Tax Alert

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Five Things You Need to Know About the Extension of the ITC/PTC

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On December 18, Congress approved and President Obama signed into law the Consolidated Appropriations Act, 2016 (the Act). Among the 887-page budget bill's myriad provisions is an extension of federal income tax credits for solar, wind and certain other renewable energy facilities.

Here are five key things renewable power industry players need to know:

I. **Solar Energy Investment Tax Credit (ITC) Extended.** The Act extends the 30 percent ITC for solar power facilities, previously available for such facilities placed in service on or before December 31, 2016, to such facilities where construction commences on or before December 31, 2019 and which are placed in service before 2024. For solar facilities whose construction commences after December 31, 2019, the ITC decreases. Projects that (i) commence construction during 2020 and are placed in service before 2024 are eligible for an ITC of 26 percent; (ii) commence construction during 2021 and are placed in service before 2024 are eligible for an ITC of 22 percent; and (iii) commence construction after 2021 or are placed in service after 2023 are eligible for an ITC of 10 percent. Changing from a deadline based solely on placement in service to one focused on commencement of construction was intended to provide facility developers with greater certainty, although the retention of an outside, hard, placed-in-service deadline of December 31, 2023 will provide an incentive for developers to follow through to completion once they have satisfied the "begun construction" guidelines previously released by the Internal Revenue Service. (Technically, these guidelines will need to be updated by the Service to reflect the dates contained in the new legislation.)

II. **Solar Homeowner Credit Extended.** The Act extends the credit for homeowners that purchase and install qualified solar electric property and/or qualified solar water heating property. This credit also phases down over time. The credit for such qualified solar property purchased and installed prior to January 1, 2020 is 30 percent. The credit for qualified solar property purchased and installed in 2020 is reduced to 26 percent, and the credit for qualified solar property purchased and installed in 2021 is further reduced to 22 percent. There is no credit for property installed after 2021.

III. **Wind Energy Production Tax Credit (PTC) Extended.** The Act restores PTCs for wind power projects that begin construction before 2020. Like the solar ITC, PTCs will be subject to a ratchet down beginning in 2017. Projects that begin construction before 2017 are eligible for PTCs for sales of electricity equal to 1.5 cents per kilowatt, as adjusted for inflation. (For sales occurring in 2015, the applicable inflation-adjusted rate is 2.3 cents per kilowatt.) Thereafter, PTCs will be reduced by (i) 20 percent for projects beginning construction in 2017; (ii) 40 percent for projects beginning construction in 2018; and (iii) 60 percent for projects beginning construction in 2019. These extensions are retroactive to January 1, 2015; thus projects beginning construction in 2015 qualify. It should be noted that, because the PTC is generally available over a 10-year credit period, the impact of the credit phase-out will be felt over the entire 10-year period in which the PTCs are available.

IV. **PTC/ITC Option Extended.** The Act extends the right for "qualified investment credit facilities" (as defined in Code Section 48(a)(5)(C)), including wind power projects, to opt for an ITC equal to 30 percent of qualified costs in lieu of PTCs. For qualified investment credit facilities other than wind projects, the election is available for those facilities whose construction has commenced prior to January 1, 2017. In the case of wind power projects, the construction commencement deadline is extended to January 1, 2020, provided that (i) for wind projects beginning construction in 2017, the ITC is reduced to 24 percent; (ii) for wind projects beginning construction in 2018, the ITC is further reduced to 18 percent; and (iii) for projects beginning construction in 2019, the ITC is limited to 12 percent. These amendments are retroactive to January 1, 2015; therefore, projects beginning construction in 2015 qualify.

V. **Other Renewable Energy PTCs Extended.** The Act extends PTCs at current rates for qualifying biomass facilities (open loop and closed loop), geothermal facilities, landfill gas facilities, trash to cash facilities, hydropower facilities, and marine and hydrokinetic facilities that begin construction before 2017. These amendments are retroactive to January 1, 2015, so there is no eligibility gap for projects beginning construction in 2015.

The information presented is only of a general nature, intended simply as background material, is current only as of its indicated date, omits many details and special rules, and accordingly cannot be regarded as legal or tax advice.

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If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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