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Navigating PFE Guidance for Clean Energy Tax Credits

Host
Carrie Falkenhayn, Tax Partner, Deloitte Tax LLP

Speakers
Jaime Park, Tax Managing Director, Deloitte Tax LLP
Ross Reiter, Tax Partner, Deloitte Tax LLP

Carrie Falkenhayn: From Deloitte Tax, welcome to the Tax News and Views podcast. In this series, we talk to specialists from Deloitte about the latest business developments. I'm Carrie Falkenhayn, your host for Tax News and Views. Joining me today are Ross Reiter, he's from Deloitte's GI3 practice, and Jaime Park from Deloitte's Washington National Tax Group. And today, we're going to be discussing new guidance for the calculation on qualifying tax credits.

Specifically, we're going to be talking about the material assistance cost ratio, also known as MACR, not to be confused with the depreciation maker, but it's a key metric under the new prohibited foreign entity or PFE rules that were introduced in the One Big Beautiful Bill Act. This measure is the proportion of a project's cost attributable to PFE-produced manufactured products, or MPs, or manufactured components, MPCs. If the MACR exceeds the statutory threshold, a taxpayer's energy credits can be denied. So, Jaime, I'm going to start with you. Has this latest IRS guidance, which came out in Notice 2026-15 that was issued back in February, brought additional clarity regarding questions that have arisen since OBBBA was enacted last summer?

Jaime Park: Hi, Carrie. Yes, that notice clarified how to calculate the material assistance cost ratio, as you call it, MACR calculation. And it significantly clarified for particular technologies for which, safe harbor tables are available. So, we have, solar, wind, and battery energy storage technologies for which Treasury had issued guidance, relating to the domestic content bonus credit, and there was safe harbor tables that were provided for domestic content. And this new guidance for PFV MACR calculation, the new guidance allows taxpayers to use those safe harbor tables for those technologies that were provided in domestic content context. So, we do have some clarity. It also provides rules on how to use those safe harbor tables for MACR calculation, which is a little different from how it was used for domestic content while it did significantly clarify the MACR calculation rules. It still didn't address some of the other open questions, so it did not address any of the issues relating to how a taxpayer can determine whether they are a prohibited foreign entity. There are a lot of uncertainties in those prohibited foreign entity rules, such as how do you apply the debt test for FIE or foreign influence entity status? And what counts as effective control? Which would result in the taxpayer being a PFE. And then for technologists that are outside of the safe harbor tables, the notice did not provide any safe harbor tables or any other ways to determine the MACR calculation for those other technologies.

One, I think clarification of the notice provided is that for purpose of determining MP and MPCs, you follow the rules that have been provided under the domestic content notices. As those domestic condo notices have been around for the past, you know, 2-3 years, taxpayers have been applying those rules, not only for technologies such as wind and solar that have safe harbor tables, but for other technologies. So hopefully, you know, that does bring some clarity to these other technologies, but still, we are hoping to see more safe harbor tables for these technologies that, are outside of the wind, solar, and batteries.

Carrie Falkenhayn: Understood. So, based on the IRS guidance that we have so far, can we answer definitively whether supply chain traceability is limited to the MPC or may suppliers need to trace their supply chains further up the chain of production?

Jaime Park: Yeah, so that was actually one of the biggest uncertainties in how to calculate MACR for PFE purposes. There were a lot of concerns that you don't stop at MP or MPC level, that you do have to go all the way up, the chain of, you're looking at all the suppliers.

And the guidance is clear that for MACR analysis for 45Y and 48E, that it stops at the MPC level. So, the taxpayers only need to determine whether the MP or the MPCs were manufactured by PFE. And then, for purpose of 45X, which is a credit for suppliers or certain manufacturers, MACR calculation stops at the constituent materials acquired by the taxpayer. You don't have to go to the suppliers beyond the tier one supplier for the 45X MACR analysis.

