Mitrex BIPV Eligibility for Tax Credits

This document provides an overview of the eligibility criteria for tax credits as it applies to Mitrex's BIPV and solar facade systems. The information is derived from the attached legal memo, which outlines that the solar cladding system called CladiShield, made by Mitrex, qualifies for a federal investment tax credit in the United States. These incentives will also be applicable for the Canadian market. Below is a concise summary of the key points.

- Eligibility:
  - Solar panels, inverters, batteries and other solar-related hardware integrated into building cladding systems can qualify for the tax credit.
- Tax Credit Details:
  - Current tax code section: 48(a).
  - Future tax code section: 48E.
  - The base tax credit can cover 22-25% of the total system costs. This includes the weatherproofing, insulation, thermal breaks, sub-interlocking channels, cladding panels, cables, inverters, optimizers, transformers and batteries (if required).
  - Potential increase to 37-42.5% based on domestic content and project location.
- Requirements:
  - Compliance with wage and apprentice rules unless exempt.
  - Equipment must be used predominantly in the US and not by tax-exempt or government entities. (Note – tax-exempt entities may still access tax credits through direct pay provisions.)
- CladiShield Case Study:
  - The solar panels are part of the building envelope, referred to as building-integrated photovoltaics (BIPV).
  - The equipment includes solar panels, power optimizers, inverters, transformers, and potentially batteries.
  - Installation and use must meet specific criteria to qualify for the tax credit.
- Window System Case Study:
  - A case study of solar panels embedded into a curtain wall system were considered eligible for the tax credit.
  - In this case, the curtain wall was viewed as functional solar equipment rather than mere building materials.
- Tax Insurance:
  - The tax credit is insurable; Mitrex can refer clients to various insurance groups that can guarantee access to tax incentives. This is subject to a fee of a small percentage of the overall tax incentive.

- Elective Pay:
  - Elective pay allows applicable entities (as defined), including tax-exempt and governmental entities that would otherwise be unable to claim these credits because they do not owe federal income tax, to benefit from some clean energy tax credits by treating the amount of the credit as a payment of tax and refunding any resulting overpayment.
  - For example, as a result of the Inflation Reduction Act, a local government that makes a clean energy investment that qualifies for the investment tax credit can file an annual tax return (via Form 990-T) with the IRS to claim elective pay for the full value of the investment tax credit, as long as it meets all of the requirements, including a pre-filing registration requirement. As the local government would not owe other federal income tax, the IRS would then make a refund payment in the amount of the credit to the local government. See Q15 on the Applicable credits for elective pay page for a list of applicable tax credits. (Source - https://www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions-overview)

- Transferability:
  - Transferability allows a taxpayer who generates certain clean energy tax credits to elect to transfer (i.e., sell) all or a portion of a tax credit to an unrelated third-party transferee (i.e., buyer) in exchange for cash. In such transactions, the buyer and seller negotiate and agree to the terms and pricing. The transferor is sometimes referred to as the "seller" and the transferee is sometimes referred to as the "buyer". Applicable entities cannot use transferability; they can only use elective pay. (Source - https://www.irs.gov/credits-deductions/elective-pay-and-transferability-frequently-asked-questions-overview)

The following pages consist of the entire legal memo provided by Norton Rose Fulbright for Mitrex, as summarized above.

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Memorandum

To	Mitrex		
From	Norton Rose Fulbright US LLP	**Date**	July 2, 2024
Re	CladiShield - eligibility for US investment tax credit		

You asked whether the solar cladding that you sell as part of a CladiShield system qualifies for a federal investment tax credit in the United States.

The short answer is an investment tax credit can be claimed on solar panels and batteries mounted on the sides of buildings as part of a CladiShield system given the right facts. The "law" section of this memo lists a number of boxes to check.

This memo reflects our view of the current US income tax laws. It is not a guarantee of results. The US tax authorities and the courts are not bound by legal opinions of outside counsel.

