OECD's shift to focus on base erosion and profit shifting grew partly out of an overly ambitious director who wanted to ensure the organization's continued relevance in the 21st century. The side-by-side agreement suggests that it could again focus its agenda on ensuring a favorable environment for business investment in order to create a better world for working people. ■

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The Road Ahead for Energy Credits in 2026

by Marie Sapirie

The year ahead may not be as legislatively tumultuous for energy tax credits as 2025, but there are still key developments on the horizon that will further shape the energy industry. Chief among them is the guidance for the revamped foreign entity of concern rules.

Last year ended with a flurry of project development activity that couldn't have easily been foreseen at the beginning of the year, when the political headwinds seemed stronger. The year-end rush to begin construction on energy projects was set in motion in July 2025 with the passage of the One Big Beautiful Bill Act (P.L. 119-21) and its rules for material assistance and prohibited foreign entities. Projects that were able to begin construction before the end of 2025 could sidestep those rules. Projects beginning this year have to comply, but as yet, there is no guidance beyond the statutory language.

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The clean energy industry has done well so far under the OBBBA changes, and that is largely attributable to its resilience and creativity and the fact that the material assistance rules only apply to projects that begin construction after 2025, said David Burton of Norton Rose Fulbright US LLP. But the tax credit transfer market has changed, largely because of provisions in the OBBBA unrelated to energy, and guidance will bring further changes.

Twists and Turns in 2025

In early 2025, the reconciliation bill created much uncertainty. Credit transferability survived in the law, but until it passed, the possibility that it might have been eliminated caused concern. Most of the OBBBA's changes were ultimately less drastic, but they include new additions to the foreign entity of concern restrictions. The White House issued Executive Order 14315 on July 7, 2025, directing Treasury to issue rules implementing the enhanced restrictions within 45 days. Those rules aren't out yet.

Although the OBBBA had a much smaller effect on the supply of credits than anticipated, it had a major impact on tax liabilities that resulted in some tax credit buyers lacking sufficient liability to purchase 2025 credits, said Andy Moon of Reunion. The impact on 2026 liabilities appears to be less pronounced, and there are more buyers looking to purchase credits, he said.

As 2025 progressed and taxpayers began to understand the OBBBA's full effect on their tax liabilities, the pace of transfer transactions began to increase. Moon said that the third quarter of 2025 saw many 2024 transactions close right before the September 15 partnership filing deadline and the October 15 extended corporate filing deadline. "That trend will probably continue — we expect to see backwards-facing transactions, with more 2025 transactions closing in the first, second, and even third quarter of 2026," he said.

Moon said that the frenzy of credit-buying that occurred in the fourth quarter of 2024, which saw bidding wars and dozens of buyers for attractive projects, wasn't repeated in the fourth quarter of 2025. "It was busy, but not a frenzy, and as a result pricing in the fourth quarter of 2025 softened," he said.

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The OBBBA dealt a heavy blow to long-term tax credit eligibility for wind and solar projects, but ironically, the short-term result was substantial activity as projects hurried to begin construction. And there will likely be another push for wind and solar projects to begin construction before the July 4 deadline to avoid the statute's 2027 placed-in-service cliff. As a result, project developers will likely have a steady supply of tax credits coming to market over the next four or five years, Moon said.

Into the New Year

The material assistance rules apply to projects under sections 45Y, 48E, and 45X that begin construction after 2025, which means that some deals have already had to contend with them. To receive one of these credits, the taxpayer must test the extent of labor and material costs of products manufactured by a prohibited foreign entity against its total labor and material costs for manufactured products. Until guidance is issued, taxpayers applying this test to wind, solar, and battery projects can rely on the domestic content safe harbor tables. For other technologies, taxpayers must make educated guesses as to where to measure a manufactured product, because no domestic content safe harbor tables exist for technologies such as geothermal electric generation projects.

