Client Alert

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Renewable Energy Industry Receives an Unexpected Gift of a Five-Year Extension of the ITC and PTC

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On December 18, 2015, the President signed the Omnibus Appropriations Act (the "Act") into law.[1] Among the numerous changes in tax law contained in the Act are five-year extensions of the 30% investment tax credit ("ITC"), which was scheduled to drop to 10% from 30% of eligible basis for solar facilities placed in service after 2016, and the production tax credit ("PTC") which was scheduled to expire for wind and certain other renewable energy projects for which construction had not begun before the end of 2015. For both the ITC and the PTC, the five-year extension is based on the year in which construction of the applicable project begins, rather than when the project is placed in service. Developers of, and investors in, solar and wind projects will welcome the tax credits being available for a significantly longer time given that the industry has been plagued by uncertainty in light of Congress's past tendency to extend the ITC and PTC for one or two year at a time. This extension is expected to generate continuing development of, and investment in, new solar and wind energy facilities.

Notably, however, the new five-year extensions will phase out over time. The amount of the PTC and ITC available will be reduced over the five-year period, as discussed in greater detail in the next paragraph. As a result, there will most likely still be pressure to commence construction of renewable energy projects prior to the end of the last taxable year for which the maximum tax credits are available.

The following chart shows the ITC and PTC available for a project for which construction begins during the relevant year. The availability is subject to a pair of notable exceptions. First, for non-wind facilities, the PTC is available only for projects for which construction begins on or before December 31, 2016. Second, the ITC for wind facilities is subject to a phase-out that mirrors the PTC phase-out. Thus, a wind project that begins construction in 2017 is eligible for only 80% of the full ITC; a wind project that begins construction in 2018 is eligible for only 60%; and a wind project that begins construction in 2019 is eligible for only 40%. All of the extensions are retroactive.

[1] H.R. 2029. Originally, the extenders bill was part of the Protecting Americans from Tax Hikes Act of 2015, and the spending bill was the Consolidated Appropriations Act of 2016. The two bills were combined in the Senate as the Omnibus Appropriations Act.

	2015	2016	2017	2018	2019	2020	2021	2022
ITC*	30%	30%	30%	30%	30%	26%	22%	10%
PTC**	100%	100%	80%	60%	40%	--	--	--
**The placed-in-service deadline for the ITC is 2024; otherwise, only a 10% ITC is available.*								
***For the PTC, the chart shows the percentage of the full PTC available for a project that begins construction during the applicable year. Currently, the PTC is 2.3 cents per kilowatt hour.*								

The Internal Revenue Service ("IRS") will need to provide updated guidance regarding how taxpayers may satisfy the "commencement of construction" requirement for eligibility for the ITC or PTC. Although the guidance is expected to be substantially similar to existing guidance with respect to the PTC, it is not clear how the IRS will address certain aspects of this guidance. For example, guidance provided by the IRS for the "commencement of construction" requirement for the PTC requires that construction be "continuous" with a safe harbor for meeting this test based on when the project was placed in service. It will be interesting to see whether the IRS retains this requirement and how it implements the placed-in-service safe harbor in light of the multi-year nature of the extensions. It is also unclear how the IRS will address the placed-in-service safe harbor for projects for which construction commenced prior to the end of 2015.

In addition, the Act extends bonus depreciation for property placed in service generally before the end of 2019 with a phase-down. In that regard, 50% bonus depreciation will be available through the end of 2017, 40% for 2018, and 30% for 2019.

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