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In this article, Chin examines the new section 50(a)(4) recapture enacted in the One Big Beautiful Bill Act for the requirements of the clean electricity investment credit and identifies potential planning opportunities to mitigate its impact on renewable financing.

This article is written for the small to midsize renewable developers who may not have in-house tax counsel to digest the One Big Beautiful Bill Act (P.L. 119-21) or the outside counsel budget to pay law firms to interpret its complicated provisions. Statutory amendment is not easy to read even for tax lawyers. With that in mind, I have laid out the various subsections referenced in new section 50(a)(4) to help you find and analyze your specific facts to the language of the law, summarized the statute in plain English so that you can communicate its requirements to other parts of your business and collectively avoid falling into its recapture trap, and included practical planning tips for a traditional tax equity partnership to consider. I have laid out my interpretation of the law based on the plain language in section 50(a)(4) and how it should apply in a traditional tax equity partnership. Guidance on these issues has not yet been issued, and under the OBBBA, Treasury has been given the authority to issue guidance preventing circumvention of the new prohibited foreign entity rules. And so, if your structure is complicated or if you have significant contractual or licensing arrangements with potentially problematic foreign entities, you should seek outside counsel advice.

Because tax credits are existential to a renewable developer's business model, I recommend cultivating in-house tax expertise to prepare for the evolution of this new body of law, to manage the onslaught of tax issues (federal, state, and local) on the horizon, and to communicate and guide your entire business to ensure compliance with these developments.

I. Prohibited Foreign Entity Restrictions Under the OBBBA

The OBBBA amended the requirements of the technology-neutral clean energy production tax credit under section 45Y by adding a new paragraph (13) to section 45Y(g). It does the same thing to the technology-neutral clean electricity investment tax credit under section 48E by adding a new paragraph (6) to section 48E(d). Both new sections 45Y(g)(13) and 48E(d)(6) impose restrictions concerning prohibited foreign entities, stating that "no credit shall be determined" under section 45Y(a) or 48E(a), as the case may be, for any tax year if the taxpayer is a specified foreign entity (as defined in section 7701(a)(51)(B)), a foreign-influenced entity (as defined in section 7701(a)(51)(D)), or if the taxpayer makes a payment in the prior year to a specified foreign entity, entitling the entity (or its related party) to exercise "effective control" (as defined under section 7701(a)(51)(D)(ii)) over the taxpayer's qualified facility, energy storage technology, or production of eligible components.

This article does not address all the new restrictions under new sections 45Y(g)(13) and

48E(d)(6);[1] that is an article for another day. Instead, because section 48E is subject to a five-year recapture period (as opposed to the section 45Y production tax credit), the OBBBA also made changes to the recapture provision under section 50 by adding an entirely new paragraph (4) to section 50(a) that is relevant for section 48E only. This article analyzes the new section 50(a)(4) recapture under the lens of statutory construction to demonstrate that the term "specified taxpayer" is limited and identifies planning opportunities to navigate this new recapture burden on renewable financing.

New section 50(a)(4), titled "Payments to Prohibited Foreign Entities," imposes a punitive 100 percent recapture over a 10-year period as follows:

> (A) In general. If there is an applicable payment made by a specified taxpayer before the close of the 10-year period beginning on the date such taxpayer placed in service investment credit property which is eligible for the clean electricity investment credit under section 48E(a), then the tax under this chapter for the taxable year in which such applicable payment occurs shall be increased by 100 percent of the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under section 46 which is attributable to the clean electricity investment credit under section 48E(a) with respect to such property.
>
> (B) Applicable payment. For purposes of this paragraph, the term "applicable payment" means, with respect to any taxable year, a payment or payments described in section 7701(a)(51)(D)(i)(II).
>
> (C) Specified taxpayer. For purposes of this paragraph, the term "specified taxpayer" means any taxpayer who has been allowed a credit under section 48E(a) for any taxable year beginning after the date which is 2 years after the date of enactment of this paragraph.

II. Section 50(a)(4) Recapture Observations

Distilled to its core, new section 50(a)(4) imposes a harsh 100 percent recapture if, anytime during the 10-year recapture period, (1) a specified taxpayer makes a payment to (2) a specified foreign entity, and (3) the payment is an applicable payment, meaning that it is pursuant to an agreement entitling the specified foreign entity (or its related party) to exercise effective control over the underlying section 48E qualified facility or energy storage technology.

