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2020 Deloitte Power & Utilities Conference

Knowledge to thrive

DECEMBER 2, 2020

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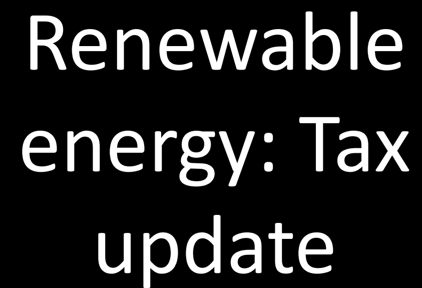

Renewable energy: Tax update

Michael Kohler, Managing Director, Deloitte Tax LLP
Todd Samson, Partner, Deloitte Tax LLP

Polling question #1

Have you previously attended the Deloitte Power & Utilities Conference?

1. Yes
2. No

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Agenda

Section 163(j) issues for renewable energy project companies

Virtual Power Purchase Agreements

Controversies Update

Evolution of Tax Equity Formation Structures

Legislative update

Bonus depreciation update for renewable energy partnerships

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Section 163(j) issues for renewable energy project companies

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Section 163(j) issues for renewable energy project companies

Topics

- Overview – Section 163(j) and partnerships
- Changes in the final regulations
  - Section 163(j) treatment of depreciation, amortization, or depletion expense capitalized to inventory
  - 90%/10% *de minimis* rules
  - Expanded the scope of "excepted regulated utility trade or business"
- Partnership look-through rules
- Electing regulated utility trade or business – Considerations
- 11-step calculation

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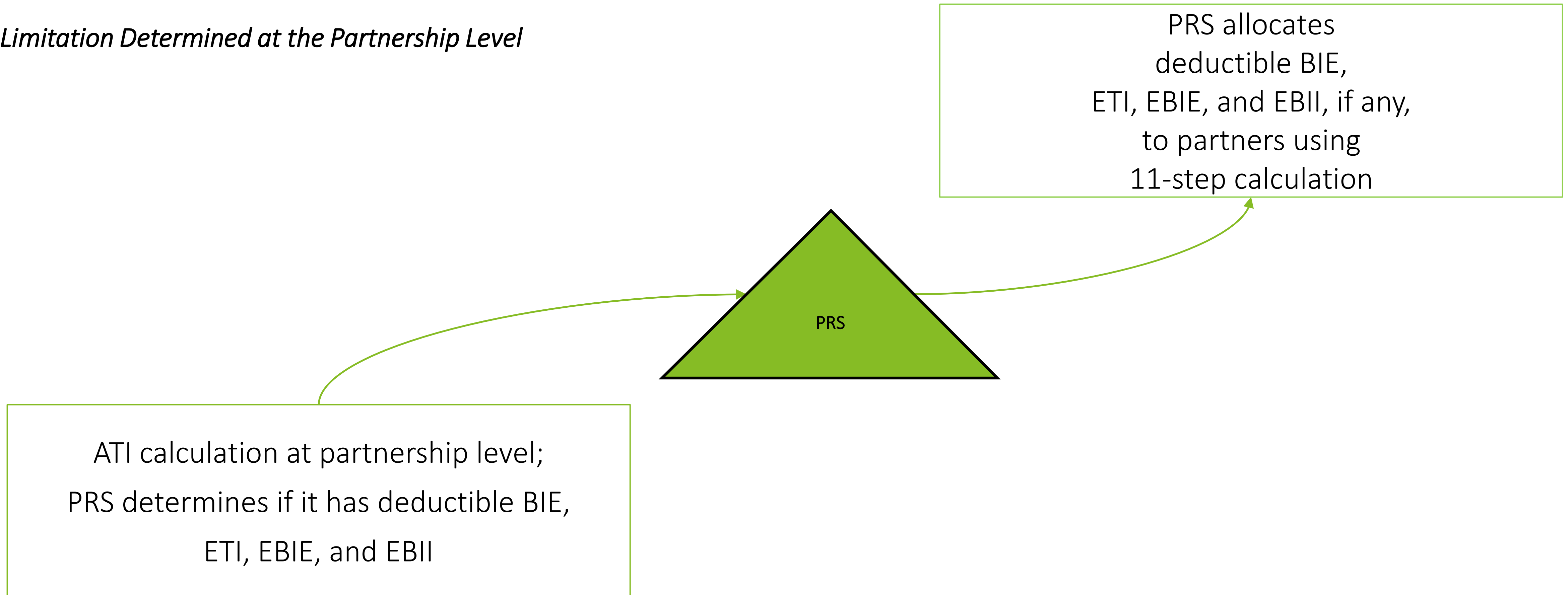
Overview

Section 163(j) and partnerships

Limitation Determined at the Partnership Level



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Changes in the 2020 final regulations

Section 163(j) treatment of depreciation, amortization, or depletion expense capitalized to inventory

- Section 163(j)(8)(A)(v) – any deduction allowable for depreciation, amortization, or depletion
- 2018 Proposed Regulations – Depreciation, amortization, or depletion expense capitalized to inventory is not depreciation, amortization, or depletion expense for purposes computing adjusted taxable income (“ATI”)
- 2020 Final Regulations – Depreciation, amortization, or depletion expense capitalized to inventory under section 263A are an addback to computing ATI for taxable years beginning before January 1, 2022
  - Costs are taken into account when capitalized rather than when recovered as cost of goods sold
  - Taxpayers that rely upon the 2018 Proposed Regulations may choose to apply the 2018 Proposed Regulation rule (no add-back) or the 2020 Final Regulation rule (add-back)

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Changes in the 2020 final regulations

Section 163(j) 90%/10% *de minimis* rules

- The 2018 Proposed Regulations created several 90%/10% *de minimis* rules
  - Prop. Reg. Sec. 1.163(j)-10(c)(1)(ii) – *De minimis* exception.— If 90 percent or more of the taxpayer's basis in its assets for the taxable year is allocable to either excepted or non-excepted trades or businesses pursuant to this paragraph (c), **then all of the taxpayer's interest expense and interest income** for that year that is properly allocable to a trade or business is treated as allocable to either excepted or non-excepted trades or businesses, respectively
- The 2020 Final Regulations eliminate one of the 90%/10% *de minimis* rules included in the 2018 Proposed Regulations, clarify that the rules are mandatory and provide and ordering for three of the 90%/10% rules
  - The consequences of the 90%/10% *de minimis* rules vary
    - Reg. Sec. 1.163(j)-10(c)(3)(iii)(C)(3) – . . . the taxpayer's entire trade or business is an excepted regulated utility trade or business, and paragraph (c)(3)(iii)(C)(2) of this section does not apply
      - Cross-referenced in Reg. Sec. 1.168(k)-2(b)(2)(ii)(F) – property not eligible for additional first-year depreciation
    - Reg. Sec. 1.163(j)-10(c)(3)(iii)(B) – . . . the taxpayer's entire basis in the asset for the determination period must be allocated to either excepted or non-excepted trades or businesses, respectively
    - Reg. Sec. 1.163(j)-10(c)(1)(ii) – . . . then all of the taxpayer's interest expense and interest income for that year that is properly allocable to a trade or business is treated as allocable to either excepted or non-excepted trades or businesses, respectively