All references to a "section" without identifying the statute are to a section of the Internal Revenue Code of 1986, as amended through today's date (the "Code").

Facts

We understand the facts to be as follows. Please let us know if you are aware of any inaccuracies or material omissions in this fact statement as they could affect our conclusions.

Mitrex, a Canadian company, makes a form of cladding called a CladiShield system that includes embedded solar panels.

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Cladding is the exterior surface on the sides of a building. Cladding comes in many forms. For example, the building exterior may be finished with such things as brick, granite, other stones, glass, wood, sintered ceramics, porcelain, painted metal, fiber cement, pre-cast concrete or aluminum.

Building envelopes can have multiple layers. In construction, a building envelope is used to provide a degree of thermal insulation and weather resistance and to improve the appearance and performance of a building. Cladding is the external layer on the building envelope. Solar panels can be mounted just inside the outer-most layer. Annex A is a diagram showing the various layers of the building envelope and the positioning of solar panels (labelled "Mitrex panel" in the diagram) when they are offered as part of a CladiShield system.

A building envelope with solar panels is said to have "building-integrated photovoltaics" or BIPV. Instead of traditional rack-mounted solar panels on the roof, the solar panels are installed vertically on the sides of the building behind colored and tinted glass.

Annex B shows the panels and junction boxes embedded in an aluminum honeycomb layer that sits immediately behind the external surface. A thin roll of ethylene vinyl acetate (EVA) or polyvinyl butyral (PVB) is inserted between the exterior glass and solar panels as lamination for the panels. A metal backsheet may be used to hold the panels in place or they may be backed directly by the aluminum honeycomb layer. Aluminum honeycomb layers are used in building construction as a form of insulation. Annex C shows the varying widths offered as part of a CladiShield system.

The rest of the solar equipment consists of power optimizers, inverters, solar panel boards and transformers. All of these items are concealed in the layers of the building envelope. The system serves as a primary or backup source of electricity for the building. There may also be batteries for storing the electricity until it is needed by the building.

Mitrex sells the CladiShield product directly to construction contractors for installation by the contractors on behalf of the building owners. The CladiShield and solar equipment end up being owned by the building owners. The solar portion of the CladiShield usually accounts for 75% to 85% of the total cost. The contractor adds its labor and a markup on installation to what it charges the building owner for the building materials and equipment.

Law

A federal investment tax credit can be claimed currently on a list of specific types of electric generating equipment, including "equipment which uses solar energy to generate electricity," and batteries. See sections 48(a)(3)(A)(i) and (ix). The solar panels cannot be used for the purposes of heating a swimming pool. Id. The existing tax credit is found in section 48 of the US tax code.

The tax credit will move after this year to a new tax code section (48E). Instead of listing specific types of generating equipment that qualify after this year, there is a general principle that generating equipment placed in service after 2024 qualifies if it has a greenhouse gas emissions rate not greater than zero. See section 48E(b)(3).[1] The IRS said categorically in proposed regulations in May that solar generating equipment will qualify. See Prop. Treas. Reg. § 1.45Y-5(c)(2). Batteries qualify by virtue of being called out in the statute. See section 48E(a)(1)(B).

The base investment tax credit is 30% of the customer's tax basis in the solar generating equipment and battery. See sections 48(a)(2)(A)(i)(II) and 48E(e). It may as high as 50% depending on how much domestic content is used in such equipment and the location of the project. See sections 48(a)(12) and 48E(a)(9) (domestic content bonus credit) and sections 48(a)(14) and 48E(a)(3) (bonus credit for projects in "energy communities").

These tax credit rates are only available if the project is exempted from, or complies with, wage and apprentice requirements. See sections 48(a)(9)(B) and 48E(d)(3) and (4). A project is exempted if it was under construction for tax purposes by January 28, 2023. See section 48(a)(9)(B)(ii) and Notice 2022-61. Otherwise, laborers and mechanics who work on the project during construction, or on "alterations" and "repairs" for the first five years after the project is placed in service, must be paid the same Davis-Bacon wages that are paid on federal construction jobs, and qualified apprentices must be used for 12.5% or 15% of total labor hours, depending on the year construction started for tax purposes. See sections 48(a)(10) and (11).

