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Transfers of Advanced Manufacturing Production Credits: Perspectives on a Busy Fourth Quarter

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Last year—particularly the fourth quarter—saw a significant uptick in transfers of advanced manufacturing production credits (AMPCs) described under Section 45X.[1]

Between the Weil and Monarch teams, we have had the opportunity to work on a significant number of these AMPC transfers. Many of these transfers successfully closed; however, others did not, with lessons learned in both circumstances.

This article provides background to the AMPC and our observations on the AMPC transfer market as we look forward to closing legacy 2024 transactions and to new opportunities in 2025.

Background to the AMPC

Section 45X was enacted as part of the Inflation Reduction Act of 2022 (the IRA). The U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) issued proposed regulations under Section 45X on December 14, 2023 and final regulations (the Final Regulations) on October 24, 2024.

Taxpayers may claim the AMPC for the domestic production and sale of eligible components (Eligible Components) to an unrelated person or, with a special election, a related person (each, a Component Buyer). Eligible Components include solar and wind energy components, inverters, qualifying battery components and certain critical minerals.

The AMPC is a production tax credit which is claimed based on the volume of Eligible Components produced by the taxpayer during the taxable year.[2] The AMPC rate under Section 45X varies depending on the type of Eligible Component produced and the production method utilized by the taxpayer.[3]

Taxpayers generally may claim the AMPC for Eligible Components produced and sold after December 2022 but, for components other than critical minerals, the AMPC will phase out starting in 2030 and terminate completely by 2033.

[1] Unless otherwise noted, all “Section” references contained herein are intended to refer to sections of the Internal Revenue Code of 1986, as amended.

[2] Production by the taxpayer would include production by a third-party contract manufacturer if an appropriate election is made under the Final Regulations, as detailed below.

[3] AMPC rate may be based on total production, individual unit volume, weight, electrical capacity, production cost, or a combination of these measurements.

Like other energy transition tax credits, a taxpayer otherwise entitled to claim the AMPCs (the AMPC Seller) may sell the credits to an unrelated taxpayer (the AMPC Buyer) pursuant to Section 6418 or elect to claim direct payments in lieu of the AMPCs for a 5-consecutive-year period pursuant to Section 6417 (the Direct Payment Election).

Observations on the AMPC Transfer Market

- AMPC pricing remained strong throughout 2024. The price for AMPCs topped out around 96 cents per $1.00 of credit. Like other production tax credits, the market generally views the AMPC as having a reduced risk profile compared with investment tax credits, which are subject to Section 50 recapture and tax basis risk. Moreover, the due diligence process for AMPCs is seen as being relatively straightforward, particularly when AMPC Sellers transfer AMPCs after production and sale of the Eligible Components is complete and a full suite of supporting information is available to the AMPC Buyer. Pricing volatility can be attributable to the AMPC Seller's financial condition, the presence (or absence) of a parent guarantee, and the presence (or absence) of complexity or uncertainty around AMPC qualification. However, in the fourth quarter, we observed less pricing volatility on account of AMPC qualification in light of greater clarity in the Final Regulations (released in late October).
- AMPC Sellers are unwilling to bear the cost of tax credit insurance. AMPC Sellers typically take the position that tax credit insurance is unnecessary because AMPCs are not subject to Section 50 recapture or tax basis risk, and because AMPC Buyers should be able to confirm, through due diligence review, that the full amount of AMPCs is valid and available for transfer pursuant to Section 6418. AMPC Buyers, of course, are free to seek tax credit insurance policies at their own expense, although the cost of the premium tends to dissuade AMPC Buyers from doing so.
- Despite the reduced risk profile associated with AMPCs, AMPC Buyers often require a creditworthy AMPC Seller or parent guarantor. AMPC Buyers generally bear the risk that the AMPCs will be disallowed in connection with a future IRS audit or that an adverse change in law could negate the transfer after the buyer has paid the purchase price. Without the benefit of tax credit insurance, an AMPC Buyer's sole recourse would be indemnification from the AMPC Seller under the applicable transfer agreement. As a result, notwithstanding the lack of recapture/basis risk and the AMPC Buyer's ability to confirm the AMPC amount through due diligence, AMPC Buyers are hesitant to purchase AMPCs from an AMPC Seller that does not have an investment grade credit rating, substantial net assets on its balance sheet, or a creditworthy parent entity that is willing to provide a guaranty.
- AMPC Buyers do not cut corners on due diligence.
  - *AMPC Buyers take a deep dive into the manufacturing process.* The Final Regulations define the phrase "produced by the taxpayer" to mean a process that substantially transforms constituent elements, materials or subcomponents into a complete and distinct Eligible Component that is functionally different from minor assembly or superficial modification.[4] AMPC Buyers generally push AMPC Sellers to provide evidence that the manufacturing processes constitute production, including technical memoranda and presentations, third-party consultant reports and in-person visits to the manufacturing facility.

