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CONTACTS

Mark Regante
Partner
+1-212-530-5236
mregante@milbank.com

Michael Duff
Partner
+1-213-892-4455
mduff@milbank.com

Drew Batkin
Special Counsel
+1-212-530-5122
dbatkin@milbank.com

Mox Elraheb
Associate
+1-213-892-4607
melraheb@milbank.com

Erika Hauser
Associate
+1-212-530-5335
ehauser@milbank.com

Tax Group Client Alert: Potential PTC and ITC Extension

On the evening of December 15, the House and Senate Congressional leaders announced two pieces of draft legislation that would affect the tax credits available for renewable energy projects. The first is entitled the Protecting Americans from Tax Hikes Act of 2015 (the “Tax Extenders Bill”).¹ The other bill, which was announced shortly after midnight, the Consolidated Appropriations Act of 2016 (the “Omnibus Bill”),² is a comprehensive \$1.15 trillion spending bill to fund the federal government in fiscal year 2016.

The Omnibus Bill would extend the production tax credit (“PTC”) on its present terms, with the changes noted below, for five years, making projects for which construction commenced prior to 2020 eligible for the credit. This extension would be at some cost, as the PTC would be phased out over the last three years, i.e., projects for which construction commenced in 2017 would face a 20% reduction in the amount of the available credit and those that commence construction in 2018 and 2019 would face reductions of 40% and 60%, respectively.³ The Omnibus Bill would also extend by five years the date at which the investment tax credit (“ITC”) reduces to 10% and would replace the prior “placed in service” requirement with a “beginning of construction” requirement. Like the PTC, there is a phase out of the ITC: subject to the placed in service deadline described below, the ITC for projects the construction of which commences before January 1, 2020 would equal 30% of eligible costs. Projects for which construction commences in 2020 would be eligible for an ITC of 26% and those construction of which commences in 2021 would be eligible for an ITC of 22%. Additionally, in all cases the available ITC would be reduced to 10% of the cost of eligible property if the project is not placed in service before January 1, 2024.

The Tax Extenders Bill would extend the availability of PTCs and ITCs in lieu of PTCs for most renewables (including wind facilities but excluding solar property) without

¹ Rules Comm. Print 114-40, H.R. Amendment to Senate comments to H.R. 2029.

² P.L. No. 114-53.

³ P.L. No. 114-53 at Division P § 301 Extension and Phaseout of Credits for Wind Facilities.

change to projects the construction of which commence before January 1, 2017. The Tax Extenders Bill would not extend the December 31, 2016 date by which solar projects must be placed in service in order to qualify for the 30% ITC or otherwise extend the January 1, 2017 date on which the ITC for solar property reduces to 10%.

The next step is to see if the Omnibus Bill can garner enough support in the House of Representatives and the Senate to pass those houses. If the extender bill is passed, it is expected that President Obama will sign it into law. Congress is scheduled to vote on the Tax Extenders Bill on December 17th. The Omnibus Bill will be voted on during the last business day of legislation this year, December 18th, which leaves the President only a brief window of time to sign the legislation prior to the expiration of government funding on December 22nd. If the Omnibus Bill passes Congress, it would supersede the Tax Extenders Bill.

TAX GROUP

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NEW YORK

28 Liberty Street, New York, NY 10005

Russell Kestenbaum	rkestbaum@milbank.com	+1-212-530-5790
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Mark Regante	mregante@milbank.com	+1-212-530-5236
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Andrew Walker	awalker@milbank.com	+1-212-530-5624
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LOS ANGELES

601 South Figueroa Street, 30th Floor Los Angeles, CA 90017

Leah Karlov	lkarlov@milbank.com	+1-213-892-4522
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Michael Duff	mduff@milbank.com	+1-213-892-4455
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MUNICH

Maximilianstrasse 15, (Maximilianhoefer), Munich 80539, Germany

Dr. Rolf Fuger	rfueger@milbank.com	+49-89-25559-3616
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Dr. Thomas Kleinheisterkamp	tkleinheisterkamp@milbank.com	+49-89-25559-3676
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Dr. Matthias Schell	mmschell@milbank.com	+49-89-25559-3676
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LONDON

10 Gresham Street, London EC2V 7JD, England

Russell Jacobs	rfjacobs@milbank.com	+44-20-7615-3009
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