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Changes in the 2020 final regulations

Excepted regulated utility trade or business

- Section 163(j)(7)(A)(iv) exception and cross-reference from Section 168(k)(9)(A) regarding bonus depreciation eligibility
- The 2018 Proposed Regulations provided a definition based on the three-part test based on the deferred tax normalization requirements and the Section 168(i)(10) of “public utility property”
- The 2020 Final Regulations expanded the scope of “excepted regulated utility trade or business”
  - Defined terms – excepted regulated utility trade or business
    - Automatically excepted regulated utility trades or businesses (three-part test)
    - Electing regulated utility trades or businesses (eligible if satisfy the first two parts of the three-part test)
    - Designated excepted regulated utility trades or businesses
  - Other phrasing in the final regulations and its preamble
    - Utility trades or businesses, remaining utility trade or business
    - Excepted utility trades or businesses, foreign-regulated utility trade or business, CFC utilities
    - Non-excepted utility trades or businesses, non-excepted regulated utility trade or business

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Partnership look-through rules

- For purposes of section 163(j), a partner's interest in a partnership is treated as an asset of the partner
  - For these purposes, the partner's adjusted basis in a partnership interest is reduced, but not below zero, by the partner's share of partnership liabilities
  - If a partner elects or is required to look through to a partnership's basis in the partnership's assets, the partner's basis in the partnership interest is adjusted to the extent of the partner's share of any adjustments to the basis of the partnership's assets required pursuant to the rules in Reg. Sec. 1.163(j)-10(c)(5)(i)
- A partner *may* look through to such partner's share of the partnership's basis in the partnership's assets, except in certain limited cases described in Reg. Sec. 1.163(j)-10(c)(5)(ii)(D)
- A partner *must* look through if the partner's direct and indirect interest in a partnership is greater than or equal to 80 percent of capital or profits
- Under a look through approach, a partner's share of partnership assets is determined using a reasonable method taking into account special allocations under section 704(b)
  - Look through approach takes into account any adjustments under sections 734(b) and 743(b)

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Electing regulated utility trade or business

Considerations

- Are rates established or approved by a regulatory commission?
  - Consider FERC market-based rate authority – PLRs 201825026, 201946007 and 202020011
- Irrevocable election
- Partnership-level implications
  - Whether the partnership incurs interest expense
  - Whether the partnership expects future additions otherwise eligible for bonus depreciation
    - Statement in the preamble of the “early release” version of the 2020 Final Regulations – Electing taxpayers are required to use the alternative depreciation system for certain types of property under section 163(j)(11) and cannot claim the additional first-year depreciation deduction under section 168(k) for those types of property
    - Statement in the preamble of the 2020 Final Regulations published in the *Federal Register* – Electing taxpayers cannot claim the additional first-year depreciation deduction under section 168(k)
- Partner-level implications
  - Whether there is excess business interest expense allocable from the partnership in years prior to the election
  - Treatment of the partnership interest in the 1.163(j)-10 asset-basis computations of the partner (including the consolidated group of a corporate partner)
  - Expectation of future excess taxable income from the partnership

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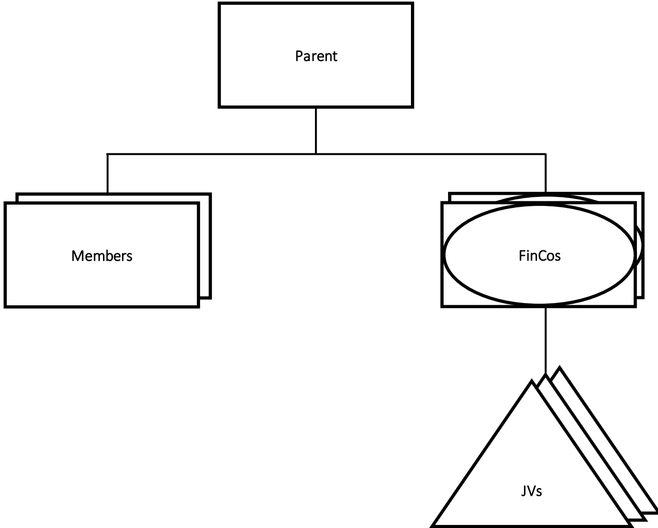
Electing regulated utility trade or business

Considerations



Rate Regulated

Asset Class	Basis
Land	2x
Inherently Permanent	19x
Other Non-Depreciable	5x
Other Depreciable	65x
Total	91x

Long-Term Negotiated PPAs

Asset Class	Basis
Land	0x
Inherently Permanent	1x
Other Non-Depreciable	1x
Other Depreciable	7x
Total	9x

Each class of asset has its own rule for determining the amount of basis used to allocate interest income and expense between excepted and non-excepted trade and businesses. See Reg. 1.163(j)-10(c)(5)(i)

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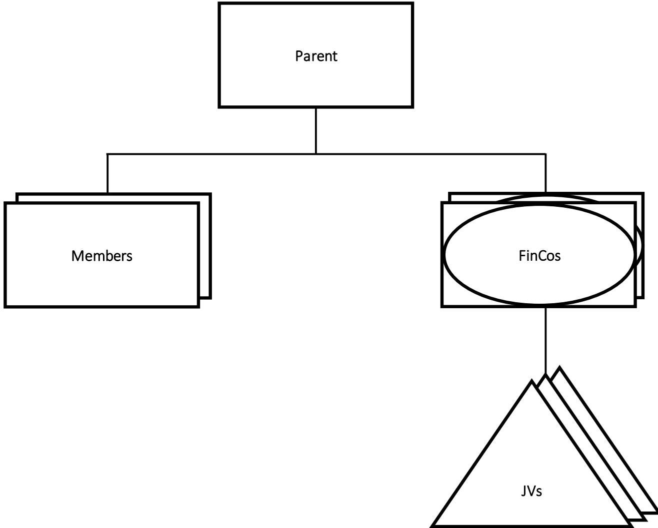
Electing regulated utility trade or business

Considerations



To determine its basis with respect to the JVs, Parent looks through to the partnerships' basis in its assets and, using a reasonable method per Reg. 1.163(j)-10(c)(5)(ii)(A)(2), determines its share of partnership assets.

