

# Update from Washington

Brandon Audap, Director of Federal Affairs, SEIA  
Christopher Mansour, Vice President of Federal Affairs, SEIA  
Gary Hecimovich, Partner, Deloitte Tax LLP  
Hilary Lefkko, Senior Associate, Hunton & Williams LLP

February 18, 2016

# Agenda

## Protecting Americans from Tax Hikes (PATH) Act of 2015 and other provisions in P.L. 114-113

- Renewable energy incentives
  - Extended
  - Not extended
- Bonus depreciation extension
- What does it mean to begin construction?
- Additional IRS guidance

# Protecting Americans from Tax Hikes (PATH) Act of 2015 and other provisions in P.L. 114-113

# Renewable Energy Incentives

- Solar ITC
  - Extended 5 years with phase-down
  - Change to begun construction standard
- Residential solar ITC
  - Extended 5 years with phase-down
  - Remains a placed in service date standard
- Wind PTC and ITC in Lieu of PTC
  - Extended 5 years with phase-out
- Other Renewable Energy Resources
  - “Clean” 2-year extension (e.g., geothermal, hydro, biomass, landfill gas, waste to energy)
- Bonus Depreciation
  - Extended 5 years with phase-out

# Investment tax credit (ITC) for solar projects under §48

The §48 ITC was extended for solar projects that **commence construction** before 1/1/22:

- Begin construction before 1/1/20 – 30%
- Begin construction before 1/1/21 – 26% (CY2020)
- Begin construction before 1/1/22 – 22% (CY2021)
- Property on which construction is begun before 1/1/22 but is placed in service after 12/31/23 – 10%

Note, for property on which construction is begun on or after 1/1/22, the permanent 10% ITC may still be claimed in the taxable year in which such property is placed in service.

# Production tax credit (PTC) and ITC in Lieu of PTC for Wind under §§45 and 48

Renewable electricity production credit extension:

- A **5-year extension** of the PTC and ITC in lieu of PTC for **wind facilities** with a **phase out**:
  - Begin construction before 1/1/17 – 100% PTC / 30% ITC
  - Begin construction before 1/1/18 – 80% PTC / 24% ITC (CY2017)
  - Begin construction before 1/1/19 – 60% PTC / 18% ITC (CY2018)
  - Begin construction before 1/1/20 – 40% PTC / 12% ITC (CY2019)
  - Begin construction on or after 1/1/20 – 0% PTC / 0% ITC
- A **2-year clean extension** (begin construction before 1/1/17) for the other section 45 qualifying resources biomass, trash, landfill gas, geothermal and hydropower facilities
- *IRS has already announced a guidance project and is soliciting industry comments*

## Residential energy efficient property credit under §25D

The section 25D residential ITC was extended at 30% for qualifying **solar** projects that are placed in service before 1/1/20 and then phased out:

- Placed in service before 1/1/20 – 30%
- Placed in service before 1/1/21 – 26% (CY2020)
- Placed in service before 1/1/22 – 22% (CY2021)
- Placed in service after 1/1/22 – 0%

# Energy-related provisions Congress allowed to expire

- Section 48 ITC for combined heat & power system property, fuel cells, microturbines, small wind, geothermal was allowed to expire, but remains in effect for qualifying technologies placed into service by December 31, 2016.
- Section 25D ITC for residential geothermal, fuel cell or small wind property was allowed to expire, but remains in effect for qualifying technologies placed into service by December 31, 2016.



# Extension of Bonus Depreciation

- Prior rule required property to be placed in service by the taxpayer before January 1, 2015, or, in the case of longer production period property before January 1, 2016
- Extends bonus depreciation for qualified property placed in service over the next five years, subject to a phase-out schedule
  - General rule
    - 50 percent bonus depreciation continues for 2015, 2016, and 2017
    - 40 percent in 2018
    - 30 percent in 2019
  - Transition rules for longer production period property
- Extends through 2019 the election to accelerate AMT credits in lieu of bonus depreciation, and beginning in 2016, increases the amount of unused AMT credits that may be claimed in lieu of bonus depreciation

What Does It Mean to Begin  
Construction?

