

Treasury and the IRS Give Guidance on "Material Assistance" Rules

by Catherine X. Pan-Giordano, John V. Chase, Liqiu Tang, Alan Wen, Patrick Peng, and Peter Wu

On February 12, 2026, the U.S. Department of the Treasury ("**Treasury**") and the Internal Revenue Service (the "**IRS**") released IRS Notice 2026-15 (the "**Notice**"), which provides guidance on the "material assistance" rules enacted as part of the One Big Beautiful Bill Act (the "**OBBBA**").

Among other things, the OBBBA introduced a series of restrictions that disallow certain tax credits otherwise available under Sections 45Y, 48E, 45X, 45Z, 45U, and 45Q of the Internal Revenue Code (the "**Code**") where a "prohibited foreign entity" (each, a "**PFE**") is involved. Like credits under Sections 45Z, 45U, and 45Q that face strict entity-level disqualifications if the taxpayer is a PFE, credits under Sections 45X, 45Y, and 48E face the same strict entity-level ban, as well as an additional "material assistance" restriction. This restriction disallows tax credits if the taxpayer receives material assistance from PFEs, meaning that the "material assistance cost ratio" ("**MACR**") is below certain specified threshold percentages, which vary by product and over time.

This Notice is the first formal guidance on the PFE-related rules but is limited to the narrow issue of "material assistance" applicable only to Sections 45X, 45Y, and 48E by (a) explaining how to calculate MACR and (b) clarifying the use of three "interim safe harbors".

A. MACR Calculation

Section 3 of the Notice outlines a four-step framework for calculating MACR. As a general matter, taxpayers are required to calculate a separate MACR for each qualified facility and each energy storage technology ("**EST**") it operates, or for each eligible component it manufactures.

Related People

- Catherine X. Pan-Giordano
- John V. Chase
- Liqiu Tang
- Alan Wen
- Patrick Peng
- Peter Wu

Related Capabilities

- Energy & Natural Resources
- Mergers & Acquisitions
- Tax

Step 1: Identify the types of manufactured products (“**MPs**”) and manufactured product components (“**MPCs**”) included in qualified facilities and ESTs, or the types of constituent elements, materials, or subcomponents (“**Constituent Materials**”) incorporated in the production of eligible components.¹

Step 2: Track (a) the “Direct Costs” of each MP or MPC, or the “Direct Material Costs” of each Constituent Material, and (b) whether each MP, MPC, or Constituent Material is mined, produced or manufactured by PFEs (“**PFE-Produced/Sourced**”). Unless relying on certain exceptions, taxpayers are required to track each MP, MPC, and Constituent Material on an individual basis.

a. **De Minimis Exception:** This exception permits taxpayers to assign MPs or MPCs of the same type among multiple qualified facilities or ESTs placed in service during the same taxable year, if the Direct Costs of all MPs and MPCs represent less than 10% of the total Direct Costs of each qualified facility or EST.

b. **Averaging Exception:** This exception permits taxpayers to (a) track the average Direct Cost/Direct Material Cost of MPs, MPCs, or Constituent Materials of the same type, and (b) determine whether an MP, MPC, or Constituent Material is PFE-Produced/Sourced by calculating the percentage of such items of the same type that are PFE-Produced/Sourced across qualified ESTs or eligible components produced during specified time periods. The “averaging exception” further suggests that a taxpayer may divide a taxable year into multiple “specified periods” and calculate a separate MACR for each period.

c. **Binding Contract Exception:** The Notice confirms a critical statutory grandfathering rule under Section 7701(a)(52)(D)(iv) of the Code. Upon a taxpayer’s election, the cost of any MP, MPC or Constituent Material, acquired pursuant to a binding written contract entered into prior to June 16, 2025, is entirely excluded from the MACR calculation. Nonetheless, this exclusion is subject to specific timing requirements, including construction commencement and place-in-service deadlines for qualified facilities, and sale deadline for eligible components.

