THE PROJECT FINANCE LAW REVIEW

Third Edition

Editor
David F Asmus

THE LAWREVIEWS

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PREFACE

I am pleased to introduce the third edition of *The Project Finance Law Review*, which now includes additional new chapters covering government investment agreements, commercial lenders, government funding and construction risk. This edition builds on the work from the first two editions, expanding both the scope and depth of the resource offered.

Recent years have seen many changes affecting the projects market, including enormous growth in capital directed toward renewable energy (and more novel projects such as carbon capture and storage, and hydrogen), the increasing impact of the regulatory environment on the viability of large projects and now, as the world gradually recovers from a covid-19-induced downturn, an abundance of government financing for selected projects as a part of various economic stimulus programmes. Project finance, unsurprisingly, continues to evolve with the markets it serves. The purpose of this volume is to provide a living guide to project finance that will be updated on a regular basis, while still tackling the core project finance concepts that every practitioner needs to understand.

This volume seeks to cover the most salient topics while leaving scope for expansion into other key areas (such as mezzanine financing, the effect of new technology risk on project financing and environmental, social and governance (ESG) issues) in future editions. As discussed briefly at the end of Chapter 1, all three of these areas have been in great flux, with newer funding sources (e.g., private equity, pension funds and sovereign wealth funds), changes in the nature of projects seeking finance (which now may involve new technologies such as carbon capture and even direct air capture of carbon dioxide) and more substantial environmental restrictions (particularly with respect to climate change concerns) in effect at key lending institutions all combining to change the complexion of the project finance market. The next several years should bring increased clarity to all of these subjects, including particularly the future of project finance in the oil and gas industry.

I would like to express my thanks to all of the authors of this third edition, and particularly those who have contributed new chapters or who undertook significant updates to their earlier work. Their efforts have allowed this volume to be more useful than ever as we enter a new decade facing increasing uncertainty in global politics and global markets, including the project finance market. It is the hope of all of the authors that this volume not only will be of use to all of its readers today, but also will continue to grow in scope and utility in the years ahead.

David F Asmus
Sidley Austin LLP
Houston
April 2021

Part VI

Other Specialised Topics

Chapter 17

TAX-EQUITY FINANCING

Brian C Greene, Michael Masri, Kelann Stirling, Jared E Joyce-Schleimer and Sophia Han[1]

I OVERVIEW

Tax-equity financing broadly encompasses investment structures in which a passive equity investor looks to achieve a target internal rate of return based primarily on US federal income tax benefits derived from an investment in a particular asset. Tax-equity investors are typically profitable tax-paying entities such as banks, insurance companies, certain utilities and general corporate entities. As discussed in further detail below, tax-equity investors generally invest alongside a developer who cannot make efficient use of the tax benefits associated with the underlying asset. Tax-equity financing structures are driven by tax laws that are unique to the United States; accordingly, this chapter focuses specifically on the US project finance market.

Although infrastructure-focused federal income tax credits in the US have traditionally been targeted to renewable energy projects, there has been a push in recent years to expand the tax credit regime to cover additional types of infrastructure such as carbon capture and sequestration, energy storage and transmission assets.

II RENEWABLE ENERGY TAX EQUITY STRUCTURES

The US government subsidises the cost of many renewable power projects with federal income tax benefits. These subsidies include tax credits and the ability to write off the cost of a project on an accelerated basis. There are two general classes of tax credits available for renewable projects: investment tax credits and production tax credits. The type of credit available for any particular project largely depends on the technology involved.

The first type of credit available for renewable projects is investment tax credits, which are available for investments in solar equipment, fuel cells, small wind energy property (i.e., 100kW or less), offshore wind, fibre-optic solar, geothermal projects, combined heat and power property, geothermal heat pump property and microturbines.[2] The credits are calculated as a percentage of a project's cost, and are available in their entirety in the year the equipment is placed into operation.

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1 Brian C Greene, Michael Masri, Kelann Stirling, Jared E Joyce-Schleimer and Sophia Han are partners at Kirkland & Ellis LLP. The authors would like to thank Scott W Cockerham for his assistance in preparing this article.