The tax credit amounts will start to phase out for projects that start construction two or more years after greenhouse gas emissions from

[1] A customer has the option to claim an investment tax credit under section 48 or 48E on a solar installation on which the customer is considered to have started construction by the end of 2024. Most such equipment must be put in service by the end of 2028 to qualify for a tax credit under section 48.

US electricity production fall at least 75% from the 2022 level. See sections 45Y(d) and 48E(e).

The eligible solar equipment and battery on which the tax credit can be claimed include not only the solar panels, but also all the other components that are "functionally interdependent," meaning that they have to be in service for the solar panels and battery to be able to function, as well as other equipment that is "integral" to the intended function of generating and storing electricity for use in the building and is owned by the same taxpayer that owns the solar panels and batteries. See Prop. Treas. Reg. § 1.48E-2(b).

Investment tax credits can be claimed under section 48E only on equipment as opposed to buildings and their structural components. See Treas. Reg. § 1.48-1(a)(3) and section 48E(b)(2).

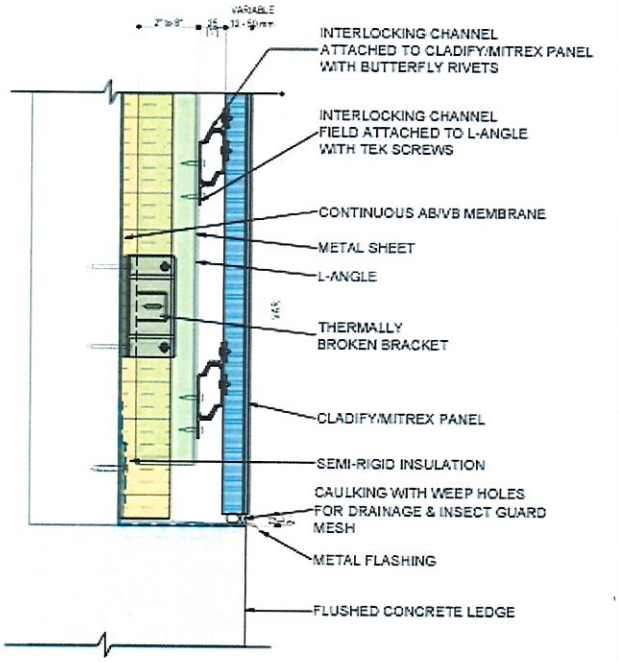
The IRS addressed the line between solar equipment and a structural component of a building in a number of private letter rulings. Such rulings are binding on the government only for the taxpayers to whom they were issued.

