Tax Insights
from Federal Tax Services

Interim guidance on prohibited foreign entity restrictions provides clarity while raising questions

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In brief

What happened?

Notice 2026-15, released on February 12, 2026, provides interim guidance on the new prohibited foreign entity (PFE) restrictions enacted by the One Big Beautiful Bill Act (OBBBA) affecting the ability of taxpayers to claim certain tax credits. Specifically, the notice previews rules and provides safe harbors regarding the Clean Electricity Investment Credit under Section 48E, the Clean Electricity Production Credit under Section 45Y, and the Advanced Manufacturing Tax Credit under Section 45X on how to calculate a qualified facility's, energy storage technology's (EST), or eligible component's material assistance cost ratio (MACR) to determine whether they include material assistance from a PFE.

Why is it relevant?

The PFE restrictions represent one of the most consequential changes to the energy tax credit landscape since the enactment of the Inflation Reduction Act in 2022. Notice 2026-15 addresses questions on how to calculate the MACR and provides taxpayers with some flexibility and interim safe harbors. However, the notice does not discuss some important aspects of the PFE restrictions where additional guidance would be necessary.

Actions to consider

Taxpayers should consider using the interim guidance in Notice 2026-15 to reduce uncertainty regarding their compliance with the PFE restrictions introduced by the OBBBA. However, reliance on some of the interim safe harbors may require the adjustment of procurement processes so that suppliers are obligated to provide the necessary assistance regarding certification.

Interested stakeholders should consider engaging in the rulemaking process by submitting comment letters on issues not addressed in the interim guidance or areas that need further clarification in the forthcoming proposed regulations.

In detail

Background

The OBBBA introduced sweeping restrictions tied to PFEs – both specified foreign entities (SFEs) and foreign-influenced entities – and expanded disqualification risk via a material assistance test that reaches deep into supply chains, IP licensing, financing, and services. Under the PFE restrictions, certain tax credits, including the Clean Electricity Investment Credit under Section 48E, the Clean Electricity Production Credit under Section 45Y, and the Advanced Manufacturing Tax Credit under Section 45X, are disallowed for any entity that is a PFE pursuant to Section 7701(a)(51). Further, a taxpayer claiming the Section 48E, 45Y, or the 45X credits cannot receive material assistance from a PFE under Section 7701(a)(52), which is determined by calculating the MACR for the respective qualified facility, EST, or eligible component. Section 7701(a)(52) also provides interim safe harbors that a taxpayer may apply when determining the MACR. Failure to comply with the PFE restrictions is subject to enhanced substantial understatement penalties for taxpayers under Section 6662(m) and an extended six-year statute of limitations under Section 6501(o), and to penalties to the taxpayer's suppliers under Section 6695B. The rules apply to qualified facilities and ESTs the construction of which begins after December 31, 2025, and to eligible components sold in tax years beginning after July 4, 2025.

Notice 2026-15 provides initial guidance on how to determine the MACR and describes safe harbors to effectuate the interim statutory safe harbors under Section 7701(a)(52). The notice also provides guidance on substantiation requirements and the ability of taxpayers to rely on the notice's interim guidance.

For additional discussion about OBBBA's changes to energy tax credits, see PwC's Tax Insights Navigating the energy credit landscape after the OBBBA and IRS Notice sheds light on construction rules for wind and solar credits.

Calculating the Clean Electricity MACR

To calculate the Clean Electricity MACR for a Section 48E or Section 45Y qualified facility or an EST, first the taxpayer needs to identify the types of Manufactured Products (MPs) and Manufactured Product Components (MPCs) that are included in the taxpayer's qualified facility or EST consistently with the meaning of those phrases and at a similar level of detail as provided in the IRS guidance on domestic content bonus credit, specifically in Notice 2023-38, Notice 2024-41, Notice 2025-08, and the safe harbor tables thereunder (the "2023-2025 Safe Harbor Tables").

