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LEGAL UPDATES

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New Bill Language Released Over the Weekend Contains Entirely New Excise Tax on Wind and Solar Projects

Over the weekend, the Senate released a revised draft of the One Big Beautiful Bill Act, containing important revisions to clean energy tax credits and that, if passed, will impact the entire renewables industry. With this latest iteration, which is set for a lengthy amendment and voting session early this week, the industry's deep concerns regarding the prior Senate Finance Committee's draft Foreign Entity of Concern (FEOC) rules have now grown to near panic. The draft bill released in the early morning hours on Saturday contains a surprising provision imposing a new excise tax on applicable wind and solar facilities that receive "material assistance" from an FEOC in excess of a stipulated threshold. This threshold varies by project type and is defined with reference to the Material Assistance Cost Ratios set forth in the initial Senate Finance Committee draft legislation released on June 16.

This change is substantial and represents a serious legislative step-up in terms of the penalties associated with FEOC violations. Previously, facilities that fell beneath the relevant Material Assistance Cost Ratios for the type of project under consideration were merely unable to claim (or transfer) any associated credits. The excise tax comes on top of this prior credit bar and presents a punitive additional financial disincentive to investment in wind and solar projects. The tax would apply to taxpayer-owned facilities that use "wind to produce electricity" within the meaning of Section 45(d)(1) or use "solar energy to produce electricity" within the meaning of Section 45(d)(4) if: (i) construction begins after December 31, 2027 and before January 1, 2036; or, (ii) construction begins after the date of enactment of the bill and before January 1, 2028, that are placed in service after December 31, 2027.[1]

The new excise tax is calculated by multiplying the amount by which the facility's threshold percentage exceeds the stipulated applicable percentage (30% for wind facilities and 50% for solar) by "the total direct costs to the taxpayer attributable to all manufactured products (including components) which are incorporated into the applicable facility upon completion of construction (as determined under section 7701(a)(52)(D)(i)(I))."^[2] This legislation would be effective for facilities that start construction after June 16, 2025.^[3]

What this means to you

As the Senate votes on the revised OBBB, additional changes to this new excise tax may be made. Industry participants should carefully watch developments tied to this new excise tax.

Contact us

We will continue to monitor this bill and any future amendments or revisions thereto as it advances through the legislative process. If you have questions regarding this latest rewrite and its implications for tax credits, please contact Doug Jones, Sean Kelly, or your Husch Blackwell attorney.

[1] Sec. 5000E-1(b)(1).

[2] Sec. 5000E-1(d).

[3] Chapter 50B(m)(3). (Page 561).