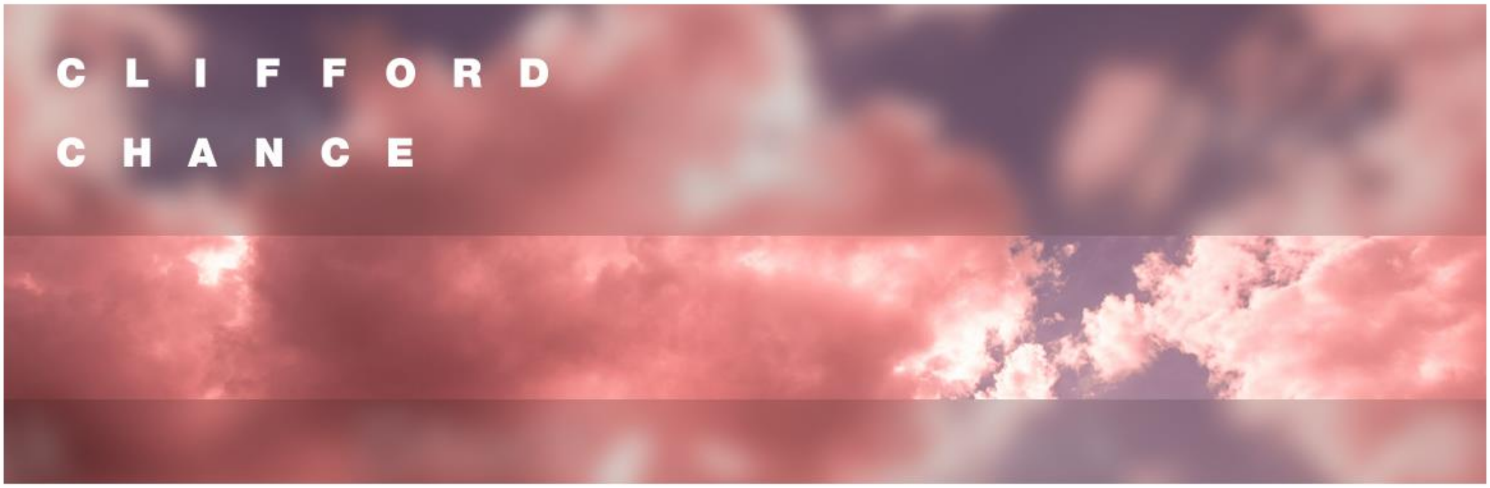

INFLATION REDUCTION ACT OF 2022

The renewable energy markets in the United States have become increasingly dynamic since the Biden Administration announced its various renewable energy, electrification, and sustainability initiatives over the course of 2021. Since the "death" of the Build Back Better Act, however, large-scale federal legislative measures have failed to garner enough support for passage—until the Inflation Reduction Act of 2022 (the "IRA") passed the United States Senate through the budget reconciliation process on August 7, 2022.

If passed by the House of Representatives, the IRA will radically change the landscape of renewable energy project development, finance and commercialization in the U.S. It will create opportunities for accelerated growth and development at all points along the renewable energy and electrification supply chains. Additionally, the IRA will incentivize industry players to broaden and deepen their involvement while also motivating newcomers to take advantage of the many advantageous tax credit structures that will be implemented as a result of the IRA's passage. The IRA is the product of innumerable political compromises reached in order to salvage the spirit of the Build Back Better Act, however, and, as such, is extremely complex. Our U.S. Clean Energy Team has been following the IRA and is well-positioned to guide clients through the complexities of the IRA in order to ensure that they are acquainted with the content of the law and that they take full advantage of the IRA's myriad benefits.

The IRA has been characterized by Senator Chuck Schumer as "the boldest clean energy package in American history." It principally relies on the United States' tax code to incentivize taxpayers (and certain tax-exempt entities) to invest in capital projects that facilitate the energy transition of the United States' electric grids and the electrification of its infrastructure, as well as support technologies that are intended to replace fossil fuels and sequester CO2e. The underlying goal of the legislation is to mitigate the impacts of anthropogenic climate change.