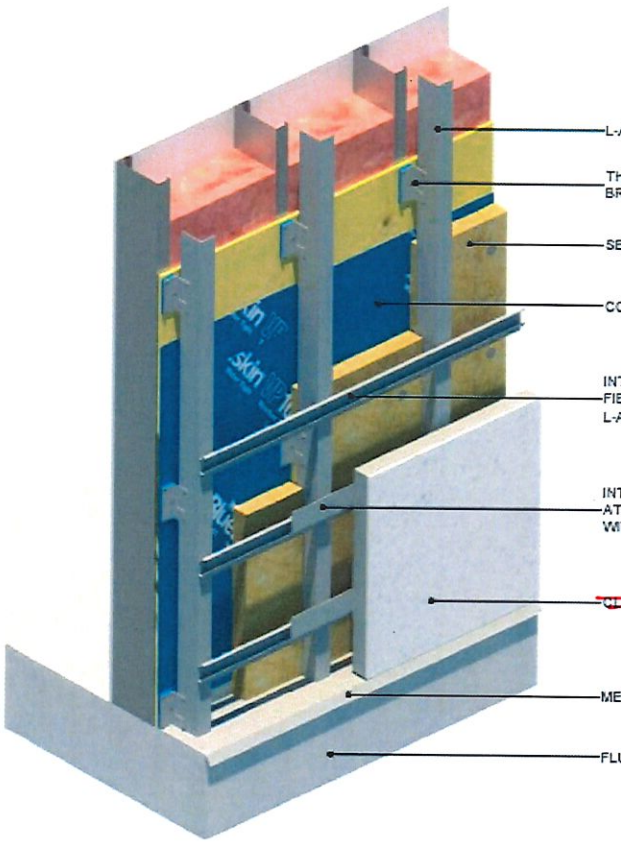
In one, a knitting company installed photovoltaic cells on its roof that were cylindrical in shape, with half the cells on the underside of the cylinder facing away from the sun. Spaces between cells let sunlight pass through. The company put a reflective surface on the roof to reflect the sunlight back up to the cells on the underside of the cylinder. The IRS said the reflective surface was part of the solar equipment. See Private Letter Ruling 200947027 (August 11, 2009).

Another ruling dealt with a solar curtain wall, or tinted glass installed in place of a window in a building with a thin solar panel embedded in the glass to generate electricity. The IRS described the curtain wall as more a piece of machinery than a structural component of a building. See Private Letter Ruling 201043023 (October 23, 2009).

The IRS has said in several rulings that an investment tax credit can be claimed on the cost of a membrane put under solar rooftop panels if that membrane doubles as a roof. However, the credit is allowed only to the extent of the incremental cost above what a membrane that serves solely as a roof would cost. See Private Letter Ruling 201121005 (February 1, 2011), PLR 201450013 (September 2, 2014) and PLR 201523014 (February 26, 2015).

The original use of the equipment must commence with the taxpayer. See sections 48(a)(3)(B) and 48E(b)(2)(C).





Dual-P
Dual-P
Building
Building
Dual
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Solar only
Dual

