



FAQs Expiration of 30 Percent ITC After 2016

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Reading Time : **3 min**

2. Absent a change in law, what ITC will be available for homeowners who install and own solar on their own homes on January 1, 2017?

Answer: None.²

3. Absent a change in law, what percentage of the ITC will be available for an investor (e.g., a bank) that invests in a solar system installed on a home and leased (or subject to a power purchase agreement) to the homeowner on January 1, 2017?

Answer: Ten percent. (In the case of a solar system owned by an investor (i.e., not a homeowner), the tax law does not distinguish between residential, commercial or utility scale systems.³)

4. What happens to the five-year accelerated depreciation (so-called MACRS) available for solar systems on January 1, 2017?

Answer: As a general matter, nothing happens to MACRS on January 1, 2017, because it is a “permanent” provision of the Internal Revenue Code.⁴ However, the MACRS benefit will effectively increase as the ITC decreases. This is because depreciable basis is reduced by half of the ITC. When the ITC declines to 10 percent, the depreciated basis will be reduced by only 5 percent (i.e., half of 10 percent), rather than 15 percent (i.e., half of 30 percent).

5. Is MACRS available to homeowners who own solar systems installed on their own homes?

Answer: Such homeowners are not eligible for MACRS (or any other type of depreciation) because depreciation is available for property used only in a trade or business.⁵ A solar system installed on your own residence is not used in a trade or business; accordingly, it is not eligible for MACRS (or any other type of depreciation). This is the case under current tax law and will be the case on and after January 1, 2017.

6. What is the solar industry's strategy for maintaining the 30 percent ITC?

Answer: The strategy has two parts. The first part is seeking an extension of the 30 percent ITC. The second part is seeking to change the deadline from projects "placed in service" before the end of 2016 to projects that "start construction" prior to 2017.⁶

7. What is the origin of the "start of construction" concept?

Answer: It was first used as one aspect of the deadline for projects seeking cash grants.⁷ In the American Taxpayer Relief Act of 2012, the production tax credit for wind was extended for projects that started construction before January 1, 2012.⁸

8. What would "start of construction" mean as a practical matter?

Answer: The Internal Revenue Service, for the production tax credit, has interpreted "start of construction" to mean either (a) spending 5 percent and taking delivery of the purchased equipment within three and a half months of payment or (b) starting work of a "significant physical nature." For more details, see the blog post available [here](#).

9. If the 30 percent ITC is not extended, what changes are likely to occur in solar tax equity transactions?

Answers: MARCS will be more important. The most effective way to monetize MACRS is through a sale-leaseback, so that structure is likely to be more popular. The pass-through and inverted lease structures are ITC-focused, so they will likely decline in popularity.

Further, there has been a recent increase in interest in homeowners owning the solar systems on their homes. For instance, SolarCity has launched a traditional lending program for homeowners. If no tax credits are available for homeowners, the interest in ownership of solar systems by homeowners will likely decline in favor of leases and power purchase

agreements in which an investor can claim tax credits and depreciation and, as a result, provide a reduced rate to the homeowner.

¹ I.R.C. § 48(a)(2)(A)(i)(II), (ii).

² I.R.C. § 25D(g)

³ I.R.C. § 48(a)(2)(A)(i)(II), (ii).

⁴ See I.R.C. § 168.

⁵ I.R.C. §§ 167(a), 168(a). If the homeowner were selling all of the electricity into the grid and using none itself, it is arguable that the system would be viewed as used in a trade or business and eligible for MACRS and the ITC under Section 48 (not Section 25D). See Michael Copley, *Rooftop Solar Group Hopes IRS Request Will Chip Away at Solar Tariffs*, SNL (Sept. 26, 2014). However, the use of the ITC and MACRS would be subject to the “passive activity loss” rules, which would be a significant constraint for most homeowners.

⁶ See Renewable Energy Parity Act of 2013 (H.R. 2502) sponsored by Rep. Mike Thompson (D-CA). Senators Michael Bennett (D-CO) and Dean Heller (R-NV) support similar legislation.

⁷ § 1603 (a)(2) of the American Recovery and Reinvestment Tax Act of 2009 (“but only if the construction of such project began....”).

⁸ § 707 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2012.

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