# Impact of “One Big Beautiful Bill” on Clean Energy Tax Credits

July 17, 2025

On July 4, 2025, President Trump signed the One Big Beautiful Bill (“OBBB”) into law. Under the OBBB, there is still a window of opportunity for solar and wind projects to receive tax credits under Sections 45Y and 48E and for projects to avoid complex provisions relating to restricted foreign entities.

Below is a summary of OBBB’s impact on these and certain other tax credits. Beginning construction as soon as possible for these projects may be critical for receipt of the tax credit.

| Section | Phase-Out Dates | Specified Foreign Entity (“SFE”) Restriction Effective Date | Foreign-Influenced Entity (“FIE”) Restriction Effective Date | Material Assistance Restriction from Prohibited Foreign Entities (“PFE”) |
|---|---|---|---|---|
| 45Y PTC and 48E ITC | No placed-in-service deadline for wind and solar projects that begin construction by July 4, 2026.<br><br>Wind and solar projects that begin construction after July 4, 2026, must be placed in service before December 31, 2027.<br><br>Credit Phase-Out for non-solar and non-wind projects begins for projects that start construction during 2034. | No restriction on taxpayer being an SFE if project is placed into service during its taxable year that includes July 4, 2025.<br><br>The taxpayer cannot be an SFE if project is placed into service in any taxable year following its taxable year that includes July 4, 2025. | No restriction on taxpayer being an FIE if project is placed into service during its taxable year that includes July 4, 2025.<br><br>The taxpayer cannot be an FIE if project is placed into service in any taxable year following its taxable year that includes July 4, 2025. | Projects that begin construction by December 31, 2025, are not subject to “material assistance cost ratio” tests.<br><br>Projects that begin construction after December 31, 2025, must meet “material assistance cost ratio” tests.<br><br>Costs of manufactured products, components, constituent elements, materials, or subcomponents acquired by the taxpayer, or manufactured or assembled by or for the taxpayer, pursuant to a binding written contract entered into prior to June 16, 2025, may be excluded from “material assistance cost ratio” calculation |

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|---|---|---|---|---|
| | | | | (a) if project starts construction before August 1, 2025, is placed into service before January 1, 2030 (or, in the case of solar or wind projects, before January 1, 2028), or, (b) in the case of a constituent element, material, or subcomponent, it is used in a product sold before January 1, 2030. |
| Section 48 | No change to ground source heat pump ITC through 2034.<br><br>Terminates tax credit for 2% base tax credit projects that begin construction on or after June 16, 2025. | | | |
| 30C EV Charger /Alternative Fuel Station | Projects need to be placed in service by June 30, 2026. | | | |
| 45W Clean Commercial Vehicles | Vehicles must be acquired by September 30, 2025. | | | |
| 179D Tax Deduction | Projects must start construction by June 30, 2026. | | | |

## Changes to Section 45Y Production Tax Credit ("PTC")

1. Change in Credit Phase-Out for PTC (non-solar and non-wind):

   (a) 100% PTC for projects that begin construction during 2033;

   (b) 75% PTC for projects that begin construction during 2034;

   (c) 50% PTC for projects that begin construction during 2035; and

   (d) 0% PTC for projects that begin construction after December 31, 2035.

2. New placed-in-service deadline for solar and wind facilities that start construction after July 4, 2026. Solar and wind projects that begin construction after July 4, 2026, must be placed in service by December 31, 2027, in order to receive the PTC.

    (a) **Executive Order:** On July 7, 2025, President Trump issued an executive order directing the Treasury Department to take steps to “strictly enforce” the termination of tax credits for wind and solar projects included in the OBBB.

    (b) The order directs Treasury to take action and issue guidance by August 18, 2025, “to ensure that policies concerning the ‘beginning of construction’ are not circumvented, including by preventing the artificial acceleration or manipulation of eligibility and by restricting the use of broad safe harbors unless a substantial portion of a subject facility has been built.” This could eliminate non-statutory rules and safe harbors for wind and solar projects (such as the physical work test and 5% safe harbor) while imposing new tests on projects, meaning that it is more critical than ever to start construction for these projects as soon as possible to help ensure receipt of the tax credit.

    (c) The order also tasks Treasury with taking action to implement the enhanced prohibited foreign entity restrictions by August 18, 2025.

3. For projects that are placed into service in any taxable year following its taxable year that includes July 4, 2025, the taxpayer:

    (a) cannot be a “specified foreign entity”

    (b) generally, cannot be a “foreign-influenced entity”

4. Projects that begin construction after 2025 are subject to the “material assistance” PFE restrictions and must meet the respective “material assistance cost ratio” test to ensure that they do not receive “material assistance” from a “prohibited foreign entity.”

