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SUBMITTED ELECTRONICALLY AND VIA USPS

Internal Revenue Service
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Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

RE: Requests for Comments on Domestic Content, Energy Communities, and Energy Investment Credit Implementation from the Inflation Reduction Act

Submitted via email: *www.regulations.gov*

Equinor Wind US LLC ("Equinor" or "we" or "our" or "us") appreciates the opportunity to submit the following comments in response to the requests for public comment on the Internal Revenue Service's ("IRS") (1) Notice 2022-51 Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022, (2) Notice 2022-49 Request for Comments on Certain Energy Generation Incentives, and (3) Notice 2022-50 Request for Comments on Elective Payment of Applicable Credits and Transfer of Certain Credits.

As explained in greater detail below, our comments are related to domestic content, energy communities, and the energy credit under section 48 (the "ITC") of the Internal Revenue Code (the "Code"). We also express our general support for the comment letters submitted by American Clean Power, and the recommendations provided therein.

I. Background

Equinor is an experienced energy company that aims to become a net zero company by 2050 and considers offshore wind an important commercial opportunity to further our decarbonization goals. In partnership with bp, Equinor is now developing two projects—Empire Wind[1] and Beacon Wind[2]—and we are pursuing further growth in the U.S. offshore wind market.

Equinor is listed on the New York and Oslo stock exchanges (NYSE: EQNR, OSE: EQNR), and has an extensive portfolio of offshore oil, gas, and wind facilities developed over its 50-year

[1] Empire Wind is a proposed utility-scale offshore wind farm on the Outer Continental Shelf Offshore New York. Developed in two phases, the total project capacity is expected to be 2.1GW, with the potential to power 1 million homes. See the project's website for more information. EMPIRE WIND, https://www.empirewind.com/ (last visited Nov. 3, 2022).

[2] Beacon Wind is a proposed utility-scale offshore wind farm offshore Massachusetts. The first phase of the project is expected to have 1,230 MW nameplate capacity, interconnecting in New York. The second phase of the project will be of similar size. See the project's website for more information. BEACON WIND, https://www.beaconwind.com/ (last visited Nov. 3, 2022).

history. Equinor also has a proven track record of successfully developing large-scale energy projects in some of the most challenging ocean environments around the world.

II. Domestic Content

We fully support the intent of the domestic content incentive in the Inflation Reduction Act ("IRA") which incentivizes offshore wind developers to develop domestic supply chains. Equinor is developing two offshore wind leases that will collectively produce more than 4 GW (enough electricity to power roughly 2 million homes) and generate more than $1 billion in economic output for New York and potentially to other states in the Northeast U.S. As part of our commitment in New York, we are building an operations and maintenance (O&M) hub and staging area in Brooklyn, with a total investment of USD 200 – USD 250 million in infrastructure upgrades, while also pursuing the development of the port as a low-emissions facility. We are already also working to boost local offshore wind manufacturing capacity, notably by committing to purchase equipment from a port facility being developed at the Port of Albany that is going to manufacture wind turbine towers for both Empire Wind and Beacon Wind. As part of these projects, we are developing talent, generating jobs, and establishing an industry in New York, Connecticut and Massachusetts. If guidance is developed in the right way, the IRA could help expand and accelerate such initiatives, also beyond the Northeastern region of the U.S.

1. Qualified Facilities and Offshore Wind Energy Projects Should be Treated as Manufactured End Products

The domestic content rules in section 48 (and other Code sections similarly introduced or modified by the IRA) explicitly reference that the Federal Transit Administration ("FTA") Buy America rules should be used as a reference point. The FTA provides representative lists[3] and guidance letters[4] to assist taxpayers' understanding of how various items and materials are classified for purposes of the Buy America requirements. Under FTA regulations (and the representative lists and guidance letters), a system may be considered an end product, and a manufactured end product includes infrastructure projects.[5] Qualified facilities, including offshore wind energy projects in particular, appear to fit well within the FTA regulations and representative examples of systems treated as manufactured end products, but there is still uncertainty as to whether or not qualified facilities and offshore wind projects will ultimately be treated as such.

