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Canada’s 2024 Federal Budget: Update on green ITCs

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(This article was last updated on June 25, 2024 to reflect recent draft legislation.)

Over the past few years, the Canadian government has developed an ambitious strategy to reshape Canada’s economy towards a 2050 net-zero objective. Two of the major pillars of this strategy are directives to the Canada Infrastructure Bank to provide over $20 billion of strategic financing to the clean growth sector, and five “green” investment tax credits (ITCs) to encourage the transition to a cleaner and greener economy.

In general, these ITCs are available only to a taxable Canadian corporation, on qualifying expenditures made by such a corporation (or by a partnership of which it is a member) to purchase (not lease) new property for use in Canada. The ITC is computed as a percentage of such qualifying expenditures, and is payable directly by the government whether or not the recipient has taxes owing (*i.e.*, it is refundable). A taxpayer can only claim one “green” ITC for the same expenditure if more than one could apply, *viz*., they are not “stackable”.

The 2024 federal budget included three significant updates on these “green” ITCs:

- further details on the Clean Electricity ITC (the only one for which no legislation has yet been released);
- elaboration on certain aspects of the Clean Technology Manufacturing ITC as it relates to key critical minerals within the scope of this ITC; and
- announcement of a new EV Supply Chain ITC on the cost of buildings used in key segments of the electric vehicle supply chain.

The discussion below summarizes the current status of Canada’s “green” ITCs, as supplemented by the 2024 federal budget and subsequent developments. On June 20, 2024, the Clean Technology ITC, Clean Technology Manufacturing ITC, Clean Hydrogen ITC, and Carbon Capture, Utilization and Storage ITC were formally enacted into law.

The Canada Revenue Agency has set up a new web page to provide administrative guidance on these ITCs, including contact information for the relevant CRA office handling queries and supporting technical information on eligibility from Natural Resources Canada.

Clean Technology ITC

The 30 per cent Clean Technology ITC is available for pre-2035 capital investments in equipment used in generating various forms of clean energy, including from wind, solar, water and geothermal sources, as well as small modular nuclear reactors, air or ground source heat pumps, and certain stationary electricity storage equipment that does not use fossil fuels in operation. Non road zero-emission vehicles (ZEVs) also qualify, as does certain concentrated solar energy equipment that generates heat or electricity exclusively from concentrated sunlight. As of Nov. 21, 2023, systems that produce electricity, heat, or both from waste biomass are also eligible.

Clean Technology Manufacturing ITC

The 30 per cent Clean Technology Manufacturing ITC is directed further up the supply chain at producers of clean economy equipment and critical minerals. It applies to pre-2035 expenditures on manufacturing and processing machinery and equipment that is used in either of two qualifying activities performed in Canada. The first of these activities is extracting, processing or recycling key critical minerals (lithium, cobalt, nickel, copper, rare earth elements and graphite): for example, ore-crushing equipment or processing vats or kilns will qualify. The second qualifying activity is activity in connection with the manufacturing or processing of machinery and equipment used in the production of various kinds of clean energy equipment such as:

- electrical energy storage equipment for renewable energy or grid scale storage;
- equipment used to generate renewable (solar, wind, water or geothermal) or nuclear energy, or to produce hydrogen by electrolysis;
- air-source or ground source heat pumps;
- ZEVs, including powertrain components (e.g., batteries) and equipment used to charge or dispense hydrogen to them; or
- various upstream components and materials for such above noted activities.

The 2024 federal budget clarified with respect to critical mineral activities that where a project involves multiple minerals, (1) eligible property at mine or well sites need only be expected to produce *primarily* eligible critical minerals, and (2) eligibility thresholds are based on the value of the minerals produced (with safe harbour rules to account for swings in mineral prices).

The 2024 federal budget also announced a new EV Supply Chain ITC, effectively as an adjunct to the Clean Technology Manufacturing ITC. The new EV Supply Chain ITC would be limited to taxpayers who have (or who are part of a related taxpayer group that has) claimed the Clean Technology Manufacturing ITC in each of electric vehicle assembly, electric vehicle battery production and cathode

active material production. Such eligible taxpayers would further be able to claim the new EV Supply Chain ITC equal to 10 per cent of the cost of *buildings* (which are not generally eligible for the other "green" ITCs) used in those same three supply chain segments, starting Jan. 1, 2024. Further details will be provided in the 2024 Fall Economic Statement. The news release issued by Ontario Premier Ford on April 25, 2024 regarding Honda's $15B EV investment in Alliston, Ontario indicated that this project "could benefit from federal support in the range of $2.5 billion through the proposed EV Supply Chain investment tax credit and the proposed Clean Technology Manufacturing investment tax credit".

