June 28, 2023

New Guidance on Direct Pay and Transferability of U.S. Clean Energy Tax Credits

The U.S. Inflation Reduction Act of 2022 (the "IRA") not only introduced a range of new and enhanced clean energy-related tax credits, but also created two new ways for taxpayers to monetize these credits. Under Section 6417 of the Internal Revenue Code (the "Code"; references to "Sections" referring to Sections of the Code), tax-exempt and government entities (and for certain credits, taxable entities as well) can elect to receive tax credits as a fully refundable direct payment (a "direct pay election"). Moreover, under Section 6418, non-tax-exempt taxpayers can elect to transfer all or a portion of tax credits to unrelated parties for cash (a "transfer election").

On June 14, 2023, the Department of the Treasury (the "Treasury") and the Internal Revenue Service (the "IRS") released a series of proposed regulations addressing the requirements and process for making the direct pay election and the transfer election, which were published in the Federal Register on June 21, 2023. Interested parties may submit comments by August 14, 2023, before the regulations are finalized.

I. KEY TAKEAWAYS

- Tax-exempt or governmental entities cannot purchase credits through transferability and then elect to receive a direct payment for those credits, foreclosing a possible monetization structure.
- Although dealer arrangements (i.e., transferring a credit first to a dealer or intermediary, which then transfers to the ultimate transferee) are not allowed, broker arrangements (i.e., matching transferors and transferees) are allowed.
- Recapture and penalty risk with respect to transferred credits generally lies with the transferee, which means that creditworthy sponsor indemnities/guarantees and tax insurance will be important features of transferability. However, for investment tax credits, if a recapture event occurs because a partner in a transferor partnership or a shareholder in a transferor S corporation sells its interest, then the recapture risk lies with that partner or shareholder and not with the transferee.
- In addition to recapture, in case of an "excessive credit transfer" (meaning the amount of credit claimed by the transferee is greater than what was available for the transferor), the transferee taxpayer is subject to a 20% penalty, unless the transferee taxpayer can demonstrate reasonable

cause, which may be satisfied by showing reasonable due diligence as undertaken on the transferor/project.

- Payments for transfers of credits must be made in cash. The proposed regulations provide for a safe harbor timing rule for cash payments made within the period between the first day of the transferor's taxable year during which the credit is determined and ending on the due date for the original return filing date.
- Partnerships and S corporations, regardless of how many tax-exempt partners or shareholders they may have, can only make a direct pay election with respect to the clean hydrogen (45V), carbon oxide sequestration (45Q), and advanced manufacturing production (45X) credits.

Direct Pay

A. GENERAL RULES

An "applicable entity" can make an election to treat certain tax credits[1] as a direct payment of tax by such entity for the taxable year with respect to which such credit is determined.[2]

- "Applicable entities" generally includes only tax-exempt entities, such as tax-exempt organizations, state and local government entities, the Tennessee Valley Authority, Indian Tribal governments, and Alaska Native Corporations.[3]
- The election, once made by the applicable entity for the taxable year, is irrevocable.[4]

A taxpayer other than an "applicable entity" (an "electing taxpayer") may also elect for direct payment with regard to the clean hydrogen (45V), carbon oxide sequestration (45Q), and advanced manufacturing production (45X) credits.[5]

The election must be made separately for each credit property (for example, a qualified clean hydrogen production facility for the Section 45V credit; a single process train at a qualified facility for the Section 45Q credit; or a facility in which eligible components are produced for the Section 45X credit).[6]

- The election must generally be made in the first year the equipment or facility is placed in service, and remains in effect for each of the four succeeding taxable years that end before January 1, 2033,[7] unless the electing taxpayer revokes the election. Any such revocation applies to the taxable year in which the revocation is made, and such revocation may not be subsequently revoked.[8]
- For any taxable years for which a direct pay election is in effect, the electing taxpayer cannot also elect to transfer the credit.[9]

The proposed regulations clarify that a taxpayer may not "chain" the direct pay election for credits obtained from other sources. For example, a tax-exempt or governmental entity may not buy credits through transferability under Section 6418 and then make a direct pay election to receive a refund for those credits.[10] A direct pay election is also not allowed with respect to credits acquired by a lessee from a lessor's election to pass through the credit to such lessee under former Section 48(d) and Section 50(d)(5); and Section 45Q credits transferred to the person that disposes of, uses as a tertiary injectant, or otherwise utilizes the captured carbon oxide under Section 45Q(f)(3).[11]