2 See 26 USC Section 48(a).

The credit amount varies depending on the technology and the year in which the project begins construction.[3] Under the current framework, only solar projects that began construction in 2019 or earlier qualify for a 30 per cent investment tax credit. Projects that began construction by the end of 2020, and solar projects that begin construction in 2021 or 2022, qualify for a 26 per cent investment tax credit. The credit phases down to 22 per cent for projects beginning construction in 2023. Projects meeting these deadlines must be placed in service by the end of 2025 to qualify for a credit above 10 per cent.[4] The credit drops to a permanent 10 per cent level for solar projects that begin construction in 2024 or later.

The tax credit for offshore wind is 30 per cent of the cost for projects that begin construction before 2026.[5] The tax credit for fuel cells, small wind energy and fibre optic solar is subject to a similar phase-down schedule as solar, but the credit expires if construction does not begin until 2024 or later, or if the project fails to be placed in service before 2026.[6] Combined heat and power, geothermal heat pump and microturbine projects qualify for a 10 per cent credit as long as construction begins before 2024.[7] Geothermal projects benefit from a permanent 10 per cent credit.[8]

The second type of tax credit for renewables projects is the production tax credit. The production tax credit is available for investments in wind, biomass, geothermal, landfill gas, municipal solid waste, hydropower, and marine and hydrokinetic facilities. Unlike the investment tax credit, the production tax credit is claimed over a 10-year period beginning on the date the project is placed in service. The amount of the credit depends on the amount of energy produced, and is adjusted annually for inflation.[9]

The value of production tax credits similarly varies depending on the asset class and year in which construction begins. For wind projects, the credit bottomed out at 40 per cent for projects that started construction in 2019, increased for projects that began or will begin construction in 2020 or 2021, and will abruptly expire for projects that do not begin construction before the end of 2021.[10] The production tax credit is available for other eligible technologies without any phasedown if construction begins before the end of 2021.[11]

Apart from tax credits, most of the equipment used in renewables projects qualifies for depreciation over an accelerated five-year period.[12] Depreciation is an annual tax deduction

3 The IRS has issued multiple sets of guidance on what it means to begin construction. See IRS Notice 2013-29, IRS Notice 2013-60, IRS Notice 2014-46, IRS Notice 2015-25, IRS Notice 2016-31, IRS Notice 2017-04, IRS Notice 2018-59, IRS Notice 2019-43, IRS Notice 2020-41 and IRS Notice 2021-05.

4 See 26 USC Section 48(a)(6).

5 See 26 USC Section 48(a)(5)(F).

6 See 26 USC Section 48(a)(7).

7 See 26 USC Section 48(a)(3)(A)(vii); Section 48(c)(2); Section 48(c)(3).

8 See 26 USC Section 48(a)(3)(A)(iii).

9 See 26 USC Section 45.

10 See 26 USC Section 45(b)(5).

11 See 26 USC Section 45(d).

12 See 26 USC Section 168(g)(3)(C).

for the wear and tear associated with equipment used in a trade or business. Certain renewable energy assets may alternatively qualify for immediate (i.e., 100 per cent) depreciation in the year in which the equipment is placed in service.[13]

One major structural limitation of the US tax subsidy regime for renewables is that the tax benefits are useless to someone who does not owe taxes. Further, special rules make it harder for wealthy individuals, S corporations and closely held C corporations (i.e., a corporation in which five or fewer individuals own more than half of the value of the stock) to claim tax credits and accelerated depreciation.[14]

Developers are rarely able to make efficient use of tax benefits, so they enter into what is effectively a bartering transaction with a tax-efficient investor (called a tax-equity investor) to whom the developer will allocate nearly all of the tax benefits in exchange for cash capital contributions for the project.

There are three primary tax-equity financing structures in the US renewables market. They are the partnership flip, the inverted lease and the sale-leaseback. As discussed further below, tax-equity financing is often used in combination with sponsor equity and debt to finance renewable energy projects.

i Partnership flip

Partnership flips are the most common structure in the US renewables market, and are the only type of tax equity financing available for projects that qualify for the production tax credit. In a typical deal, the developer either contributes a project or sells it to a partnership formed between it and the tax-equity investor, to which the tax-equity investor contributes cash. The tax-equity investor is typically allocated 99 per cent of the tax benefits and some portion of the cash (usually around 30 per cent or less, depending on the project) until the tax-equity investor reaches a target yield or a fixed date passes. The fixed date will be no earlier than five years after the project is put in service. Once tax equity reaches the applicable benchmark, its share of tax items will decrease (usually down to 5 per cent) along with its share of cash. The developer will get the bulk of the cash and tax items for the remaining life of the partnership.

