On November 2, 2017 House Republican leaders introduced their long-awaited tax proposal, H.R. 1, revealing for the first time the details of their effort to overhaul the tax code. The tax code has been essential to the continuing growth in the renewable energy sector, and the bipartisan tax law compromise enacted in 2015, which extends and phases down wind and solar tax credits, has been critical to renewable energy investment that totaled more than $46 billion last year alone.

Overview
Rather than rewarding the wind and solar sectors for their leadership in becoming the nation’s first industries to agree to the phasedown of their own tax incentives, H.R. 1 breaks faith with the 2015 tax accord. The bill would affect fundamental changes that substantially reduce the value of the wind production tax credit (PTC), phase out the permanent solar credit, and impose new requirements that retroactively change the rules governing how projects qualify for the tax credits. This latter change places more than $50 billion in wind energy investment at risk, altering the ground rules and fundamental economics for projects that have already been financed and are under construction. Having complied with law and the Treasury Department’s “safe harbor” guidance, investors who thought they had qualified for a 2016 construction start are now confronted with new rules under the only retroactive provision in the House’s 429-page bill.

It is important to keep in mind that the introduction of this bill is only the beginning of what could be a lengthy process. Any final bill must secure approval in the Senate, where renewable energy enjoys strong bipartisan support, and key Republicans, beginning with Iowa Senator Chuck Grassley, will oppose any revisions to the renewable energy credits in the 2015 tax package.

Stepping back, it should be noted that renewable tax credits are only part of the picture in assessing the impact of tax legislation on the sector. Other key considerations include the changes that impact the deductibility of interest, the treatment and value of depreciation, the availability of tax equity, the potential taxation of U.S. subsidiaries sending funds to foreign parent companies, the tax on repatriated foreign income, and of course the rate of corporate taxation. These and other changes are outlined briefly on the following page.
Key Provisions of Concern

1. **Production Tax Credit for Wind Power (Internal Revenue Code Section 45):**
   - **Lowering the PTC Value and Eliminating the Inflation Adjustment for New Projects.** The bill would eliminate the PTC inflation adjustment, decreasing the current PTC amount from $24 per megawatt hour to $15 per megawatt hour and eliminating future inflation adjustments, for projects starting construction after the date of enactment. (The official Ways and Means Committee bill is inconsistent with the bill text and indicates the change applies to projects beginning construction after November 2, 2017.) As provided in the 2015 PATH Act, the PTC is subject to an additional 20% reduction in value for projects that begin construction in 2017, and a 40% reduction in value for projects that begin construction in 2018.
   - **Continuous Construction Required to Qualify for the PTC.** The bill retroactively eliminates qualification for the credit under the Treasury Department's safe harbor guidance, requiring that projects maintain “continuous construction” until placed in service. The safe harbor provisions, which were widely used to ensure qualification for the tax credit in 2016, before the credit begins to phase down, applies to projects that incur expenses amounting to 5% or more of project costs. This provision applies “before, on and after the date of enactment.” This is the only retroactive provision in the bill (other than the parallel solar provision), and it gravely disadvantages the many investors and developers who relied on the Treasury Department safe harbor provisions in qualifying wind projects for the full value credit in 2016.
   - **Biomass, Hydro and Geothermal Technologies.** The bill does not include provisions extending credits to so-called “orphan” renewable technologies, including biomass power, geothermal power, and hydropower, that formerly qualified for the PTC, but were left out of the 2015 tax package. Credits for these technologies expired in 2016.

2. **Investment Tax Credit for Solar Power (Internal Revenue Code Section 48):**
   - **Phasing out the Permanent 10% Solar Credit.** Under H.R. 1, the permanent 10% investment tax credit for utility scale solar projects would be phased out in 2027. This is the only permanent law credit applying to the renewable energy sector. Under the 2015 PATH Act, solar projects commencing construction before 2020 would receive a 30% investment tax credit. Projects starting construction in 2020 and 2021 would receive investment tax credits of 26% and 22%, respectively, with the 10% investment tax credit applicable thereafter. That credit would phase out in 2027.
   - **Continuous Construction Required to Qualify for the Investment Tax Credit (ITC).** The bill retroactively changes qualification for the ITC to require proof of “continuous construction” in order to qualify for these tax credits. While the impacts of this change are not as immediate as in the wind sector, where the credit phase down has already begun, the provision could have important negative impacts on expected efforts to use safe harbor qualification for new solar projects after the ITC begins to phase down in 2020, constraining long-term solar sector growth.
   - **Geothermal heat pumps, fuel cells, fiber-optic solar property, and combined heat and power.** The bill extends the ITC to cover so-called “orphan” technologies that
formerly qualified for the ITC under Section 48, but whose credits expired in 2016 when they were left out of the 2015 PATH Act. Geothermal heat pumps, fuel cells, fiber-optic solar property, and combined heat and power facilities are granted access to the ITC and will follow the same phase-out timeline as solar.

