

Continuity Safe Harbor Extended to 10 Years for Qualifying Offshore Projects and Federal Land Projects

“the IRS issued new guidance (Notice 2021-05) on New Year’s Eve that extends the four-year window, within which projects must place in service in order to be deemed to have satisfied the ‘continuous efforts’ or ‘continuous construction’ requirement, to ten years,” reports Judy Kwok in *Mintz’ Insights Center*.

“Under the existing provisions, developers must ‘begin construction’—i.e., begin physical work or incur capital expenditures equal to 5% of the total project cost—by a specified date in order to qualify for the ITC or the PTC. Projects often start construction in contemplation of accessing the credits, and the default rule is that ‘continuous construction’ or ‘continuous efforts’ (depending on whether construction was begun via physical work or capital expenditures) must continue until the project is completed. Under Notice 2017-4, the ‘continuous construction’ or ‘continuous efforts’ requirement is considered to be met if the project is completed in or before the fourth calendar year following the calendar year of the beginning of construction (such rule, the ‘Continuity Safe Harbor’). To accommodate COVID-19 related delays, Notice 2020-41 extended the Continuity Safe Harbor to the fifth calendar year following the calendar year of the beginning of construction for projects that began construction in 2016 and 2017.”

Read the article.