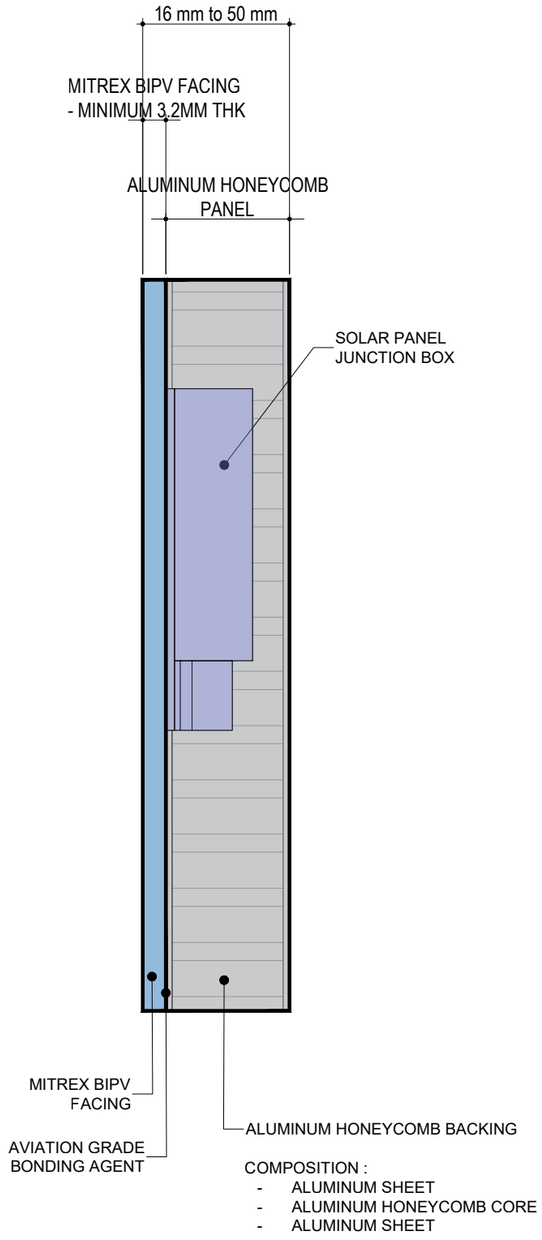
FLUSHED PANEL

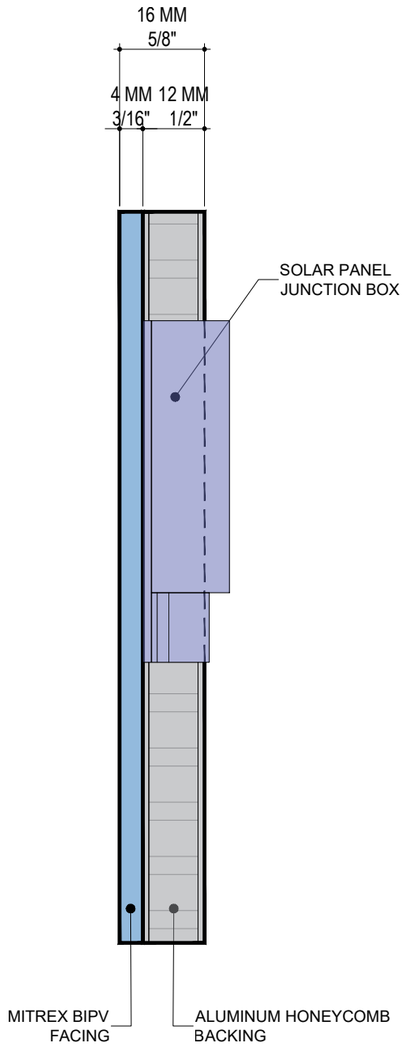
Cladify™

PANEL BASE DETAIL

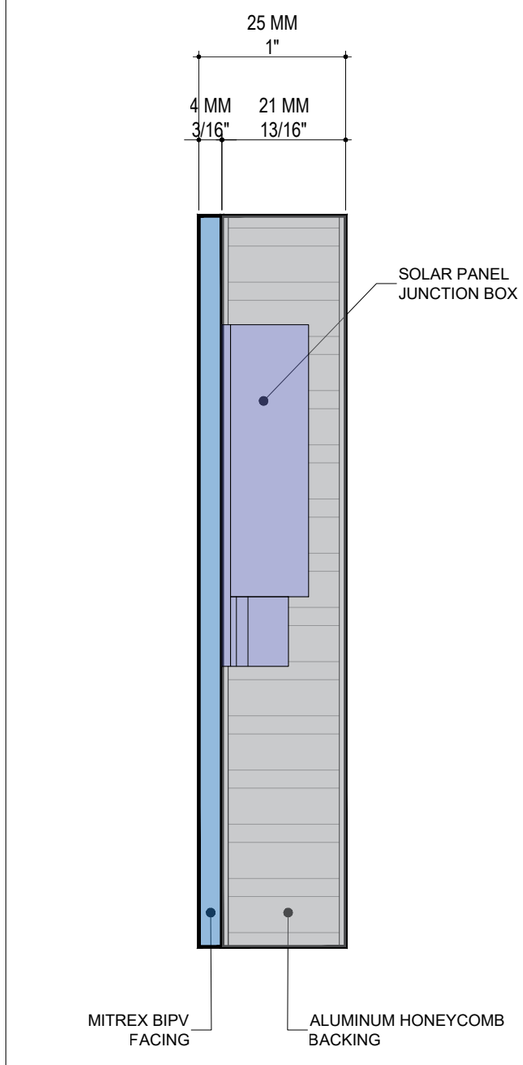
RAINSCREEN SYSTEM

A-1

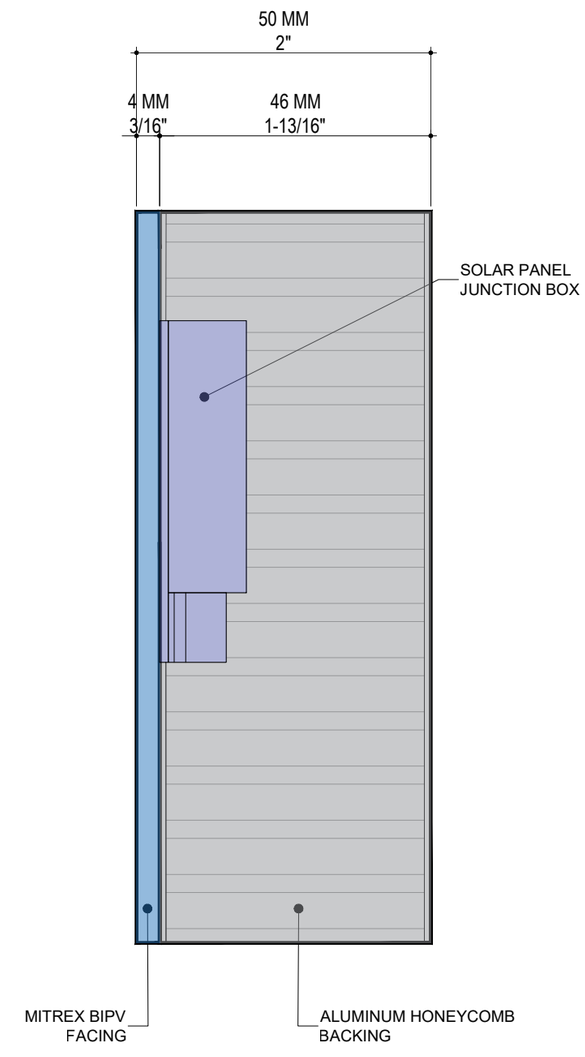