The proposed regulations provide further guidance on who can be an electing taxpayer:

- *Partnerships and S Corporations*. If the facility or property is held directly by a partnership or S corporation, the direct pay election must be made at the partnership or S corporation level.[12] The proposed regulations provide that a partnership and/or S corporation cannot be an "applicable entity" and therefore may only make an election as an "electing taxpayer" with regard to the Section 45V credit, Section 45Q credit and Section 45X credit, regardless of how many of the partners or shareholders are themselves applicable entities.[13] However, instead of holding an interest in a partnership, an applicable entity can enter into an arrangement that is not treated as a partnership for U.S. tax purposes (for example, through a joint venture that is not treated as a partnership for U.S. tax purposes, as discussed below) and elect for direct pay in respect of its interest.
- *Unincorporated joint ventures*. Each co-owner of a credit property through an ownership arrangement treated as a tenancy-in-common or pursuant to a joint operating agreement that is not a partnership for U.S. tax purposes is considered to own an undivided interest in the underlying credit property, and thus the credits are determined separately with respect to each owner. Therefore, the entity may make an election with respect to its share of the credits determined in respect to its undivided ownership interest of the underlying credit property.[14]
- *Disregarded entities*. A direct or indirect owner of a disregarded entity may also make an election with respect to property held directly by the disregarded entity.[15]
- *Members of a Consolidated Group*. A member of a consolidated group may make an election with respect to that member.[16]

B. PROCEDURE FOR MAKING A DIRECT PAY ELECTION

An applicable entity or electing taxpayer must make the direct pay election on its "annual tax return", along with any required completed source credit forms with respect to the credit property, a completed Form 3800, *General Business Credit*, and any additional information, including supporting calculations, required in instructions to the relevant forms.[17]

- The election must be made on an original return, filed no later than the due date of such return.[18] No election may be made or revised on an amended return or by filing an administrative adjustment request, and there would be no late election relief under Treasury Regulations Sections 301.9100-1 through 301.9100-3.[19]
- For applicable entities, the election, once made, is irrevocable, and applies with respect to any credit for the taxable year for which the election is made.[20] However, electing taxpayers are allowed one revocation per applicable credit property.[21]

The applicable entity or electing taxpayer must complete pre-filing registration through an IRS electronic portal and receive a valid registration number for each of the applicable credit property in order to receive any refunds from the direct pay election.[22]

C. DETERMINING THE AMOUNT OF DIRECT PAYMENT

The preamble clarifies that the direct pay election applies to both the applicable credit and any eligible bonus credit amounts (for example, from prevailing wage and apprenticeship, domestic content, energy communities and low-income communities). Despite comments received, the proposed regulations do not contain a special rule relating to credits arising during a quarter as a payment against quarterly estimated tax (if any amount is due). However, the preamble notes that taxpayers can determine, based on their projected tax liability, the correct amount of estimated tax to pay in order to avoid tax penalties.

Generally, the basis of property is reduced if cash from certain grants and forgivable loans that are tax-exempt ("tax-exempt amounts") is used for the purpose of purchasing, constructing or otherwise acquiring such property.[23] In the investment tax credit context, where the credit is a function of basis, if a tax-exempt or government entity were to acquire investment credit properties with tax-exempt amounts, then the entity could have little or no basis with respect to which to calculate the credit. Fortunately, the proposed regulations provide that any tax-exempt amounts are included in basis for purposes of computing the credit amount under the direct pay election, regardless of whether basis is required to be reduced under other provisions of the Code.[24]

D. PENALTIES AND RECAPTURE

If it is determined that there has been an "excessive payment" (meaning the amount of credit claimed was greater than the amount otherwise allowable), the applicable entity or electing taxpayer is subject to a penalty in the amount of 20% of the excessive payment, unless the applicable entity or electing taxpayer demonstrates to the satisfaction of the IRS that the excessive payment resulted from reasonable cause.[25]

Moreover, the proposed regulations provide rules similar to the five-year recapture under Section 50 for investment tax credits.[26] Any reporting of recapture is made on the taxpayer's annual tax return in the manner prescribed by the IRS in future guidance, along with supplemental forms such as Form 4225, *Recapture of Investment Credit*.[27]

II. TRANSFERABILITY

A. GENERAL RULES

An "eligible taxpayer" (i.e., any taxpayer that is not an "applicable entity" for the direct pay election) may elect to transfer all or a portion of the eligible credits[28] to an unrelated transferee taxpayer.[29]