Every single one of the three prongs above — specified taxpayer payer, specified foreign entity payee, and applicable payment conferring effective control — must be met before you trigger section 50(a)(4) recapture. Unless a developer's contractual counterparties can affirmatively confirm over a 10-year period that they (and in some cases, their related parties) are not, and will not be, a specified foreign entity — a needlessly burdensome and unadministrable process — the developer may face difficulty monetizing its tax credits.

Fortunately, the specified taxpayer whose payments section 50(a)(4) scrutinizes should be limited, based on a plain reading of the text, to just the project company and/or its class B member. Tax planning strategies to ensure that you fail to meet at least one of the three prongs to escape the recapture trap is one way to ease the financing and insurance hurdle for project developers.

In the absence of guidance, below are a few high-level takeaways and structuring tips for a standard tax equity transaction that should mitigate the need for taxpayers to have to rigorously monitor section 50(a)(4) recapture risks over a 10-year period:

[1]The OBBBA also added new material assistance requirements (sections 45Y(b)(1)(E) and 48E(b)(6)), which are also beyond the purview of this article.

- In a typical tax equity structure, payments from the project company and/or the class B member should be the focus for purposes of assessing recapture under section 50(a)(4);[2] payments made by parties related to the project company and/or class B member should therefore not matter.
- To avoid the recapture trap, structure contracts and licensing arrangement above the project company or the class B member level so that the entity claiming the tax credit is not the same as the entity making the potentially problematic payments.
- Neither the class A member nor the tax credit buyer should have the requisite ownership interest or the contracting authority to enter any contracts or licensing arrangements that could give a prohibited payment recipient effective control over the qualified facility or energy storage technology.
- If counterparties to the project company and/or class B member are unable to confirm the identity of their related parties, the project developer and/or the class B member should plan to demonstrate that at least one of the three prongs for recapture were not met, by demonstrating that:
  - they have not granted any exclusive rights to any counterparties, even for the maintenance, repair, or operation of their plant or equipment;
  - they have not allowed any counterparty to retain rights in any licensing arrangements; and
  - contracts requiring payments were all made at a level above the specified taxpayer.
- Given Treasury's authority to issue rules addressing anti-circumvention, interest payments on a secured debt at the project company or class B member level could be viewed as conferring effective control, potentially triggering section 50(a)(4).
- Likewise, given Treasury's authority to issue regulations defining effective control, if there is debt at the specified taxpayer level, make sure that it is unsecured or that the lender is required to execute forbearance agreements in case of foreclosure so that the lender can never have control of the qualified facility or energy storage technology.
- Once contracts and licensing arrangements are properly structured above the specified taxpayer level, without any exclusivity or retained rights for the counterparties, the timing uncertainty regarding the prohibited payment should become less relevant.

III. Legal Analysis

1. Who is the specified taxpayer whose payments we need to analyze?

a. In a traditional tax equity partnership, the project company and the class B member are the only entities that can realistically fall into the specified taxpayer definition whose payments we have to scrutinize to avoid the section 50(a)(4) recapture.

Section 50(a)(4)(C) applies to a specified taxpayer, which is defined as the taxpayer that has been *allowed* a section 48E tax credit for any tax year beginning after July 4, 2027. Each portion of an eligible tax credit can only be allowed to, and claimed by, one taxpayer. A practical way to identify the specified taxpayer is to identify the party that will file Form 3800. The instructions to Form 3800 describe parties and entities that must file.

In a section 6418 transfer, the specified taxpayer can be the project company (usually the tax credit seller) and the tax credit buyer; the instructions to Form 3800 indicate that both the transferor and the transferee must file the form.

In a traditional tax equity structure, both the class A member (the tax equity investor) and class B member are allowed the tax credits by way of

[2]The definition of specified taxpayer potentially encompasses multiple entities, including the partnership (the taxpayer) and its partners, because the credits are technically "allowed" to those entities. This is broader than the entities that can trigger the general payment rule in section 7701(a)(51)(D)(i)(II), which only contemplates a single entity making the offending payment (*i.e.*, the taxpayer). For example, under the general payment rule, only payments made by the partnership, and not its partners, are relevant in determining whether the partnership is a foreign-influenced entity in the year the credit is claimed. The payment analysis for the general rule (which takes place in the year a credit is claimed) is separate from the recapture payment analysis (which takes place over a 10-year period beginning in the year the section 48E credit is claimed).

the partnership flow-through; both the class A and class B members must file Form 3800 to report their respective portion of the eligible tax credit.