# Begun Construction - Background

- American Taxpayer Relief Act of 2012 (“ATRA”)
  - Changed eligibility for certain PTC and ITC in lieu of PTC technologies from a “Placed-in-Service” date requirement to a “Begun Construction” date requirement before January 1, 2014
  - Legislators intended the provision to generally follow the “begun construction” rules established for the Section 1603 Grant Program
  - Notice 2013-29, Notice 2013-60, and Notice 2014-46 promulgated to establish rules for interpreting the begun construction requirement
    - Most aspects of the guidance developed specifically for the wind industry
- Taxpayer Increase Prevention Act (“TIPA”)
  - Extended PTC and ITC in lieu of PTC for facilities that had begun construction before January 1, 2015
  - Notice 2015-25 promulgated to address the statutory change and its impact on begun construction rules

# Begun Construction - Quick Primer

## Two-prong requirement

1. Determine period construction commences
  - Physical Work of a Significant Nature ("PWSN"), or
  - 5% Safe-Harbor
2. Continuity requirement
  - Program of continuous construction (applies to PWSN), or
  - Continuous efforts toward completion (applies to 5% safe-harbor)
  - 24-Month Deemed Continuous Safe-Harbor
    - Project will be treated as satisfying the continuity requirement to the extent the facility is placed in service within 2 years of the statutory begun construction date

## Special rules

- Aggregation is permitted on a facts and circumstances basis
- Successors may generally “step into the shoes” of predecessor
- Certain property transfers NOT permitted

# Begun Construction Standard for PTC and ITC in lieu of PTC Defined

- Notice 2013-29 (April 15, 2013) – Begun construction guidance
  - Physical work of a significant nature
  - 5% safe-harbor
  - Look-through rule for work performed under a binding written contract
  - Aggregation rule
  - Continuous efforts / program of continuous construction
  - No successor in interest rule
- Notice 2013-60 (September 20, 2013) – Begun construction clarification
  - 24-month safe-harbor for continuous efforts / program of continuous construction
  - Master contract can be replaced by project contract for 5% safe-harbor
  - Successor in interest rule