Rate Regulated

Asset Class	Basis
Land	2x
Inherently Permanent	19x
Other Non-Depreciable	5x
Other Depreciable	65x
Total	91x

Long-Term Negotiated PPAs

Asset Class	Basis*
Land	0x
Inherently Permanent	1x
Other Non-Depreciable	1x
Other Depreciable	7x
Total	9x

** Assume 100 percent of partnership assets are allocable to the trade or business of furnishing electricity for sale under long-term negotiated PPAs.*

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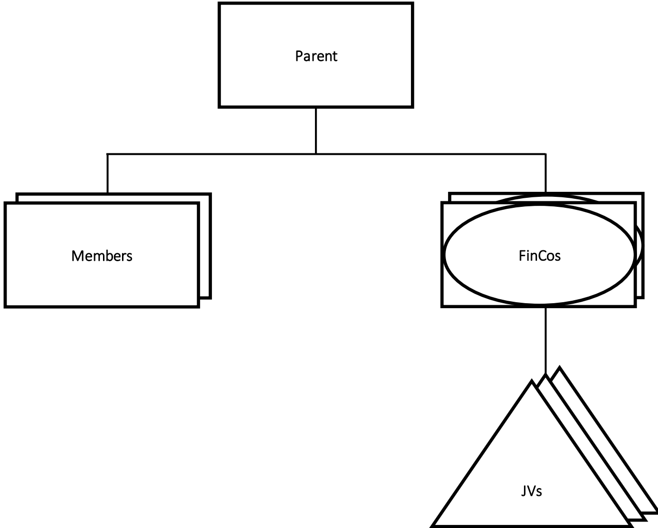
Electing regulated utility trade or business

Considerations



To determine its basis with respect to the JVs, Parent looks through to the partnerships' basis in its assets and, using a reasonable method per Reg. 1.163(j)-10(c)(5)(ii)(A)(2), determines its share of partnership assets.

Look through is elective unless Parent's direct and indirect interest in a JV is greater or equal to 80 percent of capital or profits. If Parent does not look through, its outside basis in the partnership, reduced by its share of partnership liabilities, is treated as allocable to a non-excepted trade or business. See Reg. 1.163(j)-10(c)(5)(ii)(1) and Reg. 1.163(j)-10(c)(5)(ii)(2)(iv)

Rate Regulated

Asset Class	Basis
Land	2x
Inherently Permanent	19x
Other Non-Depreciable	5x
Other Depreciable	65x
Total	91x

Long-Term Negotiated PPAs

Asset Class	Basis*
Land	0x
Inherently Permanent	1x
Other Non-Depreciable	1x
Other Depreciable	7x
Total	9x

** Assume 100 percent of partnership assets are allocable to the trade or business of furnishing electricity for sale under long-term negotiated PPAs.*

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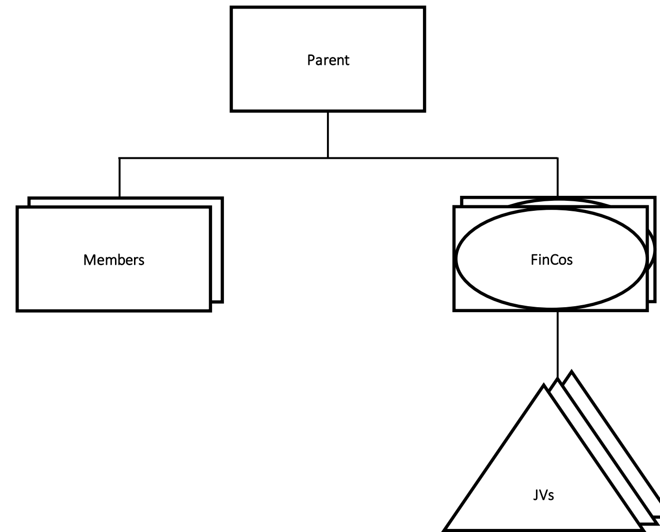
Electing regulated utility trade or business

Considerations



Rate Regulated

Asset Class	Basis
Land	2x
Inherently Permanent	19x
Other Non-Depreciable	5x
Other Depreciable	63x
Total	89x

Long-Term Negotiated PPAs

Asset Class	Basis*
Land	0x
Inherently Permanent	1x
Other Non-Depreciable	1x
Other Depreciable	9x
Total	11x

** Assume 100 percent of partnership assets are allocable to the trade or business of furnishing electricity for sale under long-term negotiated PPAs.*

If the JVs can elect “electing regulated utility trade sor business” status, all of Parent’s assets become allocable to excepted trades or businesses, and no portion of Parent’s interest income or expense is subject to section 163(j) under the 90-10 *de minimis* exception of Reg. 1.163(j)-10(c)(1)(ii)

If none of the JVs elect “electing regulated utility trade or business” status, then 11 percent of Parent’s basis is allocable to non-excepted trades or businesses. The 90-10 *de minimis* exception does not apply, and Parent must allocate its interest income and expense between excepted and non-excepted trades or businesses

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11-Step calculation

In general

- Does not change section 704 allocations
- Purpose is to determine which partner is allocated deductible BIE, ETI, EBII, or EBIE, when allocations are not pro rata
- This will be an issue any time a partnership specially allocates income or loss, *e.g.*, partnership with gross income preferred and partnership with section 704(c) property
- After a partnership determines its section 163(j) limitation, the partnership must determine each partner's allocable share of each section 163(j) item under section 704(b), including any allocations under section 704(c), other than remedial items. Only section 163(j) items that were actually taken into account in the partnership's section 163(j) calculation are taken into account for purposes of eleven-step calculation

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11-Step calculation

In general (cont.)

- The 11-Step Calculation does not compute allocations of items. The taxpayer must separately calculate allocations of section 163(j) items before the application of section 163(j), including any allocations under section 704(c)
- Inputs include: each partner’s allocable gross adjusted taxable income / (loss), partner basis items, BII, and BIE

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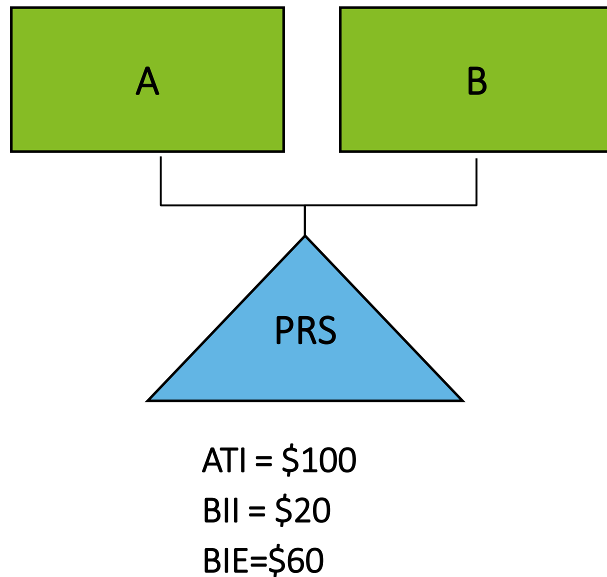
11-Step calculation

Illustration



Before 11-Step Calculation			
	A	B	Total
Allocable ATI	$100	$0	$100
Allocable BII	$10	$10	$20
Allocable BIE	$30	$30	$60

After 11- Step Calculation			
	A	B	Total
Deductible BIE	$30	$20	$50
EBIE allocated	$0	$10	$10
ETI allocated	$0	$0	$0

The 11-Step Calculation does not change the *aggregate* section 163(j) items allocated to partners. It just determines how that aggregate amount is *allocated among* the partners.