The basis used to calculate the investment tax credit is the partnership's cost to acquire or produce the project. If the partnership purchases the project from a developer, its credit-eligible basis will generally be the purchase price, subject to adjustment to remove items such as transmission equipment and intangibles that are not eligible for the credit. If the project is contributed to a partnership by the developer, rather than sold, the basis is the contributor's cost. Once the credit-eligible basis is determined, the energy credit is computed by multiplying the basis by the applicable energy percentage (e.g., 30 per cent for solar projects that began construction in 2019). The depreciable basis of the project is reduced by half of the investment tax credits claimed by the project's owner. Production tax credits do not require a basis reduction.

13 See 26 USC Section 168(k).

14 See generally 26 USC Section 49; Section 465; Section 469.

Partnership flip structures generally follow Internal Revenue Service (IRS) safe harbour rules for wind projects.[15] If all of the rules are followed, the IRS will respect the partnership's allocation of tax credits. The IRS has technically adopted the position that the safe harbour rules only apply to wind projects, but the renewables industry largely applies the rules across technologies in the absence of any other technology-specific guidance.[16]

Among other rules, the safe harbour requires the tax-equity investor to invest at least 20 per cent of its total expected investment upfront. In addition, at least 75 per cent of the total amount of the expected investment must be fixed in amount and certainty of payment. The safe harbour also requires the tax-equity investor to take neither more than 99 per cent of the tax items nor less than 5 per cent of the tax items. (There are no similar restrictions on cash sharing.) Further, the developer typically has an option to buy the tax-equity investor's interest at fair market value, but the tax-equity investor cannot force the developer to buy its interest.

Tax-equity investors in partnership flips typically want indemnification for lost tax credits and depreciation, but only if there is a breach of a representation or covenant. In investment tax credit projects, developers are usually asked to represent that the project's basis for tax credit purposes is its true fair market value. The risk of losses owing to structural risks, such as non-compliance with the safe harbour rules, is generally borne by the tax-equity investor.

ii Inverted lease

Inverted leases are another common financing structure, although they are only available for investment tax credit transactions. Unlike partnership flips and sale-leasebacks, where the project owner is the only party entitled to tax benefits, a special rule for inverted leases allows the lessor to pass the investment tax credit on to the lessee. The lessee claims the credit based on the project's fair market value (as opposed to the project's cost). The lessee must recognise income ratably over five years in an amount equal to one-half of the tax credits. The lessor is entitled to all of the depreciation.

There are two types of inverted leases: a basic structure where the developer is the lessor and leases the project to a tax-equity lessee, and an overlapping ownership structure where the lessee is a minority (typically up to 49 per cent) owner of the lessor. One of the benefits of the inverted lease is that it allows the parties to split up the tax benefits and allocate them among the parties who want them the most. For example, if a tax-equity investor only wants tax credits and the developer has some appetite for depreciation, the basic inverted lease structure makes more sense than a standard partnership flip. The overlapping ownership variant would be an improvement over the basic structure if the parties want some of the depreciation to go to the tax-equity investor.

Another advantage of the inverted lease is that the tax credit basis step-up to fair market value is free in the sense that entering into a lease is not a taxable event. The step up can have a tax cost in the other structures because the sale of a project to a flip partnership or to the tax-equity investor in a sale-leaseback is a taxable event for the developer.

15 See Rev Proc 2007-65 & IRS Announcement 2009-69.

16 This approach was confirmed to an extent in a 2015 internal memo in which the IRS national office analysed a transaction using the criteria from the wind safe harbour, even though the memo formally concluded that the wind safe harbour did not apply to solar projects as a technical matter. See Chief Counsel Advice 201524024 (12 June 2015).

Similar to solar partnership flips, there is no solar-specific guidance for inverted leases. The industry largely follows guidelines for historic tax credit transactions (which use inverted leases but call them 'master tenant' structures), and leasing principles from guidance for leveraged leasing transactions.[17] These guidelines are conceptually similar to the wind partnership flip guidelines in that they try to put the tax-equity investor more at risk than a lender would be. For example, like the partnership flip safe harbours, the tax-equity investor needs to make at least 20 per cent of its investment up front. There are also some notable ways in which the historic tax credit guidance differs from the partnership flip guidance. One way is that the tax-equity investor may have a right to put its interest to the developer for less than fair market value, but the developer may not have a call option (i.e., the exact opposite of the wind flip guidelines).