Step 3: Determine the “Direct Costs” of all MPs incorporated into the qualified facility or EST, or the “Direct Material Costs” of all Constituent Materials used in the production of the eligible component.

a. **“Direct Costs” of MPs for Qualified Facilities and ESTs:** If a taxpayer purchases an MP, the Direct Costs of such MP are simply its acquisition costs (excluding purchaser’s labor costs). In contrast, if a taxpayer manufactures any MP or MPC itself, then the Direct Costs should consist of both the direct material costs and the direct labor costs.

b. **“Direct Material Costs” of Constituent Materials for Eligible Components²:** These are costs that a taxpayer paid or incurred for materials that become an integral part of

the eligible component and/or that are consumed in the ordinary course of producing the eligible components. Under this principle, Treasury and the IRS take the position that freight-in costs and tariffs should be included in the calculation of Direct Material Costs. In addition, the Notice provides guidance on calculating Direct Material Costs in the contract manufacturing context.

Step 4: Determine the “PFE Direct Costs” of all MPs incorporated into the qualified facility or EST (which should include the cost of all MPCs in each MP), and the “PFE Direct Material Costs” of all Constituent Materials used in the production of the eligible component.

The Notice clarifies that whether an MP, MPC or Constituent Material is PFE-Produced/Sourced depends on the PFE status of the supplier as of the taxable year during which the taxpayer paid the Direct Costs/Direct Material Costs of such MP, MPC or Constituent Material.

a. “PFE Direct Costs” of MPs for Qualified Facilities or ESTs: The Notice provides specific guidance on how to calculate “PFE Direct Costs” when an MP includes both PFE-Produced/Sourced and non-PFE-Produced/Sourced MPCs.

b. “PFE Direct Material Costs” of Constituent Materials (for Eligible Components): The Notice clarifies that, if the direct supplier of a Constituent Material is merely a reseller, then the taxpayer should apply the definition of “PFE” (as defined in Section 7701(a)(51) of the Code) to the entity that actually mined, produced, or manufactured the Constituent Material for all costs associated with those Constituent Materials. This clarification may be read to suggest that the use of a non-PFE to resell PFE-Produced/Sourced Constituent Materials cannot circumvent the material assistance rules.

B. Interim Safe Harbors

The OBBBA and the Notice provide for several “interim safe harbors” which make the MACR calculation less onerous for taxpayers.

a. Identification Safe Harbor and Cost Percentage Safe Harbor

The Identification Safe Harbor: It allows taxpayers to use the “2023 - 2025 Safe Harbor Tables”³ to identify MPs and MPCs of a qualified facility or EST, or Constituent Materials of an eligible component.

The Cost Percentage Safe Harbor: It allows taxpayers relying on the Identification Safe Harbor to apply a prescribed cost percentage to each MP, MPC and Constituent Material for the calculation of Direct Costs/Direct Material Costs, PFE Direct Costs/PFE Direct

Material Costs, and MACR.

The Notice imposes certain limitations on taxpayers' eligibility to use the Identification Safe Harbor and the Cost Percentage Safe Harbor.

- A taxpayer operating a qualified facility or EST may use these two safe harbors only if such qualified facility or EST is listed as an "Applicable Project" in the 2023-2025 Safe Harbor Tables.
- A taxpayer manufacturing an eligible component may use these two safe harbors only if such eligible component is listed in Section 4.01(3)(d) of the Notice.

To the extent that a taxpayer is eligible to use the Identification Safe Harbor and the Cost Percentage Safe Harbor, it may identify the relevant MPs, MPCs and Constituent Materials (as well as their respective cost percentage) by table reference and disregard any items used in actual production that are not listed in the applicable 2023-2025 Safe Harbor Table. In addition, if the applicable table lists any MP, MPC or Constituent Material that is not used in actual production, such item could also be disregarded for purpose of calculating MACR.

b. Certification Safe Harbor

The Certification Safe Harbor allows taxpayers to determine whether an MP, MPC or Constituent Material is PFE-Produced/Sourced so that taxpayers do not need to independently conduct an exhaustive supply-chain analysis.

