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Usable Domestic Content Safe Harbor Issued

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On May 16, 2024, the IRS released Notice 2024-41, which modifies the previously issued Notice 2023-38, to provide a new safe harbor for qualifying for the “domestic content” addition to the federal production or investment tax credits. This new safe harbor provides specified percentages of cost to be used by taxpayers to determine whether the manufactured products, steel, and iron, in a project will meet the required minimum percentages to qualify for the “domestic content” addition. From our experience advising clients with respect to “domestic content,” initial indications are that this new safe harbor will provide a clearer and more manageable pathway to qualifying for this addition, as obtaining the actual, direct costs from the manufacturer will not be required.

The new safe harbor requires disregarding manufactured products, steel, or iron outside of the table in the Notice. This is important because, in an investment tax credit project (in particular), the proposed regulations defining “energy property” potentially required consideration of a wide variety of equipment and construction in the balance of plant, which now must be disregarded if the safe harbor is utilized. The Notice has an example of a land-based wind project that includes an interconnection transformer and substation and the example expressly states that these are excluded from the calculation for determining if the project meets the “domestic content” requirements.

Notice 2024-41 also addresses how to utilize the safe harbor when specific projects do not align with the table. Items in the table that are not included in a project are zeroed out. Additional items that are in a project but not in a project are disregarded; however, while it means that these additional items will not disqualify a project, it also means that these items may not count toward satisfying the requirement. In situations where this may be detrimental to specific projects, the taxpayer will have the alternative of not using this new safe harbor.

The safe harbor includes formulas for specific situations. Specifically, there is a formula to utilize where domestic and non-domestic components are utilized for the same manufactured product. A different formula is provided for energy projects comprised of solar photovoltaic systems and battery energy storage systems (BESS). It is unclear whether the latter formula might be used in an energy project that uses a different resource to produce electricity that is likewise paired with a BESS.

Taxpayers are still required to retain records sufficient to substantiate their claim for the “domestic content” credit addition. This will entail tracking where manufacturing occurs for each components and manufactured

products that is claimed to be manufactured in the United States and tracking those components and products to the project.

In addition to this new safe harbor, the Notice also adds hydropower to the table and re-names “Utility-scale photovoltaic system” to “Ground-mount and rooftop photovoltaic system” within the table.

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