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Taking Advantage of Opportunities under the Inflation Reduction Act: How, What and When?

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Key Provisions of the Act

- Extension of ITC (30%) and PTC (2.7c/kWh)
- New Prevailing wage and apprenticeship requirement to earn full ITC/PTC credit amount
- Stand-alone storage now qualifies for ITC
- Interconnection Costs includable in basis (<5 MW)
- Bonus Adders
 - › Domestic Content Bonus – 10%
 - › Energy Community Bonus – 10%
 - › Environmental Justice Bonus (<5MW) - 10% or 20% for 1.8 GW in each of 2024 and 2025
- Direct pay
- Transferability
- Solar eligible for PTC
- Clean Electricity Credit (new)
- Carbon Capture and Sequestration (CCS) credit
- Clean Hydrogen (New) (up to \$3/kg)
- Zero Emission Nuclear Credit (new)
- Biofuel credit extended
- Clean Vehicle Credit
- Clean Vehicle Refueling Credit
- Energy Efficiency Credit (Residential and Commercial)
- Advanced Manufacturing
- Advanced Energy Projects

Prevailing Wage and Apprenticeship Requirements

- Laborers and mechanics must be paid “prevailing wages” for locality during construction and for repairs or alterations after projects are PIS (10yrs for PTC, 5yrs for ITC, 12yrs for 45Q).
- Apprenticeship requirements apply to contractors or subcontractors with 4 or more employees. Taxpayer must ensure that the “applicable percentage” of total labor hours for construction, alteration or repair work is done by qualified apprentices, i.e., an employee who participates in an apprenticeship program under the National Apprenticeship Act.
- Projects beginning construction before 2023, applicable percentage is 10%, 12.5% if BOC in 2023, and 15% after; but not until 60 days after Secretary publishes relevant guidance.

Domestic Content Bonus

Project must use:

- 100% U.S. steel and iron, and
- For manufactured products that are components of the facility, an “adjusted percentage” of the total costs of the components must consist of products that are mined, produced or manufactured in the U.S.
- Adjusted percentage for most projects initially set at 40%, increasing to 45% in 2025, 50% in 2026, and 55% in 2027. For offshore wind facilities adjusted percentage initially set at 20%, increasing to 27.5% in 2025, 35% in 2026, 45% in 2027, and 55% in 2028 and after.
- Project must satisfy prevailing wage and apprenticeship requirement or be exempted to receive full bonus.
- Two exceptions to domestic content requirement:
 - › (1) if satisfying the requirement will increase the overall cost of construction by more than 25 percent, *or*
 - › (2) if the relevant products are not produced in the U.S. in sufficient and reasonably available quantities or quality. Under these circumstances, the unavailability of the product is counted 100% against the adjusted percentage, i.e., the adjusted percentage is calculated as if 100% U.S. content was supplied for the unavailable items.

Energy Community Bonus

- Projects located in an energy community qualify for 10% ITC bonus (if project meets or is exempt from prevailing wage requirement).
- "Energy Community" means:
 - › (i) a brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of section 101(39) of CERCLA (42 U.S.C. 9601(39))),
 - › (ii) an area which has (or, at any time during the period beginning after December 31, 1999, had) significant employment related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), or
 - › (iii) a census tract—
 - › (I) in which—
 - › (aa) after December 31, 1999, a coal mine has closed, or
 - › (bb) after December 31, 2009, a coal-fired electric generating unit has been retired, or
 - › (II) which is directly adjoining to any census tract described in subclause (I)
 - › A metropolitan or non-metropolitan statistical area that has, or had at any time after 2009, at least 0.17% direct employment or at least 25% local tax revenues related to "extraction, processing, transport, or storage of coal, oil, or natural gas" and had an unemployment rate at or above the national average "for the previous year" is an energy community.

Environmental Justice Bonus

- 10% bonus for projects located in a low-income community (as defined in § 45D(e) of the Code) or on Native American land (as defined in § 2601(2) of the Energy Policy Act of 1992).
- 20% bonus for projects that are part of (A) a qualified low-income residential building project or (B) a qualified low-income economic benefit project.
- A Qualified Low-Income Residential Building is one that:
 - › Participates in a housing program such as those that participate under the Violence Against Women Act of 1994, a housing assistance program administered by the Department of Agriculture under the Housing Act of 1949, a housing program administered under the Native American Housing Assistance and Self-Determination Act of 1996, or similar affordable housing programs., and
 - › The financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

Environmental Justice Bonus (*cont.*)

- A Qualified Low-Income Economic Benefit Project is one where:
 - › At least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of—
 - (i) less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A)) applicable to a family of the size involved, or
 - (ii) less than 80 percent of area median gross income (as determined under section 142(d)(2)(B)).
 - › (D) FINANCIAL BENEFIT.—For purposes of subparagraphs (B) and (C), electricity acquired at a below-market rate shall not fail to be taken into account as a financial benefit.
- Available only to solar and wind projects 5 MW AC or less, and storage associated with such solar projects.
 - › Limited to 1.8 gigawatts of solar and wind capacity in each of calendar years 2023 and 2024.
 - › Project must receive an allocation from the U.S. Treasury Secretary.

