

# Notice 2023-38 Provides Guidance on Domestic Content Bonus Credit Amounts

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May 31, 2023 Michael DePompei

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PRACTICES Tax

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On May 12, 2023, the Department of Treasury and the Internal Revenue Service issued Notice 2023-38 announcing the intent to propose regulations the domestic content bonus credit amounts under amended sections 45 and 48 and new sections 45Y and 48E of the Internal Revenue Code (the “Code”). The Inflation Reduction Act of 2022 amended Code sections 45 and 48 to provide a domestic content bonus credit amount for certain qualified facilities and energy projects placed in service after Dec. 31, 2022, and added new Code sections 45Y and 48E that include a domestic content bonus credit for certain investments in qualified facilities or energy storage technologies placed in service after Dec. 31, 2024.

Notice 2023-38 provides that an Applicable Project is eligible for the domestic content bonus credit if (1) all manufacturing processes with respect to any steel or iron items that are Applicable Project Components take place in the United States, with certain exceptions; (2) all Applicable Project Components that are Manufactured Products are produced or are deemed to be produced in the United States; and (3) the taxpayer timely certifies to the Internal Revenue Service that the domestic content requirement is met. Very generally, all Applicable Project Components that are Manufactured Products are deemed to be produced in the United States if the sum of the direct costs of all U.S. Manufactured Products that are Applicable Project Components and the direct costs of all U.S. Manufactured Product Components of other Applicable Project Components is at least 40% of the total direct costs of all Applicable Project Components that are Manufactured Products.

The Notice also provides a safe harbor for the classification of certain Applicable Project Components. For example, a photovoltaic tracker that is an Applicable Project Component of a utility-scale photovoltaic system is classified under the safe harbor as a Manufactured Product.

The taxpayer must attach the certification to Form 8835, Renewable Electricity Product Credit; Form 3468, Investment Credit; or other applicable form for reporting domestic content bonus credit amounts under Code sections 45, 45Y, 48, or 48E filed with the taxpayer’s annual return submitted to the IRS for the first taxable year in which the taxpayer reports a domestic content bonus credit amount for the Applicable Project, and thereafter for each year a domestic content bonus credit amount is claimed.