

Clean Economy Tax Credits: As Updated By The 2024 Fall Economic Statement



On December 16, 2024, the Government tabled the [2024 Fall Economic Statement](#) (“Fall Economic Statement”). The Fall Economic Statement provides notable updates to the design and delivery of the Canadian clean economy tax credits, including the proposed Clean Electricity Investment Tax Credit (“**CE ITC**”), the proposed Electric Vehicle Supply Chain Investment Tax Credit (“**EV ITC**”) and the Clean Hydrogen Investment Tax Credit (“**CH ITC**”).

This article reviews the updates from the Fall Economic Statement relevant to the Canadian clean economy tax credits. The Fall Economic Statement provides conditions that must be satisfied by provincial and territorial governments in order for the jurisdiction to be designated for purposes of Crown corporations claiming the CE ITC, reporting requirements for provincial and territorial Crown corporations claiming the CE ITC, design and implementation details for the EV ITC, and the expansion of the CH ITC to include methane pyrolysis as an eligible production pathway.

All statutory references are to the *Income Tax Act* (Canada) as proposed to be amended by the proposed draft legislation released by the Department of Finance on August 12, 2024 (“**August 12 Proposals**”) and the Fall Economic Statement.

Updates to the CE ITC

Background

Announced in the 2023 federal budget ("**Budget 2023**"), the clean electricity investment tax credit ("CE ITC") is a 15% refundable investment tax credit applicable to investments in "clean electricity property" (as defined in subsection 127.491(1)). The stated purpose of the CE ITC is "to encourage the investment of capital in the deployment of clean electricity property in Canada."

Budget 2023 included the following statement regarding the requirements that would need to be satisfied to access the credit:

In order to access the tax credit in each province and territory, other requirements will include a commitment by a competent authority that the federal funding will be used to lower electricity bills, and a commitment to achieve a net zero electricity sector by 2035.

This statement introduced significant uncertainty as it was not, at that time, apparent that these conditions would only apply to provincial and territorial Crown corporations or what specifically would be required to satisfy the conditions.

The 2024 federal budget ("**Budget 2024**") announced design and implementation particulars of the CE ITC. Budget 2024 made it clear the conditions requiring a commitment to net zero and passing savings on to ratepayers would only apply to provincial and territorial Crown corporations and stated that the Department of Finance would consult with provinces and territories regarding the eligibility criteria. The August 12 Proposals included draft legislation to implement the CE ITC but nothing further on these conditions. The Fall Economic Statement details the proposed conditions that must be satisfied by provincial and territorial governments in order

for the jurisdiction to be designated for purposes of Crown corporations claiming the CE ITC and reporting requirements for provincial and territorial Crown corporations claiming the CE ITC.

CE ITC for Provincial and Territorial Governments

Budget 2024 indicated that provincial and territorial Crown corporations would be eligible to claim the CE ITC only in respect of investments made in eligible property situated in designated jurisdictions.

Conditions for Provincial and Territorial Governments

In the Fall Economic Statement, the Government proposes that the Minister of Finance will designate a province or territory as an eligible jurisdiction if the provincial or territorial government meets the following two conditions:

- publicly committed to publish an energy roadmap to achieve net-zero emissions by 2050, inclusive of all energy sources, by the end of 2026 (**“Net-Zero by 2050 Condition”**); and
- publicly requested that provincial and territorial Crown corporations pass on the benefits of the Clean Electricity investment tax credit to electricity ratepayers in their province/territory (**“Ratepayer Benefit Condition”**).

After a provincial or territorial government has satisfied the Net-Zero by 2050 Condition and the Ratepayer Benefit Condition, it must submit a letter to the Minister of Finance requesting the province or territory be designated as an eligible jurisdiction. The provincial or territorial government must include supporting evidence such as the relevant document that includes the written public statements or links to the website that includes the relevant statements. If the Minister of Finance determines that the provincial or territorial government has not satisfied the conditions then

the province or territory will have the option to resubmit its application.

Net-Zero by 2050 Condition

To meet the Net-Zero by 2050 Condition, the provincial or territorial government must release, by the end of 2026, a written public statement committing to complete an energy roadmap to achieve net-zero emissions by 2050. For a written public statement to satisfy the Net-Zero by 2050 Condition, it must be:

- either (i) a stand-alone statement made at the ministerial level on behalf of the provincial or territorial government, either by the jurisdiction's minister responsible for energy policy or head of government, or (ii) included in a government publication such as a budget or fiscal update approved by the jurisdiction's minister responsible for energy policy or head of government; and
- available on the website of one or more of the province or territory's (i) ministry responsible for energy or electricity policy, (ii) ministry responsible for finance, or (ii) premier.