The taxpayer must then track certain characteristics of the identified MPs and MPCs to the specific qualified facility or EST into which the MP or MPC is incorporated, including the direct costs of each MP and MPC (Direct Costs) and whether the MP or MPC was mined, manufactured, or produced by a PFE (PFE Produced). This general tracking rule is subject to two exceptions. First, under the de minimis assignment-based tracking, a taxpayer may assign MPs or MPCs of the same type and characteristics to qualified facilities or ESTs placed in service during the same tax year without individually tracking them, provided that the total Direct Costs of all MPs and MPCs so assigned to such qualified facility or EST represent less than 10% of the total Direct Costs of such qualified facility or EST. And second, in the case of ESTs of the same type with a capacity under one megawatt that were placed in service during the same tax year, the taxpayer may (i) track the Direct Costs of a particular MP or MPC by calculating the average of the Direct Costs of the MPs and MPCs of the same type that were incorporated into the same type of EST that were placed in service during the same specified period of time (Average Costs); and (ii) determine whether a given MP or MPC was PFE Produced by calculating the percentage of the MPs and MPCs of the same type that were produced and that were incorporated into the same type of EST placed in service during a specified period of time (the PFE Production Percentage).

Taxpayers may determine the specified period of time for purposes of the Average Costs and the PFE Production Percentage calculation. However, they must adhere to the following rules: (i) the specified period must be at least one calendar day in length and may only include whole calendar days; (ii) the first specified period of the taxpayer's tax year must start on the first day of the taxpayer's tax year; (iii) specified periods shorter than a full tax year must be contiguous; (iv) every day of the taxpayer's tax year must be covered by a specified period; and (v) the specified period cannot be longer than the taxpayer's tax year.

Observation: In addition to the de minimis assignment-based tracking and the exception for ESTs under one megawatt, the notice also provides a Cost Percentage Safe Harbor to taxpayers, as discussed below.

Once MPs and MPCs are identified and tracked, the taxpayer must determine the Direct Costs attributable to them. Direct Costs include the taxpayer's direct material costs and direct labor costs for taxpayer-produced MPs, or acquisition costs for acquired MPs; however, Direct Costs, including direct labor costs, of incorporating MPs into the qualified facility or EST are excluded.

Observation: Only the Direct Costs of new MPs and MPCs incorporated into a facility that is a qualified facility by virtue of the 80/20 Rule are considered when calculating the Clean Electricity MACR. In addition, the costs relating to steel or iron components are generally excluded from Direct Costs, unless such components are identified as an MP or MPC.

Finally, taxpayers must determine the Direct Costs attributable to each of the identified MPs and MPCs that were mined, manufactured, or produced by a PFE (PFE Direct Costs). If the taxpayer acquires a PFE Produced MP, but some or all of the MPCs included in the MP are not PFE Produced, then the taxpayer must exclude the portion of the MP's acquisition costs that are attributable to the MPCs that are

not PFE Produced from the PFE Direct Costs of that particular MP. If the taxpayer acquires an MP that is not PFE Produced, but some or all of the MPCs included in the MP are PFE Produced, then the taxpayer must include in PFE Direct Costs the portion of the MP's acquisition costs that is attributable to the PFE Produced MPCs. If the taxpayer produces an MP that includes any acquired PFE Produced MPCs, then the taxpayer must include the acquisition costs of the PFE Produced MPCs in the taxpayer's PFE Direct Costs.

Whether an MP or MPC is PFE Produced depends on the PFE status of the relevant entities as of the tax year during which the taxpayer paid or incurred Direct Costs attributable to such MP or MPC under the taxpayer's method of accounting.

Observation: Taxpayers may also use the Certification Safe Harbor to determine Direct Costs and whether MPs and MPCs are PFE Produced, as discussed below.

Upon the completion of the above steps, the Clean Electricity MACR is determined by subtracting the sum of all PFE Direct Costs (PFE Total Direct Costs) from the sum of all Direct Costs (Total Direct Costs) and then dividing that result by the Total Direct Costs. A separate Clean Electricity MACR must be calculated for each qualified facility or EST.