- The transferee taxpayer cannot elect to resell or further transfer the tax credit to another party.[30] Moreover, the transferee taxpayer cannot transfer a credit that has been assigned to it under another provision of the Code, such as a lessee under Section 50(d)(5) or assignee under Section 45Q(f)(3).
    - Dealer arrangements (i.e., any arrangement where the tax ownership of a credit portion transfers first, from a transferor taxpayer to a dealer or intermediary and then, ultimately, to a transferee taxpayer) are in violation of the "no second transfer" rule. However, an arrangement using a broker to match transferor taxpayers and transferee taxpayers should not violate the "no second transfer" rule, assuming the arrangement at no point transfers the tax ownership of the credit to the broker or any taxpayer other than the transferee taxpayer.
- A transferor taxpayer may make multiple transfer elections to transfer different portions of a credit to multiple transferee taxpayers, provided that the aggregate amount transferred does not exceed the amount of credit determined with respect to that property.[31]
- A transferor taxpayer may elect to transfer to a different transferee for a given taxable year.[32]
- Generally, a transferor taxpayer is required to make a transfer election to transfer a specified portion of the credit on the basis of a single credit property.[33] For example, if a transferor taxpayer determines credits with respect to two credit properties, the taxpayer would need to make a separate transfer election with respect to each credit property.

- In the case of the Section 45 credit, Section 45Q credit, Section 45V credit or Section 45Y credit, a transfer election must be made with respect to each credit property and for each taxable year during the applicable credit period (12 years for the Section 45Q credit; 10 years for the others).[34]

- The election to transfer, once made, cannot be revoked.[35]

- Any carryback or carryforward tax credits cannot be transferred,[36] although the transferee can carry back or carry forward the purchased credit. The proposed regulations clarify that the purchased credits are also generally allowed a three-year carryback period (as opposed to the general one-year carryback) and a 22-year carryforward period (as opposed to the general 20-year carryback).[37]

Payments for the transfer must be made in cash.[38] Such payment must be made in U.S. dollars, and includes payments by cash, check, cashier's check, money order, wire transfer, ACH transfer or other bank transfer of immediately available funds.[39] Under a safe harbor timing rule provided under the proposed regulations, if the cash payment is made within the period beginning on the first day of the transferor taxpayer's taxable year during which the eligible credit is determined and ending on the due date for a transfer election statement (as discussed below), then such payment does not violate the "paid in cash" requirement.[40] Therefore, a contract to purchase credits in advance of the date the credit is transferred satisfies the "paid in cash" requirement if the cash payments are completed within the period between the first day of the transferor's taxable year during which the credit is determined and ending on the due date for the transfer election statement (which is normally the original return filing date).

The proposed regulations provide further information on who must make the transfer election:

- *Partnership or S corporation*. If a partnership or S corporation directly holds the credit property, the partnership or S corporation makes the transfer election, not the partners or shareholders.[41] A partnership that is an indirect or direct partner of a transferor partnership (i.e., an upper-tier partnership) is also not eligible to make the election[42]

- *Unincorporated joint ventures*. For undivided ownership interests, if eligible credit property is directly owned through a tenancy-in-common or through an organization that has made a valid Section 761(a) election, each co-owner's or member's undivided ownership share of the credit property will be treated as a separate eligible credit property owned by such co-owner or member, and each makes a separate transfer election.[43]

- *Disregarded entities*. For a disregarded entity wholly owned (directly or indirectly) by a transferor taxpayer, the transferor taxpayer makes the transfer election.[44]

- *Members of a consolidated group*. Each member of a consolidated group is required to make a transfer election with respect to its credits.[45]

B. PROCEDURE FOR MAKING A TRANSFER ELECTION

To make a valid transfer election, a transferor taxpayer must include, as part of filing its return: (1) a properly completed relevant source credit form for the eligible credit (such as Form 7202, *Advanced Manufacturing Production Credit*, if making a transfer election for the Section 45X credit); (2) a properly completed Form 3800, *General Business Credit*, including the registration number received during the pre-filing registration, (3) a schedule attached to the Form 3800 showing the amount of eligible credit transferred for each credit property; (4) a transfer election statement; and (5) any other information specified in any further guidance issued in the future.[46] The election must be made not later than the due date (including extensions) for the

original tax return for the taxable year for which the credit is determined, and cannot be made or revised on an amended return or by filing an administrative adjustment request, and there would be no relief available for an election that is not timely filed.[47]