In case of a partial transfer, all the parties could be specified taxpayers because they are all allowed the tax credits: the tax credit seller, the tax credit buyer, the class B member, and the class A member.[3]

b. The specified taxpayer definition does not include related parties.

Note that a specified taxpayer does not expand to any related parties beyond the entity allowed the section 48E tax credit. The specified taxpayer is strictly the entity that files Form 3800 and is allowed the section 48E tax credit. Nowhere in section 50(a)(4) is there a requirement that you look beyond the specified taxpayer making the offending applicable payment. Section 7701(a)(51)(D)(ii)(IV) says, "for purposes of subclauses (I), (II), and (III), the term 'taxpayer' shall include any person related to the taxpayer." But the referenced subclauses relate only to the definition of effective control and do not expand the definition of specified taxpayer under section 50(a)(4).

In drafting the OBBBA, Congress was certainly aware of related-party issues and peppered the word "related" all over section 7701(a)(51)(D)(i)(II) when defining effective control. It did not do so when defining the specified taxpayer under section 50(a)(4)(C). Therefore, in a typical tax equity structure, the only parties whose payments we need to analyze for purposes of the section 50(a)(4) recapture are the parties to whom the 48E credit was allowed — which, as discussed above, could under various circumstances include the project company, the tax credit buyer (if there is a section 6418 transfer), the class B member (if there is no transfer or a partial transfer), and the class A member, but no related parties.

c. A narrow definition of specified taxpayer, along with the fact that neither the buyer nor the class A member has the legal authority to enter any contractual or licensing arrangements on behalf of the project company, means that only project company and class B member payments require further scrutiny in determining whether an applicable payment has been made under section 50(a)(4)(A).

As we continue to examine the other prongs of section 50(a)(4), we will eliminate both the tax credit buyer and the class A member from scrutiny. This is because, neither the tax credit buyer (as an unrelated third party) nor the class A member (typically with less than 49 percent capital interest[4] in the project company) has the power to enter contracts or licensing arrangements that could convey effective control of the qualified facilities or energy storage technology. Thus, in a tax equity transaction, the project company and the class B member are the only specified taxpayers that can realistically confer effective control to a specified foreign entity and whose payments require scrutiny to avoid section 50(a)(4) recapture.

This observation presents a planning opportunity; any potentially problematic contract or licensing arrangement should be structured above the specified taxpayer level to put it beyond the reach of the section 50(a)(4) recapture. If the party claiming the tax credit — the specified taxpayer — is different from the party making the payments, you cannot violate section 50(a)(4) and trigger recapture.

2. Who are specified foreign entities — or the prohibited payees — of the prohibited applicable payment?

Under section 7701(a)(51)(B), the universe of offensive payment recipients that can trigger the

[3] Note that the position I take here assumes that *any* taxpayer who has been allowed a section 48E credit can be a "specified taxpayer" that can potentially trigger recapture. A literal reading of the statute, however, would suggest that the universe of specified taxpayers is even more limited, because section 50(a)(4)(A) indicates the applicable payment must be made by a specified taxpayer "before the close of the 10-year period beginning on the date *such* taxpayer placed in service investment credit property." (Emphasis added.)

[4] I believe that capital interest based on the partner's relative capital account balance is the most administrable way to analyze partnership ownership interest, at least in a partnership flip. This is because profit interest changes between the class A and class B members and unnecessarily complicates this analysis, whereas a class B member almost always retains majority interest under a capital account balance analysis. However, even if the profit interest were used to determine ownership and entangles class A into the definition of a specified taxpayer, factually speaking, a class A member typically does not make the type of payments on behalf the project company that would run afoul of section 50(a)(4).

punitive recapture is limited to the specified foreign entity, defined under section 7701(a)(51)(B):

> For purposes of this paragraph, the term "specified foreign entity" means —
>
> (i) a foreign entity of concern described in subparagraph (A), (B), (D), or (C) of section 9901(8) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 15 U.S.C. 4651),
>
> (ii) an entity identified as a Chinese military company operating in the United States in accordance with section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283; 10 U.S.C. 113 note),
>
> (iii) an entity included on a list required by clause (i), (ii), (iv), or (v) of section 2(d)(2)(B) of Public Law 117-78 (135 Stat. 1527),
>
> (iv) an entity specified under section 154(b) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31; 10 U.S.C. note prec. 4651), or
>
> (v) a foreign-controlled entity.