In terms of indemnities, tax equity typically expects complete coverage for lost tax credits because of anything other than a structural risk that it explicitly agrees to bear in the transaction documents. The structural risks typically cover issues such as the lease being respected as a true lease and compliance with the safe harbour guidance.

iii Sale-leaseback

A third common tax-equity structure is the sale-leaseback. As its name implies, it involves the sale of a project by a developer to a tax-equity investor, who simultaneously leases the project back to the developer. This structure is only available for investment tax credit transactions.

In this structure, the tax-equity investor's basis for tax credit and accelerated depreciation purposes is the portion of the purchase price that it pays to acquire the project that is allocable to the credit-eligible basis. Tax equity's depreciable basis will be reduced by one-half of the amount of the tax credits.

This is the only investment tax credit structure in which the tax-equity investor does not need to fund into the transaction before the project is placed in service. A special rule permits tax-equity investors to claim credits as long as the sale-leaseback happens within three months of the project's 'placed in service' date.[18]

Both parts of the transaction still need to happen simultaneously. The extra three months make sale-leasebacks an attractive option for developers who are not able to find a tax-equity investor during construction or pre-construction. The developer will recognise a taxable gain on the sale of the project. Lease terms are typically 10 to 20 years. The developer often has a purchase option to re-acquire the project for its then-fair market value when the lease ends.

In sale-leaseback transactions, the indemnity coverage typically extends to all tax benefits, except for any loss owing to a fundamental structuring issue (e.g., the tax-equity investor not being respected as the owner of the project for tax purposes). If the sale occurs after the project is in service, the developer typically bears the risk that the transaction did not occur within the three-month deadline.

17 See Rev Proc 2014-12; Rev Proc 2001-28.

18 See Former 26 USC Section 48(b)(2); Treas Reg 1.47-3(g)(1).

iv Interplay between debt and tax equity in renewable energy financings

Generally, tax equity will only cover around 35 to 40 per cent of the total capital cost for solar developments and 50 to 60 per cent of the total capital cost for wind developments, so sponsors need to complete the capital stack with sponsor equity or debt (or both). 'Debt financing' is a broad term that could include non-recourse construction or long-term financing, back-leverage financing, development loans, securitisations, portfolio financings, corporate (recourse) financing, etc. The renewable project debt toolkit has many options. Below, we focus on two commonly used project finance debt structures, and the interplay between project finance debt and tax equity. Some creditworthy sponsors may be able to fill the entire capital stack with sponsor equity or corporate debt without seeking project financing, but for many developers that is not an option.

Construction debt

Tax-equity investors typically take minimal construction risk. As a result, project developers require significant financing before tax-equity investment becomes available. One option is to obtain a construction bridge facility. This typically would be a non-recourse fully secured loan from one or more commercial banks or other private debt sources that are willing to take on construction risk. A construction bridge loan will be drawn over the course of construction of the project, as costs are incurred.

Construction debt is sized on the basis of the estimated capital costs to build the project. In addition, construction lenders typically will require the sponsor to provide a percentage of the capital costs via sponsor equity. Built into the capital cost estimate will be some amount of contingency, but if there are cost overruns prior to completion, ultimately the sponsor will have to fund the overruns or will risk defaulting on its construction debt and losing its equity in the project.

Construction bridge loan lenders typically require a full security package, including security over all of the project company's assets, and the ownership interests in the project company, along with a tight covenant package. Where the construction debt will be repaid in whole or in part with tax equity, typically the construction bridge lenders will require that the sponsor have a tax-equity commitment in hand. In that case, the construction lender will require that such commitment form part of the collateral package so that the project can benefit from the tax-equity commitment even if the construction bridge loan lenders foreclose on the project. The construction bridge facility will be repaid upon project completion by tax-equity financing and, unless repaid by sponsor equity or a corporate or mezzanine facility, back-leverage debt.

