



TaxNewsFlash

United States



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Notice 2023-38: Domestic content bonus credit guidance under sections 45, 45Y, 48, and 48E

The IRS today released an advance version of [Notice 2023-38](#) [PDF 180 KB] describing certain rules that the Treasury Department and IRS intend to include in forthcoming proposed regulations regarding the domestic content bonus credit requirements under sections 45, 45Y, 48, and 48E, including related recordkeeping and certification requirements. The notice also describes a safe harbor regarding the classification of certain components in representative types of qualified facilities, energy projects, or energy storage technologies.

Background

H.R. 5376 (commonly called the “Inflation Reduction Act of 2022” (IRA)) amended sections 45 and 48 to provide a domestic content bonus credit amount for certain qualified facilities or energy projects placed in service after December 31, 2022, and added new sections 45Y and 48E, which also incorporate a domestic content bonus credit amount, for projects placed in service after December 31, 2024.

Very generally, the domestic content bonus provides taxpayers claiming clean energy tax credits with the opportunity to claim up to an additional 10% credit for constructing projects using domestically produced steel, iron, and manufactured products.

Manufactured products are considered domestically produced if not less than an adjusted percentage of the total costs of such manufactured product are mined, produced, or manufactured in the United States. The adjusted percentage starts at 40% for projects on which construction begins before 2025 and increases thereafter.

Importantly, while satisfying the domestic content rules provide a bonus credit opportunity, not satisfying domestic content may also result in a haircut to the amount of a credit claimant’s “direct pay” tax credit, where applicable.

Notice 2023-38

The notice provides guidance relating to how what is considered a manufactured product, including its components, and how to determine the adjusted percentage of such manufactured products.

In addition, the notice provides a safe harbor for classifications of certain components, including determinations of whether such components are categorized as “steel/iron” or a “manufactured product.”

Finally, the notice provides guidance relating to when and how to certify that domestic content requirements are satisfied and references general recordkeeping requirements under section 6001 for substantiation.

The notice states the taxpayers may rely on the rules described for any qualified facility or project the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations. The notice further provides that forthcoming proposed regulations will be issued on domestic content and such proposed regulations will apply to tax years ending after May 12, 2023.

Read a related [IRS release](#) and related [Treasury release](#)

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