The transferee taxpayer may take into account the transferred credit as part of filing a return, an amended return or a request for an administrative adjustment under Section 6227.[48] The transferee taxpayer must include: (1) a properly completed form 3800, *General Business Credit*, and all registration numbers related to the transferred credit; (2) the transfer election statement;[49] and (3) any other information related to the transfer election specified in guidance.[50]

Similar to the direct pay election, the transferor taxpayer must complete the pre-filing registration process through an IRS electronic portal (available by fall 2023) and receive a valid registration number for each registered credit property in order to transfer the credit.[51]

C. DETERMINING THE AMOUNT OF TRANSFERRED CREDIT

Similar to the direct pay election, the transfer election applies to both the applicable credit and any eligible bonus credit amounts (for example, from prevailing wage and apprenticeship, domestic content, energy communities and low-income communities).[52]

A transferor taxpayer cannot divide an eligible credit into the "base" credit and the bonus credit amounts from a single credit property and elect to transfer one portion but not the other. Rather, the transferor taxpayer must transfer the entire eligible credit (or portion of the entire eligible credit, which would include a proportionate amount of any component part of the entire eligible credit) with respect to a single credit property.

D. TREATMENT OF PAYMENTS

Amounts paid by the transferee taxpayer are not included in the gross income of the selling taxpayer, nor are they deductible by the transferee taxpayer.[53]

The proposed regulations include an anti-abuse provision that will either disallow the transfer election or recharacterize a transaction's tax consequences if the parties engaged in the transaction with the principal purpose of avoiding tax liability beyond the intent of the transferability rules, including transactions that are intended to decrease the transferor taxpayer's gross income or increase a transferee taxpayer's deductions (e.g., a transferor taxpayer undercharging or overcharging for services to a customer who is also purchasing credits from the transferor taxpayer).[54]

If a valid transfer election is made by a transferor taxpayer, the transferee taxpayer specified in such election (and not the transferor taxpayer) is treated as the taxpayer for purposes of the Code with respect to the specified credit portion.[55] Therefore, if the amount paid for the credit is less than the amount of credit transferred and claimed, there is no gross income to the transferee taxpayer.[56] Although Section 49 (at-risk rules) and Section 50(b) (certain property not eligible for credit) would not apply to a transferee taxpayer (since the rules under these sections consider ownership of the underlying credit property by a transferor taxpayer or conducting the activities giving rise to the credit), the transferee taxpayer must apply rules that

relate to the transferred credit amount that is allowed based on a transferee's particular circumstances, such as the rules in Section 38 (computation of general business credit) or Section 469 (passive activity loss rules).[57]

The Treasury and the IRS requested comments on the tax treatment of transaction costs, either for the transferor taxpayer or the transferee taxpayer, and whether a transferee taxpayer is permitted to deduct a loss if the amount paid to the transferor taxpayer exceeds the credit amount the transferee taxpayer can ultimately claim.

E. PENALTIES AND RECAPTURE

If it is determined that there has been an "excessive credit transfer" (meaning the amount of credit claimed by the transferee is greater than what was available for the transferor), the transferee taxpayer is subject to a penalty in the amount of 20% of the excessive transfer, unless the transferee taxpayer demonstrates to the satisfaction of the IRS that the excessive credit transfer resulted from reasonable cause.[58] The determination of reasonable cause includes an evaluation of a transferee taxpayer's efforts to determine that the amount of eligible credit transferred is not more than the eligible credit that was determined with respect to the credit property.[59] Moreover, the proposed regulations provide a non-exhaustive list of factors that a transferee taxpayer could show to demonstrate reasonable cause (such as review of the transferor's records and documentation for bonus credit amount eligibility, reasonable reliance on third-party expert reports, reasonable reliance on representations that total portions of credits transferred do not exceed the total eligible credit, and review of public company audited financial statements (if applicable)).[60] When there are multiple transferees, all transferee taxpayers are considered one transferee for calculating whether there was an excessive credit transfer and the amount of the excessive credit transfer.[61]

The recapture amount under Section 50(a) or Section 45Q(f)(4) is calculated and taken into account by the transferee taxpayer,[62] although a transferor and transferee may contract between themselves for indemnification of the transferee taxpayer in the event of a recapture event. A transferee may also consider obtaining insurance to cover recapture risk, if available.