Clean Electricity ITC

The 15 per cent Clean Electricity ITC will apply to pre-2035 eligible investments (including refurbishments) in the following types of property:

- Non-emitting electricity generation systems, i.e., wind, solar, hydro, wave, tidal;
- Equipment generating electricity (or heat and electricity) from nuclear fission, without the capacity limits or pre-assembled component restrictions applicable to the Clean Technology ITC;
- Equipment generating electricity (or heat and electricity) from geothermal energy;
- Concentrated solar energy equipment used to generate electricity;
- Systems that produce electricity (or electricity and heat) from waste biomass;
- Stationary electricity storage systems and equipment not operating on fossil fuels, such as batteries and pumped hydroelectric storage; and
- Inter provincial electricity transmission equipment and structures (including related equipment used for managing traded electricity).

Natural gas-fired electricity generation equipment is also eligible, but only when (1) staying below an emissions limit of 65 tonnes CO_2/gigawatt of hour of energy produced, (2) captured CO_2 is stored permissibly (as under the CCUS ITC), (3) project pre-approval is received from Natural Resources Canada, and (4) ongoing verification and reporting requirements are met.

The Clean Electricity ITC is the only one for which some tax-exempts are eligible, being Canadian corporations that are owned by municipalities or First Nations or are pension investment corporations. Provincial or territorial Crown corporations that meet certain conditions are also eligible. No ITC may be claimed on projects that began construction before March 28, 2023. Draft legislation for the Clean Electricity ITC is anticipated later in 2024.

Clean Hydrogen ITC

The Clean Hydrogen ITC is applicable to pre-2035 expenditures on equipment that produces hydrogen from either electrolysis or CO_2 emission-abated natural gas reforming. Equipment involved in producing clean ammonia (ammonia produced from green hydrogen) is also eligible in some instances. The ITC offered ranges from 15 per cent - 40 per cent, depending on how carbon intensive the

hydrogen being produced is (no ITC applies if 4 kg or more of CO_2/H kg is produced). The ITC rate is cut in half for property acquired in 2034, and ends entirely after that year.

A formal clean hydrogen project plan must be submitted for approval, and some or all of the ITC claimed may be reversed if actual carbon intensity achieved is more than .25 CO_2 kg / H kg higher than forecast when the ITC was claimed and this would have changed the applicable ITC rate.

Carbon Capture, Utilization & Storage (CCUS) ITC

The CCUS ITC is directed at equipment used to capture, transport or store CO_2 in an eligible project (dual use heat and/or power equipment may also qualify). The amount of the ITC depends on the particular activity undertaken and the year in which the expenditure is incurred and the property is acquired.

The expenditures that qualify are largely those incurred prior to the “first day of commercial operations” of the taxpayer’s CCUS project to capture, transport or use CO_2. Qualifying expenditures incurred after that date (“refurbishment”) are limited to 10% of the project’s total qualifying expenditures. Expenditures on “preliminary CCUS work activity” are ineligible.

The CCUS ITC legislation is the most complex and detailed of the “green” ITCs. To claim a CCUS ITC, a “qualified CCUS project” must exist, requiring the

