

## IRS Issues Additional Guidance on Domestic Content Bonus (including New Elective Safe Harbor) for Green Energy Tax Credits

May 23, 2024

On May 16, 2024, the IRS released [Notice 2024-41](#) (the "Notice"), which provides updated guidance on the domestic content bonus energy credit available for qualifying energy projects under the Inflation Reduction Act of 2022 (the "IRA"). The Notice modifies existing guidance on the domestic content bonus under [Notice 2023-38](#) ("Notice 2023-38") and establishes a new elective safe harbor (the "New Elective Safe Harbor") that allows project owners to determine certain projects' eligibility for the domestic content bonus using predetermined cost percentages provided by the IRS.

### Background

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As part of the IRA, Congress amended the investment tax credit ("ITC") of Section 48<sup>1</sup> and production tax credit ("PTC") of Section 45 to provide a number of bonuses (or "adders") that increase the amount of a taxpayer's ITC or PTC if the taxpayer meets certain requirements regarding the nature or location of a particular project. One of these bonuses, known as the domestic content bonus, provides a 10 percent<sup>2</sup> bonus credit for a project that meets the following requirements: (i) any components of the project that are construction materials made primarily of steel or iron and are structural in function must generally be manufactured in the U.S. (the "Steel or Iron Requirement"), and (ii) a specified percentage (as described below) of any manufactured product that is a component of the project must be produced in the U.S. (the "Manufactured Products Requirement").<sup>3</sup> However, the 10 percent domestic content bonus is generally reduced to 2 percent if none of the following requirements is satisfied: (i) the project has a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy, (ii) construction of the project began before January 29, 2023, or (iii) the project satisfies certain prevailing wage and apprenticeship requirements.

In addition, a project of one megawatt or more that fails to qualify for the domestic content bonus may also lose its eligibility to claim an elective payment (also known as "direct payment") for all or a portion of an ITC or PTC. Under the IRA, state and local governments, not-for-profit entities, Indian tribal governments, rural electric cooperatives, and certain other tax-exempt entities are eligible to receive direct cash payments from the U.S. Treasury for certain tax credits specified in the IRA. For projects that are one megawatt or more and fail to qualify for the domestic content bonus, the amount of the elective payment is reduced for projects that begin construction in 2024 or later and completely eliminated for projects that begin construction after December 31, 2025.<sup>4</sup>

Notice 2023-38 provides guidance on how to determine whether a project satisfies the Steel or Iron Requirement and the Manufactured Products Requirement. Notice 2023-38 also includes a chart ("Table 2") that lists the most common project components found in utility-scale photovoltaic systems, land-based wind facilities, offshore wind facilities, and battery energy storage systems ("BESS") and identifies whether these components are subject to the Steel or Iron Requirement or the Manufactured Products Requirement.

Under the Manufactured Products Requirement, manufactured products are deemed to have been produced in the U.S. if a minimum percentage of the total cost of all the project's manufactured products are mined, produced, or manufactured in the U.S. (the "Adjusted Percentage Rule"). For projects that begin construction in 2024, the minimum percentage is generally 40 percent, and the percentage increases annually by five percent until it reaches 55 percent in 2027.<sup>5</sup> For purposes of the Adjusted Percentage Rule, as described in Notice 2023-38, a project's "Domestic Cost Percentage" is determined by dividing the project's "Domestic Manufactured Products and Components Cost" by the "Total Manufactured Products Cost." If the Domestic Cost Percentage equals or exceeds the adjusted percentage applicable to the project, then the project's manufactured components satisfy the Adjusted Percentage Rule and, accordingly, the project meets the Manufactured Products Requirement. If the project also meets the Steel or Iron Requirement, then the project qualifies for the domestic content bonus.

