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Foley: IRS Issues Notice 2015-25 Extending Safe Harbor for Continuous Construction in Order to Take Advantage of Renewable Energy Tax Credits.

Yesterday, the IRS issued [Notice 2015-25](#), which updates the guidance in [Notices 2013-29](#), [2013-60](#), and [2014-46](#). These Notices provide that a taxpayer can show that it has “begun construction” of its qualified renewable energy facility by December 31, 2014 for purposes of taking advantage of the section 45 renewable electricity production tax credit (PTC) or the section 48 investment tax credit (ITC) in lieu of the PTC by either: (1) beginning physical construction of a significant nature and maintaining a continuous program of construction (the Physical Work and Continuous Construction Tests), or (2) incurring at least 5% of the total cost of the eligible facility and maintaining continuous efforts to advance towards the completion of the project (the 5% Safe Harbor and Continuous Efforts Test). Notice 2015-25 extends a safe harbor provided in Notice 2013-60 in which a taxpayer that places its renewable energy facility in service before January 1, 2016 will be deemed to satisfy the Continuous Construction and Continuous Efforts Tests under the Physical Work Test and the 5% Safe Harbor. The new notice extends this date. The extension is in response to the recent 1-year extension of the beginning of construction deadline to December 31, 2014. (See our prior blog post on that extension [here](#).)

Takeaway: The new notice addresses uncertainty regarding how (or whether) the IRS would interpret the change to the beginning of construction deadline described above. By extending the safe harbor, taxpayers have an opportunity to avoid a subjective determination as to whether the taxpayer maintained continuous construction activities, provided that the project is placed in service by December 31, 2016. With these recent changes, so long as a taxpayer (1) “begins construction” on its renewable energy facility prior to **January 1, 2015**, and (2) the taxpayer (or eligible transferee) places that facility in service prior to **January 1, 2017**, the facility will be deemed to satisfy the Continuous Construction Test (for purposes of the Physical Work Test) or the Continuous Efforts Test (for purposes of the 5% Safe Harbor), regardless of the actual amount of physical work performed or costs paid or incurred within the January 1, 2015 through December 31, 2016 timeframe. However, to the extent the taxpayer does not place the facility in service by January 1, 2017, the taxpayer will still be required to show that based on the facts and circumstances it made continuous progress toward completion of the facility once construction began (or at least 5% of the total costs have been paid or incurred). (For more information on satisfying this requirement see our prior blog post [here](#).)

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