5. No transfers of tax credits to “specified foreign entities.”

6. No tax credit for residential solar water heating property or small wind energy property if the taxpayer/owner rents or leases such property to a third party.

**Prohibited Foreign Entity (“PFE”) Provisions**

A “prohibited foreign entity” is a “specified foreign entity” or a “foreign-influenced entity.”

A “specified foreign entity” means a foreign entity identified as a national security risk in selected statutes or a foreign-controlled entity.[1]

A “foreign-controlled entity” means (i) any government, including any level of government below the national level (or an agency or instrumentality of the foregoing) of China, North Korea, Russia, or Iran (each a “covered nation”), (ii) any citizen or national of a covered nation (other than a citizen, national, or lawful permanent resident of the United States), (iii) any entity or business unit incorporated or organized under (or having its principal place of business in) a covered nation, or (iv) an entity (including a subsidiary entity) controlled (*i.e.*, more than 50% ownership) by any of the above (other than certain publicly traded entities).[2]

A “foreign-influenced entity” means an entity:

(a) with respect to which, during the taxable year, (i) a specified foreign entity has the direct authority to appoint a covered officer of such entity, (ii) a single specified foreign entity owns at least 25% of such entity, (iii) one or more specified foreign entities own in the aggregate at least 40% of such entity, or (iv) at least 15% of the debt of such entity has been issued, in the aggregate, to one or more **specified foreign entities** (the “**Authority/Ownership/Debt Test**”), or

(b) which, during the previous taxable year, made a payment to a **specified foreign entity** pursuant to an arrangement which entitles such specified foreign entity to exercise (directly or indirectly) effective control over the project (the "**Effective Control Payment Test**").

There is an exception to the **Authority/Ownership/Debt Test** for (a) certain publicly traded entities and (b) entities for which not less than 80% of the equity securities of such entity are owned directly or indirectly by certain publicly traded entities, unless, (x) during the taxable year, a specified foreign entity has authority to appoint covered officers or certain reporting-specified foreign entity owns 25% or more of such entity or a group of certain reporting-specified foreign entities owns 40% or more of such entity, or (y) such entity has issued debt, as part of an original issuance, in excess of 15% of its publicly traded debt to one or more specified foreign entities.

The determination as to whether an entity is a specified foreign entity or foreign-influenced entity is made as of the last day of such taxable year, except that for the first taxable year beginning after July 4, 2025, such determination is made as of the first day of the year for the first four prongs of the definition of "specified foreign entity."

For purposes of the Effective Control Payment Test, the term "effective control" means one or more agreements or arrangements which provide counterparties of a taxpayer with specific authority over key aspects of the production of eligible components, energy generation in a qualified facility, or energy storage which are not included in the measures of control through authority, ownership, or debt held which are described in the Authority/Ownership/Debt Test.

For licensing agreements or IP, the term "effective control" means a contract or arrangement with a counterparty that was entered into (or modified) on or after July 4, 2025, or that allows the counterparty to specify or direct sources of components, subcomponents, or applicable critical minerals utilized, direct the operation of the facility or project, limit the utilization of intellectual property, receive royalties, or otherwise retain control over data, information, or know-how. There is an exception/safe harbor for licensing agreements in the case of a bona fide purchase or sale of intellectual property. However, if ownership of the intellectual property reverts to the counterparty after a period of time, it is not considered a bona fide purchase or sale.

Absent anticipated guidance by the Treasury Secretary, the term "effective control" means the unrestricted contractual right of a contractual counterparty to:

(a) determine the quantity or timing of production of an eligible component produced by the taxpayer,

(b) determine the amount or timing of activities related to the production of electricity undertaken at a qualified facility of the taxpayer or the storage of electrical energy in energy storage technology of the taxpayer,

(c) determine which entity may purchase or use the output of a production unit of the taxpayer that produces eligible components,

(d) determine which entity may purchase or use the output of a qualified facility of the taxpayer,

(e) restrict access to data critical to production or storage of energy undertaken at a qualified facility of the taxpayer, or to the site of production or any part of a qualified facility or energy storage technology of the taxpayer, to the personnel or agents of such contractual counterparty, or

(f) on an exclusive basis, maintain, repair, or operate any plant or equipment which is necessary to the production by the taxpayer of eligible components or electricity.

