

Q&A: Mayer Brown co-head of tax energy demystifies carbon capture tax credit

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(Reuters) - Capturing carbon to store it so it doesn't become a greenhouse gas has become a more profitable proposition with the Biden administration saying this week that as part of its \$2.3 trillion infrastructure plan, it intends to expand a federal tax credit designed to spur investment in carbon capture and sequestration projects.

The announcement comes about three months after the U.S. Treasury Department issued its final regulations for the Section 45Q of the Internal Revenue Code tax credit.

The credit offers up to \$50 per metric ton of captured carbon oxide for some projects that sequester it, for instance by extracting it from polluting sources and then storing it underground where it won't contribute to climate change, and up to \$35 per ton for projects where it is captured and then used for recovering oil or natural gas underground.

Reuters spoke with Greg Matlock, the global co-head of the tax energy group at Mayer Brown, about how lawyers can help clients use the credit and what pitfalls to keep in mind.

Questions and answers have been edited for clarity and brevity.

REUTERS: What is covered by the 45Q credit?

MATLOCK: The final regulations do contain a definition of carbon capture equipment, but it's a nonexclusive, functionality-based definition. Instead of having a rigid, exclusive description of what could be considered carbon capture, having a non-exclusive functionality focus definition is going to be helpful to encourage investment. So carbon-capture equipment generally includes all of the components of property that are used to capture a processed carbon oxide, until the carbon oxide is transported for disposal, injection or other qualified use.

REUTERS: And who stands to benefit most from it?

MATLOCK: The credit by nature applies in the first instance to the owner of the carbon-capture equipment. But that's going to have a ripple effect on a bunch of ancillary services and operations, from the emitter all the way through midstream and the upstream sectors, through transportation, sequestration and enhanced oil and natural gas recovery projects - there's going to be a value chain here. So that's where we're focused on discussing with our clients, they may own mineral interests, they may own secure geologic storage type assets - how can they get vertically integrated? Also with emitters, same thing, how can they expand into the carbon capture world and is there an economic proposal to own the carbon-capture equipment?

REUTERS: How should one go about it?

MATLOCK: If you're evaluating an integrated overall project that could include capturing carbon, working with an emitter, all the way down through the transportation and injecting into the ground, either for enhanced oil recovery or for a secure geologic storage, it's the asset-level commercial contracts that will be very, very important. You've got to make sure that this works for everybody involved throughout the value chain.

REUTERS: What are pitfalls investors should keep in mind?

MATLOCK: Folks are going to be focused on making sure there's no leakage. Section 45Q rules include the recapture rules. If there is a recapture event, meaning if there is sufficient leakage or other non-qualifying event or use, a taxpayer may have to add back all or a part of the tax credit the taxpayer claimed in prior years to the taxpayer's tax due in the tax year when the qualifying requirements for that credit are no longer met.

REUTERS: Where geographically in the United States do you expect more carbon capture business?

MATLOCK: I think you're going to see more investment in this space in Texas, in Louisiana and other places where you have both the emissions and you know the geology to support secure geologic storage.

References

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