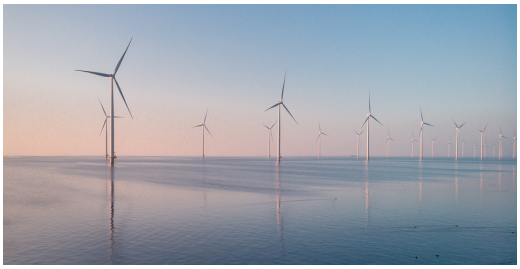
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IRS Issues First FEOC Guidance, Providing Some Familiarity and Comfort to Renewable Energy Projects

February 2026



On February 12, 2026, the IRS and Treasury released Notice 2026-15 (the "Notice"), providing interim guidance for purposes of determining "material assistance" under the new "Prohibited Foreign Entity" (PFE) restrictions enacted by the One Big Beautiful Bill Act (OBBBA) on July 4, 2025. Under the OBBBA, a PFE or project receiving "material assistance" from a PFE cannot claim tax credits under Sections 45X (Advanced Manufacturing Production Credit), 45Y (Clean Electricity Production Credit), and 48E (Clean Electricity Investment Credit) of the Internal Revenue Code. A PFE, which must have a direct or indirect nexus with China, North Korea, Iran or Russia, includes (i) a specified foreign entity (which includes certain foreign entities of concern under the William M. Thornberry National Defense Authorization Act for Fiscal Year 2021, entities on certain restricted entity lists, and certain "foreign-controlled entities"), and (ii) a foreign-influenced entity, which includes entities with certain debt, equity or contractual relationships with specified foreign entities, and entities deemed to be "effectively controlled" by a specified foreign entity.

The Notice is the first so-called "foreign entity of concern" (FEOC) guidance under the OBBBA to be released and anticipates the release of future treasury regulations covering analogous topics. The provisions of the Notice will affect credit eligibility under Sections 45X, 45Y, and 48E of the Internal Revenue Code for certain facilities, energy storage technologies ("ESTs") and components, including critical minerals.

Commentary: Because the OBBBA specifically references Treasury Regulations filling in many of the gaps where the FEOC provisions are unclear, and because the consequences for a FEOC misstep are drastic (*i.e.*, a loss of tax credits altogether), many in the industry have been impatiently awaiting FEOC guidance and have been loath to move forward with projects in the absence thereof. While this guidance, coupled with future regulations, is a significant step towards providing more market certainty, the material assistance standard is only one of the FEOC prongs and certainty is still needed in other areas. Specifically, many are still awaiting further clarity on the debt and equity standards comprising the "Foreign Influenced Entity" (FIE) definition.

Revisiting the Material Assistance Standard

Under the OBBBA, a qualified facility, EST, or eligible component, under Sections 45X, 45Y, and 48E, respectively, cannot be the product of, or include items that are the product of, "material assistance" from a PFE. For purposes of determining whether a facility, EST, or component includes items derived from "material assistance" from a PFE, such facilities, ESTs, or components must meet a minimum material assistance cost ratio ("MACR") threshold. The MACR thresholds vary by year:

- **For qualified facilities/ESTs beginning construction in 2026**: There is a 40% threshold, increasing to 55% and higher in subsequent years.
- **For eligible components sold in 2026**: There is a 50% threshold, increasing in subsequent years.

New, but not Unfamiliar, Safe Harbors

The Notice outlines the steps to be taken by a taxpayer to determine the MACR for qualified facilities, ESTs, and eligible components. Further, the Notice confirms that taxpayers may rely on three interim safe harbors, which generally may be relied upon up until the publication of the safe harbor tables under Section 7701(a)(52) (or 60 days after such publication with respect to qualified facilities and ESTs in the Section 48E and 45Y contexts):

- **Identification Safe Harbor**: Taxpayers may rely upon an "Identification Safe Harbor" to identify the types of manufactured products and components of a qualified facility or EST to the extent such qualified facility or EST is listed as an "Applicable Project" in the safe harbor tables under Notices 2023-38, 2024-41, and 2025-08.
- **Cost Percentage Safe Harbor**: Taxpayers may rely upon pre-established assigned cost percentages from the safe harbor tables under Notices 2023-38, 2024-41, and 2025-08 instead of tracking actual costs. This safe harbor, however, may only be used if such taxpayer is also relying on the Identification Safe Harbor.
- **Certification Safe Harbor**: Taxpayers may rely upon supplier certifications regarding PFE status and costs (subject to strict requirements including sworn jurats subject to penalties of perjury). Interestingly, this safe harbor may be employed "in whole or in part" in order to determine direct material costs.