**Prohibition Against Material Assistance from a PFE**

For projects that start construction after 2025, "material assistance" from a "prohibited foreign entity" is determined based on calculating "material assistance cost ratios."[3]

The “material assistance cost ratio” for any qualified facility or energy storage technology[4] must equal or be greater than the applicable “threshold percentage”[5] or the project is not eligible for the tax credit. The higher the costs from the prohibited foreign entity, the more likely the project will fail this test.

The “material assistance cost ratio” for a facility that produces eligible components[6] must equal or be greater than the applicable “threshold percentage”[7] or the project is not eligible for the tax credit. The higher the costs from the prohibited foreign entity, the more likely the facility will fail this test.

**Safe Harbor Tables**

Under the OBBB, the Treasury Secretary must issue safe harbor tables by December 31, 2026. Until then, and for projects that start construction on or before the date which is 60 days after the date of issuance of such tables, taxpayers can use the tables listed in Internal Revenue Service Notice 2025-08 to establish the percentage of the total direct costs of any listed eligible component and any manufactured product, and rely on certain certifications by the suppliers.[8]

**Penalties**

The OBBB provides that a deficiency related to meeting the material assistance threshold can be assessed at any time within 6 years after a return was filed. The OBBB also imposes accuracy-related penalties where the tax credit is disallowed, but broadens its application by defining “substantial understatement of income tax” as the greater of (i) 1% (in lieu of 10%) of the tax required to be shown on the return for the taxable year and (ii) $5,000.

The OBBB extends the same accuracy-related penalties described above to disallowed elective payments.

The OBBB imposes a penalty for substantial misstatements on certifications by suppliers with respect to the material assistance cost ratios if, after December 31, 2025, a person provides a certification from a supplier and knows, or reasonably should have known, that the certification was inaccurate or false and if the inaccuracy or falsity resulted in the disallowance of the tax credit and an understatement of income tax for the taxable year in an amount which exceeds the lesser of (A) 5% of the tax required to be shown on the return for the taxable year or (B) $100,000. The amount of the penalty imposed on a person with respect to a certification will be equal to the greater of 10% of the amount of the underpayment attributable to the inaccuracy or falsity or $5,000. (No penalty is imposed if the person establishes to the satisfaction of the Treasury Secretary that any inaccuracy or falsity is due to a reasonable cause and not willful neglect.)[9]

## Changes to Section 48E Investment Tax Credit (“ITC”)

1. Change in Credit Phase-Out for ITC (non-solar and non-wind):

   (a) 100% ITC for projects that begin construction during 2033;

   (b) 75% ITC for projects that begin construction during 2034;

   (c) 50% ITC for projects that begin construction during 2035; and

   (d) 0% ITC for projects that begin construction after December 31, 2035.

2. Solar and wind projects that begin construction after July 4, 2026, must place the project in service by December 31, 2027, in order to receive the ITC.

   (a) Does not apply with respect to any energy storage technology which is placed in service at any applicable facility.

   (b) See description of July 7, 2025, Executive Order above.

3. No ITC for residential solar water heating property or small wind energy property if the taxpayer/owner rents or leases such property to a third party.

4. Slight relief in percentage for domestic content for projects that started construction in 2025 prior to June 16, 2025, and other domestic content percentage changes to more closely align with Section 45Y.[10]

5. Prohibited Foreign Entity Provisions consistent with Section 45Y (see above).

6. Recapture rule if taxpayer is allowed an ITC for any taxable year beginning 2 years after July 4, 2025, and makes a payment subject to the Effective Control Payment Test within 10 years after the date the project is placed in service.

7. For qualified fuel cell property that begins construction after December 31, 2025, the ITC would be fixed at 30% and would not be subject to any additional adders or bonus credits or the zero-greenhouse gas emissions rate requirement or the recapture rule for greenhouse gas emissions greater than 10 grams of CO2e per KWh. Therefore, qualified fuel cell projects 1 MW or more would not have to comply with prevailing wage and apprenticeship rules to obtain the 30% ITC, but for elective payments, may still be subject to phase-out for failure to meet domestic content, even though meeting the domestic content requirements would not increase the ITC.

The above amendments generally apply to taxable years beginning after July 4, 2025 (although the domestic content changes generally apply on or after June 16, 2025).

## Changes to Bonus Depreciation

The OBBB permanently restores 100% bonus depreciation, which was currently 40% in 2025 and scheduled to fade away in 2027.[11]

The bonus depreciation deduction is not allowed for any property that is required to be depreciated under the alternative depreciation system ("ADS"), or for certain property in respect of which the business use is not greater than 50%.