Carrie Falkenhayn: I'm sure those clarifications are helpful. Ross, let's get you into the discussion. Share with us, what does a bankable supplier certification look like today, and how might this change in the future? I'm sure taxpayers that's very important to them.

Ross Reiter: Hi, Carrie. Yeah, this is a huge topic of importance for companies. And you know, what's funny is when the guidance first came out and you go to the section in the guidance that talks about what constitutes a valid supplier certification, I naively thought that this would be a pretty easy and straightforward part of the process, mostly because the guidance lays out in black and white exactly what's required for the certification to be valid. And I thought, great, companies will just copy and paste that into a Word document, send it off to their suppliers, suppliers will sign it under penalties of perjury, and away they'll go. Well, it turns out that that's not really how it's playing out in actuality. A reason for that is there are a lot of cooks in the kitchen. When we're dealing with something that needs to be signed under penalties of perjury, you have a lot of different people from a lot of different functions in the organization involved. So legal, of course, tax, supply chain, procurement, sales etc. And it's not just, you know, one side that is signing off on these certifications. It's both the supplier and the taxpayer. You have double the number of people reviewing and providing input to these certifications. A lot of what Jaime and I have been doing the past year or so is working with companies and making sure that they have a valid certification. And then as there are markups from the counterparties to ensure that those markups don't run afoul of the required language, or don't diminish the intent of what the required language is supposed to get across. So, that's been a big piece of some of the work that we've been doing the past year or so. In some cases, too, just having a valid certification might not necessarily be enough from the standpoint of the taxpayer. Some want some other independent evaluation, whether in the form of a memo or opinion of their PFE status or some sort of checklist that helps support or substantiate what's documented within the certification.
A lot of this is, dependent on how one would interpret the knows or has reason to know standards. In other

words, that means that if you're signing off that, as a supplier, you're not a PFE, you also need to validate within that certification that you also don't know or have reason to know that another supplier in the chain of production is also not a PFE. So, in terms of how this could change in the future, we obviously don't know. We could see some converging on a market standard or some sort of simplification of what's required if we do get additional tax guidance, or if we start to see more deals get financed and insured, and we get a lens or insight into how those financers or those insurance companies are viewing these certifications.

Carrie Falkenhayn: Let's talk a little bit about third party verifications, specifically around the cost percentages for the safe harbor methods. And how does this compare to other third-party verifications, right, around things like domestic content, etc.? And are companies converging the two to make the analysis more efficient and streamlined?

Ross Reiter: Yeah, Jaime alluded to this a little bit in one of the previous questions. So, the simple answer is there is no market standard quite yet. A lot of companies are still in the very early stages of performing this analysis, and unsurprisingly, we see a wide spectrum of deliverables and standards as we move through the process, but specifically for the cost percentage Safe Harbor. We do think there will be a strong push to back that up with some sort of supplier certification, because that really gives taxpayers the certainty and reliance that can provide comfort on the many open issues that may apply to a supplier's PFE status. It will have a lot of similarities, as we alluded to, with the domestic content analysis, and understandably, and I think rightfully. We're seeing many companies pursuing both of those analyses at the same time because of a lot of the overlap and similarities.

Carrie Falkenhayn: That makes sense. And are we seeing companies still focused just on the MACR requirements, or have you started to see companies turn their attention to validating themselves as non-PFE? And if so, how are they going about doing that analysis?