Under section 7701(a)(51)(C), a foreign-controlled entity is defined as:

> i. the government (including any level of government below the national level) of a covered nation,
> ii. an agency or instrumentality of a government described in clause (i),
> iii. a person who is a citizen or national of a covered nation, provided that such person is not an individual who is a citizen, national, or lawful permanent resident of the United States,
> iv. an entity or a qualified business unit (as defined in section 989(a)) incorporated or organized under the laws of, or having its principal place of business in, a covered nation, or
> v. an entity (including subsidiary entities) controlled (as determined under subparagraph (G)) by an entity described in clause (i), (ii), (iii), or (iv).

In theory, the definition of specified foreign entity should be a narrow list of offensive payment recipients. The inclusion of foreign-controlled entities under a more expansive definition makes it difficult for developers to ensure compliance with this prong of the recapture test because a counterparty's organizational relationship over a 10-year period is beyond a developer's control. If, during the due diligence process, a project company is required but unable to provide certification that all its contractual counterparties do not, and will not in the next 10 years, meet the specified foreign entity definition, its only option to demonstrate compliance with section 50(a)(4) is to show that none of its contracts confer exclusivity and none of its licensing agreements allow any contractual rights to be retained by the counterparty.

3. What is the scope of a prohibited applicable payment, and what payments at the project company/class B member level can potentially entitle a prohibited recipient (or one related to it) to exercise effective control?

a. Section 50(a)(4)(B) defines a prohibited applicable payment as one that confers effective control over the qualified facility or energy storage technology.

Section 50(a)(4)(B) defines the applicable payment that a specified taxpayer is prohibited from making and directs us to look to section 7701(a)(51)(D)(i)(II), which sets forth, in relevant part, the following prohibited payment characteristics:

> During the previous taxable year, [the entity] made a payment to specified foreign entity pursuant to a contract, agreement, or other arrangement which entitles such specified foreign entity (or an entity related to such specified foreign entity) to exercise effective control over —
>
> (aa) any qualified facility or energy storage technology of the taxpayer (or any person related to the taxpayer) . . .

b. Section 7701(a)(51)(D)(ii) defines what effective control means by setting forth a list of contractual and licensing arrangements that can confer effective control over a qualified facility or energy storage technology.

(I) In general

(aa) General rule. Subject to subclause (II), for purposes of clause (i)(II), the term "effective control" means 1 or more agreements or arrangements similar to those described in subclauses (II) and (III) which provide 1 or more contractual counterparties of a taxpayer with specific authority over key aspects of the production of eligible components, energy generation in a qualified facility, or energy storage which are not included in the measures of control through authority, ownership, or debt held which are described in clause (i)(I).

(bb) Guidance. The Secretary shall issue such guidance as is necessary to carry out the purposes of this clause, including the establishment of rules to prevent entities from evading, circumventing, or abusing the application of the restrictions described subparagraph (C) and subclauses (II) and (III) of this clause through a contract, agreement, or other arrangement.

(II) Application of rules prior to issuance of guidance. During any period prior to the date that the guidance described in subclause (I)(bb) is issued by the Secretary, for purposes of clause (i)(II), the term "effective control" means the unrestricted contractual right of a contractual counterparty to —

(aa) determine the quantity or timing of production of an eligible component produced by the taxpayer,

(bb) determine the amount or timing of activities related to the production of electricity undertaken at a qualified facility of the taxpayer or the storage of electrical energy in energy storage technology of the taxpayer,

(cc) determine which entity may purchase or use the output of a production unit of the taxpayer that produces eligible components,

(dd) determine which entity may purchase or use the output of a qualified facility of the taxpayer,

(ee) restrict access to data critical to production or storage of energy undertaken at a qualified facility of the taxpayer, or to the site of production or any part of a qualified facility or energy storage technology of the taxpayer, to the personnel or agents of such contractual counterparty, or

(ff) on an exclusive basis, maintain, repair, or operate any plant or equipment which is necessary to the production by the taxpayer of eligible components or electricity.