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Polling question #2

What do you expect to have the greatest impact on corporate renewable energy procurement in the next five years?

- ESG/sustainability goals
- Stakeholder pressure
- Declining cost of renewable energy
- Supply chain requirements
- Don’t know

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Virtual Power Purchase Agreements

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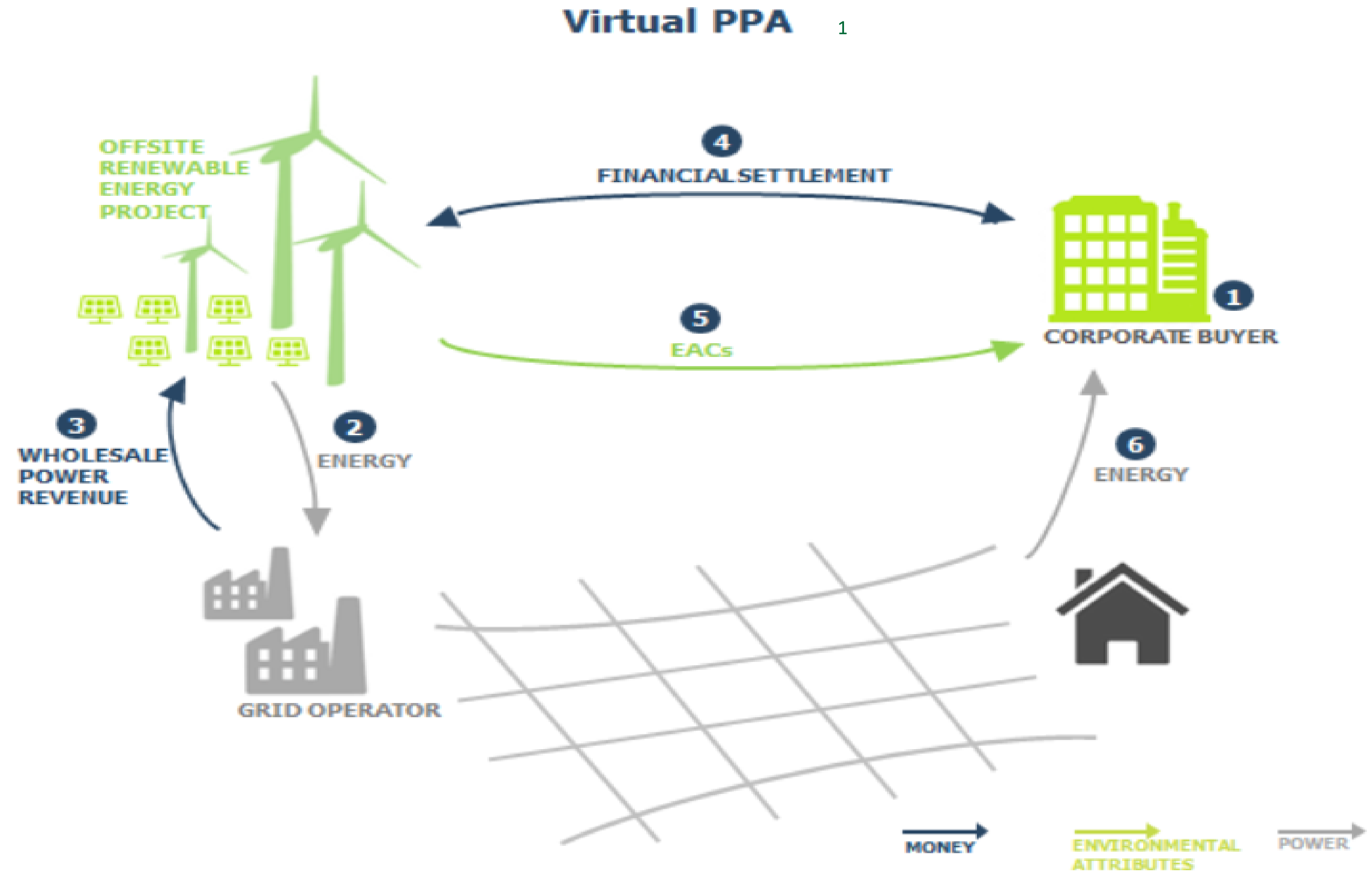
Virtual PPA (VPPA)

- A contract structure in which a power buyer (or off-taker) agrees to purchase a project's renewable energy for a pre-agreed price
- With a VPPA, there is no physical delivery of power to the buyer's load centers
- The buyer will continue to pay their utility bills.
- A VPPA is a purely financial agreement that acts as a hedge on electricity prices



1 Haddon, A. (2019, September 25). What is the Difference Between Direct and Virtual Renewable PPAs? Retrieved September 02, 2020, from https://community.exchange.se.com/t5/Active-Energy-Management-Blog/What-is-the-Difference-Between-Direct-and-Virtual-Renewable-PPAs/ba-p/179309/jump-to/first-unread-message

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Virtual Power Purchase Agreements

In general

- 82% of 2019 PPAs signed with corporates were virtual (no physical delivery)
- Exchange of fixed-price cash flow for variable cash flow plus
  - Project owner pays floating revenues
  - Corporate pays fixed payments
  - Monthly settlement
  - RECs
- Tax hedge identification
- Related party issues

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Recent developments involving tax controversies and court cases

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California Ridge Wind Energy LLC v. United States

No. 19-1463 (Fed. Cir. 2020)

Background

- Two wind farms applied for 1603 Grants under the American Recovery and Reinvestment Tax Act
- Their applications included development fees of $50 and $60 million in their grant eligible costs, which were paid to development entities owned by the same taxpayer as the projects
- Treasury Department awarded them smaller 1603 Grants than they had requested (roughly $9 and $12 million less) because it viewed the amounts requested as above market and because the development companies were related entities
- California Ridge and Bishop Hill sued the government for the difference
- During discovery, the government learned more details about the development fees and the way they were paid and decided to countersue the projects for approximately $10 million in overpayments

Trial Court

- After a trial before the Federal Court of Claims, the Court ruled in favor of the government, dismissing the suits by California Ridge and Bishop Hill and awarding the government the $10 million it countersued for
- The Trial Court stated it believed the development agreements used in the transactions lacked economic substance and the payments were sham transactions

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California Ridge Wind Energy LLC v. United States (cont.)

No. 19-1463 (Fed. Cir. 2020)

Federal Circuit Court of Appeals

- The Court of Appeals upheld the Trial Court's ruling
- The Court of Appeals agreed with the Trial Court that, at least for 1603 Grant projects, development fees are for actual costs only and not a vehicle for capturing added value
- The Court of Appeals summed up it's three main concerns with the development agreement and related transactions in these projects with the following passage:
  - " [The trial court's finding] is sufficiently supported by at least the round-trip nature of the payments; the absence in the [development] agreements of any meaningful description of the development services to be provided; and the fact that all, or nearly all, of the development services had been completed by the time the agreements were executed."