Calculating the Eligible Component MACR

To calculate the Eligible Component MACR for Section 45X purposes, a taxpayer must generally follow steps similar to the ones described above for Section 48E and 45Y taxpayers regarding the Clean Electricity MACR. However, instead of MPs and MPCs, Section 45X taxpayers must identify the constituent elements, materials, or subcomponents (collectively, Constituent Materials) incorporated into the eligible component or consumed in the production of the eligible component (unless they are relying on the Identification Safe Harbor discussed below) and track their relevant characteristics. More specifically, taxpayers must track (i) the Direct Material Costs they paid or incurred for the Constituent Materials (unless they are using the Cost Percentage Safe Harbor discussed below), and (ii) whether the Constituent Material was mined, produced, or manufactured by a PFE (PFE Sourced).

Observation: The notice emphasizes that Direct Material Costs are paid or incurred by the taxpayer within the meaning of Section 461 and the regulations issued under Section 263A, and are defined in accordance with Reg. 1.263A-1(e)(2)(i)(A). The notice also clarifies that Direct Material Costs generally include associated costs such as freight-in and tariffs paid or incurred by the taxpayer. Interestingly, the notice clarified the treatment of tariffs just days before the U.S. Supreme Court struck down President Trump's International Emergency Economic Powers Act tariffs in *Learning Resources v. Trump*. The notice therefore does not address substantive or timing issues related to tariff refunds or other purchase price adjustments.

Similar to the Clean Electricity MACR, Section 45X taxpayers may alternatively track Constituent Materials based on averaging, if a given type of Constituent Material was incorporated in or consumed in production of the same type of eligible component produced during a specified period of time. For tracking based on averaging, Average Costs and the PFE Production Percentage is calculated similar to the average tracking in the case of ESTs with capacity under one megawatt. Production in this context means a process conducted by the taxpayer that substantially transforms constituent elements, materials, or subcomponents into a complete and distinct eligible component that is functionally different from that which would result from minor assembly or superficial modification of the elements, materials, or subcomponents. For solar grade polysilicon, electrode active materials, and applicable critical minerals, production is defined as processing, converting, refining, or purifying source materials to substantially transform the source materials to derive a distinct eligible component.

Observation: The term “production” is defined in the notice consistent with the Section 45X regulations.

To determine whether Constituent Materials are PFE Sourced, taxpayers may use the Certification Safe Harbor (as discussed below) or must apply the PFE definition to the direct supplier of the Constituent Material for all costs associated with the Constituent Material procured from that supplier. If the direct supplier is merely a reseller, then the taxpayer applies the PFE definition to the entity that mined, produced, or manufactured the Constituent Material at issue for all costs associated with those Constituent Materials.

Observation: Complex supply chains may render the task to determine which entity mined, produced, or manufactured the Constituent Material challenging. However, the notice provides helpful clarification that taxpayers need only to consider either the direct supplier or the entity that actually performed the mining, production or manufacturing activities (if the direct supplier was a mere reseller) for purposes of determining whether Constituent Materials are PFE Sourced, eliminating the uncertainty regarding other suppliers in the chain.

As a final step, the taxpayer must determine the taxpayer’s direct material costs for each Constituent Material used to produce the eligible component (Direct Material Costs) and of those, determine the Direct Material Costs attributable to each PFE Sourced Constituent Material (PFE Direct Material Costs).

In the case of an eligible component produced pursuant to a contract manufacturing arrangement, Direct Material Costs are the direct material costs that are paid or incurred by the party that performs the actual production activities that bring about a substantial transformation resulting in the eligible component. The taxpayer claiming a Section 45X credit in a contract manufacturing arrangement may include the direct material costs for purposes of determining the Direct Material Costs if the party performing the production activities under such arrangement did not incur those costs.

Observation: The term “contract manufacturing” for Section 45X purposes has a different meaning than under Section 263A, and also includes tolling arrangements, under which the party performing the production activities uses the materials and subcomponents that the Section 45X taxpayer provides. For such tolling arrangements (where the “contract manufacturer” would not incur direct material costs), the notice provides that the taxpayer claiming the Section 45X credits may include such direct material costs.

The Eligible Component MACR is calculated by subtracting the sum of all PFE Direct Material Costs for all PFE Sourced Constituent Materials (PFE Total Direct Material Costs) from the sum of all Direct Material Costs for all Constituent Materials (Total Direct Material Costs) and then dividing that result by Total Direct Material Costs.

