

# IRS Issues Guidance for Solar Energy Project Tax Credit Qualification: Client Alert Digest

**Go to: [Client Alerts](#) | [News Articles](#) | [Related Content](#)**

*Current as of: 06/04/2019*

On June 22, 2018, the Internal Revenue Service (IRS) issued IRS Notice 2018-59, Beginning of Construction for the Investment Tax Credit under Section 48 (the ITC Guidance). 2018 IRB LEXIS 389, Notice 2018-59 (I.R.S. June 22, 2018). The ITC Guidance defines a standard for determining when the “beginning of construction” occurs for renewable energy projects utilizing the investment tax credit (ITC) under Internal Revenue Code (IRC) Section 48. 26 U.S.C. § 48. The ITC can be claimed by owners of solar energy, fuel cell, and qualifying small wind energy projects. Solar energy project developers utilize the ITC extensively in complex financing structures involving so-called tax equity investors. The ITC is currently subject to a phaseout, with the amount of the ITC available for a project reduced on a sliding scale depending on what year the project began construction.

The ITC Guidance assists solar energy developers and tax equity investors by giving them a clear method to determine whether their projects will qualify for the ITC, and by how much. Practitioners generally view the ITC Guidance as allowing solar energy project owners to claim a tax credit of 30% of a solar project's depreciable cost if they can show that the project began construction by the end of 2019 and the project is placed in service by the end of 2023.

Practitioners note that the ITC Guidance appears to very closely adhere to principles and concepts established in prior IRS notices applicable to wind energy projects utilizing the production tax credit (PTC) under I.R.C. Section 45 (the PTC Guidance). 26 U.S.C. § 45. For the PTC Guidance, see 2016 IRB LEXIS 772, Notice 2017-04, 2017-4 I.R.B. 541 (I.R.S. December 15, 2016).

In particular, the ITC Guidance follows the PTC Guidance in providing two distinct methods for determining the begun construction date for energy property eligible for the ITC:

- **Physical Work Test.** The beginning of construction is the date on which physical work of a significant nature has started on the project.
- **Five Percent Safe Harbor.** The beginning of construction is the date on which the project's owner paid or incurred 5% or more of the total cost of the ITC-eligible property.

For projects that fail the Five Percent Safe Harbor, the owners may avail themselves of the Physical Work Test (if the facts and circumstances support it).

Consistent with the PTC Guidance, the ITC Guidance requires developers utilizing either method to undertake continuous efforts after the begun construction date. This continuity requirement differs slightly based on the method utilized. The IRS will apply strict scrutiny of the facts and circumstances in determining compliance with this continuity requirement, though the continuity requirement will be deemed met if an energy property is placed in service no more than four calendar years after the calendar year during which construction began.

Finally, as with the PTC Guidance, the ITC Guidance makes clear that ITC-qualified property may be transferred in certain circumstances without causing the project to lose ITC eligibility. Practitioners generally view the transferability provisions of the Guidance as providing certainty to solar energy developers that they may transfer ITC-qualified solar energy equipment to a tax equity partnership that subsequently issues membership interests in such partnership to one or more tax equity investors, allowing the partners to the tax equity partnership to claim the ITC when the project is placed in service.

## Client Alerts

- Boost for Solar Energy Developers from IRS Clarification of "Beginning Construction" Tax Credit Rules (Orrick Herrington & Sutcliffe, June 29, 2018)

## IRS Issues Guidance for Solar Energy Project Tax Credit Qualification: Client Alert Digest

- ITC Beginning of Construction Guidance(Mayer Brown, June 26, 2018)
- IRS issues solar construction-start guidance: Notice 2018-59 (Norton Rose Fulbright, June 22, 2018)
- IRS Issues Beginning of Construction Guidance for Solar (Troutman Sanders, June 25, 2018)
- IRS Issues Beginning of Construction Rules for Purposes of the Investment Tax Credit under Section 48 of the Internal Revenue Code (Hunton Andrews Kurth, June 25, 2018)
- Good News for Solar and Other ITC Projects (McDermott Will & Emery, June 29, 2018)
- IRS Releases New Guidance Regarding the “Beginning of Construction” Requirements for Energy Investment Tax Credits (Paul Hastings, July 3, 2018)
- IRS Notice 2018-59 Clarifies Rules on Beginning of Construction of Solar Facilities to Qualify for the Investment Tax Credit (K&L Gates, July 3, 2018)
- Legal Alert: The long-awaited “solar beginning of construction notice”–Notice 2018-59 provides guidance for solar and other section 48 ITC-eligible facilities (Eversheds Sutherland, June 27, 2018)

### **News Articles**

- Tax Guidance Maintains Sunny Outlook For Solar Developers (Law360, June 25, 2018)

### **Related Content**

#### *Practice Notes*

- Financing a Project with a Tax Equity Investment
- Renewable Energy Finance
- Solar Energy Financing
- Project Finance Resource Kit