For taxpayers to comply with domestic content requirements, guidance is needed to understand how the materials and items that compose qualified facilities and offshore wind energy projects will ultimately be classified (i.e., as end products, components, or subcomponents) so taxpayers can source and account for such materials and items accordingly. Similar to the examples in the FTA regulations and guidance letters, the table below could be used for offshore wind, as it is

[3] 49 C.F.R. § 661.3 app. A; 49 C.F.R. § 661.11 apps. B, C, & D.
[4] *Buy America Guidance Letters*, FED. TRANSIT ADMIN., https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america-guidance-letters (last visited Nov. 3, 2022).
[5] 49 C.F.R. § 661.3; *id.* § 661.3 app. A.

representative of the main items and materials composing offshore wind facilities and projects, and would provide certainty for how various items and materials would be treated for purposes of compliance with the domestic content rules (especially if the FTA's "non-shift" rule[6] is applied with respect to energy projects and facilities under the IRA).

Technology	**End Product**	**Components**	**Subcomponents**
Offshore Wind	Qualified Facility, Offshore Wind Energy Project	Individual Offshore Wind Turbines, Substation, Transformers, Inter-array Cables, Export Cables	Tower, Nacelle, Blades, Monopile, Transition Piece, Jacket Platform

The FTA regulations serve as reference to the structure for domestic content under the IRA.[7] The table above appropriately captures the how the IRS should implement these rules for offshore wind.

The end product of a commercial offshore wind project is a combination of numerous wind turbines (Empire Wind and Beacon Wind will have a total of 200+ turbines), electrical cables, transformer stations, operating centers and other components. Treating an offshore wind farm (the entire offshore wind facility) as an end product is consistent, for example, with treating a ticket booth as a component of a transit station. It also recognizes the unique aspects of offshore wind projects as large, highly complex, combinations of components. It would be inappropriate to treat an offshore wind turbine (or any other components of an offshore wind facility) as an end product. All of these components must work together to create a functioning offshore wind facility.

As such, it is appropriate for the IRS to provide guidance consistent the proposed end product, component, and subcomponent characterizations in the table above.

2. Potential Application of Waivers

Because the application of the domestic content rules to offshore wind projects is unclear, if the recommendation outlined in Section 1 is not to be applied, investors are concerned that absolutely all structural iron and steel would need to be sourced *and* manufactured in the U.S. for an offshore wind project to be eligible for the domestic content incentive. This poses a significant challenge to the industry and may be counterproductive in terms of boosting local supply chains. Equinor supports the intention of boosting local industry and desires to source iron and steel from the U.S., and while the U.S. steel industry will have an important role to play in the development of the domestic offshore wind industry, it is highly unlikely, even with significant investment, that the U.S. steel industry will be able to fully service the offshore wind industry's short- to medium-term

[6] 72 Fed. Reg. 53,692 (Sept. 20, 2007).
[7] 49 C.F.R. § 661.5(c).

needs due to supply and logistical constraints. We suggest the IRS adopt waiver rules similar to those provided by the FTA under 49 C.F.R. § 661.7 or § 661.11.

With respect to supply, although progress is being made, there is currently both a lack of supply and quality in the U.S. of steel plates of the size needed for offshore conditions.[8] Also, even if U.S. steel were of sufficient quantity and quality, the requirements of the Jones Act provide a logistical barrier. Due to the number of welds, the plates needed for monopiles are so large they can only be transported via barges. The Jones Act requires that any such transportation of monopiles between U.S. ports be via barges that are U.S.-built, U.S.-citizen owned, and registered in the U.S.[9] Unfortunately, there is a lack of U.S. barges capable of providing these services. If a taxpayer must wait until a capable U.S. barge is available for use, it would result in significant timing delays. Further complicating the matter, is that the sole basis for obtaining a Jones Act waiver (to allow a capable non-U.S. barge to transport monopiles between U.S. points) is when doing so is in the "interest of national defense,"[10] and the lack of capable U.S. barges available to timely transport steel monopiles is unlikely to meet this standard.

The logistical challenges are similar for jacket foundations. The transportation of jacket foundations via barges, given the availability and velocity of U.S. barges, would take years and would make projects non-viable. Large numbers of Jones-Act compliant vessels would need to be built to service the offshore wind industry, which is very unlikely to happen in the short- to medium-term and until offshore wind developers can get certainty that the criteria can be met.