The bonus depreciation deduction is allowed for both regular tax and alternative minimum tax purposes, but is not allowed in computing earnings and profits. In addition, a taxpayer may elect out of bonus depreciation for any class of property for any taxable year. Any such election may be revoked only with the consent of the Treasury Secretary.

As indicated above, the OBBB permanently restores 100% expensing for qualified property, and such 100% is not phased out in future years. In general, these amendments apply to property acquired after January 19, 2025.

## Section 179 Depreciation

The OBBB increased the Section 179(b) threshold from $1 million to $2.5 million, reduced by the amount by which the cost of qualifying property exceeds $4 million (which used to be $2.5 million). Under Section 179, a taxpayer may elect to deduct, rather than capitalize and recover, the cost of Section 179 property in the year the property is placed in service (subject to the above-described thresholds). For this purpose, property is placed in service when it is first placed by the taxpayer in a condition or state of readiness and availability for a specifically assigned function.

These amendments apply to property placed in service in taxable years beginning after December 31, 2024.

## Changes to Section 48 Investment Tax Credit

The OBBB provides that property that would be "energy property" as defined in section 48 would no longer be listed as a 5-year modified accelerated cost recovery system ("MACRS") property under Section 168 with respect to projects that begin construction after December 31, 2024. (Separately, the OBBB permanently restores 100% bonus depreciation, which was currently 40% in 2025 and scheduled to fade away in 2027.)

The OBBB amends section 50 for geothermal heat pumps so that, for purposes of section 50 and section 168, the ownership of energy property described in section 48(a)(3)(A)(vii) shall be determined without regard to whether such property is readily usable by a person other than the lessee or service recipient.

Under OBBB, the 2% base tax credit under Section 48 terminates for energy property beginning construction after June 16, 2025. This does not impact geothermal heat pump systems which have a 6% base tax credit or any of the other technologies that have migrated to Section 48E.

## Changes to Section 30C Alternative Fueling Tax Credit

The OBBB phases out the Section 30C EV charger/alternative fueling tax credit so that all projects need to be placed in service by June 30, 2026.

## Changes to Section 45W Clean Commercial Vehicle Tax Credit

The OBBB phases out the Section 45W Clean Commercial Vehicles tax credit so that vehicles must be acquired by September 30, 2025.

## Changes to Section 179D Tax Deduction

The OBBB amends Section 179D so that projects must start construction by June 30, 2026, in order to be eligible for the tax deduction.

## 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 partners or the Chapman attorney with whom you regularly work:

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1 A "specified foreign entity" means:

- a foreign entity of concern described in subparagraph (A), (B), (D), or (E) of section 9901(8) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 15 U.S.C. 4651),
- an entity identified as a Chinese military company operating in the United States in accordance with section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 10 U.S.C. 113 note),
- an entity included on a list required by clause (i), (ii), (iv), or (v) of section 2(d)(2)(B) of Public Law 117–78 (135 Stat. 1527), which are U.S. restricted party lists (such as Uyghur Forced Labor Prevention Act's Entity List),
- an entity specified under section 154(b) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31; 10 U.S.C. note prec. 4651), or
- **a foreign-controlled entity.**

2 There is an exception for certain publicly traded entities (including subsidiary entities) controlled (*i.e.,* more than 50% ownership) by an entity described in any of the first four prongs of the FCE definition (*i.e.,* covered nation governments, covered nation citizens and nationals, entities, or business units incorporated, organized, or with principal places of business in covered nations), unless such entity is controlled by:

- one or more specified foreign entities (as determined without regard to whether they are a foreign-controlled entity) that are each required to report their beneficial ownership pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934 (or an equivalent rule), or
- one or more foreign-controlled entities (as determined without regard to the last clause of that definition) that are each required to report their beneficial ownership pursuant to Rule 13d-3 of the Securities and Exchange Act of 1934 (or an equivalent rule)

