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# Member Q&A: David Burton

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In each edition we interview a member of the A Word About Wind community. Today, Richard Heap talks to David Burton, partner at law firm Norton Rose Fulbright.

## How long have you been there?

I've been at Norton Rose Fulbright since April 2019. In 2011 I left General Electric, where I worked at Energy Financial Services, and moved to Akin Gump; and then moved to Mayer Brown.

## How do you see the situation at GE?

I feel bad about the financial problems it has suffered, but it's a great iconic company – large and well-capitalised – so I don't think it's going anywhere, but breaking it into smaller more easily understood separate companies is on the table. Nonetheless, the clean energy business is a core business for GE.

## What is your take on the tax reforms?

The phrase I've used is that the wind industry dodged a bullet but was hit on the ricochet. The worst fears in terms of changing the tax credit rules weren't realised, but there are some changes that are detrimental but not fatal.

The biggest is the reduction of the US federal corporate income tax rate from 35% to 21%. It doesn't impact the production tax credit but you do apply a tax rate to losses, which in wind deals stem from depreciation. If you owned a wind project costing \$100m, the tax rate is 35% and so its net cost ignoring tax credits would be \$65m. Now, with the tax rate at 21%, the cost is \$79m. It is a reduction in one of the incentives for US wind projects, and it is material.

In practice, this means the sponsors of wind projects will be able to raise less tax equity – but, if you've got an operating project that's beyond the depreciation period, it's good news for you. Such operating projects just became a little more valuable due to the lower tax rate resulting in higher after-tax cash flow from operations.

## Is there less tax equity around?

That's still shaking out. Some had observed that there was possibly an oversupply of tax equity. I'm not entirely sure that there was an oversupply, but I think there'll still be enough interest that sponsors will be able to raise tax equity for good projects.

Where I have the bigger concern is with respect to foreign-owned banks, because tax reform added this complicated new rule called the Base Erosion Anti-Abuse Tax, which is aimed at taxpayers who make large payments to foreign affiliates. It also looks like the Japanese owned banks, may pull out of the market.

## Do you look at PPAs as well?

PPAs are getting harder to come by. Investor-owned utilities are looking to buy projects, and then rate-basing it – so including it in their assets the regulator allows them to earn a return on. We're also seeing more people using alternatives to PPAs: hedges, contracts for difference and financial products that give pricing protection.

And the other thing we're seeing is repowering. The US tax law has favourable treatment of that where, if 80% of the value of the project is attributable to the new investment, you can claim tax credits with respect to the project again. That's becoming pretty common.

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