Current tax law provides significant incentives to developers and investors focused on clean energy solutions from wind, solar, geothermal, biomass, and other renewable energy sources. Federal tax credits and related incentives provide powerful benefits to developers and investors in financing renewable energy projects and subsidizing the development of renewable energy technologies. The most significant of these benefits take the form of production tax credits (PTCs) and investment tax credits (ITCs).

These federally sponsored tax benefits:
— Provide a strong incentive for private investment;
— Subsidize developer’s costs to enable far more projects to be developed;
— May be combined with other federal, state, and local financing incentives; and
— Provide a socially responsible investment opportunity.

Here’s a summary of these programs

The Investment Tax Credit (ITC) provides a credit equal to 30 percent of the cost of a qualifying facility (10 percent in some cases). A tax credit is a reduction in tax liability, not a cash payment, so often even successful developers of these projects can’t make as good a use of the benefit as a high-bracket taxpayer. So, the developer often serves as the “sweat equity” and managing member of a limited liability company, while the investor member makes a cash contribution to the venture and is allocated the tax credit. Important things to remember:

— Solar and fuel cell projects must be placed in service by the end of 2016 to qualify for the 30 percent credit. Most wind, biomass, solid waste, and many water-based technologies must have “begun construction” before the end of 2014 to qualify (more on this below). Some geothermal and wind projects can qualify under either deadline.
— The credit is typically generated in only one year, when the facility is placed in service, and it is generally allocated among the partners of the owner of the facility. Some transactions allow the credit to be “passed” to a lessee of the project.
Federal tax credits and related incentives can provide powerful benefits to developers and investors in financing renewable energy projects and subsidizing the development of renewable energy technologies.

— The credit is subject to “recapture” for five years after the facility is placed in service, so the LLC must own the project for at least that long; the developer and investor will remain co-venturers for at least that long as well.

The Production Tax Credit (PTC) provides a credit equal to 2.3 cents (adjusted annually, half that amount for some renewables) per kilowatt hour of electricity produced and sold to unrelated persons. The credit applies to electricity generated in the U.S. by most facilities based on wind, biomass, solid waste, geothermal, hydropower, and a few other technologies. Like the ITC, an LLC often owns the project, with the developer serving as the managing member, and the PTCs being allocated to an investor who can use the credit. Note:

— To qualify under current law, the facility must have begun construction before the end of 2014.

— The credit is generated for ten years. While there is no PTC recapture, the developer-investor relationship is likely to last at least that long.

Accelerated Depreciation is also available for these facilities. They typically qualify for the 5-year “MACRS” system. As of 2016, 50 percent bonus depreciation was extended through 2019.

Additional Rules You Should Know:

— Complex tax rules make these tax benefits difficult to use for individual investors. As a result, most investors are publicly traded corporations.

— The term “begun construction” has different meanings for tax credits and Treasury grants. Moreover, the IRS published a special “safe harbor” for facilities utilizing certain technologies that makes it especially easy for a facility to qualify for PTCs provided the owner of the facility (1) did some, even small amount of, “physical work” on the project in 2014, and then (2) places the facility in service by December 31, 2016. Remember that this begun construction test does not apply to solar or fuel cells. They are only subject to a “placed in service by the end of 2016” rule.

— A project can only take advantage of one of the ITC or PTC.

— These programs can be combined with other tax-favorable programs, such as new markets tax credits, historic tax credits, affordable housing credits, and others.