Therefore, an interpretation of the IRA that developers will not be eligible for the domestic content incentive unless all structural steel and iron pieces for offshore wind projects are both 100 percent sourced and manufactured in the U.S. is unworkable. Under such an interpretation, offshore wind developers will struggle to justify the substantial additional investments needed to boost U.S. supply chains for other components and to support gradual expansion of U.S. steel industry participation in the U.S. offshore wind sector, due to the risk that despite best efforts, they might fall short of satisfying the domestic content rules as a result of not satisfying the steel and iron requirements. Accordingly, we request that the IRS clarify that nonavailability waivers may be available for situations like the one described above, so that if and when U.S. monopiles (or other

[8] For example, as part of the ORECRFP22-1 solicitation for offshore wind projects, NYSERDA commissioned a study from consultancy Advisian investigating the availability of steel plate required for monopile foundations for offshore wind turbines and offshore substations. ORECRFP22-1 Preliminary Determination Memorandum, N.Y. State Energy Research & Dev., State of N.Y., *available at* https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00P8z000000kvGhEAI (last visited Nov. 3, 2022). The report concluded that "steel plate with the necessary thickness, dimension, and strength properties used to manufacture monopile foundations cannot be produced or made in the United States in sufficient and reasonably available quantities without incurring unreasonable expense" and found that a requirement for all structural iron and steel to be made in the U.S. per Buy American requirements would not be in the public interest. *Id.* at 5.

[9] 46 U.S.C. § 55102; *see also The Jones Act*, U.S. DEP'T OF TRANS. MAR. ADMIN. (Oct. 20, 2022), https://www.maritime.dot.gov/ports/domestic-shipping/domestic-shipping#:~:text=The%20Jones%20Act,-The%20most%20far&text=The%20law%20requires%20that%20this,which%20means%20crewed%20by%20Americans (last visited Nov. 3, 2022).

[10] 46 U.S.C. § 501; *see also The Jones Act*, *supra* note 9.

necessary U.S. steel or iron items) are produced in a sufficient quantity and quality, if there is not capable and timely transportation available, that a nonavailability waiver may be provided in such circumstances.

3. The IRA's Adjusted Percentage Test for Manufactured Products Should be Clarified

The IRA provides that manufactured products will be considered to have been produced in the U.S. if not less than the adjusted percentage of the total costs of all such manufactured products (and components thereof) are attributable to manufactured products which are mined, produced, or manufactured in the U.S. For offshore wind, the adjusted percentage is initially set at 20 percent. While straightforward on its face, the calculation of adjusted percentage for offshore wind is open to interpretation. This creates uncertainty for the industry when deciding on investments in domestic opportunities and should be clarified to incentivize domestic investments regardless of where they sit in the value chain.

The cost of components included in a manufactured product (under FTA rules subcomponents are included in components) would be categorized as domestic or foreign. Because some components are made up of subcomponents, this categorization should look at all costs of manufactured products across the facility, including the costs of the components and subcomponents associated with the manufactured products.

Hence, the formula for determining whether the 20 percent domestic content requirement under the manufactured product test has been met, could be as follows: Adjusted percentage *equals* all costs associated with domestic manufacturing and production of components and subcomponents (inter alia nacelles, towers, cables, blades, foundations) *divided by* the total costs of all such manufactured products of the facility.

Cost Clarifications

We also request that the IRS clarify which costs are and are not included in the adjusted percentage calculation for manufactured products, in line with the following principles:

- Labor costs of manufacturing a component should be included in the total cost calculation and the domestic content calculation.[11] This would include construction costs related to the manufacture of a component and similar costs incurred at the project site for the actual

[11] FTA does not define cost of components. FAR regulations at 48 C.F.R. § 25.003 define cost of components as:
(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

construction or final assembly of the qualified facility (e.g., contractor and subcontractor labor costs, profit, etc.).

- Marine installation and transportation costs are included in the total cost calculation of components. The cost of components delivered to a project site is the total price charged by the manufacturer or other supplier to the project sponsor, developer, contractor, or owner, including an assembly cost at the site (to the extent not duplicative with labor costs, as no double counting should be permitted).
- If any waiver is provided with respect to a specific part or material (e.g., under rules similar to 49 C.F.R. § 661.7) the costs of such part or material are considered mined, produced, or manufactured in the U.S. and included in the calculation.[12]
    - Even if the IRS disagrees with this suggestion, we request that it clarify the treatment of an item or material in the event a waiver is granted under rules similar to 49 C.F.R. §661.7(d). In that event, for purposes of the adjusted percentage calculation, is such item or material: (i) included in both the numerator and the denominator, (ii) included solely in the denominator, or (iii) excluded from the calculation altogether?