The Adjusted Percentage Rule, however, has attracted significant criticism because Notice 2023-38 requires taxpayers to use the product manufacturer's direct costs incurred in manufacturing the product in calculating the Domestic Manufactured Products and Components Cost — which means that under Notice 2023-38 a project owner would need to know the product manufacturer's direct costs and what the project's vendors actually paid the manufacturers for the equipment sold by the vendors. Manufacturers and vendors, however, generally regard their own costs as a trade secret and often refuse to share such information since its disclosure would reveal the manufacturer's or vendor's profit margins. Accordingly, many commentators denounced Notice 2023-38's Adjusted Percentage Rule as unworkable. The IRS has responded with the New Elective Safe Harbor provided in the Notice, which is intended to be more practical than the provisions of Notice 2023-38.

## Notice 2024-41

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The Notice expands upon the existing guidance in Notice 2023-38 and provides the New Elective Safe Harbor for determining whether a project's manufactured products meet or exceed the minimum percentage required to meet the Manufactured Products Requirement, which is necessary to qualify for the domestic content bonus.

First, the Notice expands Table 2 from Notice 2023-38 to include components of hydropower and pumped hydropower storage facilities. Second, the revised Table 2 replaces the term "utility-scale photovoltaic system" with "ground-mount and rooftop photovoltaic system" so that the table now includes both utility-scale and smaller-scale solar projects. See the attached *Appendix A* for the revised Table 2. Finally, the Notice expands upon Table 2's list of applicable product components for three project types (other than offshore wind facilities), for example, by providing in a new Table 1 cost percentages for various components and identifying applicable manufactured product components that make up an inverter in a PV module or a BESS, which were not included in Notice 2023-38.

The Notice also provides the New Elective Safe Harbor, designed in consultation with the Department of Energy. The New Elective Safe Harbor is based on a detailed list ("Table 1") of manufactured product components used to make the project components for solar, land-based wind, and BESS projects. Table 1 is attached as *Appendix B* to this Client Alert. The IRS has specified cost percentages for each of the manufactured product components in Table 1. Under the New Elective Safe Harbor, the cost percentages specified by the IRS may be used for the purpose of calculating the Domestic Cost Percentage and satisfying the Adjusted Percentage Rule.<sup>6</sup> Taxpayers may elect to apply the classifications and cost percentages in the New Elective Safe Harbor in lieu of using the manufacturer's direct costs under the Adjusted Percentage Rule in Notice 2023-38.

Each manufactured product component identified in Table 1 is assigned a specified percentage that can be used to determine whether the minimum percentage of the costs for manufactured products and components has been met under the Adjusted Percentage Rule. The classifications and cost percentages provided in Table 1 will be accepted by the IRS for the identified manufactured products and manufactured product components for purposes of determining compliance with the Steel or Iron Requirement and calculating the Domestic Cost Percentage, provided that all other requirements in Notice 2023-38 are met.

A taxpayer electing to use the New Elective Safe Harbor with respect to a project must use the components and the cost percentages listed in Table 1 as the exclusive and exhaustive set of project components and manufactured product components for the purpose of determining whether the project qualifies for the domestic content bonus.

To be eligible for the New Elective Safe Harbor, a project does not have to include the full list of applicable project components or manufactured product components provided in Table 1. A taxpayer may still elect to use the New Elective Safe Harbor even if components in Table 1 are not used in their project or if their project contains additional components not listed in Table 1. If a project component or manufactured product component listed in Table 1 is not used in the relevant project, the taxpayer must treat that component as having a value of zero in calculating the Domestic Cost Percentage. A taxpayer will not be disqualified from using the New Elective Safe Harbor if a project component or manufactured product component in the taxpayer's project is not listed in Table 1. However, such unlisted items do not count toward satisfying the Adjusted Percentage Rule.

**Foreign- and Domestic-Sourced Manufactured Products and Components.** The Notice provides a weighted average formula for taxpayers to determine a single “Assigned Cost Percentage” for components that are listed in Table 1 that have both foreign and domestic sources.

**Production Costs.** If all the manufactured product components of a manufactured product are domestically produced, then the production cost of the relevant manufactured product can be included in the total Domestic Cost Percentage.<sup>7</sup> Table 1 includes a line item that lists the Assigned Cost Percentage attributable to production costs for a particular manufactured product. This Assigned Cost Percentage may be used either if the manufactured product contains manufactured product components that are not listed in Table 1 or if some manufactured product components listed in Table 1 are not a part of such manufactured product, so long as the remainder of the manufactured product components in Table 1 that are a part of such manufactured product are mined, produced, or manufactured in the U.S.

