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Raeesa Hoosen, LLB. at (1908) 673-3323
Email: raeesa.hoosen@lexisnexis.co.za

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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
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From IRA to OBBBA: A New Era for Clean Energy Tax Credits

*By Laurie Abramowitz, David A. Sausen and Lauren Olaya**

In this article, the authors explain how the One Big Beautiful Bill Act reflects a fundamental shift in federal clean energy policy that is certain to affect investors, developers, manufacturers, and other actors in the renewables sector.

The One Big Beautiful Bill Act – H.R. 1 119th Congress – (OBBBA) significantly changes the clean energy tax credit landscape established by the Biden administration pursuant to the Inflation Reduction Act of 2022 (IRA). The OBBBA introduces accelerated repeal schedules for most renewable energy tax credits, compresses deadlines for certain projects to qualify for such credits, enhances domestic content requirements, eliminates several electric vehicle and residential energy incentives, and implements new foreign entity of concern (FEOC) restrictions barring certain foreign entities from accessing credits. These changes reflect a fundamental shift in federal clean energy policy that is certain to affect investors, developers, manufacturers, and other actors in the renewables sector.

FEOC DEFINITIONS

The OBBBA restricts clean energy tax credit availability for projects with “prohibited foreign entity” or “PFE” involvement. The FEOC restrictions, which vary by tax credit and tax year (as discussed further below), prevent entities tied to adversarial nations, particularly China, from accessing U.S. clean energy tax incentives. The rules are definitional in nature and are broadly drafted to encompass all types of entities with varying levels of foreign involvement.

A PFE is defined by two main categories of entities: (1) “specified foreign entities,” and (2) “foreign influenced entities.”

- *Specified Foreign Entities (SFE)*: These include entities designated as foreign terrorist organizations, entities on the U.S. Department of the Treasury’s Office of Foreign Assets Control specially designated nationals list, entities involved in activities resulting in national security convictions, Chinese military companies operating in the United States, entities on the Uyghur Forced Labor Prevention Act list, and certain Chinese battery manufacturers. They also include “foreign

* The authors, attorneys with Arnold & Porter Kaye Scholer LLP, may be contacted at laurie.abramowitz@arnoldporter.com, david.sausen@arnoldporter.com and lauren.olaya@arnoldporter.com, respectively.

controlled entities” from covered nations (North Korea, China, Russia, and Iran), such as governments or agencies or instrumentalities thereof; entities controlled by citizens or nationals of a covered nation that are not citizens, nationals, or lawful permanent residents of the United States; entities incorporated, organized, or having their principal place of business in, a covered nation; and entities controlled by one of the above.

- *Foreign Influenced Entities (FIE)*: These include entities where an SFE has certain legal and financial control over an entity, such as the authority to appoint covered officers, at least 25% ownership by a single SFE (or 40% or more combined SFE ownership), ownership of at least 15% of the entity’s debt, or where an SFE receives certain payments from an entity that grants “effective control” to an SFE. “Effective control” includes agreements or arrangements which provide one or more contractual counterparties with specific authority over key aspects of the production of eligible components, energy generation, or energy storage which are separate from any authority, ownership, or debt that would otherwise cause an entity to be an FIE.
- *Material Assistance*: The OBBBA also prohibits certain projects from receiving “material assistance” (Material Assistance) from a PFE using the “material assistance cost ratio” (MACR). The MACR is calculated by subtracting the cost of PFE-sourced goods from the total cost of goods, then dividing by the total cost of goods. Projects must meet specific MACR thresholds that vary by technology and construction year to remain eligible for credits.

The Department of the Treasury is required to release safe harbor MACR tables no later than December 31, 2026. Until then, taxpayers can rely on supplier certifications and existing IRS guidance (i.e., IRS Notice 2025-08). Taxpayers may exclude certain binding written contracts entered into prior to June 16, 2025 if construction of such facilities begins before August 1, 2025. Failure to comply with the FEOC restrictions will subject a taxpayer to penalties for non-compliance (including a 20% accuracy-related penalty for taxpayers who overstate the MACR). Additionally, the IRS can assess MACR deficiencies for up to six years after filing. Suppliers may also face penalties for submitting false certifications.

As described below, many FEOC restrictions begin to apply to projects that begin construction after July 4, 2025, making this a critical deadline for current project planning. Entities with any foreign entity involvement, whether

through ownership, supply chains, or financing, are encouraged to review the restrictions and implement compliance measures before the restrictions take effect.