Three Main Concerns

First
- The development fees were paid with funds obtained from another subsidiary of the taxpayer, resulting in round-trip transactions in which the funds left from and returned to the same account on the same day

Second
- The development agreements lacked any meaningful description of the services provided, and "the choice to include only a highly generic description [of services provided in the agreement] may reasonably be taken to suggest that the fee was not the result of a careful determination of what premium was justified for the particular work done"

Third
- The development agreements were executed after the development services were already substantially completed

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California Ridge Wind Energy LLC v. United States (cont.)
No. 19-1463 (Fed. Cir. 2020)

Takeaways and Lessons Learned

- The Court of Appeals did not state that development fees are inherently bad
  - In fact, the Court said: “[i]n this case, the trial court could reasonably find, on the particular facts, that the agreement-stated figures do not accurately value eligible costs. That is hardly a general bar to properly valued transactions.”
- Generic and overly broad development fee agreements should be avoided when possible, and development agreements executed late in the development process should be avoided when possible
- Taxpayers looking to continue to use development fees should attempt to document and quantify as much as possible in case the agreements are ever challenged
- Even if the agreements are already executed on current projects, taxpayers should start to separately document and quantify costs for their own files whenever possible
- Such supplemental documentation could help support a vague development agreement
- The trial court asked the taxpayer repeatedly for supplemental documentation during the trial to help explain and quantify the fee, but the taxpayer declined to present any

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Silver State Solar Power South, LLC v. United States
No. 18-266T (Ct. Cl. 2020)

Background

- In 2013, Nextera purchased from First Solar a 250 MW photovoltaic generation facility under construction in Nevada
  - Facility was acquired apparently at NTP, with First Solar contracted to complete construction under an EPCA
- Nextera applied for $289 million 1603 Grant; Treasury awarded only $152 million
  - Treasury final grant determination explained that the government's award "reflect an amount that is more consistent with the eligible property's fair market value than is the basis claimed in the [plaintiff's] Section 1603 application"

Trial

- Nextera sued for shortfall in 1603 Grant
- Government moved to dismiss based upon its assertion that the dispute raised no genuine issue as to any material fact (i.e., a motion for summary judgment). In its motion, government asserted:
  - *Alta Wind* precedent was determinative, making section 1060 principles applicable
  - PPA is a separate intangible asset as a matter of law
- Court of Claims denied motion, finding that genuine issues of material fact exist with respect to whether section 1060 applies to the acquisition and how to classify the PPA

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Evolution of Tax Equity Formation Structures

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“Sell-To” or “Sell-Down” Structure

- Structure has been more frequently used in the wake of recent development fee controversies
- Plant is purchased by the tax equity partnership by either the sponsor or an unrelated party for its fair-market-value prior to placed-in-service date
- Considerations
  - Purchase price allocation and potential for intangible value
  - Related party considerations
  - Timing of tax equity partnership formation
  - Separation of buyer and seller
  - Additional development/construction post-sale

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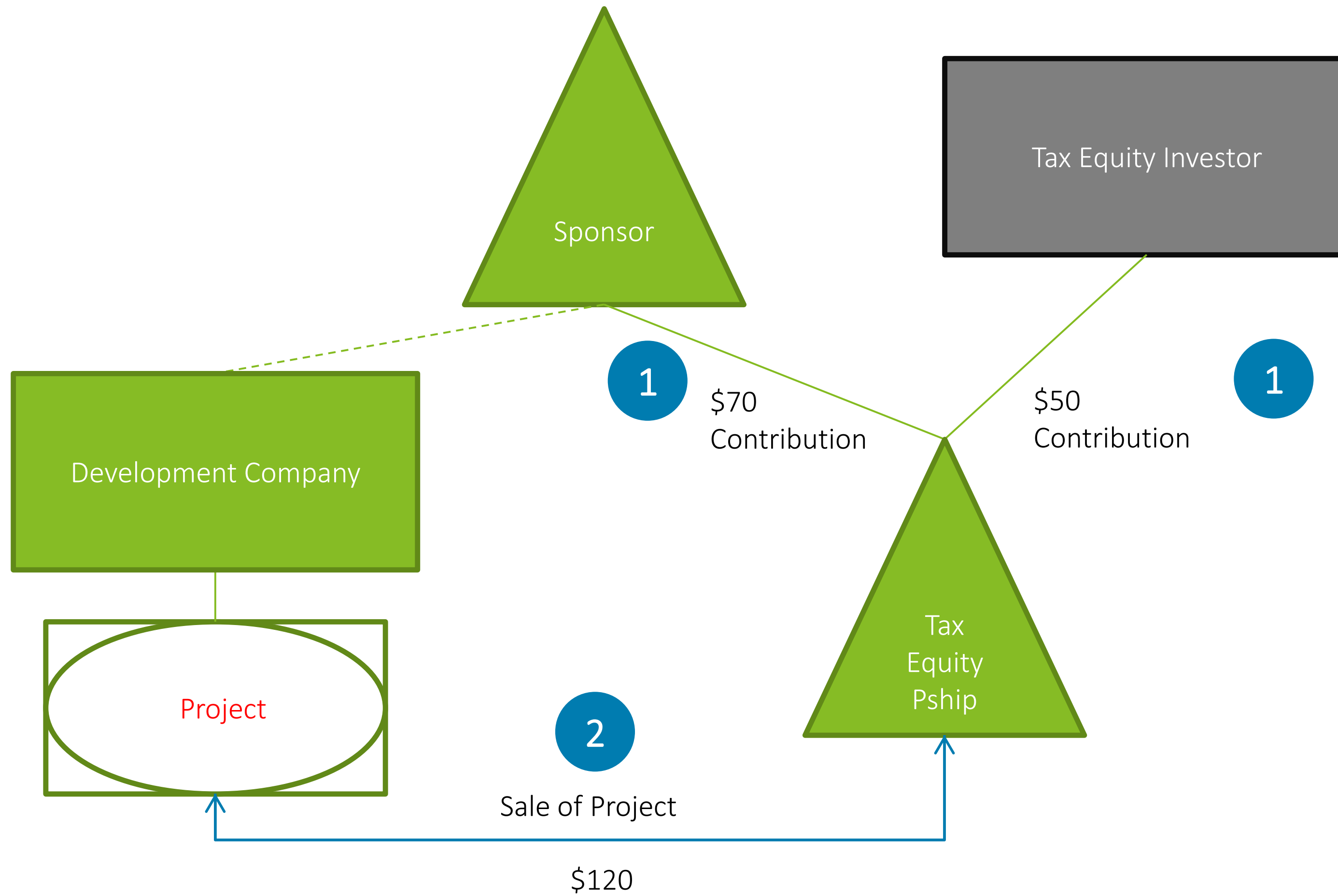
“Sell-To” or “Sell-Down” Structure – Regarded DevCo



