Insights: Alert

Update – New Guidance Confirms that Certain Japanese Products are Eligible for Inflation Reduction Act EV Tax Credits

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New proposed guidance from the U.S. Department of Treasury (Treasury) and the Internal Revenue Service (IRS) confirms that certain Japanese products are now eligible for some of the Inflation Reduction Act's (IRA's) lucrative Sec. 30D. Clean Vehicle Credit.

As previously reported, last week the U.S. and Japan entered into a bilateral trade agreement to ensure the free trade of critical minerals involved in electric vehicle battery production. In part, this agreement was in direct response to the critical mineral requirement of the Sec. 30D. Clean Vehicle Credit, which requires that at least 40% of the "value of applicable critical minerals," such as lithium, graphite, manganese cobalt, and nickel, used in the production of batteries be "extracted or processed in the United States, or in any county with which the United Sates has a **free trade agreement in effect**."

Before last week, there was no such agreement in effect with Japan. And absent a definition of "free trade agreement" in the IRA, it was not clear if this trade deal was sufficient to give Japanese companies access to any of this valuable tax credit.

The IRS's and Treasury's newly issued Notice of Proposed Rulemaking (NPRM) clears up these doubts. In addition to several other clarifications regarding the tax credit, the NPRM proposes four "criteria" for determining whether "an agreement between the United States and another country, as to critical minerals contained in electric vehicle batters" satisfies Sec. 30D. The proposed rule asks whether the trade deal does the following:

(A) reduces or eliminates trade barriers or preferential basis;
(B) commits the parties to refrain from imposing new trade barriers;
(C) establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections), and/or
(D) reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions on exports.

Treasury and the IRS have concluded that "the proposed regulations include countries with which the United States has comprehensive free trade agreements" and "additional countries" that meet these requirements. Applying these factors, the agencies have determined that "**[o]ne example of such a country is Japan**, with which the United States recently concluded a Critical Minerals Agreement (CMA)." Treasury and the IRS will continue to update the list of eligible countries as "any new qualifying international agreements enter into force" that satisfy these factors.

This NPRM will be officially published and open for public comment on April 17, 2023. All vehicles placed-in-service

after April 18, 2023, will be subject to its new requirements and impact eligible taxpayers who purchase new electric vehicles.

We are continuing to monitor these developments closely during the public comment period and as the proposed rule goes into effect. No doubt these proposed rules will affect implementation of the IRA and the negotiation of similar trade deals with other U.S. trade partners currently excluded from eligibility, including the European Union.

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