Insights: Alerts

U.S. Government Clarifies that Chinese, Russian, North Korean, and Iranian Batteries Do Not Qualify for Clean Vehicle Tax Credits

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Just this month, the U.S. Government clarified that all vehicles sold with batteries manufactured in or made of critical minerals mined from China, Russia, North Korea, and Iran will be excluded from the $7,500 Section 30D Clean Vehicle Tax Credit under the Inflation Reduction Act ("IRA").

This exclusion was implemented by the issuance of two final rules:

First, the U.S. Department of Energy issued a final interpretative rule clarifying the breadth of the definition of a "foreign entity of concern" ("FEOC"). Section 40207(a) of the Bipartisan Infrastructure Law ("BIL") defines a FEOC as one that is "owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation." Covered nations include China, Russia, North Korea, and Iran.

Under DOE's interpretation, FEOCs include not just foreign governments but any foreign entity that is "incorporated or domiciled in, or has its principal place of business in, a covered nation," participates in "extraction, processing, or recycling" of critical minerals or "manufacturing or assembly" of critical components in the covered nation, is owned or controlled 25% or more by a covered foreign entity, or has entered into contracts and licensing agreements that give it "effective control" over extraction of critical minerals and assembly of critical components.

Second, the U.S. Department of Treasury and the Internal Revenue Service issued a final rule that, among other things, clarifies that vehicles that are not "FEOC-compliant" will be excluded from the definition of a "new clean vehicle" under the IRA and thus ineligible for the $7,500 Section 30D Clean Vehicle Tax Credit. Prior to 2025, this means that the vehicle must be made with non-cell battery components "not manufactured or assembled by a FEOC" and critical minerals "not extracted, processed, or recycled by a FEOC." Starting in 2025, the batteries must also contain battery cells "not manufactured or assembled by a FEOC." This rule goes into effect July 5, 2024.

Combined these rules are designed to encourage domestic manufacturing of electric vehicles and batteries. And they come amidst sweeping tariffs on Chinese batteries, critical minerals, and electric vehicles. Though vehicles sold with batteries produced with critical minerals from certain U.S. allies, like Japan, still qualify for the tax credit.

Automakers and other stakeholders wishing to take advantage of these tax credits need to understand these definitions and exceptions and be aware of the status of various links in their supply chain.

We are monitoring these developments closely and will be available to provide updated analysis and advise on the

impact of this new rule and interpretation.

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