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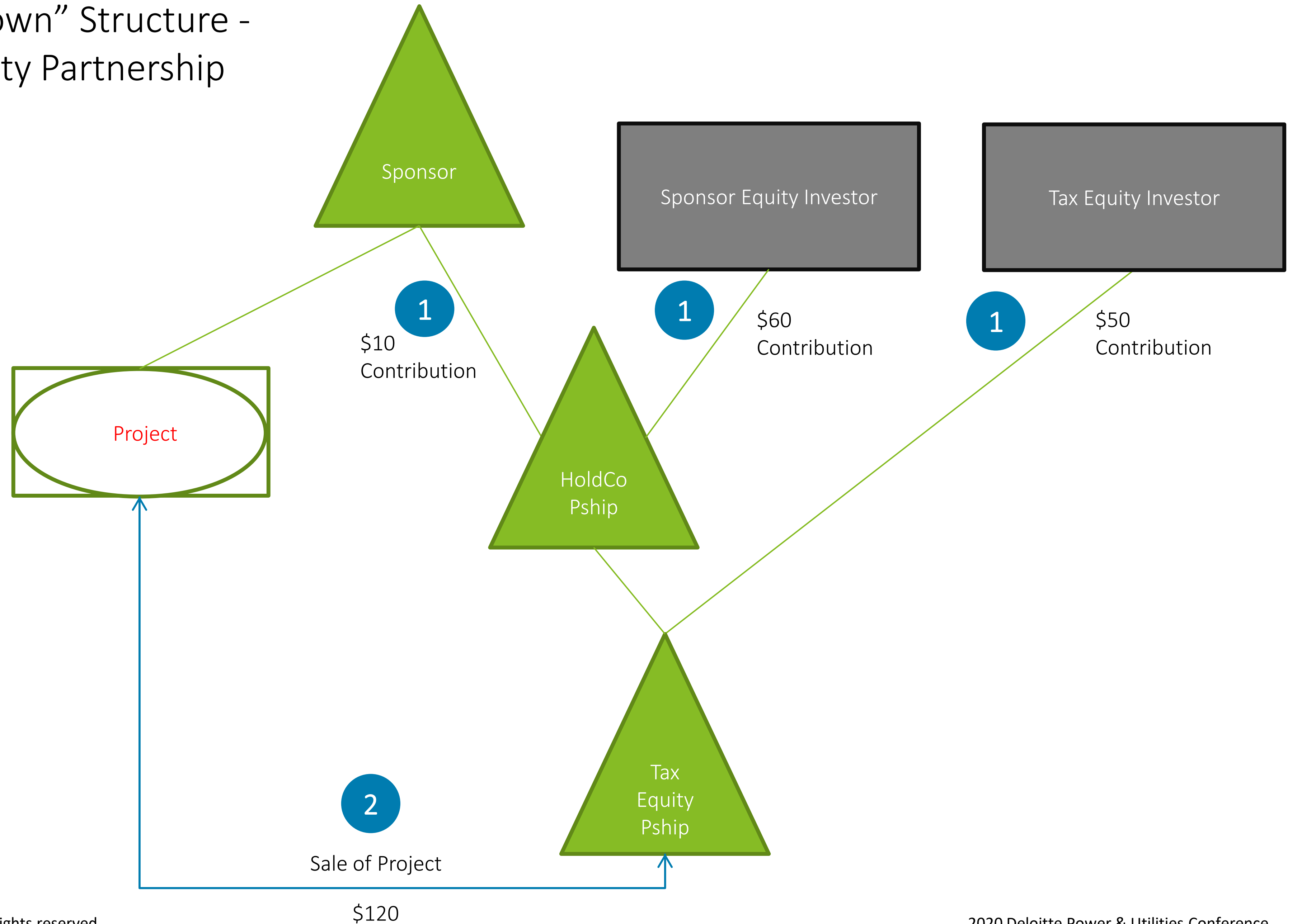
“Sell-To” or “Sell-Down” Structure - Regarded Tax Equity Partnership



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Legislative Update

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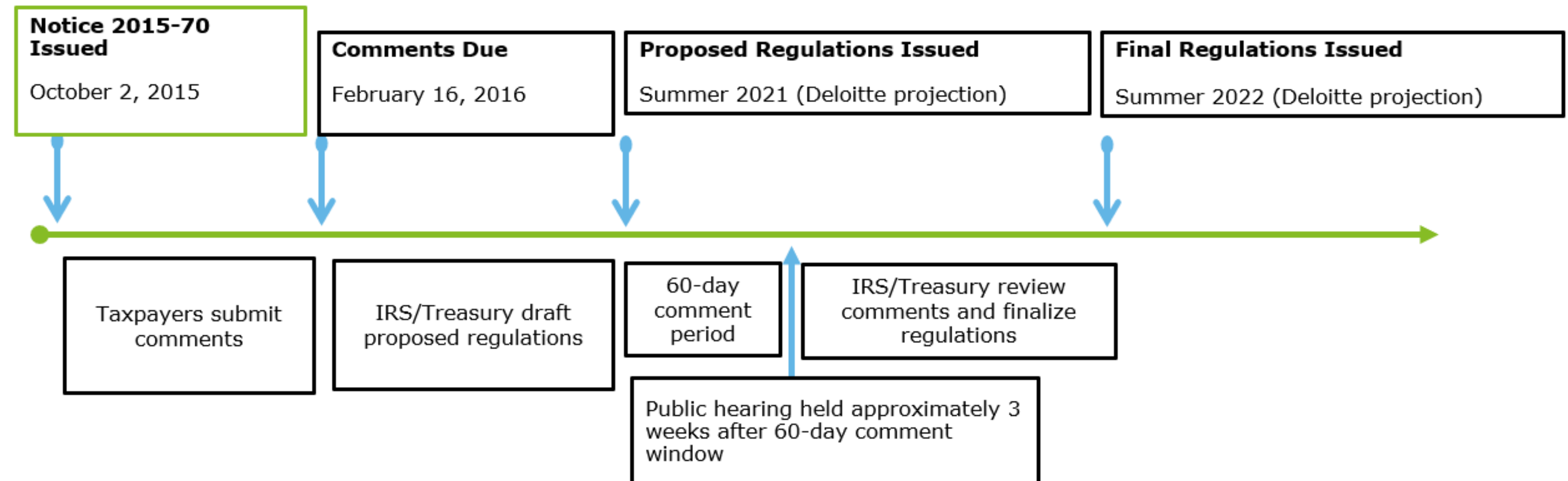
Recent administrative guidance

Private Letter Rulings (PLRs)

- *PLR 202046001 for an offshore wind project determining when costs incurred relevant for the 5% Safe Harbor*
- Taxpayer requested the following rulings: (i) the contract is a long-term manufacturing contract under section 460(f)(2) and Reg. § 1.460-2, subject to the percentage of completion (PCM) method of accounting under section 460(a), and (ii) Taxpayer is required to treat the prepayments made to Subsidiary in Year 1 as contract costs incurred in the contracting year for purposes of computing the completion factor under PCM
- The IRS concluded that the contract is a long-term manufacturing contract. Additionally, the IRS required Taxpayer to treat the prepayments made to Subsidiary in Year 1 as contract costs incurred in the contracting year for purposes of computing the completion factor under PCM