Tax-equity investors will generally not accept a position structurally subordinate to long-term debt. However, in projects that qualify for the investment tax credit, they generally will accept the project level security granted to construction bridge lenders during the period between mechanical completion and substantial completion, subject to the terms of an interparty or forbearance agreement in which the lender agrees, except under limited circumstances, not to foreclose on the assets of the project company until the expiry of the investment tax credit recapture period.[19]

19 For wind projects where the output is hedged, the hedge counterparty will sometimes take a first lien on the project assets. In this case, the hedge provider will also typically enter into a forbearance agreement with construction lenders (if applicable) and tax equity investors.

Back-leveraged debt

Back-leveraged debt is different from construction or term-loan debt at the project level in that it is incurred by a borrower in the ownership chain above the project company and is not secured by a security interest in the assets of the project company (thus eliminating the risk to the tax-equity investor that the back-leveraged lender can foreclose on the project assets).

Given that back-leverage lenders do not have project level security, it is critical that:

a the back-leverage borrower has predictable cash distributions from the project;

b the back-leverage borrower controls decisions of the project company through negative covenants in the financing documents and voting rights of the back-leverage borrower in the tax-equity documentation; and

c the change of control and transfer restrictions in the tax-equity documents are workable to facilitate foreclosure and a sale of the back-leverage borrower's equity interests.

If the tax-equity investor is permitted to divert borrower cash flows for indemnification claims or other reasons, the back-leverage lenders may require an indemnity from the sponsor. The back-leverage lenders' collateral usually will include a pledge of the shares in the back-leverage borrower (and the back-leverage borrower's interest in the tax-equity partnership), as well as a pledge over the back-leverage borrower's bank accounts. In the event of a default, the back-leverage lenders may foreclose on such shares or bank accounts (or both) and look to the revenues received from the project company via distributions to be repaid.

v A note on recapture and disallowance risk

The investment tax credit vests 20 per cent per year over a period of five years. Certain events may trigger the recapture of the investment tax credit before it has fully vested, causing the tax-equity investor to lose a portion of the benefit of its investment. As a result, tax-equity investors typically require sponsors to indemnify them for recapture risk. There are two types of recapture risk. First, there is true recapture where the project company loses the unvested portion of tax credits as a result of some event that occurs after the project becomes operational. Examples of events that can result in a recapture include taking the project out of service or selling it to a third party. Transfers of partnership interests to an entity with tax-exempt or foreign owners is also problematic. Such events are largely within the parties' control.

Second, disallowance can result from a failure to properly calculate the tax credit benefit, often as a result of a misallocation of costs as eligible to benefit from the tax credit that later are found to be inflated or ineligible. This scenario is more challenging for a sponsor trying to quantify disallowance risk. To address this concern, sponsors typically will obtain detailed appraisals on the value of the project. In addition, tax-equity investors sometimes will obtain insurance coverage for any losses resulting from investment tax credit recapture or disallowance (and the costs of interest and penalties that may be assessed by the IRS in connection with such recapture or disallowance).

Recapture and disallowance risk is an issue for lenders to the extent that the tax-equity documentation allows cash sweeps to the tax-equity investor to cover recapture and disallowance obligations ahead of scheduled principal and interest due and payable to the lenders. To address this risk, sponsors often provide the lenders with an indemnity covering these cash diversions.

III A CHANGING LANDSCAPE FOR TAX EQUITY

While tax-equity structures have primarily been used for the financing of renewable energy projects, there has been significant momentum in recent years towards expanding the use of tax credits to other technologies. On 31 March 2021, President Biden announced an infrastructure-focused American jobs plan that would extend renewable energy tax credits for an additional 10 years,[20] proposes a 'direct pay' option, and would add or expand tax credit programmes for other types of infrastructure projects.[21] These developments could lead to a significant expansion of the use of tax-equity financing structures.

i Carbon capture and sequestration tax credits

The latest example of the expansion of the infrastructure-focused federal income tax credit regime beyond renewables is the tax credit for carbon capture and sequestration, which was originally enacted in 2008 but significantly modified in 2018, in part, to make it more attractive to the tax-equity market.[22] The tax credit functions much like the production tax credit for wind, with credit values tied to the annual volume of 'qualified carbon oxide' that a taxpayer captures at a qualifying plant and then permanently buries, uses as a tertiary injectant in an enhanced oil or natural gas recovery project, or uses in another commercial process over a 12-year period. The construction of carbon capture projects must generally begin before 2026 to qualify for the post-2018 tax credit.[23] The US Department of the Treasury and the IRS have moved quickly since 2020 to issue tax guidance intended to fill legislative gaps and further incentivise tax-equity investment in projects that will qualify for the expanded tax credit.[24] Industry participants are hopeful that the new regulations will spur an active tax equity market for carbon capture and sequestration projects in the coming years.

