



LEGAL ALERT

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IRS Issues Guidance on the Domestic Content Bonus Credit

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On May 12, 2023, the IRS released Notice 2023-38, Domestic Content Bonus Credit Guidance for owners of green energy projects, such as wind, solar and energy storage technologies.

The Notice provides guidance on the Inflation Reduction Act of 2022 (IRA), which provided for an increased credit amount under Internal Revenue Code Sections ("Section") 45, 45Y, 48 and 48E if certain requirements pertaining to "domestic content" are satisfied. Domestic content is generally defined as steel, iron or manufactured products that are made or produced in the United States.

These code sections provide that if a qualified facility or energy project meets the domestic content requirements, the renewable electricity production credit is increased by ten percent, the clean electricity production credit is increased by ten percent, the investment tax credit is increased by two percent (ten percent if the wage and apprenticeship requirements or a maximum kilowatt hour test are met), and similar rules for the clean electricity investment credit.

The Notice describes certain rules that the Treasury and IRS intend to include in proposed regulations regarding how taxpayers may satisfy the Domestic Content Requirement under Section 45(b)(9)(A). These regulations will be proposed to apply to taxable years ending after May 15, 2023. The Notice provides the specific requirements for the U.S. production of steel, iron, manufactured products calculation and certification procedures. The Notice also includes a safe harbor classification of typical components related to utility-grade photovoltaic systems, land-based wind facilities, offshore wind facilities, and battery energy storage technologies.

Steel and Iron

A taxpayer meets the steel or iron requirement if all manufacturing processes with respect to any steel or iron items, that are construction materials made primarily of steel or iron and are structural in function, that are Applicable Project Components ("any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project.") take place in the United States.

Manufactured Product

The Manufactured Products Requirement is met if all Applicable Project Components that are Manufactured Products ("item produced as a result of the manufacturing process") are produced in the United States or are deemed to be produced in the United States.

Certification Requirements

A taxpayer must submit to the IRS a statement certifying for each Applicable Project for which the taxpayer is reporting a domestic content bonus credit to establish that: “any steel, iron, or manufactured product which is a component of [the Applicable Project] (upon completion of construction) was produced in the United States (as determined under section [sic] 661 of title 49, Code of Federal Regulations).”


For any questions regarding the IRA program or
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