We include some notable highlights below, but in the interest of brevity, analysis of significant portions of the legislation, as well as certain important nuances, have been omitted:

ONSHORE WIND:

- The "production tax credit" for onshore wind projects will be extended for projects that "begin construction" after December 31, 2022 and before January 1, 2025.
    - The "base credit" is equal to $0.3 cents per kWh of electrical energy generated.
    - If certain prevailing wage and apprenticeship rules are satisfied, an additional $1.5 cents per kWh become available.
    - The credit will adjust for inflation.
    - An additional tax credit equal to 10% is available for projects that satisfy certain "domestic content requirements" similar to the Dept. of Transportation's "Buy America Requirements."[1]
    - An additional credit equal to 10% is available for projects that are sited in certain "energy communities."
    - Solar projects and offshore wind projects will be eligible for the traditional production tax credit.
- After December 31, 2024 until the later of December 31, 2032 and the first year greenhouse gas emissions in the United States are equal to or less than 25% of the greenhouse gas emissions in 2022, wind, solar, and certain other projects which meet specified "qualified facilities" rules will be eligible for a technology-neutral (zero emissions) production tax credit.
    - The technology-neutral production tax credit will have a similar credit amount and structure as the traditional production tax credit.
- The legislation provides for a four-year phase-out of the technology-neutral production tax credit.

SOLAR, OFFSHORE WIND, AND STAND-ALONE STORAGE:

- The "investment tax credit" for solar projects and offshore wind projects will be extended in some instances and modified in others. Solar projects that are "placed in service" in 2022 are eligible for the 30% investment tax credit without having to demonstrate compliance with the prevailing wage and apprenticeship rules identified above.
- Commencing on January 1, 2023, the "base credit" is equal to 6% of the investment tax credit eligible cost basis.
    - If certain prevailing wage and apprenticeship rules are satisfied, an additional 24% investment tax credit becomes available.

[1] Note that the "domestic content requirement" rules for offshore wind are relaxed from those applying to other technologies.

    - An additional tax credit equal to 10% is available for projects that satisfy certain "domestic content requirements" similar to the Dept. of Transportation's "Buy America Requirements."
    - An additional credit equal to 10% is available for projects that are sited in certain "energy communities."
    - An additional credit equal to 10% becomes available if the project is sited in a "low-income community" or an additional 20% becomes available if the project satisfies certain "qualified low income building" or "benefits projects."
- Historically, stand-alone energy storage projects were not eligible for a tax credit. The IRA provides an investment tax credit for stand-alone energy storage projects that are "placed in service" after December 31, 2022.
- After December 31, 2024, the traditional investment tax credit will begin to step-down in favor of a technology-neutral (zero emissions) investment tax credit.
- After December 31, 2024 until the later of December 31, 2032 and the first year greenhouse gas emissions in the United States are equal to or less than 25% of the greenhouse gas emissions in 2022, wind, solar, energy storage, and certain other projects which meet specified "qualified facilities" rules will be eligible for a technology-neutral (zero emissions) investment tax credit.
    - The investment tax credit can be "recaptured" if the greenhouse gas emissions rate for the project is greater than 10 grams of CO per kWh.
    - "Bonus" credits similar to the aforementioned are available.
    - The technology-neutral (zero emissions) investment tax credit will phase-out in the same manner as the technology-neutral (zero emissions) production tax credit.

CARBON OXIDE CAPTURE:

- The current tax credit for carbon capture utilization and storage ("CCUS") projects will be revamped.
    - Certain CCUS projects "placed in service" after December 31, 2022 will be eligible for a $17 per metric ton tax credit for carbon oxides captured and permanently sequestered in geologic storage basins. If certain prevailing wage and apprenticeship rules are satisfied, an additional $68 per metric ton tax credit become available.
    - For CCUS projects co-located with electric generating facilities, the CCUS project is required to capture at least 18,750 metric tons of carbon oxide in a year and at least 75% of the electric generating facility's baseline carbon oxide production in that year.