**Solar Energy Property and Energy Storage Technology as Part of a Single Energy Project.** The Notice provides a weighted average formula for taxpayers to determine a single Domestic Cost Percentage for a single project that is comprised of a solar photovoltaic system and battery energy storage system.

To provide additional clarity, the Notice provides five examples of how to apply the New Elective Safe Harbor rules to particular projects.

Taxpayers must affirmatively elect to rely on the New Elective Safe Harbor in Table 1 and must notify the IRS of this election by providing information on a “Domestic Content Certification Statement” as described in the Notice. A taxpayer who elects to use the New Elective Safe Harbor for a project must use the classifications and cost percentages provided under the New Elective Safe Harbor when applying the Adjusted Percentage Rule and may not use a different method or substitute any cost percentages.

The Notice requests comments on the New Elective Safe Harbor that will be considered before forthcoming proposed regulations are released. Comments should be submitted by July 15, 2024. Taxpayers may rely on Notice 2023-38, as modified by the Notice, for projects that begin construction before the date that is 90 days after forthcoming proposed regulations are published. Taxpayers may rely on the New Elective Safe Harbor for projects that begin construction before the date that is 90 days after any future modification, update, or withdrawal of the New Elective Safe Harbor. In a press release issued in tandem with the Notice, the Treasury Department said that future guidance on the domestic content bonus will include rules regarding elective pay and may provide additional incentives to spur solar energy technology, in particular solar wafer technology.

## For More Information

We are available at any time to answer questions, discuss scenarios, and provide guidance. If you would like further information concerning the matters discussed in this article, please contact the following attorneys or the Chapman attorney with whom you regularly work.

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- <sup>1</sup> All references to “sections” are references to sections of the Internal Revenue Code of 1986, as amended.
  - <sup>2</sup> For the ITC, the bonus credit amount is 10 percentage points. See Section 48(a)(12)(C)(ii). For the PTC, the bonus credit amount is 10 percent of the production credit amount. See Section 45(b)(9)(A).
  - <sup>3</sup> For purposes of the domestic content test, components of the project are categorized as either construction materials that are structural in function (to which the Steel or Iron Requirement applies) or manufactured products (to which the Manufactured Products Requirement applies).

- 4 For projects of one megawatt or more that fail to qualify for the domestic content bonus, the amount of the elective payment is reduced by 10 percent if construction begins in 2024 and by 15 percent if construction begins in 2025 and completely eliminated if construction begins after December 31, 2025.
- 5 For projects seeking the PTC for an offshore wind facility, the minimum percentage is 20 percent for 2024 and then ramps up gradually until it reaches 55 percent in 2027. See Sections 45(b)(9)(C)(ii) and 45Y(g)(11)(C)(ii). For projects seeking the ITC for an offshore wind facility, the minimum percentage is 20 percent. See Section 48(a)(12)(B), cross-referencing 45(b)(9)(B), and cross-referenced by 48E(a)(3)(B).
- 6 The Notice indicates that to generate the cost percentage information, the Department of Energy used cost data from a variety of sources, including datasets of system characteristics, price indices, U.S. survey data from the government (for example, the U.S. Bureau of Labor Statistics, Department of Labor) and the private sector, public filings from corporations, and comprehensive interviews of manufacturers, installers, developers, and owners of the representative technologies.
- 7 See Notice 2023-38, Section 3.03(2).