For investment tax credits, in the case of a transferor partnership or transferor S corporation, if a partner or a shareholder sells and thereby reduces its interest in such partnership or S corporation by a certain percentage during the recapture period, recapture can occur to such partner or shareholder.[63] However, because recapture is applicable with respect to the specific shareholder or partner and not with respect to the transferor S corporation or transferor partnership, the transferee taxpayer is not subject to the recapture risk with respect to the transferred investment tax credit under these circumstances.[64] Instead, the recapture tax liability continues to result in recapture to the applicable disposing shareholder or partner.

A transferor taxpayer is required to provide notification of a recapture event to a transferee taxpayer in a timely manner, including all of the information necessary for the transferee taxpayer to calculate the recapture amount.[65] Beyond such requirements, the parties can contract as to the form the notice must take and to any additional time periods for providing the notice. The transferee taxpayer is also required to provide notification of a recapture amount to the transferor taxpayer.[66]

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ENDNOTES

1 Such tax credits include: alternative fuel vehicle refueling property credit under Section 30C; renewable electricity production credit under Section 45 (the "Section 45 credit"); carbon oxide sequestration credit under Section 45Q (the "Section 45Q credit"); zero-emission nuclear power production credit under Section 45U; clean hydrogen credit under Section 45V (the "Section 45V credit"); qualified commercial vehicle credit under Section 45W; advanced manufacturing production credit under Section 45X (the "Section 45X credit"); clean electricity production credit under Section 45Y (the "Section 45Y credit"); clean fuel production credit under Section 45Z; energy credit under Section 48; advanced energy project credit under Section 48C; and clean electricity investment credit under Section 48E. Section 6417(b); Prop. Reg. Section 1.6417-1(d).

2 Section 6417(a).

3 Section 6417(d)(1)(A). The proposed regulations clarify the definition of "applicable entities" to include all organizations that are exempt under Section 501(a) from the tax imposed by Subtitle A of the Code, any agency or instrumentality of any state, the District of Columbia, Indian tribal government, U.S. territory, or political subdivision thereof, subdivisions of Indian tribal governments, and governments of any U.S. territory, or a political subdivision thereof. Prop. Reg. Section 1.6417-1(c).

4 Prop. Reg. Section 1.6417-2(b)(4)(i).

5 Section 6417(d)(1)(B), (C), (D); Prop. Reg. Section 1.6417-3.

6 Prop. Reg. Section 1.6417-1(e).

7 Section 6417(d)(1)(B), (C), (D); Prop. Reg. Section 1.6417-3(e)(2), (3).

8 Section 6417(d)(1), (d)(3); Prop. Reg. Sections 1.6417-2(b)(4)(iii); 1.6417-3(e)(3)(ii).

9 Section 6417(d)(3); Prop. Reg. Section 1.6417-3(e)(4).

10 However, the Treasury and the IRS requested comments on limited situations where exceptions may be appropriate, such as (1) the type of applicable entity that may be allowed to make a direct pay election with respect to credits transferred, such as a government entity; (2) the involvement of the transferee taxpayer in the project's development; (3) the level of due diligence conducted by the transferee taxpayer regarding whether the project qualifies for the credits; (4) the fact that the transferee taxpayer is paying close to the face value of the credit; and (5) the fact that there are no other special financial arrangements between the parties.

11 Prop. Reg. Section 1.6417-2(c)(4).

12 Section 6417(c)(1).

13 Prop. Reg. Section 1.6417-2(a)(1)(iv), (a)(2)(ii).

14 Prop. Reg. Section 1.6417-2(a)(1)(iii), (a)(2)(v).

15 Prop. Reg. Section 1.6417-2(a)(1)(ii), (a)(2)(iv).

16 Prop. Reg. Section 1.6417-12(a)(2)(vi).

17 Prop. Reg. Section 1.6417-2(b).

18 Prop. Reg. Section 1.6417-2(b)(1)(ii), (b)(3).

19 Prop. Reg. Section 1.6417-2(b)(1)(ii).

20 Section 6417(d)(3)(A)(ii); Prop. Reg. Section 1.6417-2(b)(4)(i).

21 Section 6417(d)(1)(D), (d)(3); Prop. Reg. Section 1.6417-3(b)(4)(iii).

22 Prop. Reg. Sections 1.6417-2(b)(2); 1.6417-5.

ENDNOTES (CONTINUED)

23 *See*, *e.g.*, Sections 118(a); 362(c)(2).

