

Alert | Energy Project Finance & Development



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IRS Releases Guidance on Elective Payments and Transferability of Certain Tax Credits

On June 14, 2023, the IRS released [proposed regulations and additional guidance](#) describing rules for applicable taxpayers to benefit from investments in renewable energy projects through a direct payment of the tax credit amount or by transferring (i.e., selling) the tax credit to an unrelated taxpayer in exchange for cash.

Taxpayers seeking direct payment or transferability of credits must complete a pre-filing registration with the IRS. The registration process includes providing information regarding the taxpayer, which tax credits the taxpayer intends to earn, and which projects the taxpayer intends to qualify for the tax credits. Upon completion of the registration process, the IRS will issue the taxpayer a separate registration number for each applicable credit property that contributes to an applicable credit. The registration numbers are used when filing annual tax returns.

The energy community has eagerly anticipated the release of guidance relating to direct pay and transferability. The guidance released today will allow transactions to start moving forward, but it also will require some of the transactions negotiated in advance of guidance to be restructured. Those seeking assistance in navigating these new monetization opportunities should consult with experienced energy project finance counsel.

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