(III) Licensing and other agreements

(aa) In general. In addition to subclause (II), for purposes of clause (i)(II), the term "effective control" means, with respect to a licensing agreement for the provision of intellectual property (or any other contract, agreement or other arrangement entered into with a contractual counterparty related to such licensing agreement) with respect to a qualified facility, energy storage technology, or the production of an eligible component, any of the following:

(AA) A contractual right retained by the contractual counterparty to specify or otherwise direct 1 or more sources of components, subcomponents, or applicable critical minerals utilized in a qualified facility, energy storage technology, or in the production of an eligible component.

(BB) A contractual right retained by the contractual counterparty to direct the operation of any qualified facility,

any energy storage technology, or any production unit that produces an eligible component.

(CC) A contractual right retained by the contractual counterparty to limit the taxpayer's utilization of intellectual property related to the operation of a qualified facility or energy storage technology, or in the production of an eligible component.

(DD) A contractual right retained by the contractual counterparty to receive royalties under the licensing agreement or any similar agreement (or payments under any related agreement) beyond the 10th year of the agreement (including modifications or extensions thereof).

(EE) A contractual right retained by the contractual counterparty to direct or otherwise require the taxpayer to enter into an agreement for the provision of services for a duration longer than 2 years (including any modifications or extensions thereof).

(FF) Such contract, agreement, or other arrangement does not provide the licensee with all the technical data, information, and know-how necessary to enable the licensee to produce the eligible component or components subject to the contract, agreement, or other arrangement without further involvement from the contractual counterparty or a specified foreign entity.

(GG) Such contract, agreement, or other arrangement was entered into (or modified) on or after the date of enactment of this paragraph.

(bb) Exception

(AA) In general. Item (aa) shall not apply in the case of a bona fide purchase or sale of intellectual property.

(BB) Bona fide purchase or sale. For purposes of item (aa), any purchase or sale of intellectual property where the agreement provides that ownership of the intellectual property reverts to the contractual counterparty after a period of time shall not be considered a bona-fide purchase or sale.

I. Persons related to the taxpayer. For purposes of subclauses (I), (II), and (III), the term "taxpayer" shall include any person related to the taxpayer.

II. Contractual counterparty. For purposes of this clause, the term "contractual counterparty" means an entity with which the taxpayer has entered into a contract, agreement, or other arrangement.

c. Before examining effective control further, it should be clear that only payments at the project company or class B member level are relevant for the section 50(a)(4) recapture analysis.

Triggering section 50(a)(4) recapture requires that (1) a specified taxpayer makes a payment (2) to a specified foreign entity, and (3) the payment is an applicable payment entitling the specified foreign entity (or one related to it) to exercise effective control over the underlying section 48E qualified facility or energy storage technology.

Previously we defined specified taxpayers by analyzing the parties who must file Form 3800 and are allowed the section 48E tax credit. The universe of potential specified taxpayers includes the project company, the class B member, the class A member, and the tax credit buyer.

Now that we have examined the definition of an applicable payment, it should be clear that it is highly unlikely (if not virtually impossible) for a tax credit buyer or the class A member to ever make a payment that would give a specified foreign entity effective control over the qualified facility or energy storage technology. This is because neither the tax credit buyer nor the class A member holds a controlling interest in, or has the authority to enter contractual arrangements regarding, the qualified facility or energy storage technology.

With the understanding that both the tax credit buyer and the class A member would likely never make payments that we would need to

monitor for 10 years to avoid this 100 percent recapture under section 50(a)(4), we now turn back to the deal structure to further determine whether the relevant specified taxpayer should be the project company or the class B member, or in some cases, both.

As discussed, a specified taxpayer is defined as the taxpayer that has been *allowed* a section 48E tax credit for a tax year beginning after July 4, 2027. In a full tax credit transfer scenario, the project company is the party that files a Form 3800, so the only relevant payments should be those made by the project company.

When tax credits are not sold but instead allocated to the partners through Forms K-1, the partners are the entities filing the Form 3800 and allowed the section 48E credit. As discussed, the class A member does not typically hold a controlling interest or legal authority to contract on behalf of the project company. Therefore, in a no-transfer scenario, it is the class B member that is the specified taxpayer and whose payments need to be scrutinized for a 10-year period.