ii Direct pay

President Biden's American jobs plan includes proposals for a direct pay election, which would provide project owners with a form of cash payment in lieu of tax credits without the need for third-party tax-equity investors. This concept has precedent in the Section 1603 grant programme, which was authorised under the 2009 American Recovery Act.[25] The

20 On 28 May 2021, the Biden Administration released the "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals," better known as the "Green Book." If adopted, it would extend a full 30 per cent investment tax credit for solar projects that begin construction between 2022 and 2026, with a phase-down of 20 per cent each year beginning in 2027. It would also extend a full 100 per cent production tax credit for wind and other eligible facilities that begin construction between 2022 and 2026, with a phase-down of 20 per cent each year beginning in 2027.

21 See The White House, FACT SHEET: The American Jobs Plan, Statements and Releases (31 March 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/.

22 See 26 USC Section 45Q.

23 The Green Book, if adopted, would extend the beginning of construction deadline to 1 January 2031.

24 See, e.g., Treasury Regulations Sections 1.45Q-1 through 1.45Q-5; IRS Notice 2020-12; IRS Revenue Procedure 2020-12.

25 See American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, Div. B, Title 1, Subtitle G, § 1603, 123 Stat. 308; US Department of the Treasury, 1603 Program: Payments for Specified Energy Property in Lieu of Tax Credits, Policy Issues, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/1603-program-payments-for-specified-energy-property-in-lieu-of-tax-credits.

Section 1603 grant programme allows for cash grants to reimburse developers for a portion of the costs of installing certain specified energy property that commenced construction prior to 31 December 2011 (e.g. solar, wind, geothermal, biomass, fuel cells, hydropower, combined heat and power, landfill gas, municipal solid waste, and microturbine property)). The Section 1603 programme has disbursed over US$26 billion for clean energy projects. If a direct pay option were enacted, it would be expected to supplement and facilitate financing for smaller developers without existing tax-equity relationships, but not to replace the tax-equity market.

iii Battery storage

A key structural limitation of certain renewable energy generation projects – notably solar and wind – is that generation cannot be guaranteed at any given moment. Battery storage has long been seen as the solution to this problem, but until recently, battery technology and equipment costs made utility-scale battery storage projects unrealistic. Under current IRS guidance, the storage portion of these combined projects qualifies for investment tax credits only if at least 75 per cent of the energy used to charge the battery comes from solar generating equipment. Further, if the solar input is less than 100 per cent, the investment tax credits are reduced to the extent of the non-solar input.[26] Increases in the percentage of non-solar input in subsequent years may cause the IRS to recapture a portion of previously claimed credits.

The American jobs plan proposes a standalone investment tax credit for energy storage.[27] However, even without a stand-alone credit, the number of energy storage projects in development and construction is expected to increase dramatically in the coming years and, pending a standalone energy storage credit, developers will look to qualify solar-plus storage projects under current IRS guidelines.

iv Other tax incentives and legislative outlook

In addition to the proposal for a standalone investment tax credit for energy storage, President Biden has proposed tax credits for hydrogen and transmission facilities.[28] The American jobs plan also proposes tax incentives for next generation technologies in distressed communities, including, as an example, the pairing of an investment in 15 decarbonised hydrogen demonstration projects in distressed communities with a new production tax credit. These tax incentives, combined with a whole-of-government effort to jumpstart investment in clean energy, are expected to provide additional momentum for clean energy and the demand for tax-equity investments. In the offshore wind sector, as an example, the White House convened a meeting including the Departments of Interior, Energy and Commerce and business leaders to announce targets to deploy 30 gigawatts of offshore wind by 2030 through loans, granting

26 See: IRS Private Letter Ruling 201308005.

27 The Green Book provided a 30 per cent tax credit for standalone energy storage projects with a capacity of at least 5kWh that commence construction prior to 2027.