ITC Regulations status update

- *Potential timeline*



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Notice 2020-41

As a result of the COVID-19 pandemic, renewable energy developers asked Congress and the Treasury Department/IRS for relief from COVID-related delays for solar, wind, fuel cell, biomass, waste-to-energy, hydropower and geothermal projects seeking PTC and ITC eligibility

On May 27, 2020, the IRS released Notice 2020-41 covering two topics related to those requests

Extension of Continuity Safe Harbor

The Notice provided that for any qualified facility or energy property that began construction under the Physical Work Test or the Five Percent Safe Harbor in either calendar year 2016 or 2017, the Continuity Safe Harbor (normally 4 calendar years after the calendar year during which construction began) will be extended an additional year to 5 years (meaning 2021 and 2022 instead of 2020 and 2021)

This change will help many projects, particularly onshore wind projects, that began construction in 2016 and 2017 and have experienced supply chain and construction delays as a result of COVID-19

This relief is available to all taxpayers and projects that began construction in 2016 and 2017 regardless of direct impacts to such projects by COVID-19

Project developers are re-evaluating project pipelines and (re)allocations of equipment on which construction started in 2016 and 2017

This relief is also available to offshore wind, solar and other renewable energy technologies, but those technologies will largely not be helped by this particular change due to their specific project timelines

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Notice 2020-41 (cont.)

3½-month Safe Harbor

The 3½-month rule is a rule set forth in Treas. Reg. § 1.461-4(d)(6)(ii) which provides that a taxpayer may treat the costs of services or property as being incurred by the taxpayer at the time of payment if the taxpayer can reasonably expect the person to provide the services or property within 3½ months of the date of payment, regardless of any subsequent events that may prevent that reasonable expectation from occurring

In an effort to provide more certainty to taxpayers wishing to use the 3½-month rule, the Notice provided that for purposes of the beginning of construction requirement for the Production Tax Credit and the Investment Tax Credit, services or property paid for by the taxpayer on or after September 16, 2019, will be automatically deemed to have had a reasonable expectation that the services or property would be received within 3½ months after the date of payment in the case of any services or property actually received by the taxpayer by October 15, 2020

As for anything ordered on or after September 16, 2019 and actually received after October 15, 2020, the taxpayer can still attempt to satisfy the normal 3½-month rule based on the original reasonable expectation at the time of payment

The Notice does not provide a similar 3½-month Safe Harbor for purchases made at the end of 2020 but notes that satisfaction of the 3½-month rule is based on reasonable expectations at the time of payment, which may be read to provide comfort to taxpayers in the event of future unforeseen delays related to deliveries of property in 2021

- Although this rule is applicable to all renewables projects that began construction in 2019 to qualify for the ITC and PTC, most beginning of construction activities in 2019 were performed by solar and fuel cell projects based on other ITC and PTC qualification deadlines being extended at the end of the year

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Polling question #3

What best describes how your company applies the 3½-month rule in the economic performance regulations?

1. Our business has never applied this rule.
2. Our business has only applied this rule in the context the beginning-of-construction rules.
3. Our business has filed a Form 3115 and now applies the 3½-month rule.
4. Our business only applies the 3½-month rule at new companies that clearly had not previously made a prepayments for goods or services.
5. Don't know/Not applicable/None of the above

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Bonus depreciation update for renewable energy partnerships

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Section 168(k) issues for renewable energy project companies
Background

Background

- On November, 10, 2020, final regulations under sections 168(k) and 1502 (“2020 Final Regulations”) published
- The 2020 Final Regulations are effective sixty days after the date they are published in the Federal Register for qualified property acquired after September 27, 2017 and placed in service during or after the taxpayer’s taxable year that begins on or after January 1, 2021
  - Taxpayers may rely on the 2020 Final Regulations in their entirety for qualified property acquired and placed in service by the taxpayer during a taxable year ending on or after September 28, 2017
  - Once a taxpayer applies the rules of Reg. Sec. 1.1502-68 and Reg. Sec. 1.168(k)-2, in their entirety, for a taxable year, the taxpayer must continue to apply the rules, in their entirety, for the taxpayer’s subsequent taxable years

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Section 168(k) issues for renewable energy project companies (cont.)

General

General

- Section 168(k), as amended by the 2017 Tax Act (P.L. 115-97, also referred to as the Tax Cuts and Jobs Act of 2017 or "TCJA"), provides 100% bonus depreciation for qualified property acquired or self-constructed and placed in service after September 27, 2017 but before January 1, 2023 (or January 1, 2024 for LPPP)
  - 100 percent depreciation begins to phase out with respect to qualified property placed in service on or after January 1, 2023 (January 1, 2024, for longer production property and certain aircraft)
- Qualified property is property:
  - That is a specified type of property ("Specified Property"),
  - The original use of which begins with the taxpayer ("Original Use Requirement") or the acquisition of which by the taxpayer meets the requirements of section 168(k)(2)(E)(ii) (the "Acquisition Requirements"), and
  - That is placed in service before January 1, 2027

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Section 168(k) issues for renewable energy project companies (cont.)

General

- Qualified property includes, among other assets—
  - MACRS property that has a recovery period of 20 years or less,
  - Water utility property as defined under section 168(e)(5),
  - Specified plant as defined under section 168(k)(5)(B), and,
  - QIP as defined under section 168(e)(6)
- Qualified property does not include, among other exceptions—
  - Regulated utility property as defined under section 163(j)(7)(A),
  - Assets required to be depreciated using the alternative depreciation system (ADS), and
  - Assets that the taxpayer elected to forgo bonus depreciation under section 168(k)(7)

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Section 168(k) issues for renewable energy project companies (cont.)

Partnerships

Partnerships

- The proposed regulations issued in 2019 included a rule that treated a person that is or was a partner in a partnership as having a depreciable interest in partnership property (solely by reason of owning an interest in the partnership) to the extent of the partner's cumulative share of depreciation deductions with respect to the partnership's property during the current calendar year and the prior five calendar years (the "Partnership Lookthrough Rule," see Prop. Reg. Sec. 1.168(k)-2(b)(3)(iii)(B)(5))
- The 2020 Final Regulations withdraw the Partnership Lookthrough Rule. Thus, under the 2020 Final Regulations, a partner is not treated as having any depreciable interest in partnership property solely by reason of owning an interest in the partnership
  - The government acknowledged the complexity of applying the Partnership Lookthrough Rule and the significant administrative burden it would place on taxpayers and the Internal Revenue Service

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Section 168(k) issues for renewable energy project companies (cont.)

