

2024 Issue No. 59  
2 December 2024

# Tax Alert – Canada

## Canada's clean technology manufacturing investment tax credit: Update

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

The Department of Finance released for public comment draft legislative proposals relating to the clean technology manufacturing investment tax credit (ITC) on 12 August 2024 to clarify and expand the existing rules.<sup>1</sup>

The legislation implementing Canada's clean technology manufacturing ITC, which was previously announced in the 2023 federal budget, received Royal Assent on 20 June 2024. The initial draft legislative proposals were outlined in EY Tax Alert 2024 Issue No. 09, [Canada's proposed clean technology manufacturing investment tax credit](#).

This Tax Alert highlights specific clean technology manufacturing ITC updates contained in the latest round of draft legislative proposals, which includes proposed amendments to support polymetallic extraction and processing that were previously announced in the 2024 federal budget.<sup>2</sup> Broadly speaking, the draft legislative proposals are consistent with previous announcements and also include various other technical amendments.

The proposals described below may undergo further amendments before they are tabled in a bill.

<sup>1</sup> The consultation period ended on 11 September 2024.

<sup>2</sup> See EY Tax Alert 2024 Issue No. 24, [Federal budget 2024](#).

## Background

The purpose of the clean technology manufacturing ITC is to encourage the investment of capital in Canada for qualified zero-emission technology manufacturing activities, the extraction and processing of six key critical minerals, and similar recycling and synthetic graphite activities.

The clean technology manufacturing ITC is refundable and available to *qualifying taxpayers* that make eligible investments in certain clean technology manufacturing property that is acquired and available for use on or after 1 January 2024 and before 2035 for eligible clean technology manufacturing use. The tax credit rate ranges from 5% to 30% depending on the year in which the property is acquired and becomes available for use, as described in our previous Tax Alert noted above.

The credit is available in respect of the capital cost of certain eligible equipment that qualifies as clean technology manufacturing property. Eligible equipment includes certain property described in capital cost allowance (CCA) Classes 8, 10, 12, 41, 38, 43, 43.1, 43.2, 53 and 56, which have declining-balance-basis CCA rates ranging between 20% and 100%. Eligible equipment included in these CCA classes will also be eligible for enhanced first-year depreciation under the accelerated investment incentive if acquired and available for use before 2028.

## Proposed draft legislative changes

The draft legislative proposals incorporate various changes that were announced in the 2024 federal budget; most notable are the changes to support polymetallic extraction and processing projects.

The following proposals announced in the 2024 federal budget and included in the 12 August 2024 draft legislative proposals are discussed below in more detail:

- ▶ Changes in the definition of *clean technology manufacturing use*;
- ▶ Details pertaining to the value of qualifying mineral activity outputs, including a safe harbour rule and the required election;
- ▶ Certification requirements for property used, or to be used, in qualifying mineral activities producing primarily qualifying materials;
- ▶ Clarification on the exclusion of repayment of assistance and unpaid amounts paid after 180 days from year-end on property that has been recaptured; and
- ▶ Changes to partnership rules.

All the draft legislative proposals are deemed to have come into force on 1 January 2024, which aligns with the date the clean technology manufacturing ITC became effective.

## **Change in the definition of *clean technology manufacturing use***

To qualify for the clean technology manufacturing ITC, an investment must be made in eligible property for a *clean technology manufacturing use*, as defined in subsection 127.49(1) of the *Income Tax Act* (the Act).

The definition of eligible property for a clean technology manufacturing use remains the same for property used all or substantially all in performing certain qualified zero-emission technology manufacturing activities defined in section 5202 of the *Income Tax Regulations*.

Under the current definition, all property used in a *qualifying mineral activity* has to produce all or substantially all qualifying materials (i.e., lithium, cobalt, nickel, copper, rare earth metals and graphite) to qualify as a clean technology manufacturing use. Since projects may be engaged in the production of multiple metals, proposed amendments have been made to the definition of clean technology manufacturing use with the intention of permitting property used in connection with certain eligible activities to produce a lesser proportion of qualifying materials and still qualify as a clean technology manufacturing use. Specific certification requirements will also apply in these situations (see “Certification requirement” below).