16mm THICK CLADIFY PANEL



25 mm THICK CLADIFY PANEL



50 mm THICK CLADIFY PANEL

MITREX PANEL COMPONENTS

PANEL TYPES

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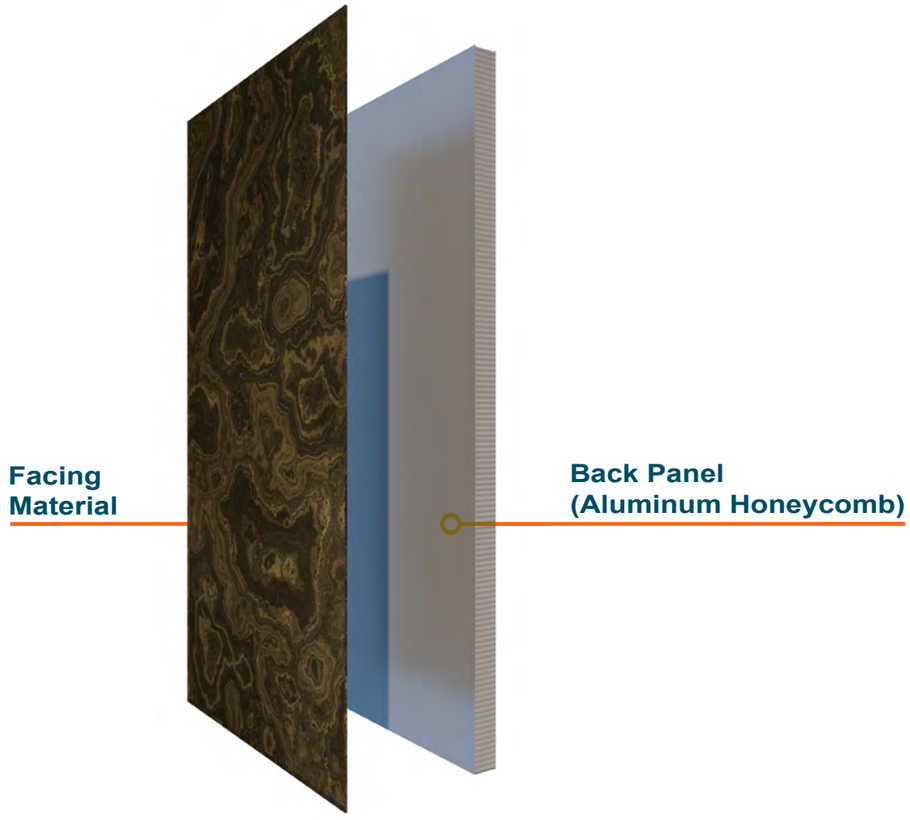
PANEL THICKNESSES