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice and no attorney-client relationship is created. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

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## Appendix A

Table 2 – Categorization of Applicable Project Components

Applicable Project	Applicable Project Component	Categorization
<b>Hydropower Facility, or Pumped Hydropower Storage Facility</b>	Steel or iron rebar for the reservoirs, upper and/or lower	Steel/Iron
	Steel or iron rebar, plating, and piping in water conveyance (penstock piping)	Steel/Iron
	Steel or iron rebar in powerhouse and foundation, spiral case, discharge ring, and draft tube	Steel/Iron
	Steel or iron rebar in canals	Steel/Iron
	Powerhouse structure, gates, stoplogs, screens, and embedded structure parts, foundation plates and anchors	Steel/Iron
	Turbine/Pump Runner (which includes the following Manufactured Product Components, if applicable: spiral/scroll case, vanes, bottom ring, wicket gates, runner, draft tube, shaft, head cover, bearings, and flow control and isolation mechanisms)	Manufactured Product
	Motor/Generator (which includes the following Manufactured Product Components, if applicable: stator, rotor, windings, poles, generator shaft, thrust bearing, brake ring/disc, guide bearings, ventilation and cooling system, and exciter)	Manufactured Product
	Generator Step-up Transformer (which includes the following Manufactured Product Components, if applicable: containment/main tank, cooling system, deenergized tap changer (DETC), load tap changer (LTC), bushings/insulators)	Manufactured Product
<b>Ground-Mount and Rooftop Photovoltaic System</b>	Steel photovoltaic module racking	Steel/Iron
	Pile or ground screw	Steel/Iron
	Steel or iron rebar in foundation (e.g., concrete pad)	Steel/Iron
	Photovoltaic tracker	Manufactured Product
	Photovoltaic module (which includes the following Manufactured Product Components, if applicable: photovoltaic cells, mounting frame or backrail, glass, encapsulant, backsheet, junction box (including pigtails and connectors), edge seals, pottants, adhesives, bus ribbons, and bypass diodes)	Manufactured Product
	Inverter	Manufactured Product
<b>Land-Based Wind Facility</b>	Tower	Steel/Iron
	Steel or iron rebar in foundation (e.g., spread footing)	Steel/Iron
	Wind turbine (which includes the following Manufactured Product Components, if applicable: the nacelle, blades, rotor hub, and power converter)	Manufactured Product
	Wind tower flanges	Manufactured Product

Applicable Project	Applicable Project Component	Categorization
Offshore Wind Facility	Tower	Steel/Iron
	Jacket foundation	Steel/Iron
	Wind tower flanges	Manufactured Product
	Wind turbine (which includes the following Manufactured Product Components, if applicable: the nacelle, blades, rotor hub, and power converter)	Manufactured Product
	Transition piece	Manufactured Product
	Monopile	Manufactured Product
	Inter-array cable	Manufactured Product
	Offshore substation	Manufactured Product
	Export cable	Manufactured Product
Battery Energy Storage Technology	Steel or iron rebar in foundation (e.g., concrete pad)	Steel/Iron
	Battery pack (which includes the following Manufactured Product Components, if applicable: cells, packaging, thermal management system, and battery management system)	Manufactured Product
	Battery container/housing	Manufactured Product
	Inverter	Manufactured Product

## Appendix B

### Table 1 – New Elective Safe Harbor

#### (1) Solar PV Table

APC	MPC	Groundmount (Tracking)	Groundmount (Fixed)	Rooftop (MLPE)	Rooftop (String)
PV Module	Cells	36.9	49.2	21.5	30.8
	Frame/Backrail	5.3	7.0	3.1	4.4
	Front Glass	3.7	4.9	2.2	3.1
	Encapsulant	2.2	3.0	1.3	1.8
	Backsheet/Backglass	3.7	4.9	2.1	3.1
	Junction Box	1.6	2.2	1.0	1.4
	Edge Seals	0.2	0.2	0.1	0.2
	Pottants	0.2	0.2	0.1	0.2
	Adhesives	0.2	0.2	0.1	0.2
	Bus Ribbons	0.4	0.5	0.2	0.3
	Bypass Diodes	0.4	0.5	0.2	0.3
	<b>Production<sup>1</sup></b>	<b>11.5<sup>2</sup></b>	<b>15.3<sup>2</sup></b>	<b>6.7<sup>2</sup></b>	<b>9.6<sup>2</sup></b>
Inverter	Printed Circuit Board Assemblies	3.0	4.0	16.0 <sup>3</sup>	2.5
	Electrical Parts <sup>4</sup>	1.0	1.3	1.6	1.1
	Climate Control	0.7	0.9	–	0.3
	Enclosure	1.0	1.3	1.6	0.8
	<b>Production</b>	<b>3.3<sup>2</sup></b>	<b>4.4<sup>2</sup></b>	<b>16.4<sup>2</sup></b>	<b>2.9<sup>2</sup></b>
PV Tracker or Non-Steel Roof Racking	Torque tube	9.7	–	–	–
	Fasteners	0.4	–	11.1	16.0
	Slew Drive	2.0	–	–	–
	Dampers	0.4	–	–	–
	Motor	3.1	–	–	–
	Controller	0.9	–	–	–
	Rails	2.0	–	8.6	12.3
	<b>Production</b>	<b>6.2<sup>2</sup></b>	<b>–</b>	<b>6.1<sup>2</sup></b>	<b>8.7<sup>2</sup></b>
Steel Photovoltaic Module Racking <sup>5</sup>	–	–	Steel/Iron Product	–	–
Pile or Ground Screw <sup>5</sup>	–	Steel/Iron Product	Steel/Iron Product	–	–
Steel or Iron Rebar in Foundation <sup>5</sup>	–	Steel/Iron Product	Steel/Iron Product	–	–
<b>Total</b>	–	<b>100</b>	<b>100</b>	<b>100</b>	<b>100</b>

