

## CLIENT ALERT

# Treasury and IRS Issue Revised Beginning of Construction Guidance for Clean Energy Tax Credits

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Earlier this afternoon the Treasury Department and the IRS released much-anticipated beginning of construction guidance in response to President Trump's executive order issued shortly after the passage of the "One Big Beautiful Bill." Notice 2025-42 (available: <https://communications.willkie.com/138/3076/uploads/notice-2025-42.pdf>) (the "**Updated BOC Notice**") applies to solar and wind projects that do not begin construction prior to September 2, 2025 (as determined under prior guidance) for purposes of the credit termination provisions under Section 45Y and Section 48E of the Internal Revenue Code. The One Big Beautiful Bill terminates the clean electricity production credit under Code Section 45Y and the clean electricity investment credit under Code Section 48E if the applicable wind or solar facility begins construction after July 4, 2026 (one year after passage of the One Big Beautiful Bill) and is not placed in service by the end of 2027. It is noteworthy that the Updated BOC Notice does not apply for purposes of determining whether a project began construction by a certain date for other purposes, such as the applicability of the "foreign entity of concern" rules or applying the energy community start of construction safe harbor.

For purposes of determining whether a facility began construction on or prior to July 4, 2026, the Updated BOC Notice effectively eliminates the “5% safe harbor” pursuant to which a project was deemed to start construction once five percent (5%) or more of the total costs of such project were incurred. As a result, for purposes of the credit termination provisions under Sections 45Y and 48E of the Code, the physical work test is the exclusive means of establishing start of construction (other than for a low output solar facility that has a maximum net output of not greater than 1.5 megawatts) for a wind or solar facility that did not begin construction before September 2, 2025.

We are continuing to review the Updated BOC Notice and will provide additional analysis as necessary.

**If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.**

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