28 See, e.g., Green Act of 2021, H.R. 848, 117th Cong (2021); Energy Storage Tax Incentive and Deployment Act of 2021, S. 627, 117th Cong (2021); Energy Storage Tax Incentive and Deployment Act of 2021, HR 1684 117th Cong (2021).

of offshore leases and permitting targets.[29] The future of many of these proposals is uncertain, and the American jobs plan and other Biden administration efforts are expected to undergo significant, perhaps transformative, changes through the legislative and regulatory processes. This legislation will be closely watched by industry participants in the coming months, and may lead to a tax-equity market in 2022 that is in many ways very different from the tax equity market in 2021.

29 Press release, FACT SHEET: Biden Administration Jumpstarts Offshore Wind Energy Projects to Create Jobs (March 29, 2021), online: https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/29/fact-sheet-biden-administration-jumpstarts-offshore-wind-energy-projects-to-create-jobs/.

Appendix 1

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Brian Greene is a partner in Kirkland's Washington, DC office. Brian's practice includes representing private equity investors, lenders and sponsors in a broad range of project finance, acquisition finance, project development and restructuring matters in the power sector and in both the United States and Latin America. He has experience with renewable energy projects dating back to 2006 and has seen the sector develop through extensions of the investment tax credit and the PTC, the Recovery and Reinvestment Act of 2009, and the dramatic reduction of costs and the emergence of new technologies over the past decade. Brian has particular expertise with solar projects, having worked on numerous financings for utility scale, commercial industrial and residential solar projects over his career. He was recognised as a 'Project Finance MVP' in 2020 and 'Rising Star' for project finance in 2017 by *Law360* and an 'LMG rising star' by Euromoney PLC for project finance in 2015 and 2016. He received his JD from the University of Michigan Law School and a BA *cum laude* from Princeton University.

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Kelann Stirling is a partner in Kirkland's New York office. Kelann focuses her practice on development and financing of energy and infrastructure projects. She has advised clients on a wide range of projects, within and outside the US, with a focus on renewable power (including wind, battery storage and hydroelectric facilities), conventional power, LNG and midstream gas-gathering and processing facilities. She has represented private equity investors, strategic investors, developers and lenders (including commercial and investment banks, export credit agencies, institutional investors, credit funds and governmental entities), and has experience in all aspects of structuring international and domestic infrastructure financings and negotiating and drafting finance and project development documents. From 2014 to 2016, Kelann was a director and corporate counsel at InterGen Services, Inc, an IPP based in Burlington, MA that operated power plants in the UK, the Netherlands, Mexico and Australia. From 2004 to 2005, she was a judicial clerk for Judge Richard A Cardamone, United States Court of Appeals for the Second Circuit. She has been recognised as 'up and coming' in the 2021 edition of *Chambers USA* for her work in Projects (USA – Nationwide). Kelann received her JD *magna cum laude* from Cornell Law School and her BS *magna cum laude* from Boston University.

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Jared Joyce-Schleimer is a partner in Kirkland's New York office. Jared advises clients in financing matters relating to major energy and infrastructure projects at all stages of the project lifecycle. His practice has included representations of sponsors and lenders that are equally robust among development and construction financings, acquisition financings, refinancings and restructurings in domestic and cross-border transactions across the energy and power, satellite and telecom, and transportation industries. His practice includes a focus on renewable power and sustainable infrastructure. He also has significant restructuring experience representing debtors and creditors, which he applies to assist clients in downside and distressed investment scenarios. He assists developing countries in bringing sustainable projects to market in his pro bono work. Jared received his JD *cum laude* from Georgetown Law, his MPP from Georgetown and his BS with honours from the Honors College at the University of South Carolina.

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Sophia Han is a tax partner in the New York office of Kirkland & Ellis LLP. Sophia's practice focuses on the tax aspects of domestic M&A and the renewable energy sector. She regularly advises project sponsors, tax equity investors and lenders on energy tax credits, project developments and financings, and M&A transactions for wind, solar and energy storage assets. Sophia represents clients on a variety of other federal income tax matters. Her experience also includes advising clients across a variety of industries, including medical device, retail and tech, on transfer pricing disputes. She received her JD and LLM from New York University School of Law and her BS from Stern School of Business at New York University.

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