With nearly $50 billion in annual investment, the renewable energy sector is one of America's most important economic drivers, thanks largely to dramatic recent growth in the wind and solar power industries. All other major sources of electricity generation have permanent law incentives, many of which have been on the books for over a century, while the wind and solar tax credits are on schedule to phase out over the next several years (with the limited exception of a permanent 10 percent investment tax credit (ITC) for commercial and utility-scale solar power). This phase-out schedule was endorsed by the wind and solar sectors under a bipartisan legislative compromise in December 2015. Credits for other forms of renewable energy generation, including biomass, geothermal, hydropower, marine hydrokinetic energy, and fuel cells expired in 2016.

With enactment of the Tax Cuts and Jobs Act, Congress ushers in the first major change to the U.S. Internal Revenue Code in over 30 years. The legislation will have a dramatic impact on business and investment, including direct and indirect impacts on the renewable energy sector. The final tax bill represents a measured victory for renewable energy in that it leaves the 2015 renewable tax credit extensions for wind and solar power unaltered, rejects the 20% Alternative Minimum Tax (AMT), and includes important repairs that reduce, but do not eliminate, the detrimental impacts of the new Base Erosion Anti-Abuse Tax (BEAT). Included below is a summary of the key final provisions.

General Business Provisions

- **Corporate Tax Rate:** The corporate tax rate will be reduced from 35% to 21%. While both the Senate and House bills originally proposed a 20% tax rate, the rate was raised to 21% in order to increase federal revenue to cover cuts elsewhere. The new rate will take effect in 2018.
- **Pass-Through Businesses:** A roughly 20% income deduction for pass-through businesses, such as partnerships and S-corporations, was included in the final tax bill. The calculation of the actual percentage is highly complicated.
- **Deductibility of Interest:** The final tax bill includes a restriction on the amount of deductible interest for businesses to 30% of their “modified income” with carryover of excess deductible interest to later years. The final bill adopts the House proposal's definition of “modified income” as earnings before interest, taxes, and depreciation and amortization (essentially gross income); however, after 2021, the Senate proposal's new definition of “modified income” that does not include depreciation, depletion, and amortization will take effect. The result for many businesses will be a smaller pool of deductible interest starting in 2022.

Renewable Tax Credits

The Final Bill: The final Tax Cuts and Jobs Act keeps intact the 2015 PATH Act extension and its schedule for phasedown of the wind and solar investment and production tax credits. ACORE and other industry partners worked with renewable energy champions in Congress to reject the proposed House language that would have substantially reduced the value of the PTC and would have phased out the permanent 10 percent solar credit. The Conference Committee rejected the problematic House provisions that would have established new criteria retroactively changing the rules for how projects qualify for renewable tax credits.

The final bill does not, however, include language extending credits for renewable technologies that were left out of the 2015 tax package. Important technologies that now have lapsed credits include biomass power, geothermal energy, hydropower, marine hydrokinetic energy, and waste-to-energy. ACORE will work with allies to promote extensions for these technologies through separate “extenders” legislation that may be considered very soon.

Summary: Tax credits for wind and solar energy remain intact and were successfully defended against a direct attack in the original House bill; the tax credits for renewable energy technologies that had previously expired were not extended.

New Base Erosion Anti-Abuse Tax

The Final Bill: The final tax bill includes a revised version of the Senate's new Base Erosion Anti-Abuse Tax (BEAT) intended to limit the ability of multi-national corporations to use cross-border payments to affiliates to avoid U.S. taxes. Under the final bill language, the PTC, the ITC and other business credits can be used to offset up to 80% percent of the BEAT through 2025. The provision does not allow the unmonetized value of credits to be carried forward for use against future BEAT liability, and only 80% of credit value can be used to reduce the BEAT.

The BEAT applies to corporations that have average annual gross receipts of at least $500 million for the three previous years, and a base erosion percentage of at least 3% percent, or 2% for banks and securities dealers. This is lower than the originally proposed 4% threshold, and the change is expected to subject more businesses to BEAT liability. While extensive calculations are required to determine the base erosion percentage, in summary, it represents the percentage of a corporation's overall deductions that are made up of payments to affiliated foreign companies.

The BEAT is calculated as the difference between 10% (11% for banks and securities dealers) of a corporation's taxable income before cross-border payments to affiliates and the corporation's tax liability after accounting for tax credits and cross-border payments. The conferees settled on a repair that allows renewable energy tax credits (and others) to reduce up to 80% of BEAT liability through 2025. In addition, the tax formula only allows for 80% of the value of the ITC and PTC to be used to reduce BEAT liability, resulting in up to a 20% claw back of renewable energy tax credits.
An additional concern is that the 80 percent repair does not extend to tax credits after 2025, thus reducing the outyear values for PTC’s associated with recent wind power deals.

The final bill treats 2018 as a transition year, using a 5% (6% for banks and securities dealers) base erosion minimum tax amount to calculate the BEAT. The full 10% minimum (11% for banks and securities dealers) takes effect in 2019.

It will take some time to see how financial institutions respond to the new BEAT constraints on renewable tax credits’ utility. The lower minimum tax rate in 2018 may provide financial institutions with a window in which they can restructure to escape or reduce their BEAT liability before the higher rate takes effect in 2019.

We note that tax equity investors are only able to determine if they are covered by the BEAT provisions once they have completed their year-end tax calculations. The reduced value of the ITC and PTC under the BEAT, combined with uncertainty about BEAT applicability, may push some tax equity investors out of the renewable energy market.

**Summary:** While the Base Erosion Anti-Abuse Tax language remains in the final bill, a repair was included to allow 80% of the value of the ITC and PTC to be used to reduce BEAT liability by up to 80% through 2025, but the unmonetized value of credits may not carry over to subsequent years. A lower BEAT tax rate applies in 2018, providing a window for institutions to restructure before the rate increases in 2019.

**The Alternative Minimum Tax**

**The Final Bill:** The final bill does not include an Alternative Minimum Tax for corporations. The Senate bill established a 20% corporate tax rate and also restored the corporate AMT at 20%. Having an AMT at the general tax rate raised numerous concerns, since many important tax credits cannot be fully applied against AMT. The PTC for example can only be used against the AMT for the first four years after each turbine is placed in service (IRS code Section 38(c)(4)), resulting in a substantial reduction in the value of the PTC benefit for existing and new wind facilities. The removal of the corporate AMT protects the intended value of the PTC.

**Summary:** The final tax bill adopts the House proposal and removes the Alternative Minimum Tax protecting the value of the PTC.