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Cleantech tax
What to watch for in 2014

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The production tax credit (PTC) for wind, biomass, geothermal, and several other energy sources expired at the end of 2013 – although companies that began construction on projects by the end of the year generally will be eligible for tax credits once those projects are placed into service.

Support for and opposition to the PTC breaks across party lines. Although a bipartisan group of senators has called for allowing the PTC to expire, prominent supporters of renewing it include the likely next chairman of the Senate Finance Committee, Senator Ron Wyden (D-OR), and Finance Committee member Charles Grassley (R-IA).

More broadly, extension of the PTC and other expired renewable energy incentives is likely to be bound up with an overall package of "tax extenders," addressing some or all of the more than 50 currently lapsed provisions in the tax code. In recent weeks, Senate tax committee leaders have indicated an interest in taking action on tax extenders early in 2014 and making that action retroactive. In contrast, House leaders have been less willing to discuss tax extenders, preferring instead to focus on a potentially broader reform of the corporate tax system.

In contrast to the wind industry, solar developers have relative policy stability for the next several years since the investment tax credit (ITC) for solar, fuel cells, and certain other technologies is slated to remain at 30% through 2016 and drop to 10% for 2017 and subsequent years.

Senate discussion draft on energy tax reform

Over the past several months, current Senate Finance Committee Chairman Max Baucus (D-MT) and the committee staff have released a series of discussion papers outlining options for a comprehensive reform of the current corporate tax system. These changes would be intended to reduce corporate income tax rates while eliminating many current tax preferences and deductions.

In December, Chairman Baucus released an energy tax reform discussion draft. The discussion draft would simplify approximately 40 current energy tax incentives into two basic categories of activity: clean electricity production, and clean transportation fuel production. Within these two categories, taxpayers would be able to choose either a PTC or an ITC. The clean electricity PTC would be up to 2.3 cents per kilowatt hour (kWh), and the ITC would be up to 20 percent. The clean fuels PTC would be up to $1 per gallon, and the ITC would be up to 20 percent. The amount of each credit available for a specific project would be based on a sliding scale measured by how clean the electricity or fuel is relative to baseline standards.

Leadership Change at Senate Finance

In December, President Obama announced that Senator Baucus would be nominated to serve as US ambassador to China. Senator's Baucus' likely confirmation by the Senate would result in a change of leadership at the Finance Committee. Senator Wyden, the third-ranking Democrat on the Finance Committee, appears likely to take the chairman's gavel. Although Senator Wyden generally has been supportive of renewable energy, this change could affect both the timing and substance of tax proposals considered by the Senate this year.

Unlike current tax credits, these credits would phase out based on specified improvements in greenhouse gas intensity of the underlying activity, rather than a calendar sunset date. Specifically, the clean electricity credit would phase out over a three-year period beginning the year after the overall US electricity sector is certified by the EPA to be 25 percent cleaner than it was in 2013. The clean fuel credit would phase out over three years after the year in which EPA certifies that greenhouse gas intensity of all transportation fuels is 25 percent cleaner than in 2013.

Finally, as a transition to the new system, the discussion draft proposes extending through 2016 the current PTC; the credit for residential renewable electricity investments; and the credits for transportation-grade, renewable, and alternative fuels. It also would repeal or not renew eleven other tax provisions.

The takeaway

The current uncertainty about the PTC may drive investors toward solar, fuel cells, and other technologies that qualify for the ITC, unless tax extenders are addressed relatively early in 2014. As always, investors and developers will want to keep one eye on Washington as they assess their project models.

Longer term, the Baucus proposals represent the first attempt to harmonize the numerous clean energy tax provisions that have grown in the tax code. In addition, the new proposals coupled with the extension of existing credits through 2016 seek to establish a long-term policy for clean electricity and fuels, a refreshing change from existing credits that frequently expire.

Since the post-2016 system proposed by the Senate Finance discussion draft is intended to be technology-neutral, some energy sources may benefit more from the post-2016 system than under existing credits, and other energy sources may receive lower benefits than under existing law. Energy developers, producers and investors should carefully review the discussion draft and consider the impact on energy projects in progress and planned for the future.

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