<sup>1</sup> Although “Production” is listed under the column for Manufactured Product Components (MPCs), it is not an MPC. “Production” refers to the production cost of the Manufactured Product and can only be included in the Domestic Cost Percentage if all of the MPCs of a Manufactured Product are domestically produced. See section 3.03(2) of Notice 2023-38.

<sup>2</sup> Consistent with Notice 2023-38, the direct cost of producing a Manufactured Product counts toward the Domestic Cost Percentage only if all its Manufactured Product Components are domestically produced.

<sup>3</sup> For purposes of this table, module-level power electronics inverter systems, including either microinverters or direct current (DC) optimizers, are considered an inverter product.

<sup>4</sup> Includes transformers, capacitors, inductors, bus/cables, circuit protection not on printed circuit board (PCB) assemblies.

<sup>5</sup> Notice 2024-41 was revised on May 24, 2024 to include this applicable project component.

## (2) Land-Based Wind Table

APC	MPC	Value
Wind Turbine	Blades	31.2
	Rotor Hub	9.9
	Nacelle	47.5
	Power Converter	8.9
	<b>Production</b>	<b>0.9<sup>2</sup></b>
Wind Tower Flanges	Material <sup>6</sup>	0.8
	<b>Production</b>	<b>0.8<sup>7</sup></b>
Tower	—	Steel/Iron Product
Steel or Iron Rebar in Foundation	—	Steel/Iron Product
<b>Total</b>	—	<b>100</b>

## (3) Battery Electric Storage System (BESS) Table

APC	MPC	Grid-Scale BESS	Distributed BESS
Battery Pack	Cells	38.0	18.1
	Packaging	3.3	30.1
	Thermal Management System	4.9	9.0
	Battery Management System	5.2	9.0
	<b>Production</b>	<b>21.1<sup>7</sup></b>	<b>27.3<sup>7</sup></b>
Inverter	Printed Circuit Board Assemblies	1.7	3.8
	Electrical Parts <sup>8</sup>	0.6	0.4
	Climate Control	0.4	—
	Enclosure	0.6	0.4
	<b>Production</b>	<b>1.9<sup>7</sup></b>	<b>1.9<sup>7</sup></b>
Battery/Container Housing	Battery Racks and Metal Enclosure	15.8	—
	<b>Production</b>	<b>6.5<sup>7</sup></b>	—
Steel or Iron Rebar in Foundation	—	Steel/Iron Product	—
<b>Total</b>	—	<b>100</b>	<b>100</b>

6 Flanges are typically made from single pieces of steel bar or pre-formed steel ingot; therefore the only component of a flange would be the steel material.

7 Consistent with Notice 2023-38, the direct cost of producing a Manufactured Product counts toward the Domestic Cost Percentage only if all its Manufactured Product Components are domestically produced.

8 Includes transformers, capacitors, inductors, bus/cables, circuit protection not on PCB assemblies.