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Tax Update September 22, 2025

New Debt Issuance Considerations under the One Big Beautiful Bill Act

This update describes considerations arising under the OBBBA related to debt issuances to specified foreign entities that may result in the issuer's becoming ineligible for certain U.S. federal income tax credits.

The One Big Beautiful Bill Act (the OBBBA),[1] which was signed into law on July 4, 2025, made significant changes to U.S. federal income tax benefits available to certain clean energy projects.[2]

This update describes considerations arising under the OBBBA relating to debt issuances to "specified foreign entities" (SFEs) that may result in the issuer's becoming ineligible for certain clean energy-related tax credits.[3]

Executive Summary

Issuers may become ineligible to claim tax credits. Under the OBBBA, a borrower that has issued at least 15 percent[4] of its debt to certain foreign entities or individuals (most notably, Chinese or Chinese-controlled entities) is treated as a "foreign-influenced entity," making the issuer ineligible to claim certain clean energy-related tax credits.[5]

Affected credits and effective dates. The rule denies the following credits to affected taxpayers:

- The credits under section 45Q (carbon capture, utilization, and sequestration), section 45X (advanced manufacturing production), section 45Y (clean electricity production), and section 48E (clean electricity investment) for taxable years beginning after July 4, 2025.

- The credits under section 45Z (the clean fuel production) and section 45U (zero-emission nuclear production) for taxable years beginning after July 4, 2027.

Additional Detail

Potential Adverse Impact on Issuer

The OBBBA introduced a rule that prevents an issuer/borrower[6] from claiming these tax credits if 15 percent or more of the issuer's debt has been issued to one or more SFEs. Importantly, for publicly traded debt, the test is based on the identity of the original holders.[7]

Definition of Specified Foreign Entity

Among other entities, an SFE includes:

1. The governments (including agencies and instrumentalities) of China, Iran, Russia, and North Korea;
2. Citizens or nationals of any of those countries;
3. Entities or branches formed in or having their principal place of business in any of those countries; and
4. Controlled entities and subsidiaries of any of the above (determined on a more-than-50 percent equity ownership basis and regardless of jurisdiction of organization).

No Applicable Guidance

The IRS and Treasury have not issued guidance regarding these rules. In the absence of guidance, the market approach for managing the rules is still developing, with ongoing negotiation between issuers and underwriters. Issuers subject to the rules should, at a minimum, require underwriters to:

1. Remove China and Hong Kong selling legends in the offering document;
2. Add "embargo" language in Bloomberg prohibiting sales into China and Hong Kong;
3. Discuss draft allocations with the issuer before pricing to determine whether the issuer has any concerns with the identities of potential investors; and
4. Provide a final list of the initial allocations, ideally with addresses for the investors.

In addition, the issuer should document the steps that were taken to address the potential application of these rules and keep that documentation in its files.

It is hoped that the IRS and Treasury will issue guidance (i) listing the entities and persons that are SFEs for these purposes, (ii) clarifying which debt issuances are to be included in the numerator and denominator for purposes of the 15 percent determination, and (iii) specifying whether the test is applied on an entity-by-entity or on a group-wide basis (and, if on a group-wide basis, how to determine the composition of the group).

[1] The technical name for the OBBBA is "an Act to provide for reconciliation pursuant to title II of H. Con. Res. 14."

[2] The text of the OBBBA can be found here. Our prior alert on the tax highlights of the OBBBA can be found here. Our prior alert on the clean energy-related tax provisions of the OBBBA can be found here.

[3] Unless indicated otherwise, all "section" references are to the Internal Revenue Code of 1986, as amended (the "Code"). All references to "Treasury" are to the U.S. Department of the Treasury, and all references to "IRS" are to the U.S. Internal Revenue Service.

[4] Section 7701(a)(51)(D)(i)(I)(dd), which is the general rule, describes this threshold as "at least 15 percent," although we note that section 7701(a)(51)(E)(iii)(II), which is a specialized rule for entities that have publicly-traded securities or certain subsidiaries of those entities, describes this threshold as a percent "in excess of 15 percent."

[5] The determination as to whether an entity is a foreign-influenced entity is made as of the last day of the applicable taxable year.

[6] It is unclear whether these rules apply on an entity-by-entity basis or on a group-wide basis (and, if the latter, how to determine the relevant group). For example, it is unclear whether debt issued by a parent corporation could cause one or more of its corporate subsidiaries to become ineligible to claim these credits.

[7] Section 7701(a)(51)(e)(iii)(II). It is unclear how the 15 percent test is calculated.

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Gibson Dunn lawyers are available to assist in addressing any questions you may have regarding this proposed legislation. To learn more about these issues or discuss how they might impact your business, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any member of the firm's Tax and Tax Controversy and Litigation practice groups:

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