4. Expedient Guidance is Critical for Developing U.S. Projects

There is a lot of uncertainty in how the IRA will be interpreted with respect to domestic content. For offshore wind projects being developed in the U.S. that are making live procurement decisions, time is of the essence. It is critical that the IRS develop guidance quickly to incentivize decisions to boost domestic content. For example, both Empire Wind and Beacon Wind are currently in the process of awarding major contracts to suppliers. In some cases, there are U.S. options but they come at a significant premium or with significant risk compared to suppliers from outside the U.S. The domestic content incentive has the potential to change this calculus and enable both Empire Wind and Beacon Wind to unlock millions of dollars in local investments and generate a significant amount of local employment opportunities. However as outlined above, there is too much uncertainty in interpreting the domestic content requirements to presently justify the risk. If we knew more about how the IRA domestic content incentive would apply to us, it would be easier for us to make timely decisions in support of U.S. suppliers.

Accordingly, we request that guidance be promulgated rapidly to clarify the application of the domestic content requirements to offshore wind projects.

[12] 49 C.F.R. § 611.7 makes clear that in the event a waiver is provided in the public interest or due to an item not being available in sufficient and reasonably available quantities and of a satisfactory quality, the specific item or material for which the waiver is granted is treated as being of domestic origin. However, the regulations are silent as to the treatment of an item or materials in the event a waiver is granted under 49 C.F.R. § 611.7(d) because the cost of purchasing domestic would increase the costs by more than 25 percent.

III. Energy Communities

We fully support the intent of the energy community bonus included in the IRA to incentivize the repurposing of sites or parcels of land that may have been environmentally challenged by prior energy projects or negatively affected by the energy transition or environmental damages from coal extraction and combustion. We believe this incentive has the potential to help states install significant capacities of renewable sources by the end of the decade. The energy community incentive can also be an effective mechanism in compensating taxpayers for the challenges of developing projects on brownfield sites. However, there is still a lot of uncertainty in how the energy communities criteria will be applied to offshore wind projects.

1. Guidance is Needed to Clarify how Offshore Wind Facilities Qualify for the Energy Communities Incentive

Under the IRA, certain qualified facilities and energy property may receive an additional 10 percent bonus credit if the qualified facility or energy property is located in an energy community, which is defined as:

> (1) A brownfield site (as defined in subparagraphs (A), (B), and (D)(ii)(III) of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (42 U.S.C. 9601(39)),
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> (2) A metropolitan statistical area or non-metropolitan statistical area that has (or had, at any time after December 31, 2009) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined IRS), and has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the IRS), or
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> (3) A census tract (i) in which a coal mine has closed after December 31, 1999; (ii) in which a coal-fired electric generating unit has been retired after December 31, 2009; or (iii) that is directly adjoining to any census tract in which a coal mine has closed after December 31, 1999 or in which a coal-fired electric generating plant has been retired after December 31, 2009.

We encourage the IRS to adopt a readily understandable definition for the meaning of "located in" for offshore wind facilities and projects, as by definition, a large portion of such facilities and projects are located offshore (and therefore outside of energy communities). It is not feasible for the entire offshore wind "energy project" as defined under section 48 of the Code to be fully within an energy community. As a matter of fact, only the onshore portion of the facility, which consists of the onshore substation and operations base, can be located within an energy community. The offshore wind industry presents the added particularity that beyond the facility's footprint during long-term operations, substantial industrial space is needed to assemble and stage wind turbines before offshore installation. Since the intent of the IRA is to incentivize the repurposing of sites previously impacted by prior energy projects and to spur employment for the attendant

communities, the footprint required for wind turbine staging should be considered in the energy community qualification criteria.

In this context, the onshore portions of offshore wind energy projects, such as the substation, Operations and Maintenance base and port facility, that result in both job creation and significant infrastructure to the benefit of the energy community should be considered. Accordingly, our ask is that offshore wind energy projects qualify for the energy community incentive if: (1) any portion of the onshore substation is within an energy community, (2) any portion of any port facility substantially used for staging and crewing of the project is located within an energy community, or (3) any part of the Operations and Maintenance base for the project is located within an energy community.

On a related note, we request that the IRS clarify that the energy community provision in Code section 48E, which refers to a "qualified facility" being within an energy community, is treated the same as the energy community provision under Code section 48.

2. Facilities or Energy Projects in Locations Where the Presence (or Potential Presence) of a Hazardous Substance, Pollutant, or Contaminant may Complicate Development, Should be Considered Brownfield Sites

A brownfield site qualifies as an energy community under the IRA. Under CERCLA 101(39)(A), a "brownfield site" is defined as "real property, the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant."