More specifically, the proposed changes expand the definition of eligible property for a clean technology manufacturing use with respect to the definition of *qualifying mineral activity* to include:

- ▶ Property used in certain qualifying mineral activities producing primarily (i.e., greater than 50%) qualifying materials, the determination of which will be based on the value of all commercial outputs in accordance with proposed subsection 127.49(2.2) (discussed below).
  - ▶ Examples of qualifying mineral activities under this new “primarily” test are the extraction of resources from a mineral deposit or from a tailing pond, and *specified mineral processing activities* that are performed at a mine or well site, which can also include tailing ponds and mills located at these sites.
- ▶ Property used in qualifying mineral activities producing all or substantially all qualifying materials, the determination of which will be based on the value of all commercial outputs in accordance with proposed subsection 127.49(2.2) (discussed below).
  - ▶ Examples of qualifying mineral activities that would still need to produce all or substantially all qualifying materials include specified mineral processing activities that are performed at a location other than a mine or well site, and certain recycling and synthetic graphite activities.

The definition of *specified mineral processing activity* has also been included in the draft legislative proposals and is defined as a mineral processing activity that occurs prior to or as part of a process that is intended to increase the purity of at least one qualifying material, or produce a material with non-trace amounts of a single qualifying material, and without non-trace amounts of any elements other than permitted elements.

Activities that may qualify include crushing, grinding, milling, separation, sieving, screening, froth floatation, leaching, recrystallization, precipitation, drying, evaporation, heating, calcinating, roasting, smelting, casting of ingots, refining, purification, distillation, electrodeposition and surface roughening of electrodeposited foil.

## **Valuation of all commercial outputs**

The draft legislative proposals include new proposed subsection 127.49(2.2) of the Act, which allows a qualifying taxpayer to make an election with respect to the methodology used to value all commercial outputs for purposes of determining eligible clean technology manufacturing use.

The taxpayer may elect to determine the value in one of two ways, either the “fair market value” or the “safe harbour price.”

### **Fair market value**

The use of the fair market value method depends on whether commercial production has begun.

If the property is used, or becomes available for use, before the start of commercial production within the year, the taxpayer may elect to use the fair market value of the *expected* output from that property to determine eligibility for the tax credit.

If the property is used in commercial production in subsequent years, the taxpayer must calculate the fair market value of the actual output to determine where recapture may be applicable.

### **Safe harbour price**

Alternatively, to prevent future recapture due solely to fluctuations in the market prices of outputs, a taxpayer may elect to use the “safe harbour price” computed at the time the clean technology manufacturing ITC is claimed to determine whether the property is expected to meet the “primarily” or “all or substantially all” test.

The draft legislative proposals define *safe harbour price* in subsection 127.49(1). The safe harbour price must be calculated using the five-year historical average spot price of the relevant material. Where available, the safe harbour price should be calculated using prices from a recognized commodities exchange. Otherwise, the safe harbour price would be

determined based on the normal and accepted commercial practices in the industry to calculate the five-year historical average spot price of the relevant material.

## **Required election**

Once a taxpayer has elected a method to value qualifying mineral activity outputs produced from a particular property, as outlined above, the same valuation method must be used for any taxation year subsequent to the year the related clean technology manufacturing ITC is claimed, as proposed in subsection 127.49(2.3) of the Act.

## **Certification requirement**

Where a taxpayer relies on the “primarily” test, the clean technology manufacturing ITC claim will be denied unless certification is provided in respect of property used, or to be used, in qualifying mineral activities producing primarily qualifying materials.

The certification requirements in proposed subsection 127.49(2.1) of the Act stipulate that an independent engineer or geoscientist certify that the property is being used, or is intended to be used, at a specific mine site or well site of the taxpayer, and in accordance with a plan that primarily targets qualifying materials (as determined under proposed subsection 127.49(2.2)).

*An independent engineer or geoscientist* is an individual who is a *qualified professional engineer or professional geoscientist*, as defined in subsection 127(9) of the Act. More specifically, the individual must, among other things:

- ▶ Be an engineer or a geoscientist with a university degree (or equivalent accreditation) in an area of geoscience, or engineering, relating to mineral exploration or mining;
- ▶ Have at least five years of experience in mineral exploration, mine development or operation, or mineral project assessment (or any combination of those);
- ▶ Have experience relevant to the subject matter of the exploration plan; and
- ▶ Be registered and in good standing with the relevant professional association regulating the profession of engineering or geoscience.

In addition, the independent engineer or geoscientist must remain at arm’s length with, independent of, and not employed by each taxpayer claiming a related clean technology manufacturing ITC.

## **Repayment of assistance**

Under the current legislation, if the taxpayer has received assistance or is entitled to receive assistance, either from the government or non-government organizations, the capital cost of the property eligible for the ITC must be reduced by the amount of the assistance received or

receivable. If the taxpayer subsequently repays the assistance received, or the assistance is no longer expected to be received, the amount repaid may be eligible for the ITC.

Proposed legislative changes to subsection 127.49(7) are intended to clarify that an ITC may be available in respect of amounts that have been repaid if that assistance previously reduced the capital cost of property. More specifically, proposed amendments deem a separate property to be acquired in the year of repayment, provided that recapture has not occurred in respect of the property on which the assistance has been repaid.

