

Client Alert

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IRS Interprets Special Exception Applicable to Renewable Energy Projects in Puerto Rico and Other U.S. Possessions

The IRS recently released a private letter ruling that a renewable energy project located in a U.S. possession qualified for the investment tax credit and accelerated depreciation. The ruling addresses a key legal issue for renewable energy projects, namely whether a project owned by a U.S. partnership qualifies for a special exception applicable to projects located in Puerto Rico and other U.S. possessions. The ruling involves a wind farm located in a U.S. possession and owned, directly or through a disregarded limited liability company, by a U.S. partnership.

In general, renewable energy projects “used predominantly outside of the United States” are not eligible for an investment tax credit and are subject to a slower, alternative depreciation system. I.R.C. §§ 50(b)(1)(A), 168(g)(1)(A). However, a special exception applies to certain property used predominantly in U.S. possessions, including Puerto Rico. I.R.C. §§ 50(b)(1)(B), 168(g)(4)(G).

Section 168(g)(4)(G) provides that property will not be treated as used predominantly outside the United States if the property is owned by a domestic corporation or by a United States citizen and is used predominantly in a possession of the United States by such a corporation or such a citizen, or by a corporation created or organized in, or under the law of, a possession of the United States. The literal language of Section 168(g)(4)(G), however, does not specifically address whether property owned by a U.S. partnership qualifies for the exception. Thus, it was not clear whether the use of the traditional partnership form to own projects in Puerto Rico and other possessions caused the project to be ineligible for the investment tax credit and accelerated depreciation.

After examining the legislative history of the special exception, the IRS ruled that its benefits apply to projects owned by U.S. partnerships, provided all of its partners are domestic corporations, which do not have a possession tax credit election in effect under Section 936, or are United States citizens, who are not entitled to the benefits of Section 931 (i.e., individual residents of Guam, American Samoa or Northern Mariana Islands) or Section 933 (i.e., individual residents of Puerto Rico). Although the ruling is not binding on the IRS and cannot be cited as precedent, the ruling indicates the IRS’s administrative interpretation and legal analysis. It resolves a significant issue that has caused uncertainty with respect to investments in Puerto Rico and other U.S. possessions.

Click on the following link for a copy of the [IRS ruling](#).

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