Ross Reiter: And there's really two ways to approach answering this. One is from the lens of the developer, and one from the lens of the supplier. From a developer's standpoint, at least in my experience so much of what they've done the past year or so has been related to making sure that they can satisfy the material assistance requirements. There's been a lot of work, as I mentioned before, of them engaging with their suppliers to get those certifications signed so that they can compute their MACR threshold and make sure that they don't run afoul of the necessary threshold. But we are starting to see those developers now turn their attention to their own PFE status because there's really two parts to the prohibited foreign entity analysis. The material assistance cost ratio is one of those parts, but the other part is making sure that the developer themselves is not a PFE. And as Jaime mentioned before, we don't really have guidance on that part of it yet. So, are they a foreign influenced entity? Are they a specified foreign entity? we are starting to see companies turn their attention to that, and we're navigating it as best as possible, given the limited guidance, but it is becoming a big topic of conversation. Suppliers they're probably, at least in my experience, a little further ahead than the developers because. They've had to start doing this because they've been getting requests from their customers about signing these certifications. And for them to sign those certifications that they're not a PFE, they must go through the PFE analysis to validate that. I will also mention specific to the specified foreign entity and foreign influence entity aspect of this. Part of that is a tax analysis, but part of it is also more of a legal analysis. So, as companies are pursuing, helping to validate this determination, they're requesting memos, oftentimes from multiple advisors, both law firms and accounting firms. That way they can ensure that they have really a holistic view on their PFE status and that each aspect of it is covered and documented properly.

Carrie Falkenhayn: Jaime, there still is a lot of uncertainty. How can a developer future-proof their projects today against any upcoming guidance? I know we're waiting on a lot of answers here, like, how do they have an effective contract, given that there could be significant changes, and what roles suppliers can play to support ITC claims in this uncertain environment?

Jaime Park: Yeah, so it is difficult right now without guidance defining certain terms or providing, you know, clearer rules regarding PFE and MACRs. Generally, when Treasury issues guidance, it is applicable prospectively. There are a few times when it has retroactive effect, but generally it's, it only has a prospective application, and that's usually tied to when the projects have begun construction, or whether the projects, that have not been placed in service. So once any upcoming guidance comes out, there will be some time that taxpayers can make changes as needed or after understanding what the new rules are and how they apply to their projects. So, for now, we've generally seen taxpayers taking on a more conservative position as they are, developing their projects. What we've seen is that taxpayers with their contractors are taking building in flexibility to their agreements, to adjust or renegotiate if there is a significant change due to future guidance. This way, both parties are likely to have mutual interest in continuing the relationship. And tax credit eligibility is a key driver in the market. We've also seen some savings clauses used in contracts, and these clauses will state that if a provision in the contract constitutes, for example, effective control, then that provision in the contract is void. I'm not sure how this would play out if there is an IRS audit, but it is definitely one way that we have seen some protection that parties are putting into the contracts.

Carrie Falkenhayn: All right, Jaime, look in your crystal ball. What do you expect the next round of guidance to include? Are we looking at tighter restrictions, loose restrictions, or anything that companies should be expecting, but may not be right now? What are your thoughts?

Jaime Park: Yeah, so taking out my crystal ball, you know, we have seen couple notices that came out since OB3, notice 2025-42 that came out relating to begin construction rules. And then, as we just discussed, Notice 2026-15 related to material assistance cost ratio. Many had feared before these notices came out that there would be very tight restrictions on the begin construction rules and on the MACR rules and we were pleasantly surprised that these notices provided rules that were workable and thoughtful rather than tighter restrictions. Based on these data points, it is possible that the guidance is going to continue in a positive direction. We hope that it will strike a balance between having workable rules and meeting the policy and intent of the statute. We have seen that there's some indications that tax credits will be an enforcement priority from the IRS, but we'll have to see how that enforcement side plays out. But I'm hoping for workable rules rather than, you know, tighter or looser restrictions, but something that Taxpayers both from the developers and supplier side will be able to apply those rules and that'll be consistent with the intent of the statute while helping proceed with these project developments.

Carrie Falkenhayn: Agreed. Hopefully we see some of that guidance soon. Well, thank you, Jaime and Ross, for this important information. And obviously, there's a lot to these rules. If our audience wants more information, what I'd encourage you to do is to go to Deloitte.com, search on Tax News and Views. There you can see a variety of newsletters as well as webcasts that touch on the credits and incentive considerations related to the One Big Beautiful Bill Act. And of course, you could always reach out to Jaime or Ross directly. Thank you as always for listening. I hope you tune in next time. Everyone continue to be well! Take care!