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Locke Lord QuickStudy: Treasury Issues Proposed Regulations ??on Expanded ITC Under Inflation Reduction Act, ?Boosting ??Storage, Offshore Wind

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On November 17, 2023, the Internal Revenue Service ("***IRS***") and the U.S. Treasury Department ("***Treasury***") issued Proposed Treasury Regulations (REG-132569-17) (the "***Proposed Regulations***") providing guidance and amending existing regulations relating to the investment tax credit (the "***ITC***") under Section 48 of the Internal Revenue Code of 1986, as amended (the "***Code***"). The ITC provides a tax credit for investments in energy producing property. The Inflation Reduction Act of 2022 (the "***IRA***") significantly expanded the types of projects that may qualify for the ITC. The Proposed Regulations seek to provide clarity and certainty regarding eligibility for the ITC to facilitate investment decisions for clean energy projects.

Notably, the Proposed Regulations provide guidance on:

- the definitions of energy property for projects historically eligible for the ITC (e.g., solar and wind), as well as new energy technologies added to the ITC by the IRA. Significantly, in addition to including standalone energy storage technology in this definition as called for in the IRA, the Proposed Regulations would expand this definition to include subsea cables, onshore transformers and other critical interconnection equipment for offshore wind projects;
- rules and definitions generally applicable to the ITC requirements;
- the prevailing wage and apprenticeship requirements, including (i) the exception for projects with a maximum output of less than one megawatt and (ii) certain recapture rules that apply if the prevailing wage requirements are not satisfied for the 5-year period beginning on the date a project is placed into service;
- the application of the recapture rules described above to the transferability of the ITC;
- whether property is a functionally interdependent part or an integral part of a project;
- the "80/20" rule in connection with retrofitted equipment added to a project (generally a project will be treated as originally placed in service if 20% or less of the project's total value is used property);
- projects that use energy from multiple sources;
- property that can be eligible for multiple federal tax credits;
- ITC eligibility for property that is owned by multiple taxpayers;
- the election to treat certain "qualified facilities" under Code Section 45 (regarding the production tax credit) as energy property for purposes of the ITC; and
- interconnection costs included in the basis of some lower-output projects.

The Proposed Regulations further clarify applicability of the various bonus credits made available by the IRA, which can increase the 6% base credit to as much as 70% for projects that meet the criteria for all credit enhancements, including prevailing wage and apprenticeships, domestic content, and location in an energy community.

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Taxpayers may generally rely on the Proposed Regulations at least until final regulations are promulgated (although the reliance period varies to some degree). The Proposed Regulations are scheduled to be published in the *Federal Register* on November 22, 2023, and a public hearing is scheduled for February 20, 2024 at 10:00 AM EST.

Locke Lord is analyzing the Proposed Regulations and will provide further QuickStudies on the material aspects of these Proposed Regulations in the coming weeks. For additional information and context, please contact one of the authors.

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