

Press Coverage | June 26, 2023

New Tax Credit Rules May Not Simplify US Clean Energy Project Finance Deals

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Anne Loomis, a partner in Troutman Pepper's Tax Practice Group, was quoted in the June 26, 2023 *S&P Global* article, "[New Tax Credit Rules May Not Simplify US Clean Energy Project Finance Deals](#)."

But instead of eliminating the burdensome due diligence required for tax equity financing, transferability is "looking to be just as thorough and complicated" based on the proposed clarifications, which still need to be finalized, Anne Loomis, an energy tax attorney for Troutman Pepper Hamilton Sanders, said in an interview.

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Questions also persist regarding how the recapture of tax credits applies to changes in partnership and pass-through entity interests, according to Troutman Pepper's Loomis.

"We were hoping the regulations would say that, that sort of indirect disposition by a seller wouldn't constitute recapture of a transferred credit but that wasn't the answer," meaning that recapture risk is shared by buyers and sellers, Loomis said. "That just creates some wrinkles in the structuring and thinking about what the indemnifications need to look like."

The IRA for the first time also allows tax-exempt organizations such as electric cooperatives and businesses with limited tax liabilities to claim the equivalent of a tax credit as a cash payment from the IRS, known as direct pay.

But the guidance stipulates that partnerships that include both tax-exempt and taxpaying entities do not qualify for direct pay, while making it harder for such partnerships to economically transfer credits, according to Loomis.

"The transfer regulations say that the tax-exempt use property rules apply, which means you would end up with a haircut of credit based on the tax-exempt partner," Loomis said, leaving those partnerships "in an impossible position, and so that form of doing business doesn't appear to be an option for how tax-exempts can participate in the market."

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