

An Energy/Production Credit Boost – IRS Issues Notice With Safe Harbor for Domestic Content



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The Internal Revenue Service (IRS) issued Notice 2024-41 on May 16, 2024. Notice 2024-41 guides taxpayers on qualifying for increased renewable energy tax credits. To qualify for this credit increase, a taxpayer must satisfy requirements for the domestic content bonus. The domestic content bonus requirements are meant to incent renewable energy developers to use products and components manufactured in or otherwise sourced to the United States. The following discusses key points of Notice 2024-41.

The Notice builds on an earlier Notice.

IRS issued Notice 2023-38 on May 12, 2023 to guide taxpayers in qualifying for the domestic content bonus. Notice 2024-38, however, gave developers some heartburn. In particular, developers winced at requirements to gather cost data from manufacturers and suppliers. Manufacturers and suppliers are reluctant to provide sensitive cost data which they protect like trade secrets.

The Safe Harbor applies to certain projects.

The Notice includes data for Solar Photovoltaic, Land-Based Wind, and Battery Electric Storage Systems only. A taxpayer owning a Qualified Fuel Cell project, for example, cannot use the Safe Harbor. The Notice requests comments on expanding the scope of the Safe Harbor to cover other project types.

The Safe Harbor may obviate need for manufacturer's cost data.

The Safe Harbor provides costs for certain Components that can be used in lieu of actual manufacturer's cost data. The costs are located in Table 1 of the Notice. The list of Components in Table 1 is not a comprehensive list of Components for every project or facility. It's a start, though. In some cases, the Safe Harbor provides a way to claim the domestic content credit without as much conflict from suppliers.

The Safe Harbor is elective.

A taxpayer does not need to use the Safe Harbor. A taxpayer can opt to rely on actual supplier data instead. However, taxpayers cannot pick and choose. If a taxpayer elects the Safe Harbor, it must use the Safe Harbor for all applicable components.

The adjusted percentage rule is the same.

A project qualifies for domestic content bonus if it meets the Domestic Content Requirement of Notice 2023-38. That requirement is met as to manufactured components if those components are produced or deemed produced in the United States. Manufactured products are deemed produced in the United States if the Adjusted Percentage Rule is satisfied as to those products. The Adjusted Percentage Rule under the Safe Harbor is the same as that used if the taxpayer does not elect to use the Safe Harbor. Accordingly, if the Safe Harbor is elected, the Adjusted Percentage Rule is applied using the cost data from Table 1 of Notice 2024-41.

Still a lot of work.

Claiming the domestic content bonus was never easy. It is time intensive. Applying the rules under

Notice 2023-38 and (now) Notice 2024-41 require much work and attention. The Safe Harbor does not change that. However, the Safe Harbor greatly simplifies part of the diligence process for claiming the bonus. For that reason, the Safe Harbor is helpful. Perhaps if the IRS expands the scope of Table 1 to include component costs for a broader selection of projects in the future, taxpayers may avoid the impossible position of having to gather cost data that manufacturers understandably do not want to share.

But the bonus can be worth it.

The domestic content bonus is valuable. For energy credit projects, the bonus is worth an additional 10% of the energy property's basis. For projects seeking a production tax credit, the bonus is 10% of the production tax credit amount. In each case, the credit calculation is more complex than the foregoing indicates. For example, in each case, the bonus is affected or conditioned on meeting prevailing wage and apprenticeship requirements. Those requirements are the subject of IRS proposed regulations issued on November 22, 2023.

Regulations are coming.

IRS plans to issue regulations governing requirements for claiming the domestic content bonus. Those regulations will likely align with the requirements set forth in the Notices discussed herein. When those regulations are issued, they will take the place of the Notices over time. Notice 2024-41 contains detailed rules that establish which projects may be governed by the Notices and which will be governed by the regulations. Before relying on either Notice, a taxpayer should first determine whether that Notice will apply to that taxpayer's project.