CERCLA section 101(39)(B) provides exclusions from the definition of brownfield site, and the exclusions under CERCLA sections 101(39)(B)(iii) and (iv) provide exclusions for facilities that are the subjects of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued under this chapter or has been issued to or entered into by the parties, or a facility to which a permit has been issued by the U.S. or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321) ("FWPCA"), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.) ("TSCA"), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.) ("SDWA"). With respect to these exclusions as they apply to the IRA, a distinction should be made between brownfield sites that have state-level consent orders or permits and brownfield sites that have Federal-level consent orders or permits. These former should not be automatically disqualified and we request the IRS provide clarifying guidance.

- The exclusion in CERCLA section 101(39)(B)(iii) relates to orders issued or entered into by "the parties under this chapter." Guidance from the Environmental Protection Agency ("EPA") clarifies that "this chapter" relates to CERCLA, noting that the exception applies to facilities "subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under

CERCLA."[13] Parties under CERCLA include the owner/operator and the EPA as regulator (i.e., not states).

- With respect to the exclusion in CERCLA section 101(39)(B)(iv), the EPA Guidance states: "Applicants/recipients [for CERCLA brownfield funding] should note that the exclusion for permitted facilities does not extend to facilities with [National Pollutant Discharge Elimination System] permits issued under the authorities of the [FWPCA], but is limited to facilities issued permits under the authorities of the [Oil Pollution Act], (i.e., FWPCA section 1321)."[14]

As such, we request the IRA provide guidance that (i) the brownfield site exclusion in CERCLA section 101(39)(B)(iii) not apply to exclude a site unless it is subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA (i.e., the EPA and the owner/operator); and (ii) clarify that the brownfield site exclusion in CERCLA section 101(39)(B)(iv) not apply to exclude a site for all permits issued under the FWPCA unless it is issued under the authorities of the Oil Pollution Act (i.e. FWPCA section 1321).

Access to suitable sites to build onshore substations close to a point of interconnection has become increasingly challenging as earlier projects have secured the "low hanging fruits" and future projects in densely populated areas face increasing complexity and therefore cost and schedule risk. The available sites share in common the presence or potential presence of hazardous substances, pollutants, or contaminants that may complicate development. Some of those sites may or may not be subject to the exclusions set forth in 42 U.S.C. 9601(39)(B), which may disqualify them as energy communities. In line with the intent behind the energy communities provision to incentivize building projects in environmentally challenged areas, our ask is that the definition of energy community be defined in a way that is not overly restrictive so that placing the energy project or facility in a site were the presence or potential presence of a hazardous substance, pollutant, or contaminant may complicate its development is sufficient to qualify it for the energy community benefit.

3. A Map or Database of Energy Communities Should be Provided

In order to provide clarity as to which areas are energy communities, we urge the IRS to create (or reference) an official map of such locations for purposes of certifying compliance as energy communities, similar to the map that was provided with respect to opportunity zones.[15] A developer should be permitted to rely on the inclusion of a site on such map with respect to activities the developer undertook at the site (e.g., if a location is treated on the official map an energy community at the time the development is undertaken and meaningful steps are taken, such as

[13] *Information on Sites Eligible for Brownfields Funding Under CERCLA § 104(k)*, EPA (hereinafter "EPA Guidance"), *https://www.epa.gov/brownfields/information-sites-eligible-brownfields-funding-under-cercla-ss-104k* (last accessed Nov. 4, 2022).
[14] EPA Guidance, *supra* note 13, at 8.
[15] *Map of Opportunity Zones*, OPPORTUNITY ZONES, https://opportunityzones.hud.gov/resources/map (last visited Nov. 3, 2022).

beginning construction or acquisition of property rights, the site should be treated as an energy community until the project is completed).

As developers are now contemplating where to site projects and are looking for immediate guidance on potential energy communities, the IRS should seek to make this database searchable and available within the next 180 days. The website could be updated on a monthly basis, while still allowing developers the ability to seek an energy communities determination or self-certification for sites not listed on the website. The IRS should make clear that inclusion in the database is not a gating mechanism for eligibility for the energy communities incentive; instead, it is intended to disseminate and standardize information to allow taxpayers greater certainty.