## Unpaid amounts

Under the current legislation, if a portion of the cost of the property capitalized remains unpaid after 180 days from the end of the taxation year in which it became available for use, the capital cost of the property must be reduced by the unpaid amount. The amount can later be added back to the capital cost upon payment of the outstanding balance.

Proposed legislative changes to subsection 127.49(9) are intended to clarify that an ITC may be available for amounts in respect of a clean technology manufacturing property that are paid 180 days after the end of the taxation year in which the ITC would have been otherwise available. More specifically, proposed amendments deem a separate property to be acquired in the year of payment, provided that recapture has not occurred in respect of the property for which the amount has been repaid.

## Partnerships

The draft legislative proposals include the following three new subsections with respect to partnerships:

- ▶ ***Election by member of a partnership to pay tax:*** Proposed subsection 127.49(18.1) allows a qualifying taxpayer that is a member of a partnership to elect to pay the entire amount determined in respect of the partnership under the related recapture rules in subsections 127.49(16) and (17) of the Act.
- ▶ ***Joint, several and solidary liability:*** Proposed subsection 127.49(18.2) is intended to create joint and several liability for current or former partnership members for any tax determined as a result of the related recapture rules in subsections 127.49(16) and (17) in respect of the partnership. This proposed provision will not apply to the extent that the tax has been paid by a qualifying taxpayer under proposed subsection 127.49(18.1) or has been allocated to a member of the partnership under subsection 127.49(17).
- ▶ ***Former member liability:*** Proposed subsection 127.49(18.3) limits the liability imposed under proposed subsection 127.49(18.2) to the total of all amounts that the former member of the partnership received as a clean technology manufacturing ITC because of its membership in the partnership.

In addition, section 127.47 of the Act provides rules that apply to partnerships with respect to certain clean economy ITCs, including rules regarding the allocation of ITCs from a partnership to its members. The draft legislative proposals released on 12 August 2024 include proposed subsection 127.47(4.1) of the Act, which provides rules to clarify the amount that a taxpayer who is a member of a partnership is deemed to have paid on account of its tax payable under Part I of the Act under each of the clean economy tax credits. A qualifying taxpayer is generally restricted to claiming only one of the clean economy tax credits if the property is eligible for more than one clean economy tax credit.

Proposed subsection 127.47(4.1) generally provides that where property is owned at the partnership level, each member of the partnership may generally claim any one – but not more than one – credit that they have been allocated by a partnership. The rules provide an exception to ensure that the dual-use equipment rules in the carbon capture, utilization and storage and clean hydrogen ITC context still allow each portion of the property to support a credit claim.

For more information on proposed subsection 127.47(4.1), refer to EY Tax Alert 2024 Issue No. 49, [Canada's new clean electricity investment tax credit](#).

## Learn more

For more information on the proposed changes to the clean technology manufacturing ITC legislation, contact your EY or EY Law advisor, or one of the following professionals.

### Toronto

**Dharmesh Gandhi**

+1 416 932 5755 | [dharmesh.gandhi@ca.ey.com](mailto:dharmesh.gandhi@ca.ey.com)

**Martin McLaughlin**

+1 416 932 5751 | [martin.mclaughlin@ca.ey.com](mailto:martin.mclaughlin@ca.ey.com)

### Quebec

**Julia Bolpois**

+1 514 879 2709 | [julia.bolpois@ca.ey.com](mailto:julia.bolpois@ca.ey.com)

### Atlantic Canada

**Brett Copeland**

+1 902 421 6261 | [brett.copeland@ca.ey.com](mailto:brett.copeland@ca.ey.com)

## **Prairies**

Korey Conroy

+1 403 956 5778 | [korey.conroy@ca.ey.com](mailto:korey.conroy@ca.ey.com)

## **British Columbia**

Tamara Tarnowsky

+1 604 891 8486 | [tamara.tarnowsky@ca.ey.com](mailto:tamara.tarnowsky@ca.ey.com)

Sean Verret

+1 604 891 8341 | [sean.verret@ca.ey.com](mailto:sean.verret@ca.ey.com)



## **EY | Building a better working world**

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation is available via [ey.com/privacy](https://ey.com/privacy). For more information about our organization, please visit [ey.com](https://ey.com).

### **About EY's Tax Services**

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit [ey.com/ca/tax](https://ey.com/ca/tax).

### **About EY Law LLP**

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit [eylaw.ca](https://eylaw.ca).

### **About EY Law's Tax Law Services**

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2024 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

*This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.*

[ey.com/ca](https://ey.com/ca)