Client Alert

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Impact of Trump Presidency on Renewable Energy Incentives Remains Uncertain

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Last week's election, surprising many with Republican control of the political branches of the federal government, has led to significant uncertainty throughout the private and public sectors. The renewable energy industry is no exception, and the absence of specific policy proposals from President-elect Trump during the campaign and in the first week following the election has led industry participants and observers to seek insight from broad principles articulated by the Trump campaign and House Republicans in order to understand the implications, including for the various tax incentives that have subsidized the development of renewable energy projects for many years.

One source of potential guiding principles is in the House Republican blueprint for tax reform and other matters, issued in June 2016. The tax portion of the blueprint strikes familiar tones of base broadening through the elimination of deductions and tax credits and reduced rates, the first of which would appear to militate against an extension of the tax credits targeted at the renewable energy industry, which are already scheduled to be phased out under current law. However, many observers have cautiously expressed optimism that those phase-out provisions, including for wind and solar incentives, are not likely to be accelerated further through new legislation, particularly because the tax credits have enjoyed broad bipartisan support. Moreover, many tax practitioners expect that any major tax reform will have a transition period or grandfather tax incentives for investments and activities that have already begun.

Separate and apart from the credits themselves, there are a number of other tax reform principles that are likely to have an effect on renewable energy incentives, though their breadth makes the consequences difficult to predict. For example, a significantly reduced corporate tax rate (a consistent and recurring theme of President-elect Trump and Congressional Republicans) could limit tax capacity for the common players in the so-called "tax equity" space, even if the tax credits themselves remain unaltered. Beyond tax credits, reduced rates would reduce the cash value of depreciation and other cost recovery deductions, an important component of the benefits sought by tax equity investors. Proposals to allow expensing of capital investments (together with repeal of the alternative minimum tax and an indefinite carry forward period for net operating losses) would alter the landscape currently occupied by accelerated depreciation.

While it is unclear how these various changes will compare with the current system in subsidizing renewable energy investment, the system proposed by House Republicans would appear to be targeted at domestic capital investment broadly, in contrast with the current system that favors capital investment in certain targeted industries (such as renewables) through relatively short depreciation schedules. Nonetheless, industry-specific incentives could be renewed outside the tax code if Mr. Trump's promise to boost infrastructure spending includes investments in renewable energy projects, storage, and improvements to transmission. Furthermore, targeted measures enacted by the states are a sizeable source of investment incentive for the industry, and those incentives are likely to survive reform at the federal level. These facts, combined with the increasing cost efficiencies across the industry, have fueled optimism in the industry that even an elimination of the various federal tax incentives will not end investment or growth in the sector.

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