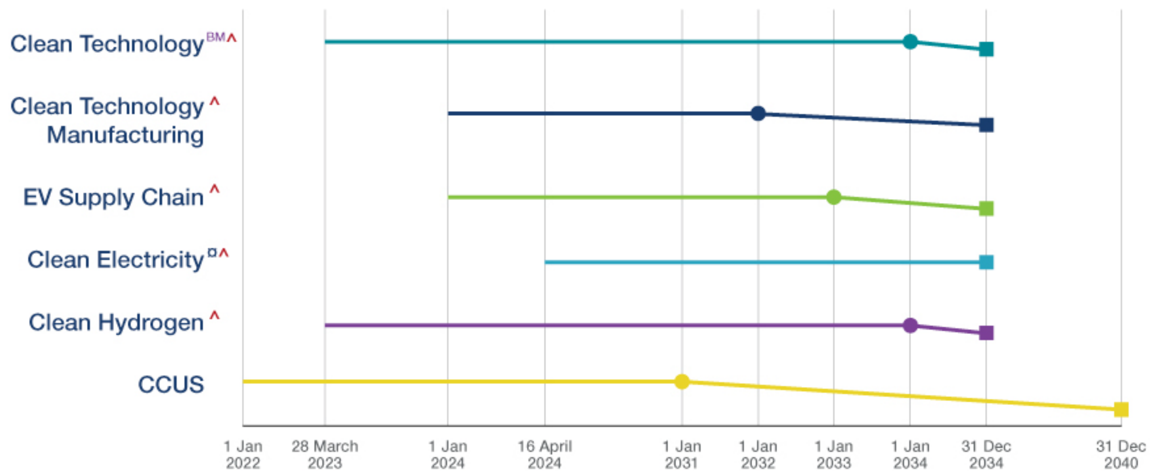
taxpayer to submit a formal plan (including a front end engineering design study) meeting specified conditions to the Ministry of Natural Resources. The Ministry of Natural Resources must issue an initial project evaluation, and the taxpayer is subject to various ongoing reporting requirements. In particular, annual reporting is required on project results (*i.e.*, how much CO_2 is being captured and used in eligible uses) relative to what the project plan anticipated, and if the deviation is sufficiently large then some or all of the CCUS ITC previously claimed is effectively taxed back. Unique among the "green" ITC provisions, if a property used in a CCUS project (or a person with a direct or indirect interest in such a property) is a "tax shelter investment", CCUS ITCs are denied on the entire project, not merely the particular property in question.

Eligibility periods

The period during which expenditures may qualify varies amongst the different "green" ITCs. For some of them, a phase-out period exists where only a reduced ITC is offered. In most cases the taxpayer cannot claim an ITC for an expenditure on ITC-eligible property until that property is actually "available for use", *i.e.*, installed and capable of operating.

Clean Economy ITC Expenditure Timelines

(Start date, phase-out start date and end date)



BM November 21, 2023 for expansion to support using waste biomass to generate heat and electricity.

^ "Available for use" rules defer ITC claim until year in which property is actually "available for use".

¤ Limited to projects that did not begin construction before March 28, 2023. Separate rules applicable to Crown corporations.

Rules generally applicable to "green" ITCs

All of these "green" ITCs have now been formally enacted into law as Bill C-59 and Bill C-69 except for the Clean Electricity ITC, draft legislation for which is scheduled to be released later in 2024.

GREEN ITCs: OVERVIEW

	Clean Technology	Carbon Capture, Utilization and Storage†	Clean Hydrogen†	Clean Technology Manufacturing	Clean Electricity
Maximum ITC Rate Offered	30%*	60%/50%/37.5%*	40%/25%/15%*	30%	15%*
Eligible Taxpayers (directly or through a partnership)	Taxable Canadian corporations & real estate investment trusts	Taxable Canadian corporations	Taxable Canadian corporations	Taxable Canadian corporations [EV]	Canadian corporations (taxable and certain tax-exempts)
Expenditure Start Date	March 28, 2023[BM^GA]	Jan. 1, 2022	March 28, 2023[^GA]	Jan. 1, 2024[^GA]	16 April 2024[^¤ GA]
ITC Phase-out Starts	Jan. 1, 2034	Jan. 1, 2031	Jan. 1, 2034	Jan. 1, 2032	N/A
ITC End Date	Dec. 31, 2034	Dec. 31, 2040	Dec. 31, 2034	Dec. 31, 2034	Dec. 31, 2034
Recapture Period	10 years	20 years	20 years	10 years	10 years (20 years for natural gas systems)†
Status as of June 2024	Enacted (s. 127.45 of Bill C-59)	Enacted (s. 127.44 and Part XII. 7 of Bill C-59)	Enacted (s. 127.48 of Bill C-69)	Enacted (s. 127.49 of Bill C-69)	Draft legislation scheduled to be released for comment during 2024

† Submission of project plan and certification by Ministry of Natural Resources required.
* Labour requirements applicable to attain highest ITC rate.
BM November 21, 2023 for expansion to support using waste biomass to generate heat and electricity.
^ “Available for use” rules defer ITC claim until year in which property is actually “available for use”.
GA Cost of ITC-eligible property reduced by “government assistance” received, receivable or expected.
¤ Limited to projects that did not begin construction before March 28, 2023. Separate rules applicable to Crown corporations.
EV Claimants involved in electric vehicle assembly and battery production and cathode active material production may also be eligible for 10% EV Supply Chain ITC on the cost of buildings.

A number of detailed technical rules apply to various aspects of these “green” ITCs, the most important of which are summarized below.

