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News & Alerts

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Tax Reform Conference Committee Bill Keeps, But "Beats" LIHTC, HTC, NMTC, REITC and REPTC Credits

The House-Senate Conference Committee on the 2017 Tax Cuts and Jobs Act has approved a conference report containing the final version of the bill, which will now go before the full House and Senate for final passage. Below is an overview summary of the conference bill's provisions regarding investment tax credits.

HTC: The conference bill eliminates the 10% historic rehabilitation tax credit for pre-1936 non-historic buildings but retains the 20% historic rehabilitation tax credit (HTC) subject to a modification that the HTC be claimed 20% per year over five years *rather than* 100% in the year of completion. A transition rule permits phased rehabilitations (which may be elected over a 60-month period) for buildings continuously owned or leased by a taxpayer after December 31, 2017, and completed within a 24- or 60-month period that begins within 180 days of the bill's passage into law—to claim HTC under the current 100% in year of completion rule. Additional clarity is needed for the new 20% HTC transition rule. As discussed below, the HTC cannot offset the BEAT.

LIHTC: The 9% and 4% low-income housing tax credit (LIHTC) were retained essentially unchanged. In addition, the tax exemption for private activity bonds is retained in the conference bill (despite being repealed in the House version of the bill).

NMTC: Despite new markets tax credits (NMTC) being slated for elimination, the conference bill retains the 2018 and 2019 annual NMTC allocation rounds at $3.5 billion each. In addition, the NMTC cannot offset the BEAT (discussed below).

REITC: As in the Senate bill, the conference bill retains the renewable energy investment tax credit (REITC) and production tax credit (REPTC) without any changes to current law. The House bill eliminated the REPTC inflation adjustment and changed the continuous construction requirement.

BEAT: The conference bill adopts the Senate's imposition of a new Base Erosion and Anti-abuse Tax (BEAT), which is similar to an international alternative minimum tax on foreign-owned corporations or U.S. corporations with significant foreign operations. The BEAT may inhibit such corporate investors from claiming tax credits, since such corporations would be limited from utilizing HTC and NTMC—although the bill allows such corporations to benefit from 80% of LIHTC, REITC and REPTC (but not HTC or NMTC) tax credits despite owing a BEAT liability.

Alternative Minimum Tax (AMT): The conference bill retains the individual alternative minimum tax (AMT) with increased AMT exemption amounts and phase-out thresholds, but eliminates the corporate AMT. The REPTC cannot be used to reduce or offset AMT during the final six years of such credit allocation. The LIHTC and HTC may reduce or offset AMT.

Next Steps: The conference bill is expected to pass the House and Senate and be signed into law by the president. Though the bill's impact to HTC and NMTC tax credits is somewhat disappointing, the coming year will present an opportunity to assess the impact of the new bill and propose modifications to clarify transition rules. Ongoing advocacy of HTC, NMTC, LIHTC, REITC and REPTC tax credits will be important to restore and improve the positive impact and effectiveness of these credits as economic drivers and job producers.

Any project involving tax credits or credit syndication must be carefully planned and reviewed by an experienced team. **Hirschler Fleischer's Tax Credit Group** continues to lead successful tax credit projects with deep experience in state and federal tax credit issues as well as land conservation projects and credits. The group assists developers, real estate companies and landowners with projects intended to generate these credits, and structures, negotiates and prepares the partnership and/or other investment vehicles for syndicating such credits. In addition, the group counsels investment entities in structuring partnerships, private investment funds (including opportunity funds) and private development entities interested in investing in these credit projects, and also counsels brokers selling such credits. Contact any member of the team for more information.

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