Interim safe harbors

To effectuate the interim safe harbors of Section 7701(a)(52)(D)(iii)(II), the notice describes three interim safe harbors that taxpayers may use when determining the Clean Electricity MACR or the Eligible Component MACR: (i) the Identification Safe Harbor, (ii) the Cost Percentage Safe Harbor, and (iii) the Certification Safe Harbor.

Identification Safe Harbor

A taxpayer may rely on the Identification Safe Harbor to identify MPs and MPCs of a “Listed” qualified facility or EST for Section 48E and 45Y purposes, or to identify the Constituent Materials of a “Listed” eligible component for Section 45X purposes. A qualified facility or EST is “Listed” if it is included as an

"Applicable Project" (AP) in the 2023-2025 Safe Harbor Tables, which include Sections 5.05, 5.06, 6.02, and 7.02 of Notice 2025-08, Section 3.02 in Notice 2024-41 for a Hydropower Facility, or a Pumped Hydropower Storage Facility, and Section 3.04 in Notice 2023-38 for an Offshore Wind Facility. Similarly, an eligible component is "Listed" if it is included as an "Applicable Project Component" (APC) in the 2023-2025 Safe Harbor Tables.

If a taxpayer uses the Identification Safe Harbor, it must use the MPs and MPCs listed in the relevant 2023-2025 Safe Harbor Tables as the exclusive and exhaustive list of MPs, MPCs or Constituent Materials for purposes of calculating the MACR. This means that if an MP is not listed in a table, it cannot be considered when determining the MACR, even though such MP is incorporated into a qualified facility or EST.

Observation: The Identification Safe Harbor relies on the safe harbor tables included in the previously issued guidance on domestic content bonus credit. However, such tables are only available for certain, but not all types of qualified facilities, ESTs, or eligible components. Accordingly, not all Section 48E, 45Y, or 45X taxpayers will be able to take advantage of this safe harbor.

Cost Percentage Safe Harbor

A taxpayer may use the Cost Percentage Safe Harbor only if it uses the Identification Safe Harbor. Under the Cost Percentage Safe Harbor, the MACR is determined by relying on the Assigned Cost Percentages listed in the 2023-2025 Safe Harbor Tables as the exclusive and exhaustive set of costs. A taxpayer may not use the Cost Percentage Safe Harbor for any facility which is a qualified facility by virtue of the "Incremental Production Rule" (under which a new unit or additions of capacity to an existing facility can generally be considered as a qualifying facility to the extent of increased production that results from such new unit or additions of capacity). A taxpayer must also disregard any used property for purposes of using the Cost Percentage Safe Harbor for any facility owned by the taxpayer that is a qualified facility by virtue of the 80/20 Rule (under which an AP may qualify as originally placed in service even though it contains some used property, provided the fair market value of the used property is not more than 20% of the AP's total value calculated by adding the cost of the new property to the value of the used property).

Observation: Consistent with the Identification Safe Harbor, the Cost Percentage Safe Harbor is not available to taxpayers whose project is not listed in the 2023-2025 Safe Harbor Tables. Instead, such taxpayers will need to gather and analyze actual Direct Costs or Direct Material Costs, as applicable.

Certification Safe Harbor

Under the Certification Safe Harbor, a taxpayer may rely on certifications from direct suppliers to determine the Direct Costs or Direct Material Costs and the PFE Direct Costs or PFE Direct Material Costs, as applicable for Section 48E, 45Y, or 45X purposes, and/or to determine whether MPs and MPCs are PFE Produced or Constituent Materials are PFE Sourced. This safe harbor can be used (i) with the Identification Safe Harbor, (ii) with both the Identification and the Cost Percentage Safe Harbor, or (iii) without the other safe harbors. However, if a taxpayer knows (or has reason to know) that the certification is inaccurate and that an MP, MPC, eligible component, or Constituent Material was PFE Produced or PFE Sourced, then the taxpayer must treat all direct costs or direct material costs with respect to such property as PFE Produced or PFE Sourced.

