November 4, 2022

Office of the Associate Chief Counsel (Passthroughs and Special Industries)
U.S. Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-50)
Room 5203, P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Via Federal eRulemaking Portal at: www.regulations.gov (IRS-2022-0050)

Re: Comments of Drax Group PLC on Elective Payment of Applicable Credits and Transfer of Certain Credits (Notice 2022-50)

Dear Sir/Madam:

We value the opportunity to submit comments on elective payment of applicable credits and transfer of certain credits. Drax Group owns and operates a portfolio of flexible, low carbon and renewable electricity generation. Drax is the world's largest producer and generator of sustainable bioenergy. We have operations in Arkansas, Louisiana, Mississippi and Alabama and power generating facilities across the UK. At the Drax Power Station in North Yorkshire we have been trialing Bioenergy with Carbon Capture and Storage (BECCS) to produce carbon removals. Now we are ready to go further by using BECCS at scale to permanently remove millions of tons of CO2 each year from the atmosphere and become a carbon negative company.

We have an ambition to deploy our BECCS technology globally. What's more we have set a target to deliver 12Mt of negative CO2 emissions per annum – including 4Mt of CO2 from new-build BECCS projects internationally by 2030. In fact, we are progressing our plans to build the first at-scale carbon removal power plant in the U.S. We are aiming to build a new facility of around 300 MW, with the capacity to generate over two million tons of carbon removal each year. Through the provision of dispatchable renewable power and carbon removals, this facility will play an important role in meeting both the Administration's 2035 clean grid target, as well as its short and long term decarbonization goals. The project will also create a unique end-to-end US supply chain protecting and creating around 1,000 jobs in green growth.

The deployment of carbon removal technologies will be highly reliant on favorable government policy frameworks to enable investment in first of a kind projects such as BECCS by Drax, and to ensure scale up of these technologies. With respect to provisions under §6417 and 6418, we offer the following comments.

(6) With respect to the elections under § 6417(d)(1)(B), (C), or (D):

(a) What, if any, issues could arise when an entity makes an election under § 6417(d)(1)(B), (C), or (D) and what, if any, guidance is needed with respect to such issues?

The elective payment provisions under §6417 appear to require an applicable entity to either not make the election and use the tax credits to reduce its tax liability or to make the election for the entire amount of an applicable credit. For a taxable entity making the election under § 6417(d)(1)(B), (C), or (D), this could lead to a situation in which a taxpayer is forced to make estimated tax payments even though the elective payment would more than offset the tax liability to avoid penalties for underpayment of estimated taxes. If the taxpayer was allowed to make an election for only a portion of the applicable credits, the credits not treated as an elective payment could eliminate the need for the taxpayer to make estimated payments without any penalties. The guidance on the treatment of the date on which the elective payment is made should allow the value of the elective payment to reduce the amount of any underpayment of estimate taxes for purposes of computing the underpayment penalties.

(b) What factors should the Treasury Department and the IRS consider in determining the time and manner for making the election?

Making the election should be as simple and as transparent as possible. The IRS and Treasury have already developed forms for the transfer of the §45Q tax credit: Form 8933 and the model certificates to report all of the information necessary to determine the amount of credits earned by the taxpayer, the amount transferred to a third party, and all information necessary to determine the party that is eligible to reduce its tax liability by the amount of those credits.

With respect to the transferability rules under §6418, the guidance on these provisions should make it clear that a taxpayer that makes the §6417 election for the first five years of the §§ 45Q, 45V, or 45X credits would be allowed to make an election to transfer the credits under those sections for each of the remaining years in the credit window for those credits. In addition, if the taxpayer makes the election to terminate the previously made §6417 election, transferability would be available for the year in which the revocation election is made and all subsequent years in the credit window.

(4) With respect to an election under § 6417(a) made by a partnership or S corporation pursuant to §6417(c)(1) for any applicable credit determined with respect to any facility or property held directly by a partnership or S corporation:

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6417(a) and what, if any, guidance is needed with respect to such issues?

A partnership or S corporation may include partners/shareholders that are applicable entities under §6417(d)(1)(a) and those that are not applicable entities. The statutory language in §6417(a) makes it clear that an applicable entity can make an election for the amount of the applicable credit that is determined with respect to that taxpayer. The guidance should make it clear that the partnership or S corporation is making the §6417 election on behalf of the partners/shareholders for the amount of applicable credits that are determined with respect to the partners/shareholders that are applicable entities. This treatment would allow applicable entities to receive the benefits of the applicable credits through a partnership or S corporation in the same manner they would have received those credits if they owned the investment directly. In addition, this should not prevent the partnership from making the §6418 election on behalf of its partners/shareholders that are eligible taxpayers under that section.

(2) Section 6418(c)(1) provides that, in the case of any eligible credit determined with respect to any facility or property held directly by a partnership or S corporation, the Secretary determines the manner in which such partnership or S corporation makes an election under § 6418(a) with respect to such credit.

(a) What, if any, issues could arise when a partnership or S corporation makes an election under § 6418(a) and what, if any, guidance is needed with respect to such issues?

A partnership or S corporation may include partners/shareholders that are eligible taxpayers under §6418(f)(2)(a) and those that are applicable entities under §6417(d)(1)(a). The statutory language in §6418(a) makes it clear that an eligible taxpayer can make an election for the eligible credit that is determined with respect to that taxpayer. The guidance should make it clear that the partnership or S corporation is making a §6418 transfer on behalf of the partners/shareholders for the eligible credits that are determined with respect to the partners/shareholders that are eligible taxpayers. This treatment would allow eligible taxpayers to receive the benefits of the eligible credits through a partnership or S corporation in the same manner they would have received those credits if they owned the investment directly. In addition, this treatment would not prevent the partnership/S corporation from making the 6417 election on behalf of its applicable entity partners/shareholders and the 6418 transfer on behalf of it eligible taxpayer partners/shareholders.

Thank you for the opportunity to provide comments on these important issues.

Sincerely,

Ross McKenzie

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Drax Group

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