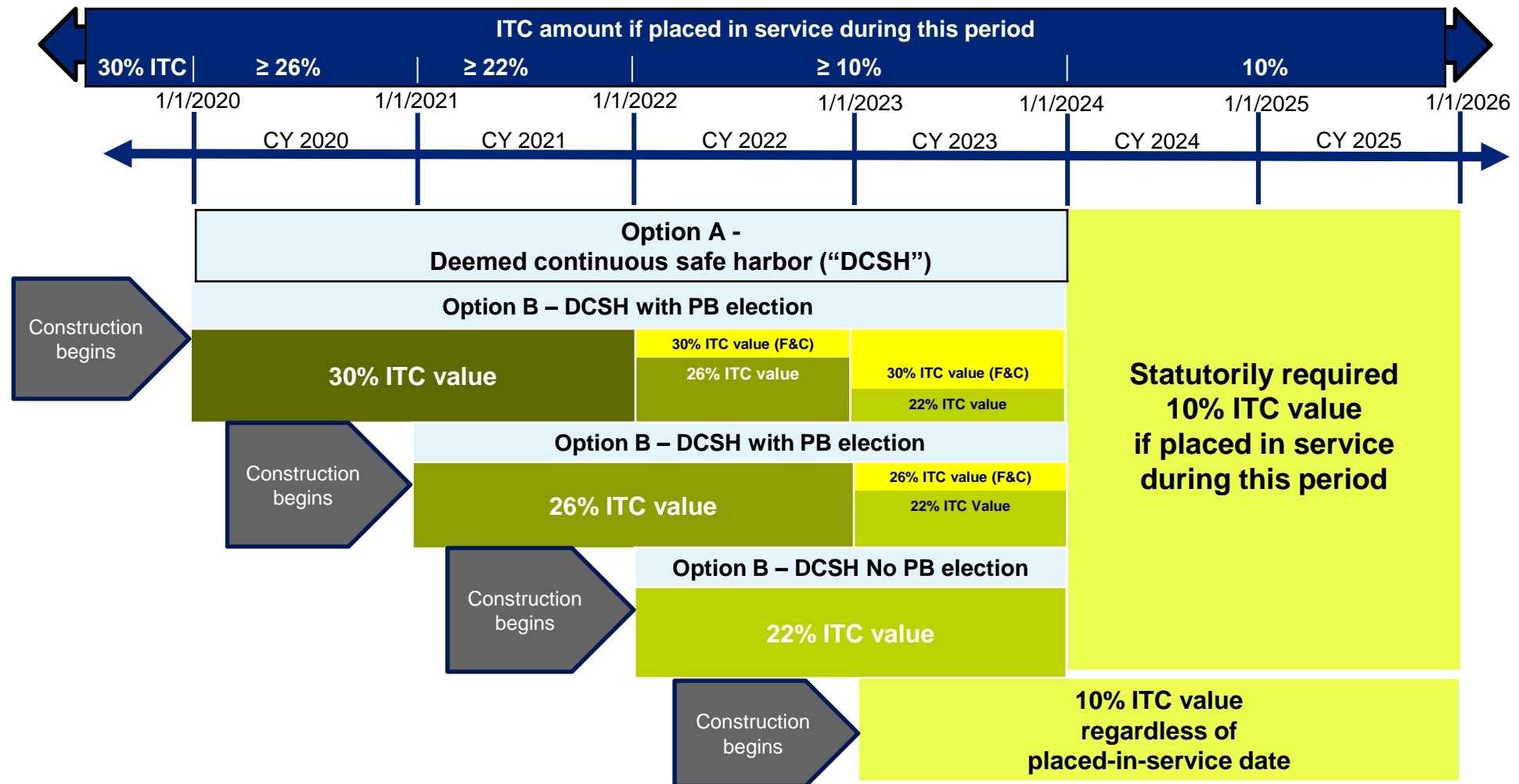
## Begun Construction Standard for PTC and ITC in lieu of PTC Defined

- Notice 2014-46 (Aug. 8, 2014) – Begun construction clarification
  - Physical Work of a Significant Nature
  - Qualitative vs. Quantitative standard - Beginning any work on a transformer, roads, or the foundation is PWSN
  - Transferability- Developers permitted to transfer projects under construction - except transfers of solely tangible personal property to an unrelated party
  - Taxpayer only has to incur 3%, subject to a cutback on the size of the project
- Notice 2015-25 (Mar. 11, 2015) – Begun construction clarification
  - References to “January 1, 2014” begun construction deadline in prior IRS Notices replaced with “January 1, 2015”
  - Extends deadline for Deemed Continuous Safe Harbor, through December 31, 2016, (i.e., 24 months from statutory begun construction deadline) without regard to physical work performed or costs paid or incurred after December 31, 2014 and before January 1, 2017

# Additional IRS Guidance

# Begun construction guidance - Proposed provisions following PATH Act and Omnibus legislation

## Solar energy property





Question and answer

# Contact info

Gary Hecimovich  
Deloitte Tax LLP  
[ghecimovich@deloitte.com](mailto:ghecimovich@deloitte.com)  
(202) 879-4936

Hilary Lefko  
Hunton & Williams LLP  
[hlefkoh@hunton.com](mailto:hlefkoh@hunton.com)  
(202) 955-1906

This presentation contains general information only and Deloitte is not, by means of this presentation, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This presentation is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this presentation.



Official Professional Services Sponsor

Professional Services means audit, tax, consulting and financial advisory services.

#### About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) for a detailed description of DTTL and its member firms. Please see [www.deloitte.com/us/about](http://www.deloitte.com/us/about) for a detailed description of the legal structure of Deloitte LLP and its subsidiaries. Certain services may not be available to attest clients under the rules and regulations of public accounting.

Copyright © 2016 Deloitte Development LLC. All rights reserved.  
36 USC 220506  
Member of Deloitte Touche Tohmatsu Limited