

**One Big Beautiful Bill Act Increases Uncertainty
for Renewable Energy Sector**

US – July 2025

With the passage of the One Big Beautiful Bill Act (Act) and the related July 7, 2025 executive order (July 7 EO), the Trump administration moves closer to its goals of moving the US’s energy portfolio away from renewable energy and storage solutions by, in effect, ending tax credits for wind and solar energy projects.

Among other provisions, the Act terminates the clean electricity production tax credit and clean electricity investment credits for wind and solar facilities starting January 1, 2028. To be eligible for tax credits under the Act, solar and wind facilities must be placed in service prior to January 1, 2028, or begin construction within 12 months following July 4, 2025, the date of enactment. Importantly, the Act also requires battery storage technology and renewable energy facilities, including solar and wind projects, to comply with the newly applicable enhanced foreign entities of concern (FEOC) requirements, adds several layers of complexity to such FEOC analysis which is used to determine tax credit eligibility, including the introduction of concepts such as “Material Assistance”, “Specified Foreign Entities”, “Foreign-Controlled Entity”, “Foreign-Influenced Entity” and “Effective Control”, as well as adds penalties for misrepresentations of information related to the FEOC analysis. The enhanced FEOC analysis will result in an expensive and lengthy due diligence process for a solar or wind project’s interested parties, especially considering the provisions of the July 7 EO discussed below and the current absence of related guidance.

In parallel with the Act, the July 7 EO grants the secretary of the treasury broad authority to “take all action as the Secretary of the Treasury deems necessary and appropriate to strictly enforce the termination of the clean electricity production and investment tax credits under sections 45Y [(clean electricity production tax credit)] and 48E [(clean electricity investment credit)] of the Internal Revenue Code for wind and solar facilities,” and “take prompt action as the Secretary of the Treasury deems appropriate and consistent with applicable law to implement the enhanced Foreign Entity of Concern restrictions in the One Big Beautiful Bill Act.” It also instructs the secretary of the interior to “conduct a review of regulations, guidance, policies and practices under the Department of the Interior’s jurisdiction to determine whether [to] provide preferential treatment to wind and solar facilities in comparison to dispatchable energy sources... revise any identified regulations, guidance, policies and practices as appropriate and consistent with applicable law to eliminate any such preferences for wind and solar facilities.”

Based on the broad drafting of the July 7 EO, the administration could adopt strict rules that, among other things, disqualify entire megawatt-sized projects from tax credit eligibility for the failure of components (regardless of materiality) to comply with enhanced FEOC requirements, or adopt guidance that eliminates or substantially limits the safe harbor provisions of Internal Revenue Service Notice 2013–29 and Internal Revenue Service Notice 2018-59 for determining when construction has begun on a facility, or fail to timely adopt guidance at all. Finally, and no less concerning, the secretary of the interior could seek to revoke or limit permits, as well as access to land used by such facilities. Any such measures will add further significant legal and investment uncertainty.

From an investment perspective, the Act’s amendments to the internal revenue code coupled with the scope of the powers granted to the secretary of the treasury and the secretary of interior by the July 7 EO may have the practical effect of eliminating the availability of these tax credits altogether. As a result, investment in America’s energy portfolio may be stifled if the renewable energy sector becomes too risky or unattractive because the receipt or availability of tax credits cannot be confirmed even by seasoned attorneys and tax experts. Moreover, the complexity of compliance with enhanced FEOC requirements may also serve to dissuade investment in these projects entirely. If investors cannot assume value for such tax credits and perceive material risk associated with enhanced FEOC compliance, it will affect projected rates of return on investment, and the sector may experience significant slowdowns. An outsized impact may be felt by businesses that are not publicly-traded given the Act extends an important exemption from the myriad FEOC restrictions to publicly-traded entities that meet a long list of requirements.

What does all this mean for projects that are currently under construction, or for which development agreements are currently being negotiated?

First, parties will have to determine whether they can afford to develop a wind or solar project without relying on tax credits.

Second, any party seeking tax credits for its wind or solar project will have to conduct extensive due diligence on its supply chains to make sure they comply with the new FEOC restrictions, which will likely require comprehensive analysis of suppliers' ownership structures.

Third, parties participating in the development of wind and solar projects will have to work together to monitor supply chains more carefully to anticipate cost and schedule impacts. Moreover, they will have to conduct extensive due diligence on a project's existing supply chain and attempt to identify more than one alternative, each of which will have to comply with enhanced FEOC requirements.

Lastly, parties participating in the development of wind and solar projects, including owners and contractors, will have to be more flexible across the board with respect to risk sharing, not only with respect to potential increased costs relating to change of law and impacts to supply chains as a result thereof, but also with respect to performance schedule and the potential loss or disqualification of a tax credit.

The administration has made predicting its next moves very difficult. As a result, parties participating in the development of wind and solar projects should measure expectations with respect to a subcontracted party's willingness or ability to absorb costs and schedule impacts relating to changes in tax laws or regulations.

For further guidance, please contact the authors or any other members of our Energy and Natural Resources Industry Group or Tax Practice Group.

Contacts

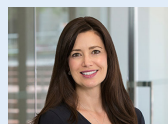


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