Section 45Y, 48E, and 45X credits are also subject to the effective control prohibition, which couldn't be avoided by beginning construction before the end of 2025. A specified foreign entity such as a manufacturer based in China can be deemed to have effective control if it grants an intellectual property license. Therefore, some counsel are advising the removal of IP licenses from equipment supply agreements, Burton said. However, it's unclear what policy is served by restricting IP licenses in the electricity generation projects, he said. While supply agreements for purchasing equipment typically include an IP license, that shouldn't matter under the foreign entity of concern rules, he said. In contrast, under section 45X, a Chinese parent company could sell its U.S. factory to a U.S. citizen who would then make license payments to the Chinese parent. Those kinds of deals may be what the rules aim to stop. Burton said that deals have been completed that had to navigate the effective control rules, but that they required additional legal advice, and brokers have generally reported lower pricing, typically by a couple of cents per dollar, for transfers subject to the OBBBA rules.

The key questions that need to be answered in the material assistance rules include the level at which taxpayers should test for manufactured products and how to treat contract manufacturing arrangements. In addition, clarification of who is a "national" of a covered nation and how the section 50 recapture rules that apply to payments made over 10 years work for the effective control rules would be helpful, Burton said.

Jennifer Bernardini of PwC said that the approach Treasury has taken for preparing to implement the foreign entity of concern changes has been impressive. "Treasury is very receptive to learning about the different industries and transactions that are affected by potential guidance," she said. Open questions that will need to be resolved include definitions, such as what is considered debt for the foreign-influenced entity rule and how direct costs and direct material costs are defined. Bernardini said that the guidance will likely answer threshold questions such as at what point the tests in the rules on prohibited foreign entities and material assistance are applied and at what level of components the tests apply. Treasury is also likely to use subregulatory guidance, rather than proposed regulations, for its initial guidance, she said. "It's an opportunity to put out a position and get comments before they approach proposing a rule set," she added.

Coming Attraction: OBBBA Guidance

This year should feature substantive — and substantial — guidance on the OBBBA's energy credit changes. In addition to the much-anticipated rules under subsections 7701(a)(51) and (52) regarding prohibited foreign entities and material assistance, the IRS's priority guidance plan also includes as-yet-unpublished guidance under sections 45Q, 45U, 45X, and 45Z.

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Section 45Z's clean fuel production credit has no published guidance yet, but that hasn't been an impediment to transactions, which increased last year. (Prior analysis: *Tax Notes Federal*, Oct. 13, 2025, p. 221.) The credit was also one of the few beneficiaries of an extension in the OBBBA, giving taxpayers until 2029 to produce and sell fuel. A notice of proposed rulemaking under section 45Z was received by the Office of Management and Budget's Office of Information and Regulatory Affairs on December 17, 2025, which indicates that answers to questions raised in comments about issues such as the qualifying sale rule, the provisional emissions rate process, and potentially the updates to the 45ZCF-GREET model will be coming soon.

OIRA also appears to be doing a more robust review of tax guidance under the Trump administration, Bernardini said. She added that there may also be a review of subregulatory guidance. The review process could run more quickly now than under the first Trump administration, because the staff reviewing tax rules now has years of experience.

Market Update

"Right now, we are getting more calls from parties looking to sell 2026 vintage credits than to buy," Burton said. Interest in buying credits has typically picked up around the September 15 deadline for estimated tax payments, because in January tax directors are reluctant to commit to buying credits when they aren't really sure how the year will go, he said.

But buyers are mobilizing for 2026, Moon said. The type of buyer looking early in the year tends to be larger and has a strategic plan to secure credits, particularly coveted credits like legacy section 48 investment tax credits or section 45 production tax credits that have no foreign entity of concern compliance requirements, he said. "That type of credit trades at a meaningful premium to comparable [section] 48E and 45Y tech-neutral credits. However, there is also a greater diversity of credits now available, too," Moon said. Over the past year, the types of credits being transferred have expanded, and there has been growing interest in other production-based credits, such as section 45Z and 45U credits, he said. One result of credit supply growth has been a continued bifurcation of the market pricing between credits with investment-grade counterparties or a very strong balance sheet, and credits that must offer a larger discount to entice buyers. Another market trend is buyers seeking tax credit purchase agreements that allow them to make delayed payments on ITCs, said Moon. "We are increasingly seeing ITC opportunities where sellers are willing to accommodate that," he said.

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