Guidance Issued for the Inflation Reduction Act's New Clean Vehicle Credit

On March 31, 2023, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) unveiled its proposed rules and guidance interpreting the domestic content requirements for the Inflation Reduction Act's (IRA) electric vehicle battery tax credit known as the New Clean Vehicle Credit. This guidance discusses the requirements governing where critical minerals for electric vehicle batteries are sourced and where their components can be manufactured or assembled to qualify for the credit.

Internal Revenue Code (IRC) Section 30D(b) has been amended to provide a maximum potential credit of $7,500 per electric vehicle. This credit consists of: (1) $3,750 from meeting the **Critical Minerals Requirement**; and (2) $3,750 for meeting the **Battery Components Requirement**. Vehicles can qualify for half the credit if they meet either the battery or critical minerals requirement. All vehicles, however, must undergo final assembly in North America.

These requirements will apply to vehicles placed in service **after April 17, 2023**, the date of the official release of the guidance. Following its official release, manufacturers will have **a two-and-a-half-week grace period** to certify whether their vehicles qualify. To aid in this endeavor, the Treasury stated it would publish a shortlist of tax credit-eligible vehicles on April 18, 2023.

To benefit from the maximum potential credit in 2023, these requirements must be met: (1) at least half of its battery components must be made in North America; and (2) at least 40% of the battery's critical minerals must be sourced domestically or from a country with which the U.S. has a free trade agreement.

BATTERY COMPONENTS REQUIREMENT

To meet the Battery Components Requirement, a specific percentage of the battery components must be manufactured or assembled in North America. The percentages by year are as follows:

YEAR	APPLICABLE %
2023	50%
2024	60%
2025	60%
2026	70%
2027	80%
2028	90%
2029	100%

The Treasury proposed a four-step process for determining the percentage of components qualifying for the tax credit:

(1) Identify battery components manufactured or assembled in North America

(2) Assess each North American battery component

(3) Determine the incremental value of all battery components

(4) Calculate the qualifying battery component content by dividing the total incremental value of North American battery components by the total incremental value of all battery components

CRITICAL MINERALS REQUIREMENT

To meet the Critical Minerals Requirement, a specific percentage of the critical minerals contained in the battery must be extracted or processed in the United States or a country with which the United States has a free trade agreement, or be recycled in North America. The percentage increases each year as follows:

YEAR	APPLICABLE %
2023	40%
2024	50%
2025	60%
2026	70%
2027	80%

Similarly, the Treasury proposed a three-step process for determining the percentage of the value of the critical minerals in a battery that contribute toward meeting the Critical Minerals Requirement:

(1) Determine procurement chains

(2) Identify qualifying critical minerals

(3) Calculate qualifying critical mineral content

FINAL ASSEMBLY REQUIREMENT

Along with the requirements outlined above, the IRA requires that all qualifying vehicles undergo final assembly in North America to be eligible for the Section 30D credit. This requirement applies to vehicles sold after August 16, 2022.

The IRA defines "final assembly" as how "a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle."

To establish where final assembly of a vehicle occurred, the Treasury states it will rely on the following: (1) the vehicle's plant of manufacture as reported in the vehicle identification number (VIN); or (2) the final assembly point reported on the label affixed to the vehicle as required under 49 CFR 583.5(a)(3).

QUALIFYING FREE TRADE AGREEMENT COUNTRIES

The IRA mentions the term "free trade agreement" but does not define it. The Treasury, however, has interpreted this to mean countries with which the U.S. has comprehensive free trade agreements — that is, agreements covering "substantially all trade in goods and services between the parties, including trade in critical minerals."

The Treasury listed these countries as pre-approved: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru and Singapore.

Additional Assistance

Our attorneys remain ready to provide advice and guidance on complying with the shifting regulatory landscape surrounding the IRA. For further assistance, please contact the attorneys on our Energy Law Practice Team or the Phillips Lytle attorney with whom you have a relationship. ■

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ENERGY LAW

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