24 Prop. Reg. Section 1.6417-2(c)(3).

25 Prop. Reg. Section 1.6417-6(a). Unlike the transferability proposed regulations, the direct pay proposed regulations do not provide specific guidance on what "reasonable cause" means.

26 Prop. Reg. § 1.6417-6(b).

27 Prop. Reg. § 1.6417-6(b)(2).

28 All tax credits that are eligible for the direct pay election are eligible for transferability as well, except for the qualified commercial vehicle credit under Section 45W. Section 6418(f)(1)(A); Prop. Reg. Section 1.6418-1(c).

29 Section 6418(a).

30 Section 6418(e)(2); Prop. Reg. Section 1.6418-2(c)(2).

31 Prop. Reg. Section 1.6418-2(a)(2).

32 The preamble states: "Proposed §1.6418-2(a) would provide rules generally applicable to a transfer election. Consistent with the language in section 6418(a), the proposed rules would provide that if a valid transfer election is made by an eligible taxpayer for any taxable year, the *transferee taxpayer specified in such election* (and not the eligible taxpayer) is treated as the taxpayer for purposes of the Code with respect to the specified credit portion." (emphasis added)

33 Prop. Reg. Section 1.6418-2(b).

34 Section 6418(f)(1)(B)(ii); Prop. Reg. Section 1.6418-2(b)(2).

35 Section 6418(e)(1); Prop. Reg. Section 1.6418-2(c)(1).

36 Section 6418(f)(1)(C).

37 Section 39(a)(4); Prop. Reg. Section 1.6418-5(g).

38 Section 6418(b)(1); Prop. Reg. Sections 1.6418-2(a)(4)(ii); 1.6418-2(e)(1).

39 Prop. Reg. Section 1.6418-1(f)(1).

40 Prop. Reg. Section 1.6418-1(f)(2).

41 Prop. Reg. Section 1.6418-2(a)(3).

42 Prop. Reg. Section 1.6418-2(a)(3)(iv).

43 Prop. Reg. Section 1.6418-2(a)(3)(ii).

44 Prop. Reg. Section 1.6418-2(a)(3)(i).

45 Prop. Reg. Section 1.6418-2(a)(3)(iii).

46 Prop. Reg. Section 1.6418-2(b)(3).

47 Prop. Reg. Section 1.6418-2(b)(4).

48 Prop. Reg. Section 1.6418-2(f)(4).

49 A transfer election statement is a written document that describes the transfer that can be completed any time after the transferor taxpayer and transferee taxpayer have sufficient information but before a return is filed by either party. Prop. Reg. Section 1.6418-2(b)(5).

50 Prop. Reg. Section 1.6418-2(f)(4).

51 Prop. Reg. Section 1.6418-4(a).

52 Prop. Reg. Section 1.6418-1(h).

ENDNOTES (CONTINUED)

53 Section 6418(b); Prop. Reg. Section 1.6418-2(e)(2), (3). Also, for purposes of calculating the corporate alternative minimum tax, the "adjusted financial statement income" ("AFSI") of the applicable corporation is adjusted to generally disregard any amount received from the transfer of a credit under Section 6418 that is not includible in the gross income of the taxpayer. Similarly, AFSI is adjusted to disregard the refund amount received pursuant to a direct pay election. Notice 2023-7, Section 6.02(1), (2).

54 Prop. Reg. Section 1.6418-2(e)(4).

55 Prop. Reg. Section 1.6418-2(a)(1), (f)(3)(i).

56 Prop. Reg. Section 1.6418-2(f)(2).

57 Prop. Reg. Section 1.6418-2(d)(1), (f)(3)(i).

58 Prop. Reg. Section 1.6418-5(a).

59 Prop. Reg. Section 1.6418-5(a)(4).

60 Prop. Reg. Section 1.6418-5(a)(4).

61 Prop. Reg. Section 1.6418-5(b)(2).

62 Prop. Reg. Section 1.6418-5(d)(3), (e)(3).

63 Treas. Reg. Sections 1.47-4(a)(2); 1.47-6(a)(2).

64 Prop. Reg. Section 1.6418-2(d)(2).

65 Prop. Reg. Section 1.6418-5(d)(2)(i).

66 Prop. Reg. Section 1.6418-5(d)(2)(ii).

Questions regarding the matters discussed in this publication may be directed to Isaac Wheeler, Eric Wang, Inosi Nyatta, Sam Saunders or any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. Additional S&C resources about energy transition matters may be found here.