



## GUIDANCE UPDATE

# US Treasury Tightens Beginning of Construction Standards for Solar and Wind Projects, Creating Uncertainty for Energy Tax Credits

On Friday, the U.S. Department of the Treasury and Internal Revenue Service (IRS) released new guidance regarding when construction of a wind and solar facility has begun for purposes of qualifying for tax credits. [Notice 2025-42](#) follows the recent passage of significant tax legislation (referred to as "One Big Beautiful Bill Act," but we're calling it "OB3") that phases out tax credits for clean energy projects. Days after signing OB3 into law, President Donald Trump issued an executive order directing Treasury to tighten up the rules for beginning construction on new projects to strictly enforce the tax credit phase-out.

Until now, the renewables industry has relied on a series of notices issued by the IRS beginning in 2013 to establish when construction has begun on a project intended to qualify for tax credits. Prior guidance allowed developers to establish the "beginning of construction" on a project by performing "physical work of a significant nature" or meeting a safe harbor by incurring 5% of the project costs and then demonstrating continuous work to complete the project.

The main takeaway from this recent guidance is the 5% safe harbor is no longer available for large solar projects and all wind projects beginning construction on or after September 2, 2025. Instead, "beginning of construction" for purposes of these facilities will be based solely on physical work performed, although it is unclear how much work will suffice. The notice states that there is no set minimum amount of work or dollar-threshold required to qualify. Instead, each project requires a facts-and-circumstances analysis that will require sign off from tax credit buyers and tax equity investors. Distributed solar facilities with less than 1.5-megawatt maximum net output, and other power and storage technologies may continue to rely on earlier "beginning of construction" guidance (for now).

Although not as punitive as the industry expected, the revised "beginning construction" framework makes it harder for projects beginning construction after September 2, 2025 to qualify for tax credits. Moreover, a footnote in the Notice alludes to further "beginning of construction" guidance from Treasury and the IRS related to application of the "Foreign Entity of Concern" rules which applies to projects beginning construction in 2026.

Developers, sponsors, tax equity investors, lenders, and tax credit buyers can, however, continue to look to Vanbridge's tax credit insurance solutions to protect against an unexpected financial loss if a renewable energy project fails to qualify for an intended tax credit. For example, a tax credit insurance policy that covers "beginning of construction" risk, adds certainty to the financing of a clean energy project by protecting against a challenge by a taxing authority to an intended construction start date. Coverage under a tax credit insurance policy is tailored to the tax risks in each transaction, which may include failure of the investment or transfer structure to be respected as well as disallowance, reduction or recapture of the intended tax credits.

Vanbridge's Tax Team can help bring certainty to your project finance transaction with tax credit insurance and other bespoke solutions. For more information on how tax insurance can be used to facilitate renewable energy project financing, [see our earlier commentary](#) or reach out to a member of our team today.

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