Partnerships

“Green” ITCs can be claimed by eligible taxpayers who directly make qualifying expenditures, or who are members of a (fiscally transparent) partnership that does so. Where the partnership makes qualifying expenditures, the ITC is generally computed as if the partnership were a taxpayer and is then allocated out amongst the partners.

While partnerships are commonly used in clean energy projects, the government is clearly concerned with inappropriate results occurring in cases involving them. As such, the government has created a number of anti-avoidance rules to police ITCs claimed by taxpayers through partnerships that will require very careful consideration and planning by those considering using them. In particular, these rules deal with how ITCs on expenditures incurred by a partnership are allocated amongst its partners. The statement made in the 2024 federal budget with respect to the Clean Electricity ITC that “where a property is eligible for both the Clean Electricity and Clean Technology investment tax credits, partners could claim their reasonable share of either credit for which they qualified (but could not claim both credits in respect of the same property)” is particularly interesting, as it appears to represent a departure from one of the ITC partnership allocation rules included in Bill C-59. Further clarity on this point will be provided by eventual draft legislation.

Beyond these anti-avoidance rules specific to “green” ITCs, clean economy projects carried on within a partnership will need to navigate several other anti-avoidance rules applicable to partnerships generally. In particular, “at-risk” rules restrict the extent to which partners whose liability is effectively limited or who benefit from certain protections can claim ITCs, deduct losses from partnership activities, or avoid certain adverse tax consequences. The result is that the government is grudgingly allowing projects eligible for “green” ITCs to be carried on within a partnership, but has made doing so riskier and more difficult than doing so in a corporation.

Labour Requirements

Except for the Clean Technology Manufacturing ITC, taxpayers wanting the full “green” ITC rate must formally commit to meeting certain standards (“labour requirements”) as to prevailing wages and the use of apprentices with respect to workers engaged in the preparation or installation of property on which an ITC has been claimed. Failure to do so results in a 10 per cent reduction in the applicable ITC rate (*i.e.*, a 30 per cent ITC becomes a 20 per cent ITC), and taxpayers who so commit but fail to achieve the necessary standards are subject to penalties. The Explanatory Notes accompanying these provisions provide useful insight into how the government intends them to operate in practice.

Government Assistance

Various forms of “government assistance”[1] received, receivable or expected to be received by a taxpayer and that reasonably relate to a property are deemed to reduce the taxpayer’s cost of that property for tax purposes. This has the effect of reducing the amount of the taxpayer’s “green” ITC generated by that property (since it is computed as a percentage of cost), as well as the amount of tax depreciation that may be claimed. This “government assistance” rule does not apply to the CCUS ITC.

In certain cases, government support for a project can cause a property to which it relates to become completely ineligible for the Clean Technology Manufacturing ITC. Taxpayers must very carefully consider the impact of any government assistance received or expected to be received in relation to a project on which

“green” ITCs are being claimed. Note that government (or non government) assistance received, receivable or expected to be received by a member of a partnership is attributed to the partnership for purposes of computing ITCs in respect of partnership expenditures, meaning one partner’s entitlement to such assistance can affect the amount of every partner’s “green” ITC.

Recapture Provisions

All of the “green” ITCs contain “recapture” provisions that apply when the property that is the subject matter of the ITC claim is disposed of, exported out of Canada or ceases to be used in a qualifying manner during a prescribed period of time (either 10 or 20 years) following the year the ITC is claimed. In general terms, where applicable these “recapture” rules may cause some or all of the “green” ITCs claimed on such property to be taxed back. The interaction of the recapture provisions with partnerships must be carefully considered to avoid inappropriate results from occurring.

First Nations

Many projects involving “green” ITCs benefit from the inclusion of one or more First Nations as project participants. Bands themselves are essentially tax-exempt on all forms of income, while corporations wholly-owned by a First Nation may be tax-exempt on some forms of income and taxable on others (e.g., most types of off-reserve income). In these circumstances, project participants will need to work collaboratively to achieve the best overall tax result and in particular maximize the amount of “green” ITCs claimable.

If you have any questions about any of the investment tax credits, reach out to BLG’s tax group or any of the key contacts below. For more information on the Federal Budget, see our full insight.

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1 Broadly defined as a grant, subsidiary, forgivable loan or any other form of assistance received from a government or other public authority. Late in 2023 the government announced that low/no interest loans with reasonable repayment terms would not be considered as “government assistance” for this purpose. ITC claims can also be reduced by “non government assistance”, a comparable but less frequently encountered phenomenon.

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