RAINSCREEN SYSTEM

02

CLADIFY PANEL COMPOSITION :



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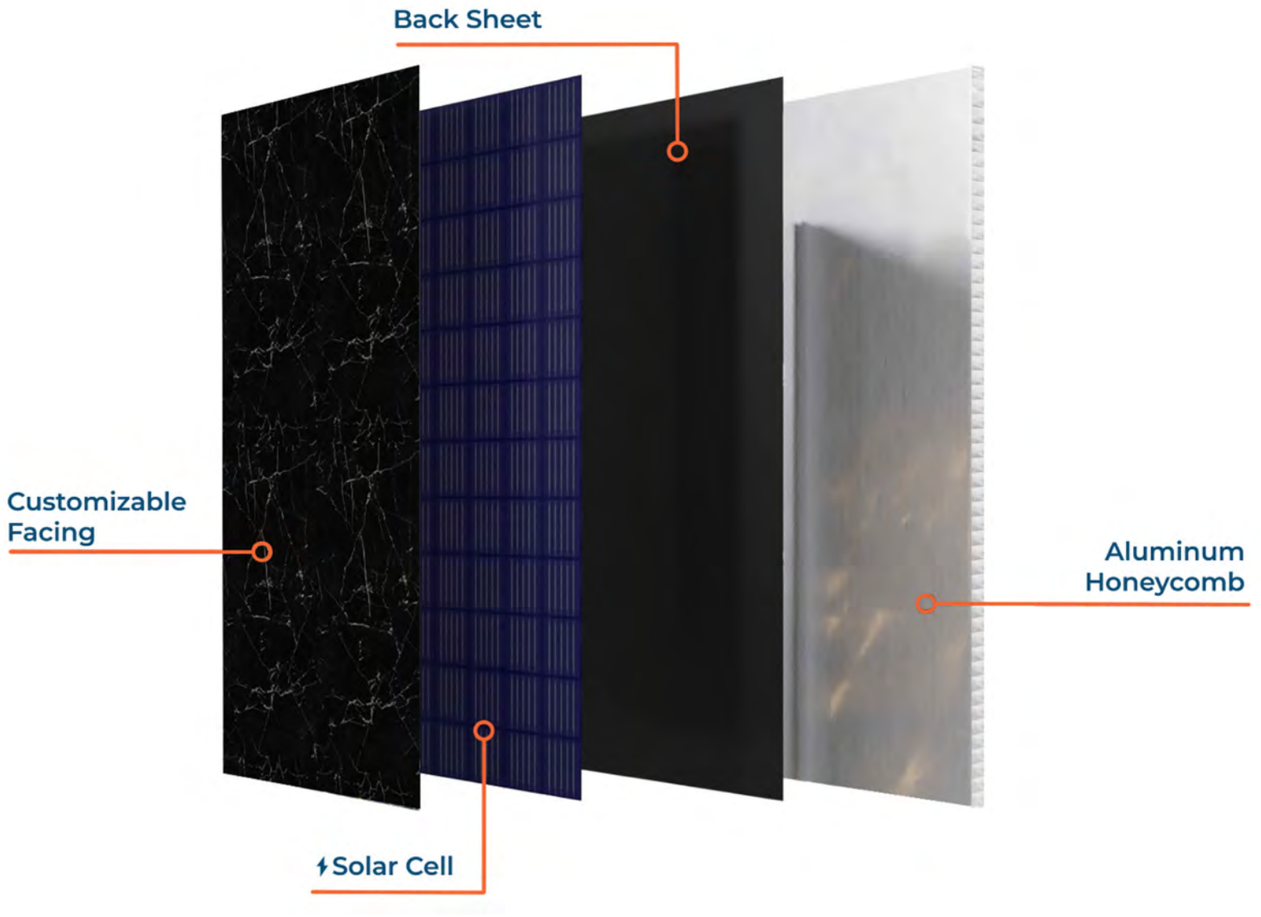
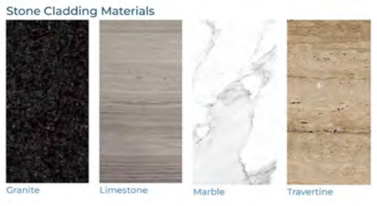


