an agency or instrumentality of a government described in (i);
 - iii. a person who is a citizen or national of a covered nation, provided that such person is not an individual who is a citizen, national, or lawful permanent resident of the United States;
 - iv. an entity or a qualified business unit (as defined in Section 989(a) of the Code) incorporated or organized under the laws of, or having its principal place of business in, a covered nation; or
 - v. an entity (including subsidiary entities) controlled by an entity described in (i), (ii), (iii), or (iv).
 - “Material assistance from a prohibited foreign entity” is determined to exist with respect to any qualified facility or energy storage technology based on a specific formula, the “material assistance cost ratio,” which is

described below.

- Material assistance from a prohibited foreign entity exists if the material assistance cost ratio is less than the threshold percentage applicable under the Code.
 - The threshold percentage for these purposes depends on when a facility begins construction and ranges from 40% for facilities beginning construction in 2026 to 75% for facilities beginning construction after December 31, 2029.
 - The “material assistance cost ratio” means the amount (expressed as a percentage) *equal to the quotient of (I) an amount equal to (aa) the total direct costs to the taxpayer attributable to all manufactured products (including components) that are incorporated into the qualified facility or energy storage technology upon completion of construction, minus (bb) the total direct costs to the taxpayer attributable to all manufactured products (including components) that are (AA) incorporated into the qualified facility or energy storage technology upon completion of construction and (BB) mined, produced, or manufactured by a prohibited foreign entity; divided by (II) the amount described in (I)(aa).*
 - The Code provides certain certifications that may be obtained from suppliers to assist in determining these ratios and percentages.
- **Potential Grandfathering Out Certain Pre-6/16/25 Contracts.** Certain existing contracts may be eligible to elect out of the material-assistance rules if the applicable manufactured product, eligible component, or constituent element, material, or subcomponent of an eligible component is (I) acquired, manufactured, or assembled by or for the taxpayer pursuant to a binding written contract entered into prior to June 16, 2025, and (II) Placed in Service before 2028 for applicable wind or solar facilities (before 2030 for eligible nonwind/-solar projects) if the facility Began Construction before August 1, 2025.

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