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KPMG report: Outlook for what's ahead for energy tax incentives (GREEN Act)

Coming off year-end extensions, the tax incentives for various renewable and clean energy sources and technologies could see an additional boost from Congress in the coming months.

This report briefly summarizes current law and describes the potential for additional extensions and enhancements.

Current law

Both the production tax credit (PTC) and investment tax credit (ITC) statutorily phase down based on the date on which construction on a project begins. The "Consolidated Appropriations Act, 2021," (the "Act") signed on December 27, 2020, extended the PTC and ITC and provided other changes favorable to the renewable energy industry. Read a more detailed summary of these changes in ***TaxNewsFlash***.

Solar

A 26% ITC rate is available for solar projects that begin construction in 2021 or 2022, and a 22% ITC rate is available for projects that begin construction in 2023. Projects that begin construction thereafter or that are placed in service after 2025 will remain eligible for a 10% ITC.

Wind

Taxpayers that begin construction on a wind facility in 2021 continue to be eligible for the PTC at 60% of the otherwise available statutory rate (currently 2.5 cents per kilowatt hour and adjusted annually for inflation). A taxpayer may elect the investment tax credit ITC in lieu of the PTC, in which case the ITC rate would be 18% of eligible basis.

Offshore wind

The Act included a special rule for offshore wind farms. Under the Act, a taxpayer that begins construction on an offshore wind farm after 2016 and before 2026 is eligible to claim the ITC at the full statutory credit rate of 30%.

Other extensions and modifications

The Act:

- Extended ITCs and PTCs for other types of resources such as geothermal, hydropower, fuel cell, small wind and others
- Extended the section 45Q credit for carbon capture and sequestration facilities
- Provided a new ITC for waste energy recovery property

The GREEN Act

President Biden has described a two-step plan for "rescue and recovery" in response to the COVID-19 health and economic crises—the "American Rescue Plan" and the "Build Back Better Recovery Plan." The recovery plan could include a massive bill that addresses multiple policy areas, including infrastructure, manufacturing, innovation, research and development, clean energy, investments in the caregiving economy, and worker training.

In February 2021, Representative Mike Thompson, (D-CA), a member of the Committee on Ways and Means of the U.S. House of Representatives, reintroduced the Growing Renewable Energy and Efficiency Now (GREEN) Act. The GREEN Act would further extend and enhance the incentives for wind and solar and other technologies and would introduce some new and interesting provisions aimed at supporting the development of clean energy. As priorities emerge for inclusion in a recovery plan, existing proposals, such as the GREEN Act, may be an indicator of what's to come.

ITC and PTC

The GREEN Act would reinstate and extend the solar ITC at 30% for projects that begin construction after 2020 and before 2026, then phase down to 26% for projects that begin construction in 2026, 22% for projects that begin construction in 2027 and 10% thereafter.

The table below summarizes the current applicable credit rates for **solar** based on the date construction begins and then shows the changes proposed in the GREEN Act:

Construction begins in	**Current law ITC rate**	**GREEN Act ITC rate**
2020 - 2022	26%	30%
2023	22%	30%
2024 -2025	10%	30%
2026	10%	26%
2027	10%	22%
After 2027	10%	10%

For wind, the GREEN Act would extend the current 60% PTC for wind facilities that begin construction before 2027.

The table below summarizes the current applicable credit rates for **onshore wind facilities** based on the date construction of the facility began/begins:

	Current law credit rate		GREEN Act credit rate	
Construction begins in	**PTC**	**ITC**	**PTC**	**ITC**
2020	60%	18%	60%	18%
2021	60%	18%	60%	18%
2022 - 2026	0%	0%	60%	18%
After 2026	0%	0%	0%	0%

A significant feature of the GREEN Act is its inclusion of a provision allowing taxpayers to elect to have 85% of the ITC and PTC refundable. In other words, taxpayers could take the credit as a refund even if they do not have the taxable income to offset the credits. Specifically, the legislation would treat the applicable portion of the credit as a "payment of tax" that is subject to refund. By recasting credits as a payment of tax, it is possible that the proposal simultaneously would provide a direct tax benefit to the taxpayer while not creating related tax increases under the base erosion and anti-abuse tax (BEAT).

This refundability mechanism would significantly change the landscape of renewable energy development and investment, which currently relies on large part on outside tax equity investors. As written, the provision would only apply to projects placed in service after the date of enactment.

The GREEN Act would extend the ITC and PTC for other eligible technologies and expand the ITC to include energy storage technology and linear generators.

Electric vehicles

The GREEN Act also includes proposals related to electric vehicles, which is another priority area for the Biden administration. The proposal would extend and expand the existing electric vehicle incentives and also broaden the scope of the incentives.

The GREEN Act would modify existing limitations on the available credits for qualified plug-in electric drive motor vehicles. Under current law, the tax credit available for such vehicles is between $2,500-$7,500 and phases out beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of vehicles manufactured by the manufacturer after December 31, 2009, for use in the United States is at least 200,000. The GREEN Act would amend this limitation by providing a transition period for all vehicles sold after a manufacturer reaches the 200,000 vehicle threshold and reducing the per vehicle dollar limitation under the transition period by $500. Further, the GREEN Act would increase the phase-out period threshold to 600,000 vehicles.

The GREEN Act also includes a provision that would allow manufacturers who have already passed the 200,000 threshold to begin at the transition period and continue to benefit from the credit.

The GREEN Act would create a new tax credit for used electric vehicles. The amount of the credit is based on a statutory formula and would be limited to no more than 30% of the sales price of the vehicle.

The GREEN Act would create a new tax credit for any vehicle weighing at least seven (7) tons which does not include an internal combustion engine, and is propelled solely by an electric motor powered by a battery or fuel cell. The credit is equal to 10% of the sales price of such vehicle, except to the extent the sales price of such vehicle exceeds $1 million.

Other notable provisions

The GREEN Act would:

- Extend the section 45Q credit for carbon oxide sequestration facilities that begin construction before the end of 2026 and, like the PTC and ITC refundability election, provide an 85% direct-payment option for developers.
- Extend and modify residential energy and energy efficiency incentives
- Provide for additional allocation of section 48C advanced manufacturing credit

Other potential proposals

In addition to those included in the GREEN Act, there are various other proposals and efforts aimed at advancing a clean energy agenda that need to be monitored on the legislative as well as administrative fronts:

- Tax incentives for investments in the electric transmission grid
- Repeal/reform of deduction for intangible drilling costs
- Long-awaited update to ITC regulations
- Energy tax-related proposals in the administration's budget proposals (the Green Book)
- Further study within the Treasury Department on the carbon pricing/carbon tax

Timing

For a detailed discussion of the possible timing and potential roadblocks for both rescue and recovery legislation see **The Biden Administration and the 117th Congress: Possible Tax Legislation** [PDF 2.8 MB].

To summarize, the process is likely to be complicated given the scope of the expected recovery bill and the numbers of policy priorities involved so it might take several months for legislation to move through the process. And, of course, priorities could change during this time. That said, the current emphasis on clean energy both from the Biden administration and many members of Congress is unlikely to subside.

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