INTERCHANGEABLE ARCHITECTURAL FINISHES

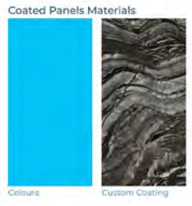
NATURAL STONE FACING



PORCELAIN FACING

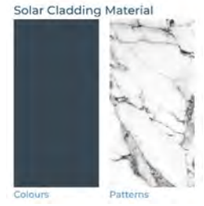
BRICK FACING

PAINTED/COATED METAL FACING



FOR COMPLETE CLADIFY FINISHES OPTIONS :

MITREX BIPV FACING



FOR COMPLETE MITREX FINISHES OPTIONS :

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The owner must put the equipment to business use rather than personal use. (There is a separate residential tax credit for solar equipment installed on a dwelling unit used as a residence by the taxpayer. See section 25D(d)(2).)

The equipment must be used predominantly in the United States. See section 50(b)(1)(A). It cannot be used by a tax-exempt or government entity. See section 50(b)(3) and (4). Equipment is considered used by such an entity if it is owned directly or indirectly by such an entity (for example, through a partnership with a tax-exempt or government entity as a partner) or is leased to such an entity. See sections 50(b)(4)(D) and 168(h)(6)(A).

Solar projects placed in service in 2022 or later have the option to claim production tax credits for 10 years on the electricity output instead of an investment tax credit claimed entirely in the year the equipment is first put in service. See sections 45(d)(4) and 45Y. No investment tax credit may be claimed on any property that is part of a facility on which production tax credits are claimed or have been claimed in any prior year. See sections 48(a)(3) (flush language at the end of the section) and 48E(b)(3)(C).

The investment tax credit is subject to recapture if there is a sale or other transfer or disposition of the equipment within the first five years after the equipment is originally placed in service. See section 50(a)(1)(A). Investment tax credits vest ratably over five years. See section 50(a)(1)(B). Thus, a disposition in year four will lead to recapture of 40% of the tax credit claimed. In cases where the equipment is owned by a partnership, the unvested credit claimed by a partner will be recaptured if the partner disposes of its interest in the partnership or there is more than a one-third reduction in the partner's share of partnership profits within the first five years after the equipment is originally placed in service. See Treas. Reg. § 1.47-6(a)(2).

Analysis

An investment tax credit can be claimed on new solar panels, batteries and other equipment like wiring, power optimizers, inverters, solar panel boards and transformers that are functionally interdependent or integral to operation of the solar panels and batteries. It does not matter that the solar panels are installed on the side of a building as part of the building envelope rather than on the rooftop. The equipment must be put to business use. It must be installed in the United States. It cannot be used by a tax-exempt or government entity.

Disclaimer

We are furnishing this memo to you to help with your analysis of whether building owners can claim investment tax credits on the solar elements of the CladiShield system. It should not be used for any other purpose. The building owners should consult with their own tax advisers.

NRF