3. **Corporate Tax Rate:**
   - The bill proposes to reduce the corporate tax rate on a permanent basis from 35% to 20% beginning in 2018. However, important scoring issues could compel legislators to move to a higher rate or require a phase-in period. The tax cuts in the bill add up to $5.5 trillion over 10 years, and the Budget Resolution which the tax legislation must comply with requires that the bill does not add more than $1.5 trillion in total to the national debt. The JCT estimate is not yet available, but when it is complete it must find that the cost savings in the bill totals at least $4 trillion.
   - A higher tax rate or resort to a phase-in schedule, which is in any case is typical to allow for better business planning in transition to new tax rates, are likely approaches to lower the cost of the bill.

4. **Expensing and Depreciation:**
   - The bill would allow 100% expensing with the full cost of new or used equipment to be written off immediately in the first year for equipment acquired and put into service after September 27, 2017. This would in effect increase the 50% depreciation bonus.
   - Full expensing would end in 2022 with most assets required to be in service by then to qualify. However, certain assets like transmission lines would have an additional year through 2023 to be in service, but only the tax basis build up through 2022 could be written off immediately.

5. **Interest Deductibility:**
   - Starting in 2018, the bill would limit interest deductibility for businesses with average gross receipts of more than $25 million.
   - Interest deductions would not be allowed for debt if a company's net interest expense exceeds 30% of adjusted gross income. Any interest that cannot be deducted could be carried forward for up to five years.
   - These provisions would not apply to regulated public utilities. They could be an issue for companies in renewable energy and other capital-intensive sectors.

6. **U.S. Subsidiaries of Foreign Corporations:**
   - The bill proposes a 20% “transfer tax” that would assess a tax on funds transferred from U.S. subsidiaries to foreign owners if the transfer averaged more than $100 million during the previous three years.
   - The tax applies to payments that the U.S. company deducts or adds to the basis of depreciable assets in the U.S. The tax can be avoided if the foreign corporation receiving the payment files a U.S. tax return reporting the payment as income in the U.S.
7. Repatriation of Overseas Profits:
   - The bill would tax foreign earnings at 12% if held in cash or equivalents and 5% otherwise.
   - Companies would have to calculate earnings as of November 2, 2017 and December 31, 2017 and pay U.S. tax on the higher amount.
   - The concept of repatriation enjoys significant bipartisan support and has been seen as an important area of revenue to offset rate reduction.

8. New Markets Tax Credits:
   - The bill would terminate the new markets tax credit, a credit for investments in qualified community development entities generally intended to serve low-income communities and individuals. Renewable energy assets could qualify for coverage in certain cases where the assets are located in areas to aid low-income communities and individuals.
   - The bill would not allow additional new markets tax credits to be allocated after 2017; although, credits that have already been allocated may be used over the course of up to seven years as provided by the credit's multi-year timeline.

9. Treatment of Pass-Through Income:
   - Income that individuals receive from partnerships, S corporations, and other pass-through entities will be taxed at a 25% rate, rather than the top rate of 39.6%.
   - Passive investors in partnerships will be assumed not to be receiving compensation. Income received by active partners will be assumed to be 70% compensation and 30% return on investment. Only the latter would qualify for the lower pass-through rate.
   - We would note that master limited partnerships (MLPs) operate as pass-through entities, receiving favorable tax treatment to promote investment in qualified industries. Bipartisan legislation was recently reintroduced to extend MLP applicability to renewable energy resources. The sponsors of the legislation to extend MLP coverage to renewables would like to include this in tax reform legislation, but it is not clear there is the level of support for this effort to succeed.