

# Inflation Reduction Act Domestic Content Bonus Update: IRS Issues Updated Guidance with New Elective Safe Harbor

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On May 16, 2024, the IRS released [Notice 2024-41](#) (the “Notice”), modifying its preliminary guidance issued last May in [Notice 2023-38](#) addressing the application of potential future rules that taxpayers must satisfy to qualify for the domestic content bonus tax credit amounts under the Inflation Reduction Act (IRA). The IRA amended §§ 45 and 48 of the Internal Revenue Code to provide domestic content bonus tax credits for certain qualified energy facilities or projects placed in service after December 2022.

The revisions and new rules introduced by Notice 2024-41 are intended to clarify the prior notice, and importantly, introduce a New Elective Safe Harbor that allows taxpayers the option to elect an objective calculation of the domestic cost formula required to qualify for the bonus. A summary of the changes introduced by the Notice are provided below.

## Summary of Notice 2024-41:

- Hydropower and pumped hydropower storage facilities was added to the list of Applicable Projects (“Applicable Project” is more fully defined in Notice 2023-38, but generally refers to a qualified facility or energy project or qualified investment in a qualified facility or energy technology under the IRA).
- The “utility scale photovoltaic system” Applicable Project is redesignated as the “Ground-mount and rooftop photovoltaic system.”
- The Notice provides additional Manufactured Product Components (any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project Component that is a Manufactured Product) that may be included with previously listed Applicable Projects.
- The Notice provides a new safe harbor that taxpayers may elect to use to classify Applicable Project Components (any article, material, or supply, whether manufactured or unmanufactured, that is directly incorporated into an Applicable Project) and to calculate the Domestic Cost Percentage<sup>[1]</sup> in an Applicable Project to qualify for domestic content bonus

credits. Taxpayers may elect to use the classifications and costs percentages in the New Elective Safe Harbor in lieu of the method specified in Section 3.03(2)(b) and (c) of Notice 2023-38. Taxpayers who utilize the New Elective Safe Harbor must use the classifications and cost percentages provided under the Notice. The New Elective Safe Harbor is intended to address the challenges of substantiation and verification in obtaining manufacturer's direct costs.

Should a taxpayer elect to utilize the New Elective Safe Harbor, the Notice also provides more detailed guidance regarding appropriate calculations of combined solar energy and energy storage projects. The formulas provided by the Notice with respect to the New Elective Safe Harbor offer the advantage of an objective, pre-formulated calculation of the Domestic Cost Percentage needed to satisfy the Adjusted Percentage Rule. However, this New Elective Safe Harbor merely provides an additional option for taxpayers seeking to qualify for the domestic content bonus; taxpayers still have the option to elect to proceed pursuant to the Direct Cost formula provided in Notice 2023-38, although they must elect either the original option or the New Elective Safe Harbor option.

Notice 2024-41 is not a notice of proposed regulations, which remains still to be issued. Additional uncertainties remain to be resolved in continued rulemaking. Notably, Notice 2024-41 appears to contain an incomplete description of steel or iron products in its Solar PV Table (Table 1). The IRS has requested written comments on Notice 2024-41 on or before June 15, 2024. Taxpayers may rely on Notice 2023-38, as modified by the Notice, for the domestic content bonus credit requirements for any Applicable Project the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations on the domestic content bonus credit requirements in the Federal Register.

Overall, the New Elective Safe Harbor established by Notice 2024-41 is likely to provide greater certainty to the renewable energy industry of how and whether taxpayers may obtain the domestic content bonus tax credit pursuant to the IRA.

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[1] For purposes of the Adjusted Percentage Rule, the "Domestic Content Percentage" is the percentage produced by dividing the Domestic Manufactured Products and Components Cost (as described in section 3.03(2)(b) of Notice 2023-38) by the Total Manufactured Products Cost (as described in section 3.03(2)(c) of Notice 2023-38).

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