Observation: The statute requires that the certification be obtained from the supplier from which the taxpayer purchased any MP, eligible component or subcomponents, materials, or constituent elements. The notice clarifies that it must be the direct supplier that provides the certification. Accordingly, even if the direct supplier was just a reseller, the taxpayer is still not required to obtain a certification from the

entity that mined, produced, or manufactured an item. However, since a taxpayer cannot rely on a certification that it knows or has reason to know to be inaccurate, it is still unclear how far a taxpayer is required to trace a supplier chain to satisfy the “knows or has reason to know” standard, or what affirmative obligations that standard might create to scrutinize publicly available information.

The certification must include the information identified in Section 7701(a)(52)(D)(iii)(IV) and the notice, and be attached to the form claiming the Section 48E, 45Y, or 45X credit filed with the taxpayer’s annual return for the first tax year in which the taxpayer claims a credit for a qualified facility, EST, or eligible component. The certification must be retained by both the supplier and the taxpayer for a period of not less than six years.

Observation: It is unclear whether the certification must be obtained from a supplier at the time of the purchase or at the end of the year, or what would be the consequence if a taxpayer used an MP, MPC, eligible component or material in its production that was purchased from a supplier who provided a valid and accurate certification at the time of the purchase, but became a PFE by the end of the tax year and/or after the taxpayer completed production.

Anti-evasion provisions

Treasury and the IRS signaled their intent in the notice to propose regulations to prevent entities from evading, circumventing, or abusing the application of restrictions with respect to PFEs, including rules to prevent such evasion, circumvention, or abuse through transfers or alterations of rights, property, or both, including transfers or alterations resulting in lapses of restricted foreign ownership or control that are temporary in nature.

Observation: The reference to "temporary" lapses indicates that the government intends to focus on transactions where foreign ownership or control is reduced immediately before a relevant determination date and then restored.

Reliance, open issues, and next steps

The Treasury Department and the IRS intend to issue more comprehensive proposed regulations and other guidance with respect to the definitions of a PFE and material assistance from a PFE. In the meantime, taxpayers may rely on Notice 2026-15 to calculate (i) the Clean Electricity MACR for any Section 48E qualified facility or EST, or any Section 45Y qualified facility, the construction of which begins after December 31, 2025, and (ii) the Eligible Component MACR for Section 45X eligible components sold in tax years beginning after July 4, 2025, and on or before the date that is 60 days after the publication of the forthcoming proposed regulations in the Federal Register (or with respect to the interim safe harbors, the publication of the forthcoming safe harbor tables under Section 7701(a)(52)(D)(iii)(I)). The notice also provides that a taxpayer using the guidance must apply it in a manner that is consistent with the purposes of the PFE and material assistance rules under Sections 7701(a)(51) and (52).

In addition to general comments, Treasury and the IRS requested comments on the following specific questions:

- Is any further guidance needed to clarify how to determine Total Direct Costs, including whether the standard based on the taxpayer’s direct costs under the Section 263A regulations capture the appropriate costs, and whether the rules for taxpayers that purchase MPs or MPCs should be different than for those that mine, produce, or manufacture them?

- What rules are necessary to prevent the circumvention of the restrictions with respect to PFEs?
- What substantiation and documentation should be required to support compliance with the anti-circumvention rules, including to demonstrate that beginning of construction of a qualified facility or EST has occurred for purposes of the PFE and material assistance rules added by the OBBBA?

Observation: Notice 2026-15 does not address several important areas. For example, the statute provides that a publicly traded entity is deemed to be a foreign-influenced entity if such entity has issued debt, as part of an original issuance, in excess of 15% of its publicly-traded debt to one or more SFEs. However, certain aspects of this test remain ambiguous, including (i) whether this test applies at the time of issuance or on an ongoing basis, (ii) what efforts should be undertaken to verify the identity and ownership of the debt holders, or (iii) how multinational cash pooling arrangements should be considered for purposes of this test. The notice also does not address complicated ownership structures and attribution rules for purposes of determining an entity's PFE or SFE status.

While the comment period expired on March 30, 2026, the notice indicates that consideration will be given to any written comments submitted after March 30, 2026, if such consideration will not delay the issuance of future published guidance.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact us.

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