- The tax credit is reduced for CCUS projects used by a taxpayer as a tertiary injectant in a qualified enhanced oil or natural gas recovery project and disposed of by the taxpayer.
- Certain other specified CCUS facilities will qualify if the project captures at least 12,500 metric tons of qualified carbon oxide in a year.
- CCUS projects that constitute "direct air capture" facilities that capture at least 1,000 metric tons of qualified carbon oxide receive an enhanced tax credit.

- The tax credit will remain available for CCUS projects that "begin construction" by December 31, 2032.

HYDROGEN:

- After December 31, 2022, qualified clean hydrogen projects that do not elect to take the investment tax credit will be eligible for a new, 10-year production tax credit equal to up to $0.60 per kilogram or, if certain prevailing wage and apprenticeship requirements are satisfied, up to $3.00 per kilogram.
  - The amount of the credit available (which is adjusted for inflation) corresponds to the project's carbon intensity reduction based on lifecycle greenhouse gas emissions:
    - 20% if the lifecycle greenhouse gas emissions rate is not greater than 4 kilograms of CO and not less than 2.5 kilograms of CO;
    - 25% if the lifecycle greenhouse gas emissions rate is less than 2.5 kilograms of CO and not less than 1.5 kilograms of CO;
    - 33.4% if the lifecycle greenhouse gas emissions rate is less than 1.5 kilograms of CO and not less than 0.45 kilograms of CO; and
    - 100% if the lifecycle greenhouse gas emissions rate is less than 0.45 kilograms of CO.
- The investment tax credit for qualified clean hydrogen projects is structured similarly: there is a base credit of up to 6% multiplied by an applicable percentage, which corresponds to the project's carbon intensity reduction based on lifecycle greenhouse gas emissions. The investment tax credit is increased up to 30% if certain prevailing wage and apprenticeship requirements are satisfied.
- Qualifying hydrogen projects that "begin construction" on or before December 31, 2032 are eligible for the above tax credits.

OTHER NOTABLE TAX CREDITS THAT HAVE BEEN ADDED OR SIGNIFICANTLY MODIFIED:

- Nuclear Power Production Credit;
- Clean Vehicle Credit;
- Advanced Manufacturing Production Credit;
- Advanced Energy Project Credit;
- Clean Fuel Production Credit;
- Sustainable Aviation Fuel Credit;
- Renewable Fuels Credits; and
- Alternative Fuel Refueling Property Credit (electric vehicle and charging infrastructure credits).

TAX CREDIT MONETIZATION INNOVATIONS:

- Historically, tax equity investors monetized tax credits through complex tax equity structures. The IRA adds two new mechanisms to monetize tax credits.
- (1) Direct Pay:
  - Direct pay essentially makes tax credits refundable by the United States Treasury. Where the amount of a federal income tax credit exceeds the taxpayer's federal income tax liability in a tax year, the United States Treasury will pay directly to the taxpayer the amount of the excess.
  - However, the list of "eligible entities" that may elect into the "direct pay" option is limited to the following:
    - tax exempt entities, state and local governments, the Tennessee Valley Authority, an Indian Tribal Government, or any Alaska Native Corporation; and
    - taxpayers developing CCUS, hydrogen, advanced manufacturing projects for the first five years after the applicable project is "placed in service" and in each case, only with respect to any taxable year beginning before December 31, 2032.
- (2) Transferability:
  - After December 31, 2022, taxpayers may elect to "transfer" or sell certain tax credits to an unrelated taxpayer.
  - Consideration for the tax credits must be cash.
  - Consideration will not be treated as income to the transferor/seller of the credits. The consideration is also not deductible by the transferee/purchaser of the credits.

  - The tax credits may only be transferred once and tax credits which have been carried back or carried forward may not be transferred.

The IRA will drastically affect the way our current and future clients work in the U.S. clean energy space and navigating its complexities will require specialists with extensive experience working with renewable energy tax equity structures and related fields. Should you have any questions, do not hesitate to contact any member of our team listed below. For related analysis done by our team, see here.

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