3 These tests apply to:

a. a qualified facility, as defined in section 45Y(b)(1),
b. a qualified facility, as defined in section 48E(b)(3),
c. any qualified interconnection property (as defined in section 48E(b)(4)) which is part of the qualified investment with respect to a qualified facility (as defined in section 48E(b)(1)),
d. any "energy storage technology" as defined in section 48E(c)(2),
e. any facility that produces eligible components, where "eligible components" include:
   i. solar energy components:
      1) Solar modules.
      2) Photovoltaic cells.
      3) Photovoltaic wafers.
      4) Solar-grade polysilicon.
      5) Torque tubes or structural fasteners.
      6) Polymeric backsheets.
   ii. wind energy components:
      1) Blades.
      2) Nacelles.
      3) Towers.
      4) Offshore wind foundations.
      5) Related offshore wind vessels.
   iii. any inverter (described in subparagraphs (B) through (G) of section 45X(c)(2)):
      1) central inverter
      2) commercial inverter
      3) distributed wind inverter
      4) microinverter
      5) residential inverter
      6) utility inverter
   iv. any qualifying battery component:
      1) Electrode active materials.
      2) Battery cells.
      3) Battery modules.
   v. any applicable critical mineral (as such term is defined in section 45X(c)(6)).

4 The "material assistance cost ratio" for **qualified facilities** and **energy storage technology** equals the quotient (expressed as a percentage) of:

(1) an amount equal to (a) the total direct costs to the taxpayer attributable to all manufactured products (including components) which are incorporated into the qualified facility or energy storage technology upon completion of construction (the "**Total Direct Costs of Manufactured Products**"), *minus* (b) the total direct costs to the taxpayer attributable to all manufactured products (including components) which are incorporated into the qualified facility or energy storage technology upon completion of construction, and mined, produced, or manufactured by a prohibited foreign entity (the "**Total Direct Costs of Manufactured Products Attributable to Prohibited Foreign Entity**"), *divided by*

(2) Total Direct Costs of Manufactured Products.

5 **Threshold percentage for qualified facilities if construction begins:**

a. during calendar year 2026: 40%,
b. during calendar year 2027: 45%,
c. during calendar year 2028: 50%,
d. during calendar year 2029: 55%, and
e. after December 31, 2029: 60%.

**Threshold percentage for energy storage technology if construction begins:**

a. during calendar year 2026: 55%,
b. during calendar year 2027: 60%,
c. during calendar year 2028: 65%,
d. during calendar year 2029: 70%, and
e. after December 31, 2029: 75%.

6 The "material assistance cost ratio" for **eligible components** equals the quotient (expressed as a percentage) of:

(1) an amount equal to (a) the total direct material costs that are paid or incurred by the taxpayer for production of such eligible component (the "**Total Direct Material Costs of Eligible Components**"), *minus,* (b) with respect to an eligible component, the total direct material costs

that are paid or incurred by the taxpayer for production of such eligible component that are mined, produced, or manufactured by a prohibited foreign entity (the "**Total Direct Material Costs of Eligible Components Attributable to Prohibited Foreign Entity**"), *divided by*

(2) Total Direct Material Costs of Eligible Components.

7 **Threshold percentage for eligible components:**

a. in the case of any solar energy component (as such term is defined in section 45X(c)(3)(A)) sold:
   vi. during calendar year 2026: 50%,
   vii. during calendar year 2027: 60%,
   viii. during calendar year 2028: 70%,
   ix. during calendar year 2029: 80%, and
   x. after December 31, 2029: 85%,
b. in the case of any wind energy component (as such term is defined in section 45X(c)(4)(A)) sold:
   i. during calendar year 2026: 85%, and
   ii. during calendar year 2027: 90%,
c. in the case of any inverter described in subparagraphs (B) through (G) of section 45X(c)(2) sold:
   i. during calendar year 2026: 50%,
   ii. during calendar year 2027: 55%,
   iii. during calendar year 2028: 60%,
   iv. during calendar year 2029: 65%, and
   v. after December 31, 2029: 70%,
d. in the case of any qualifying battery component (as such term is defined in section 45X(c)(5)(A)) sold:
   i. during calendar year 2026, 60%,
   ii. during calendar year 2027, 65%,
   iii. during calendar year 2028, 70%,
   iv. during calendar year 2029, 80%, and
   v. after December 31, 2029, 85%, and
e. except as described below, in the case of any applicable critical mineral (as such term is defined in section 45X(c)(6)) sold:
   i. after December 31, 2025, and before January 1, 2030: 0%,
   ii. during calendar year 2030: 25%,
   iii. during calendar year 2031: 30%,
   iv. during calendar year 2032: 40%, and
   v. after December 31, 2032: 50%.

Not later than December 31, 2027, the Treasury Secretary will issue threshold percentages for each of the applicable critical minerals described in section 45X(c)(6), which will equal or exceed and apply in lieu of the threshold percentages described in (v) above for each calendar year, and take into account (a) domestic geographic availability, (b) supply chain constraints, (c) domestic processing capacity needs, and (d) national security concerns.