In addition to certain formality requirements (including providing the supplier's EIN and signing under penalties of perjury), a valid certification from a direct supplier should be structured as a written attestation that includes one of the following:

- **Option A:** The supplier may provide a broad certification that the MP, MPC, eligible component or Constituent Material (as applicable) it supplied was not PFE-Produced/Sourced, and that it does not know (or have reason to know) that any prior supplier in the chain of production is a PFE; or
- **Option B:** Instead of providing the broad certification described in Option A, the supplier may alternatively certify the total Direct Costs/Direct Material Costs of the non-PFE-Produced/Sourced MP, MPC, eligible component or Constituent Material (as applicable).

However, taxpayers and suppliers should be aware that the abusive use of this safe harbor may result in penalties and could expose them to significant financial and legal risks.

C. What Happens Next?

a. Rules that Treasury and the IRS Expect to Include in Future and Present Clarifications

Treasury and the IRS indicate that they will include comprehensive rules in forthcoming regulations regarding the “Application of foreign-influence entity rules.” However, Section 5.01 of the Notice already provides an immediate, critical guidance on “effective control.” The Notice states that the statutory control provisions operate independently. For example, if a taxpayer makes a payment to a Specified Foreign Entity (each, an “**SFE**”) under an IP licensing agreement related to a facility or eligible component, and that agreement was entered into or modified on or after July 4, 2025, the SFE exercises effective control, automatically rendering the taxpayer a Foreign-Influenced Entity. Further forthcoming regulations will include rules to “prevent entities from evading, circumventing, or abusing the application of the PFE restrictions”, which may further clarify the scope of the OBBBA’s anti-circumvention provisions.

b. Comment Period and Process

Taxpayers are encouraged to submit comments to Treasury and the IRS on general issues relating to PFE and material assistance, as well as on certain specific questions set forth in Section 7.01 of the Notice, by March 30, 2026.

c. Reliance on the Notice

Taxpayers may rely on Sections 3 and 5.01 of the Notice until the date that is 60 days after the publication of the forthcoming regulations and may rely on Section 4 of the Notice until the date that is 60 days after the publication of the forthcoming safe harbor tables.

Dorsey & Whitney can continue to monitor developments and provide updates and analysis regarding this Notice and forthcoming regulations addressing PFE issues.

¹ “MP” is defined in Section 3.01(2)(c) of Notice 2023-38, “MPC” is defined in Section 3.01(2)(d) of Notice 2023-38, and certain additional definitions could be found in Section 3.01(2) of Notice 2023-38.

² Taxpayers relying on Section 45X integrated components rule should be aware of new statutory limitations.

³ “2023-2025 Safe Harbor Tables” include: (a) Sections 5.05, 5.06, 6.02, and 7.02 of Notice 2025-08, (b) Section 3.02 in Notice 2024-41 for a Hydropower Facility or a Pumped Hydropower Storage Facility, and (c) Section 3.04 in Notice 2023-38 for an Offshore Wind Facility.

The guidance contained in IRS Notice 2026-15 is interim in nature and precedes the issuance of comprehensive proposed regulations by the Department of the Treasury. Consequently, the interpretation and enforcement of the OBBBA are rapidly evolving. This publication does not, and is not intended to, provide legal, tax or accounting advice, and readers should consult their tax advisors concerning the application of tax laws to their specific facts and circumstances, particularly regarding the complex supply chain and ownership restrictions imposed by the OBBBA. This analysis is not tax advice and is not intended or written to be used, and cannot be used, for purposes of avoiding tax penalties that may be imposed on any taxpayer. The information contained herein is general in nature and based on authorities that are subject to change without notice.