TERMINATED TAX CREDITS

The OBBBA will terminate completely several clean vehicle and residential energy credits over the next year. Section 25E (Previously Owned Clean Vehicle Credit), Section 30D (Clean Vehicle Credit), and Section 45W (Credit for Qualified Commercial Clean Vehicles) will terminate on September 30, 2025. Section 30C (Alternative Fuel Vehicle Refueling Property Credit) is terminated for property placed in service after June 30, 2026. Section 25C (Energy Efficient Home Improvement Credit) and Section 25D (Residential Clean Energy Credit) will terminate on December 31, 2025, and Section 45L (New Energy Efficient Home Credit) will terminate for homes acquired after June 30, 2026. Section 179D (Energy Efficient Commercial Buildings Deduction) will no longer be available for property beginning construction after June 30, 2026.

PRE-IRA TAX CREDITS

Energy projects that began construction before January 1, 2025 generally remain eligible for pre-IRA tax credits under Section 48 (Investment Tax Credit) and Section 45 (Production Tax Credit). Such projects are not subject to the accelerated phaseouts, FEOC restrictions, or other limitations introduced by the OBBBA.

TECHNOLOGY-NEUTRAL TAX CREDITS

Section 45Y (Clean Electricity Production Tax Credit)

- *Early Termination for Wind and Solar.* Wind and solar facilities that begin construction after July 4, 2026 (one year after enactment) are ineligible for the Section 45Y credit if placed in service after December 31, 2027. Facilities that begin construction prior to July 4, 2026 would not be subject to this accelerated placed-in-service deadline. Moreover, the OBBBA eliminates credit for leased residential solar, water, heating, and wind energy property (except leased solar electric generating property).
- *Phaseout for Other Technologies.* The Section 45Y credit for technologies other than wind and solar begins to phaseout after 2033 as follows: 100% credit for facilities beginning construction during 2033; 75% credit for facilities beginning construction during 2034; 50% credit for facilities beginning construction during 2035; and 0% credit for facilities beginning construction after December 31, 2035. Under the IRA, the Section 45Y credit began to phaseout the later of 2034 and

when the annual greenhouse gas emissions rate fell below a certain threshold.

- *Bonus Credit.* The OBBBA added a new 10% bonus credit under Section 45Y for advanced nuclear facilities located in a metropolitan statistical area that currently has 0.17% or greater direct employment related to the advancement of nuclear power or has had such employment levels at any time after December 31, 2009.
- *Transferability Maintained.* Transferability under Section 6418 of the Code is maintained, but transfers to SFEs are prohibited. The Section 45Y credit also remains eligible for direct pay under Section 6417.
- *FEOC Restrictions.* Facilities for which construction begins after December 31, 2025 are ineligible if the construction of such facility includes any Material Assistance from a PFE. The taxpayer cannot be an SFE or an FIE, and facilities cannot be under “effective control” by an SFE in tax years beginning after July 4, 2025.

Section 48E (Clean Electricity Investment Tax Credit)

- *Early Termination for Wind and Solar.* Wind and solar facilities that begin construction after July 4, 2026 (one year after enactment) are ineligible for the Section 48E credit if placed in service after December 31, 2027. This placed-in-service deadline would not apply to energy storage technology. Moreover, the OBBBA eliminates credit for leased residential solar water heating and wind energy property (except leased solar electric generating property).
- *Phaseout for Other Technologies.* The Section 48E for technologies other than wind and solar begins to phaseout after 2033 as follows: 100% credit for facilities beginning construction during 2033; 75% credit for facilities beginning construction during 2034; 50% credit for facilities beginning construction during 2035; and 0% credit for facilities beginning construction after December 31, 2035. Under the IRA, the Section 48E credit began to phaseout the later of 2033 and when the annual greenhouse gas emissions rate fell below a certain threshold.
- *Special Provisions.* The OBBBA harmonized the domestic content requirements under Section 48E with those under Section 45Y for projects beginning construction on or after June 16, 2025.
- *Transferability Maintained.* Transferability under Section 6418 of the Code is maintained, but transfers to SFEs are prohibited. The Section 48E credit also remains eligible for direct pay under Section 6417.
- *FEOC Restrictions.* Facilities for which construction begins after De-

cember 31, 2025 are ineligible for the credit if the construction of such facility includes any Material Assistance from a PFE. The taxpayer cannot be an SFE or an FIE, and facilities cannot be under “effective control” by an SFE in tax years beginning after July 4, 2025.

PRODUCTION TAX CREDITS

Section 45Q (Carbon Oxide Sequestration)

- *Parity for Different Uses.* The base credit amount for general commercial utilization and enhanced oil recovery was increased to \$17/ton (\$36/ton for direct air capture) to align with the rate for secure geological storage, achieving parity for all uses, effective for facilities or equipment placed in service after July 4, 2025.
- *No Changes to Credit Timeline.* The Section 45Q credit saw no change from the IRA regarding its termination date, making it one of the few credits not subject to accelerated phase-out schedules under the OBBBA.
- *Transferability Maintained.* Transferability of the credit under Section 6418 generally remains unchanged, but transfers to SFEs are prohibited. The Section 45Q credit also remains eligible for direct pay under Section 6417.
- *FEOC Restrictions.* Taxpayers cannot be an SFE or FIE (without regard to “effective control”) for taxable years beginning after July 4, 2025.