8 A taxpayer may not rely on such certification if the taxpayer knows (or has reason to know) that the certification by the supplier pertaining to a manufactured product or eligible component is inaccurate. If the taxpayer knows (or has reason to know) that a manufactured product or eligible component was produced or manufactured by a prohibited foreign entity, the taxpayer must treat all direct costs with respect to such manufactured product, or all direct material costs with respect to such eligible component, as attributable to a prohibited foreign entity.

The certification by the supplier must (consistent with Treasury Regulation section 1.45X–4(c)(4)(i) as in effect on July 4, 2025):

1. include the supplier's employer identification number or any such similar identification number issued by a foreign government,
2. be signed under penalties of perjury,
3. be retained by the supplier and the taxpayer for a period of not less than 6 years and shall be provided to the Treasury Secretary upon request, and
4. be from the supplier from which the taxpayer purchased any manufactured product, eligible component, or constituent elements, materials, or subcomponents of an eligible component, stating:
   a. that such property was not produced or manufactured by a prohibited foreign entity and that the supplier does not know (or have reason to know) that any prior supplier in the chain of production of that property is a prohibited foreign entity,
   b. for purposes of section 45X, the total direct material costs for each component, constituent element, material, or subcomponent that were not produced or manufactured by a prohibited foreign entity, or

for purposes of section 45Y or section 48E, the total direct costs attributable to all manufactured products that were not produced or manufactured by a prohibited foreign entity.

9 Although this penalty arguably could be imposed on taxpayers that pass on this certification to the IRS (as well as suppliers), there is an argument that it only was intended to be imposed on suppliers. As indicated above, the penalty is waived if any inaccuracy or falsity in the underlying certification is due to reasonable cause and not willful neglect. Accordingly, if the penalty was imposed on the end-user taxpayer who merely provided the certification to the IRS upon request, the penalty would not under these terms be waived on such a taxpayer that had no knowledge of (or reason to suspect) the underlying falsity of the certification. This strict liability penalty would be quite unusual (see section 6664(c) (reasonable cause exception for underpayments if taxpayer acted in good faith)). In addition, if this penalty could be imposed on the end users that merely provided (innocently) the certification to the IRS, the IRS would be unable to assess the penalty against taxpayers if the IRS was relying on a false certification that they had in their possession (perhaps obtained through a subpoena from a rogue supplier) but didn't actually get from the taxpayer. This would be quite odd, as the IRS would then need to request the certification from the taxpayer – not because they needed it to assess the veracity of the certification, but rather to satisfy the prerequisite for the penalty. Thus, although the language is a bit unclear, there is an argument that the penalty was meant to be imposed on suppliers.

10 Domestic content percentages for ITC:

a. 40% (or 20% for offshore wind) if construction begins before June 16, 2025; otherwise,
b. 45% (or 27.5% for offshore wind) if construction begins on or after June 16, 2025, and before January 1, 2026;
c. 50% (or 35% for offshore wind) if construction begins during calendar year 2026; and
d. 55% if construction begins after December 31, 2026.

11 A taxpayer generally must capitalize the cost of property used in a trade or business, or held for the production of income, and recover the cost over time through annual deductions for depreciation or amortization. The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer. Tangible property generally is depreciated using the modified accelerated cost recovery system (“MACRS”), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention.

However, bonus depreciation, which has been permitted from time to time, provides a quicker deduction than allowed under regular depreciation rules. For example, a 100% bonus depreciation allows businesses an immediate deduction of 100% of its otherwise depreciable expenses.

The 2017 Tax Cuts and Jobs Act (“TCJA”) provided 100% bonus depreciation for machinery and equipment for calendar years 2018 through 2022, and a reduction of such bonus depreciation by 20 percentage points each year from 2023 through 2027, until it was scheduled to fade away in 2027. Thus, in 2025, prior to the OBBB, the bonus depreciation was 40%.

The TCJA bonus depreciation generally applies to (i) property to which MACRS applies with an applicable recovery period of 20 years or less, (ii) computer software other than computer software required to be amortized under Section 197, (iii) water utility property, or (iv) a qualified film, television, or live theatrical production, for which a deduction otherwise would have been allowable under Section 181 without regard to the dollar limitation or termination of that section. To qualify for bonus depreciation under the TCJA, either (i) the original use of the property must commence with the taxpayer or (ii) the property must not have been used by the taxpayer at any time before acquisition and, among other requirements, must not have been acquired from certain related parties.