Partnership State Considerations

- A majority of states specifically decouple from the bonus depreciation regime of section 168(k). In those states, taxpayers would need to calculate any applicable depreciation based upon state specific rules, which could include methods such as MACRS without bonus depreciation
  - Certain states adopt the current version of the Internal Revenue Code and have not taken any legislative action to decouple from section 168(k), thus in those states, the provisions of section 168(k), and regulations thereunder, would be applicable. In such states, the rules contained in the 2020 Final Regulations that have specific application to federal consolidated filing groups may not apply
  - Additionally, certain states adopt the provisions of the Internal Revenue Code as of a fixed date that pre-dates TCJA and/or the CARES Act. Accordingly, such conformity issues must be considered when computing state depreciation expense and the state impacts of accounting method changes
- In addition to non-conformity around the bonus depreciation expense, there could also be non-conformity for partnerships related to section 743(b) adjustments. As a section 743(b) adjustment may encompass bonus depreciation (pursuant to the TCJA), this amount may vary for non-conforming states. In other words, some states that decouple from bonus depreciation may require a state section 743(b) adjustment computed using the state’s depreciation rules

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Polling question #4

Do you plan to take bonus depreciation on assets placed-in-service during 2020?

1. Yes.
2. No.
3. We are waiting to see what happens with tax rates.
4. Not certain.

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Appendix – Key Dates

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Investment Tax Credit—Dates and Rates

Type of Energy Property	Date Construction Begins	Placed in Service Date	ITC Amount
Solar	Before 1/1/2020	Before 1/1/2024	30%
	Calendar 2020	Before 1/1/24	26%
	Calendar 2021	Before 1/1/24	22%
	Before 1/1/22	On or after 1/1/24	10%
	On or after 1/1/22	Any	10%
Fiber-Optic Solar	Before 1/1/20	Before 1/1/24	30%
	Calendar 2020	Before 1/1/24	26%
	Calendar 2021	Before 1/1/24	22%
	Before 1/1/22	On or after 1/1/24	0%
	On or after 1/1/22	N/A	0%
Qualified Fuel Cell	Before 1/1/20	Before 1/1/24	30%
	Calendar 2020	Before 1/1/24	26%
	Calendar 2021	Before 1/1/24	22%
	Before 1/1/22	On or after 1/1/24	0%
	On or after 1/1/22	N/A	0%

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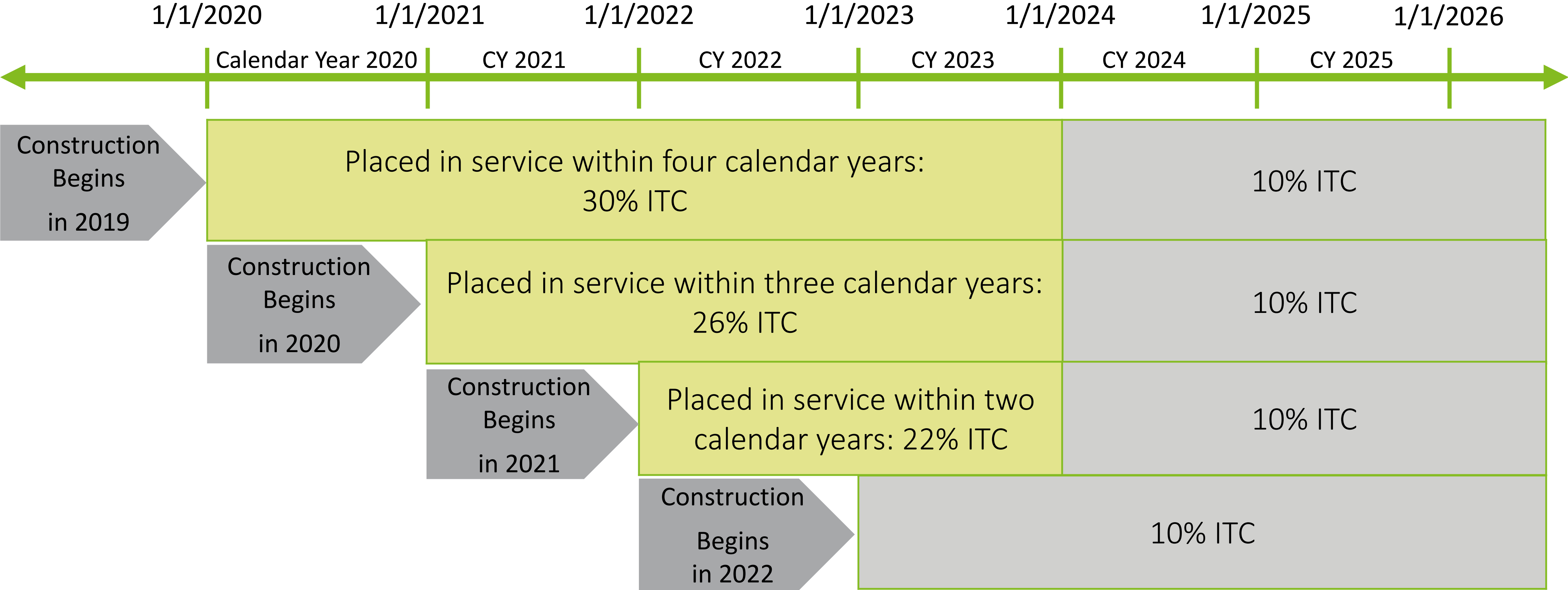
Beginning of Construction and Placed-in-Service Date Requirements

Solar Energy Facilities—Investment Tax Credit



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Investment Tax Credit—Dates and Rates

Type of Energy Property	Date Construction Begins	Placed in Service Date	ITC Amount
Qualified Small Wind	Before 1/1/2020	Before 1/1/2024	30%
	Calendar 2020	Before 1/1/2024	26%
	Calendar 2021	Before 1/1/2024	22%
	Before 1/1/2022	On or after 1/1/2024	0%
	On or after 1/1/2022	N/A	0%
Qualified Microturbine	Before 1/1/2022	Any	10%
	On or after 1/1/2022	N/A	0%
Combined Heat and Power (CHP)	Before 1/1/2022	Any	10%
	On or after 1/1/2022	N/A	0%
Geothermal Heat Pump	Before 1/1/2022	Any	10%
	On or After 1/1/2022	N/A	0%
Geothermal	Any	Any	10%

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Production Tax Credit and ITC in Lieu of PTC—Dates and Rates

Qualified Resources/Facilities	Credit Amount for 2020	Construction Beginning …	PTC Rate (Phase-out)	ITC Election Phase-out)
Wind	2.5 cents/kwh	Before 1/1/2017	100%	30%
		Calendar 2017	80%	24%
		Calendar 2018	60%	18%
		Calendar 2019	40%	12%
		Calendar 2020	60%	18%
Geothermal	2.5 cents/kwh	Before 1/1/2021	None	30%
Closed-loop biomass	2.5 cents/kwh	Before 1/1/2021	None	30%
Open-loop biomass	1.3 cent/kwh	Before 1/1/2021	None	30%
Municipal solid waste (landfill gas, trash)	1.3 cent/kwh	Before 1/1/2021	None	30%
Hydropower	1.3 cent/kwh	Before 1/1/2021	None	30%
Marine and hydrokinetic renewables (including small irrigation power)	1.3 cent/kwh	Before 1/1/2021	None	30%

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