[4] Section 1.45X-1(c)(1) of the Final Regulations. In addition, partial transformation that does not result in substantial transformation of constituent elements, materials or subcomponents into a complete and distinct eligible component does not qualify as production for purposes of Section 45X.

- *Contract manufacturing arrangements require additional due diligence.* The Final Regulations permit taxpayers to claim the AMPC in connection with contract manufacturing arrangements.[5] The parties to such an arrangement generally may determine by contract the party that is entitled to claim the AMPC. The contract manufacturing rule provides taxpayers with significant flexibility to outsource certain aspects of production to third-party manufacturers. However, the presence of a contract manufacturing arrangement typically adds significant additional time and expense to the due diligence workstream. In this case, AMPC Buyers must confirm that (1) any relevant commercial contracts satisfy the technical definition of a "contract manufacturing arrangement," (2) the allocation of AMPCs among the parties was appropriate, correctly applied, and not inconsistent with the contract manufacturing agreement, and (3) the taxpayer has submitted duly executed and valid certification statements, in which case the IRS will not challenge the AMPC allocation.[6]
- *AMPC Buyers scrutinize the substance of related party sales.* If the AMPC Seller makes a special election (the Related Person Election), the sale of Eligible Components to a related Component Buyer will be treated as if made to an unrelated person.[7] In this case, the careful AMPC Buyer will analyze whether the sale of Eligible Components should be treated as a sale to the related Component Buyer for federal income tax purposes or, instead, if the related Component Buyer should be treated as an agent of the AMPC Seller for this purpose (for instance, if the related Component Buyer is a distributor to end users and is not deemed to take ownership of the components under tax principles), in which case a further review of the subsequent sales would be prudent.[8] If the related Component Buyer purports to incorporate the Eligible Components into its own projects, the AMPC Buyer should request additional information to confirm that the components have been put to productive use and are not subject to the related party anti-abuse rule.[9]
- *Accounting firms play a key role in the due diligence workstream.* AMPC Sellers generally provide voluminous information to support qualifying sales of Eligible Components. AMPC Buyers should expect to receive evidence that Eligible Components were produced by the AMPC Seller, internal records tying a serial number to each Eligible Component, purchase contracts and purchase orders governing the sale of Eligible Components to Component Buyers, and a calculation of the AMPC amount. For most AMPC Buyers, it is impractical or impossible to confirm the accuracy and completeness of this information. In light of this, AMPC Buyers often request certification from an outside accounting firm that, among other things, (1) the AMPC Seller's internal controls are sufficient to permit the AMPC Buyer to rely on the information provided by AMPC Seller and (2) a random sampling (for example, 10 percent) of the Eligible Components gives rise to valid AMPCs.[10] Some AMPC Sellers have proffered verification of AMPCs via artificial intelligence in lieu of third-party substantiation, but we have yet to see this approach find footing with AMPC Buyers.

[5] Section 1.45X-1(c)(3)(ii) of the Final Regulations. A contract manufacturing agreement is an agreement providing for the production of an eligible component so long as the agreement is entered into before the production is completed.

[6] Certification statements must be prepared in the manner required in IRS Form 7207 (Advanced Manufacturing Production Credit).

[7] Section 1.45X-2(d) of the Final Regulations.

[8] Parties and their advisors typically look to general principles of federal income tax ownership for this purpose (that is, a benefits and burdens analysis).

[9] Section 1.45X-1(c)(4) of the Final Regulations.

[10] More recently, however, we have seen AMPC Sellers provide verification of 100 percent of the AMPCs and associate Eligible Components in a given transaction.