Commentary: In the context of tax due diligence, taxpayers will recall that FEOC rules impact different credits differently. Specifically, the material assistance rules apply for all years post-enactment for Section 45X credits but only for projects beginning construction on or after 2026 in the context of credits under Sections 45Y and 48E. Keeping this in mind, buyers of tax credits for solar and battery storage deals are less likely to see an immediate impact resulting from the Notice, whereas 45X deals will need to consider this right away.

Moreover, notwithstanding the new safe harbor nomenclature, much of the substance of the Notice tracks the existing language the statute itself. Specifically, the safe harbors discussed in the Notice appear to be an

extension of the safe harbor provisions originally introduced in the OBBBA. Taxpayers are likely to be comforted by this direction and familiarity, as perhaps, when it comes to FEOC, the "fear of the unknown" has been as daunting as the substance of the provisions themselves.

Also, rather than simply providing that taxpayers can rely on the provisions of prior notices and safe harbor tables,[1] the Notice provides specific calculation methodologies and examples.

Additional Highlights from the Notice

In addition, the Notice provides some helpful additional guidance to the FEOC body of law, some of the highlights of which include:

- Confirmation that the domestic content framework largely applies when determining the MACR for Sections 45Y and 48E (*i.e.*, assessing MP and MPC manufacturers and confirming that subcomponents and steel/iron products are not relevant for MACR).
- Certain sourcing rules for constituent materials in the context of Section 45X and technical rules regarding how to account for direct costs.
- Exclusion of "direct costs of incorporating MPs into the qualified facility or EST" from the general definition of "direct costs attributable to an MP" for purposes of Sections 48E and 45Y.
- As to suppliers, establishment of PFE status as of the year that the applicable cost was paid or incurred by the taxpayer, as opposed to, for example, the year of production.
- Confirmation that the Identification and, by extension, the Cost Percentage Safe Harbors cannot be used for qualified interconnection property, because under the applicable statute such property doesn't constitute qualified energy property under Section 48E.
- Confirmation that traditional beginning of construction standards apply,[2] rather than Notice 2025-42, in determining applicability of the material assistance rules to a qualified facility or energy storage technology.
- Confirmation that, in determining the MACR for certain energy storage technologies and Section 45X, for simplification purposes taxpayers may elect to average costs for "specified periods," according to certain baseline parameters.
- Provision of a simplified approach and "de minimis" rule when assigning MPs or MPCs of the same type and characteristics to qualified facilities or ESTs, such that taxpayers do not need to individually track them to such facilities or ESTs, provided that the facilities or ESTs were placed in service during the same taxable year and represent less than 10% of the Total Direct Costs of such qualified facility or EST.

[1] Specifically, Notices 2023-38, 2024-41, and 2025-08 in the context of the domestic content adder.

[2] Specifically, e.g., Notice 2013-29, Notice 2013-60, and Notice 2016-31.

- Confirmation that, in the case of resellers, taxpayers must look instead to the entity that mines, manufactures, or produces MPs, MPCs, and Constituent Materials.
- Treatment of qualified interconnection property as a separate unit – in other words, if interconnection property does not pass muster under MACR standards, credits are invalidated only with respect to the specific property and not the entire qualified facility.
- Coordination with the 80/20 rule for retrofitted facilities – only the Direct Costs of the new MPs and MPCs incorporated into a facility that is a qualified facility by virtue of the 80/20 Rule are considered when calculating the Clean Electricity MACR.
- The Notice further describes the United States Department of the Treasury (Treasury)'s intent to issue certain proposed regulations designed to accomplish the following:
  - prevent anti-circumvention of the FEOC rules, including "through transfers or alterations of rights, property, or both, including transfers or alterations resulting in lapses of restricted foreign ownership or control that are temporary in nature"; and
  - provide that meeting any one of the effective control factors creates effective control (*e.g.*, a relevant license being entered into or modified after July 4, 2025).
- The Notice also requests general comments, as well as comments on certain specific items, by March 30, 2026.

Michael Rodgers
Partner, Energy & Infrastructure, Tax
Tel: +1 202 654 9269
michael.rodgers@linklaters.com

Erika Jensen
Senior Associate, Tax
Tel: +1 212 903 9392
erika.jensen@linklaters.com

Marius Griskonis
Partner and Head of Energy & Infrastructure in the Americas
Tel: +1 212 903 9262
marius.griskonis@linklaters.com

For general inquiries please contact

Linklaters LLP
1290 Avenue of the Americas
New York, NY 10104

Tel: +1 212 903 9000
Fax: +1 212 903 9100

www.linklaters.com

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