Section 45U (Zero-Emission Nuclear Power Production Credit)

- *Credit Retained for Existing Facilities.* The OBBBA retains the Section 45U credit for existing nuclear facilities through December 31, 2032. Transferability remains in place through the credit’s full eligibility window. The Section 45U credit also remains eligible for direct pay under Section 6417.
- *FEOC Restrictions.* The taxpayer cannot be an SFE for tax years beginning after July 4, 2025. The taxpayer cannot be an FIE (without regard to “effective control”) beginning two years after July 4, 2025.

Section 45V (Clean Hydrogen Production Tax Credit)

- *Shortened Credit Period.* The OBBBA terminates the Section 45V credit for facilities that begin construction after December 31, 2027. This represents a significant acceleration of the phaseout timeline compared to the original IRA provisions, which begin phasing out the credit in 2033.
- *Transferability and Direct Pay Eligibility Maintained.* Transferability of

the credit under Section 6418 generally remains unchanged, as well as eligibility for direct pay under Section 6417.

- *No FEOC Restrictions.* Notably, Section 45V does not appear to have any FEOC restrictions.

Section 45X (Advanced Manufacturing Production Credit)

- *Wind Component Credits Eliminated.* The OBBBA eliminates the Section 45X credit for wind components produced and sold after December 31, 2027.
- *Enhanced Domestic Content Requirements for Integrated Components.* Effective for eligible components sold after December 31, 2026, a person will not be treated as having sold an eligible component that is integrated (a primary component) into another eligible component (a secondary component) unless 65% of the direct material cost to produce the secondary component within the same manufacturing facility is attributable to primary components mined, produced, or manufactured in the United States.
- *Extended Critical Minerals Phasedown Schedule.* The OBBBA gradually phases out the credit for critical mineral production over a four-year period: 2031, 75%; 2032, 50%; 2033, 25%; 2033 and thereafter, 0%.
- *New Eligible Component Added.* The OBBBA expands the scope of Section 45X to include metallurgical coal production.
- *Modified Battery Module Definition.* Effective for tax years after July 4, 2025, the definition of “battery module” is modified to require that such module is “comprised of all essential equipment needed for battery functionality,” tightening the definition to ensure battery modules are complete functional units.
 - *Transferability Maintained.* Section 45X credits remain available for transfer under Section 6418, but transfers to SFEs are prohibited. The Section 45X credit also remains eligible for direct pay under Section 6417.
 - *FEOC Restrictions.* For tax years beginning after July 4, 2025, the taxpayer cannot be a PFE or receive material assistance from a PFE. No credit is allowed for eligible components determined to be produced through “effective control” by an SFE.

Section 45Z (Clean Fuel Production Credit)

- *Extension of Credit Period.* The OBBBA extended the deadline to sell eligible fuel from December 31, 2027, under the IRA, to December 31,

2029.

- *Domestic Feedstock Requirements.* Feedstock must be produced or grown in the U.S., Mexico, or Canada for fuel produced after December 31, 2025.
- *Other Changes.* The OBBBA disallows a credit under Section 6426(k) (for alcohol fuel, biodiesel, and alternative fuel mixtures) for the same fuel for which a Section 45Z is allowed. Sustainable aviation fuel sold after December 31, 2025 is no longer eligible for enhanced credit rates under the IRA. The OBBBA also simplifies lifecycle greenhouse gas emission rates for fuels derived from animal manure, eliminates potential negative emissions rates, and excludes emissions attributed to indirect land use.
- *Transferability Maintained.* Section 45Z credits remain available for transfer under Section 6418, but transfers to SFEs are prohibited. The Section 45Z credit also remains eligible for direct pay under Section 6417.
- *Section 40A (Small Agri-Biodiesel Producer Credit).* The Section 40A credit is extended to fuel sales through December 31, 2026, and the credit amount is doubled. Feedstock must be exclusively produced in the U.S., Mexico, or Canada. Transferability of this credit is allowed under Section 6418 of the Code.
- *FEOC Restrictions.* The taxpayer cannot be an SFE for tax years beginning after July 4, 2025. The taxpayer cannot be an FIE (without regard to “effective control”) beginning two years after July 4, 2025.

CONCLUSION

The OBBBA introduces a fundamental realignment of federal clean energy policy, with immediate and long-term consequences for tax credit eligibility, project financing, and supply chain strategy. As the regulatory landscape continues to evolve, proactive planning and early compliance efforts will be critical to preserving value and mitigating risk. Stakeholders are strongly encouraged to consult with legal and tax advisors to navigate these changes and position themselves for continued success in the clean energy transition.