Stand-Alone Storage

- Stand-alone energy storage projects now qualify for 30% ITC. Project must have a nameplate capacity of at least 5 kWh. Thermal storage projects and hydrogen storage projects qualify.
- To receive full credit project must satisfy the prevailing wage and apprenticeship requirements or have begun construction prior to 60 days after the Treasury Secretary issues guidance on prevailing wage and apprenticeship standards.

Interconnection Equipment

- Qualifying projects under 5 MW (AC) may claim ITC on their interconnection costs. Credit applies even if interconnection facilities are owned by the interconnecting utility, so long as they are paid for by taxpayer.
- Not a stand-alone tax credit, but an additional cost added to a project's basis.

Direct Pay

- Allows certain tax-exempt organizations to treat credits as taxes already paid.
- In lieu of receiving tax credit, eligible entity is treated as if it had paid taxes in the amount of the credit, for which it then receives a cash refund.
- Eligible entities include tax-exempt organizations, state and local governments, Indian tribes (as defined in the Act), the Tennessee Valley Authority, and any Alaska Native Corporation.
- Also available (regardless of tax-exempt status) for Carbon Capture, Hydrogen, and Advanced Manufacturing.
- Projects electing direct pay that do not meet domestic content requirements receive a reduction for projects beginning construction in 2024 (90%) and 2025 (85%). Thereafter, direct pay option not be available for projects that do not satisfy domestic content requirement.

Transferability

- Eligible taxpayers that do not elect direct pay have option to transfer certain credits to unrelated taxpayers
- Eligible credit must be transferred for cash
- Payment is not taxable income to transferor and not deductible to transferee
- Penalties apply for “excessive payments”
- Credits for progress expenditures, carryforwards or carrybacks are not “eligible” for transfer

Implementation/Timing

Provision	Effective Dates and Phasedown
ITC	BOC must be prior to Jan. 1, 2025 and PIS no earlier than 2022 and no later than December 31, 2024. In 2025 ITC is replaced by Clean Electricity Credit. Must be PIS by end of fifth CY after the year in which construction started.
PTC	BOC must be prior to Jan. 1, 2025 and PIS no earlier than 2022 and no later than December 31, 2024. In 2025 PTC is replaced by Clean Electricity Production Credit. Must be PIS by end of the fifth CY after the year in which construction started.
Stand-Alone Energy Storage	Applicable to Projects PIS after December 31, 2022.
Interconnection Facilities	Applicable to Projects PIS after December 31, 2022.
Prevailing Wage Requirement	Effective January 1, 2023, but not before 60 days after Secretary publishes guidelines
Apprenticeship Requirement	Effective January 1, 2023, but not before 60 days after Secretary publishes guidelines
Domestic Content bonus	Applicable to Projects PIS after December 31, 2022. For projects beginning construction in 2022 and 2023, (but not before 60 days after Secretary publishes guidelines) the applicable percentage of US content for most projects is 40%, 20% for off-shore wind. Percentages increase each year beginning in 2024 through 2027.
Energy Community Bonus	Applicable to Projects PIS after December 31, 2022. Pre-existing projects qualify to extent of additional construction, reconstruction or erection after December 31, 2022
Environmental Justice	Allocations for 2023 and 2024. Rules on allocation are to be issued by Treasury within 180 days of enactment.

Implementation/Timing (*cont.*)

Provision	Effective Dates and Phasedown
Clean Electricity Invest. and Prod. Credits	Effective beginning January 1, 2025 when it replaces existing ITC and PTC. Phases out the later of 2032 or when emission targets are achieved (75% below 2022 electric sector carbon emission levels).
Direct Pay	Annual election. Available for CCS and Clean Hydrogen for first five years of operation.
Transferability	Effective 180 days after enactment. Credit period extended to 23 years (including 3 years for carrybacks). Credit must be used by transferee in earliest possible year.
Carbon capture and sequestration	Facility must be PIS after December 31, 2022.
Alternative fuel vehicle refueling property	Property must be PIS after December 31, 2022.
Advanced Energy project	Effective January 1, 2023. Limited to \$10 bn (\$4bn must be in energy communities)
Zero-emission nuclear power	Effective for electricity produced and sold from existing facility to unrelated person after December 31, 2023. Credit terminates December 31, 2032.
Clean hydrogen	BOC before January 1, 2033. Effective for 10-year period
Advanced Manufacturing Production credit	Effective for components produced and sold after December 31, 2022. Phases out for components sold after December 31, 2029, ending on December 31, 2032.
Clean fuel production credit	January 1, 2025, expires for transportation fuels sold after December 31, 2027
Clean Vehicles	For vehicles PIS after December 31, 2022.
Clean Hydrogen	For facilities PIS after December 31, 2022. 10-year credit.

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