

# Client Alert

March 2015

## IRS Issues Updated Guidance on Beginning of Construction Requirement Under Sections 45 and 48 of the Internal Revenue Code

The Internal Revenue Service has issued updated guidance on the “beginning of construction” requirement under Sections 45 and 48 of the Internal Revenue Code. The Tax Increase Prevention Act of 2014 (Pub. L. No. 113-295, 128 Stat. 4010) (TIPA), which was signed into law in December 2014, extended the “beginning of construction” deadline for wind, closed- and open-loop biomass, geothermal, landfill gas, trash, hydropower and marine and hydrokinetic facilities. Accordingly, a taxpayer will be eligible for the renewable electricity production tax credit under Section 45 (PTC), or the energy investment tax credit under Section 48 (ITC) in lieu of the PTC, if construction of such facility began before January 1, 2015.

On March 11, 2015, the Internal Revenue Service released Notice 2015-25, 2015- I.R.B.  (the “[Notice](#)”), which provides updated guidance on the beginning of construction requirement. The Notice updates certain dates and deadlines in the guidance previously provided in Notice 2013-29, 2013-1 C.B. 1085, Notice 2013-60, 2013-2 C.B. 431, and Notice 2014-46, 2014-36 I.R.B. 520 (collectively, the “prior notices”)<sup>1</sup>.

Most importantly, the Notice extends by one year the date by which a facility must be placed in service in order to be deemed to satisfy the Continuous Construction Test (for purposes of satisfying the Physical Work Test) or the Continuous Efforts Test (for purposes of satisfying the 5 percent Safe Harbor). Pursuant to the Notice, a facility will be deemed to satisfy the Continuous Construction Test or Continuous Efforts Test if a taxpayer begins construction on a facility prior to January 1, 2015, and places the facility in service before January 1, 2017, regardless of the amount of physical work performed or the amount of costs paid or incurred after December 31, 2014 and before January 1, 2017.

The new guidance provides needed comfort in evaluating which projects will satisfy the beginning of construction requirement as extended by TIPA.

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<sup>1</sup> See prior client alerts [here](#), [here](#) and [here](#).