- Change in law risk is ever present and will be an acute concern until Congress provides certainty on IRA repeal or reformation, specifically for Section 45X. AMPC Buyers are sensitive to the risk that the 119th Congress (convened on January 3, 2025) could repeal all or a portion of Section 45X. For 2024 transactions, cautious AMPC Buyers worried that Congress would repeal or curtail Section 45X after the buyer paid for AMPCs but before the buyer reported the purchase on its 2024 tax return. Although such a retroactive repeal or amendment of Section 45X is unlikely, AMPC Buyers have been unable to rule out this risk completely.[11] Accordingly, AMPC Buyers have required AMPC Sellers to agree to return the purchase price (to the extent paid), without interest or damages, in the event of an adverse retroactive change in law. Tax credit insurance policies often protect tax credit purchasers against this risk. However, because AMPC transfers generally do not feature tax credit insurance protection, AMPC Buyers appropriately look to AMPC Sellers as their recourse for this risk and, accordingly, are particularly focused on the creditworthiness of the AMPC Seller or its guarantor (as discussed above).
- Taxpayers have opted to transfer AMPCs rather than make the Direct Payment Election. Taxpayers otherwise eligible to claim the AMPC may make the Direct Payment Election for any five-consecutive-year period before 2033, in which case the taxpayer would receive a cash payment in lieu of the AMPC at face value (i.e., 100 cents on the dollar). Despite the fact that the taxpayer must bear a discount on an AMPC transfer—in addition to transaction costs and the burden of negotiating a complex transaction—most taxpayers choose to transfer AMPCs in lieu of the Direct Payment Election. Treasury is not obligated to make direct payments until after a taxpayer files its tax return, with many taxpayers fearing the refund process will be subject to significant delay. Selling the AMPCs therefore becomes an appealing option given the opportunity to receive up to $0.96 per credit compared with the time value cost of awaiting an IRS refund. Of course, taxpayers selling AMPCs today will have the flexibility to make the Direct Payment Election with respect to future five-consecutive-year periods and receive cash payments for AMPCs generated during those years.

What's Next for AMPC Transfers

Looking ahead to 2025, we expect the supply of AMPCs to continue to grow. The U.S. domestic manufacturing capacity for clean energy components is on the rise as manufactures seek to match the growing demand of renewable project developers. In fact, U.S. module manufacturing capacity has quintupled since the passage of the IRA,[12] with many production facilities coming online in Ohio, Texas, Washington, Alabama and South Carolina. As domestic manufacturers continue to expand their production of solar modules, inverters, trackers and other project components, we expect that they will continue to utilize the transfer of AMPCs as a financing tool.

At the same time, demand for AMPCs should remain strong. We expect tax credit purchasers to continue to have strong appetite for AMPCs on account of the relatively low risk profile and relative ease of due diligence review. Per credit pricing should continue to reach $0.96 per $1.00 of AMPC. In contrast with transactions in the fourth quarter of 2024, where AMPC Buyers typically purchased previously-generated AMPCs, we expect tax credit purchasers in 2025 to agree to purchase AMPCs prospectively throughout the year, most likely with payments made on a quarterly basis.

[11] Even AMPC Buyers that believe Section 45X is safe from Congressional repeal or curtailment generally are unable to completely eliminate this risk from their transaction analyses.

[12] https://seia.org/research-resources/us-solar-market-insight/

In addition, as the market becomes more familiar with AMPCs, we expect tax credit buyers to enter into multi-year forward commitments at meaningful discounts to market pricing and with more buyer-friendly commercial terms (e.g., parent guaranties and no-fault indemnification).

We are optimistic that the terms, documentation and due diligence process with respect to AMPC transfers will become more consistent, streamlined and efficient in the years to come, thereby reducing the time required from term sheet to closing, thereby limiting the transaction costs in connection with these transactions.

Finally, we expect change-law-risk to be increasingly at the forefront of 2025 AMPC transactions. To an even greater extent than in 2024, AMPC Buyers will emphasize the creditworthiness of AMPC Sellers or other of means of risk mitigation, such as delay in purchase price payment until there is Congressional certainty, payment of purchase price into escrow, letters of credit or other credit support provided by AMPC Sellers (or their affiliates), or tax credit insurance (with policy premium potentially borne by AMPC Sellers).

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