IV. Energy Investment Tax Credit

1. Onshore Substations Should Qualify for the ITC

Treas. Reg. section 1.48-9(e)(1) provides that ITC-eligible wind energy property extends up to but does not include the stage that transmits or uses electricity. Wind energy property "consists of a windmill, wind-driven generator, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items." In CCA 201122018, the IRS provided "we read "power conditioning" equipment to include the step-up transformer that increases the voltage of the electricity generated in the wind farm to the voltage of the high voltage transmission line. Equipment beyond the step-up transformer is qualified property if that property is related to the functioning of the transformer or of transfer equipment."

Treas. Reg. section 1.48-9(e)(1) and T.D. 7765 discussed and differentiated between specific types of property including "power conditioning equipment, transfer equipment, and parts related to the functioning of those items." The types of activities that occur at the offshore substation and onshore substation are power conditioning and the transfer of electricity, not the transmission of electricity. IRS Notices similarly distinguish and define power conditioning and transfer equipment.[16] These definitions are consistent with the IRS's rulings in PLRs[17] and TAMs[18] that demonstrate a more limited definition of transmission equipment in the context of energy storage and capitalization of utility handling costs.

The property comprising an offshore wind project up to the point of interconnection including the offshore substation, the undersea export cables, the onshore substation and the gen-tie lines to the point of interconnection is property integral to the production of electricity and are not used for electrical transmission. As such, we request that the IRS formalize the classification of onshore substations as "power conditioning" equipment to provide certainty for its eligibility for the ITC.

[16] I.R.S. Notice 2013-29 ("physical work on a custom-designed transformer that steps up the voltage of electricity produced at the facility to the voltage needed for transmission is physical work of a significant nature with respect to the facility because power conditioning equipment is an integral part of the activity performed by the facility"); I.R.S. Notice 2018-59.

[17] I.R.S. P.L.R. 201142005 (Oct. 21, 2011); I.R.S. P.L.R. 201419006 (May 9, 2014); I.R.S. P.L.R. 201543001 (Oct. 23, 2015).

[18] I.R.S. Tech. Adv. Mem. 200543050 (June 29, 2005).

V. Transferability Guidance

1. Allocation Flexibility for Partnerships Making Code Section 6418 Election

Code section 6418 provides that a partnership is permitted to both allocate a portion of its tax credits to its partners and sell a portion of its credits. We request that the IRS clarify that cash proceeds from the transfer of tax credits pursuant to Code section 6418 do not have to be distributed in the same proportion as the credits would have been allocated for tax purposes, and confirm that cash sharing among partners is permitted to be determined by the partnership agreement.

With respect to the Code section 6418(c) election at the partnership level for less than all of the applicable credits, we request the IRS clarify that in such case, each partner's distributive share of any credits not subject to an election under Code section 6418 be determined under the partnership agreement as provided in Code section 704(a), and that any tax-exempt income allocations also be determined by the partnership agreement.

2. Transferred Credit Consideration Applied to Adjusted Financial Statement Income

Code sections 6418(b)(2) and (3) provide that the consideration for the transfer of credits is not taxable to the transferor or deductible for the transferee. As seen in practice with other transferable tax credits,[19] there is an expectation that the renewable credits will not be transferred at 100 percent of their value, and will instead be traded at a discount. While not taxable pursuant to Code section 6418, GAAP and IFRS accounting methods may require the gain on the purchase and sale of tax credits to be recorded in adjusted financial statement income. Under Code section 56A(c)(9), there is a specific exclusion or adjustment to adjusted financial statement income for amounts attributable to election for direct payments of certain credits. We request confirmation that the Code section 56A(c)(9) exclusion or adjustment provision applies to any discount or premium on the purchase and sale of transferable tax credits under Code section 6418, so that any such discount or premium does not result in an increase to a taxpayer's adjusted financial statement income.

3. Transferred Credits Offsetting Estimating Tax Payments

We request clarifying guidance that the transferred credits under Code section 6418 may be used to satisfy estimated tax payments. For example, if in February, Taxpayer 1 transfers credits to Taxpayer 2 for cash, please confirm that Taxpayer 2 could use the purchased credits to offset its estimated tax payments otherwise required for the first quarter.

[19] *Tax Equity Financing: An Introduction and Policy Considerations*, MARK P. KEIGHTLEY, DONALD J. MARPLES, MOLLY F. SHERLOCK, (2019), https://www.everycrsreport.com/reports/R45693.html (last visited Nov. 2, 2022).

VI. Conclusion

We appreciate the opportunity to respond to this request for comments on the domestic content requirements, energy communities, and the energy credit under section 48 of the Code and look forward to your thoughtful guidance. Should you have any questions, please contact Madeline Vey at mvey@equinor.com.