In a partial transfer scenario, both the project company and the class B member can fall within the scope of a specified taxpayer, so payments from both the class B member and the project company should be scrutinized for the requisite period to avoid the section 50(a)(4) recapture.

d. The project company or class B member should avoid granting unrestricted contractual rights to its counterparties — especially as it relates to the determination of timing, production, uses, purchasers, and access to the qualified facility or energy storage technology, or even to maintain, repair, or operate any plant or equipment on an exclusive basis.

As outlined above, section 7701(a)(51)(D)(ii)(II) sets forth a list of contractual arrangements under subparagraphs (aa) through (ff) that can trigger effective control. This list is especially relevant during the period before the issuance of any Treasury guidance. Specifically, effective control means the *unrestricted right* of a counterparty, relating to the qualified facility or energy storage technology, to (1) determine the quantity and timing of production; (2) determine the purchaser or user/off-taker of the energy production; (3) restrict critical data, site, or personnel access; or (4) maintain, repair or operate any plant or equipment on an exclusive basis.

To avoid running afoul of the applicable payment prong of the section 50(a)(4) recapture rule, aside from structuring contracts above the specified taxpayer level and avoiding making prohibited payments to specified foreign entities, do not grant exclusive rights in any of your contracts.

e. Project company or class B member should avoid entering into licensing agreement which allows the counterparty to retain certain rights with respect to the qualified facility or energy storage technology.

Similarly, section 7701(a)(51)(D)(ii)(III)(aa) sets forth a list of licensing or other agreements under (AA) through (GG) that can trigger effective control. Specified taxpayers should avoid entering into any covered licensing arrangements included in that list, including arrangements that allow the counterparty to retain certain contractual rights with respect to the qualified facility or energy storage technology.[5]

f. While not enumerated as effective control under section 7701(a)(51)(D)(ii), interest payments on a secured debt in case of foreclosure may trigger section 50(a)(4) recapture if Treasury takes an expansive view of the meaning of effective control.

While not enumerated under section 7701(a)(51)(D)(ii), project company debt for which a lien is provided may confer actual (and not effective) control to the lender/lienholder in the case of foreclosure on the underlying debt if the lender is a specified foreign entity.

To avoid triggering section 50(a)(4) recapture under an expansive definition of control, structure around this potential issue by placing any debt above the specified taxpayer level, entering into unsecured financing arrangements,

[5]Section 7701(a)(51)(D)(ii)(III)(aa)(GG) could be read as particularly stringent, as it suggests that payments made under *any* licensing agreement entered into after enactment of the OBBBA will be treated as conferring effective control.

or requiring forbearance agreements in case of foreclosure.

4. Once you structure around the recapture, the timing uncertainty under the OBBBA becomes less relevant.

Under section 50(a)(4)(C), a taxpayer cannot become a specified taxpayer until it claims a section 48E tax credit for a tax year beginning after the date that is two years after the OBBBA's enactment date. For a calendar-year taxpayer, only tax credits claimed for 2028 and later can render a taxpayer a specified taxpayer.

But the definition of applicable payment requires an analysis of offending payments made by the specified taxpayer during the previous tax year, which potentially puts payments in 2027 in the section 50(a)(4) recapture crossfire.

The section 50(a)(4) recapture also does not have the 20 percent "vesting" that is allowed under the section 50(a)(1) recapture.

However, under the more narrow understanding of the term "specified taxpayer" under section 50(a)(4), placing the debt above the specified taxpayer and structuring the debt terms so that no control can ever be conveyed, which will hopefully make these timing issues largely irrelevant.

5. Focusing on the renewable developer as the specified taxpayer is entirely consistent with the policy rationale for the section 50(a)(4) recapture to protect American energy facilities and technology from foreign control.

The OBBBA added many new definitions and restrictions to the clean electricity investment credit, many of which have created interpretative uncertainties, and therefore financing and insurance challenges for renewable developers. Fortunately, the statutory language of section 50(a)(4), along with how a typical tax equity partnership is structured, allows a narrow definition of specified taxpayer, limited to the project company and the class B member only. This provides renewable developers with a tax planning opportunity, demonstrating certain failure of at least one of the three recapture prongs, to avoid section 50(a)(4) recapture.

Focusing on project developers and the entities and contracts which they can control is consistent with the policy objective of these prohibited foreign entity requirements: to protect American energy facilities and storage technology from foreign control. Expanding the section 50(a)(4) scrutiny beyond project developers would not provide additional policy benefits but would instead create needlessly burdensome — and unachievable — due diligence requirements. ■