The Fall Economic Statement clarifies the meaning of the phrases “energy roadmap”, “net-zero emissions by 2050” and “inclusive of all energy sources” for purposes of the Net-Zero by 2050 Condition:

- an “energy roadmap” means a comprehensive energy strategy authored by the provincial or territorial government to achieve net-zero emissions by 2050. The energy roadmap must articulate a vision, objectives, and associated near-term and long-term actions;
- “net-zero emissions by 2050” means that, by the year 2050, anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere; and

- “inclusive of all energy sources” means that all traditional and emerging sources of energy are considered, including different generation sources of electricity, fossil fuels, hydrogen, biofuels, and any other forms of energy. For this purpose, energy exports to other countries are to be considered out of scope.

The Government encourages provincial and territorial governments to consider the best practices for preparing an energy roadmap set out in the Canada Electricity Advisory Council’s final report available on Natural Resources Canada’s [website](#).

Ratepayer Benefit Condition

To meet the Ratepayer Benefit Condition, a provincial or territorial government must issue a written public request to the Crown corporations of that province or territory that expect to be eligible to claim the CE ITC (for investments in their own province or territory) to pass on the benefit of the CE ITC to electricity ratepayers in the province or territory. The Ratepayer Benefit Condition reiterates the Government’s original statement in Budget 2023 that the requirements for the CE ITC would “include a commitment by a competent authority that the federal funding will be used to lower electricity bills”.

To meet the Ratepayer Benefit Condition the provincial or territorial government must release a written public request to the Crown corporations of that province or territory in the same form as it is required to make the written public statement in respect of the Net-Zero by 2050 Condition.

The Fall Economic Statement also clarifies the meaning of the terms “ratepayers” and “benefits” and for purposes of the Ratepayer Benefit Condition:

- a “ratepayer” includes any customer who purchases electricity for end use; and

- “benefits” will be measured relative to a scenario where the Crown corporation did not claim the CE ITC and will depend on the particular Crown corporation’s circumstances including whether the Crown corporation is engaged in the generation, transmission or distribution of electricity. For this purpose, benefits may include lower electricity prices, lower electricity rates, improved system reliability, new system services or other benefits.

Timing of Eligibility

The timing of a Crown corporation’s eligibility for the CE ITC will depend on when the relevant provincial or territorial government satisfies the Net-Zero by 2050 Condition and the Ratepayer Benefit Condition. If the conditions are satisfied by June 30, 2025, and the Minister of Finance subsequently designated the relevant jurisdiction as an eligible jurisdiction for purposes of the CE ITC, provincial or territorial Crown corporations investing in that jurisdiction will be eligible to claim the CE ITC in respect of the capital cost of clean electricity property acquired and available for use on or after April 16, 2024 (*i.e.*, Budget Day 2024) for projects that did not begin construction before March 28, 2023 (*i.e.*, Budget Day 2023).

If the relevant provincial or territorial government does not satisfy the conditions by June 30, 2025, then provincial or territorial Crown corporations investing in that jurisdiction will not be eligible to claim the CE ITC until the jurisdiction is designated as an eligible jurisdiction for purposes of the CE ITC. In such a case, the provincial or territorial Crown corporations investing in that jurisdiction will not be entitled to claim the CE ITC for cost incurred between Budget Day 2024 and the date when the jurisdiction is designated as an eligible jurisdiction by the Minister of Finance and will only be eligible to claim the CE ITC in respect of the capital cost of clean electricity property

acquired and available for use on or after that date when the jurisdiction is designated as an eligible jurisdiction by the Minister of Finance for projects that did not begin construction before March 28, 2023 (*i.e.*, Budget Day 2023).

Reporting Requirements for Provincial and Territorial Governments

A provincial or territorial Crown corporation that claims the CE ITC is required to report in respect of each taxation year beginning with the taxation year for which the Crown corporation first claims and the CE ITC and for each subsequent year that ends before 2036, the following information:

- an estimate of the Crown corporation's annual forecasted total cost to provide electricity to its customers ("Cost of Service") with and without any CE ITC. For this purpose, Cost of Service is considered to generally include depreciation and amortization costs, financing costs, operation costs and taxes;
- a description of the methodology used by the Crown corporation to prepare its forecast of its Cost of Service;
- the amount of CE ITC received for the year, and a running total of the cumulative CE ITC received; and
- an explanation of how the Crown corporation has used the value of the CE ITC to benefit ratepayers in the eligible jurisdiction by using qualitative and/or quantitative information. For this purpose, the terms "ratepayers" and "benefits" have the same meaning as for the purposes of the Ratepayer Benefit Condition (described above).

The above annual reports must be made publicly available on the Crown corporation's website and remain available until December 31, 2035. Each report will be due on the date that is nine months after the end of the Crown corporation's taxation

year in which a report is required to be made.

If a Crown corporation fails to make its report available within 6 months after the date the report is due the Crown corporation will be liable to repay an amount equal to the lesser of (a) 5% of its aggregate CE ITC received for all taxation years before the date the report was due, and (b) \$10 million (**“Reporting Penalty Amount”**).

If the Crown corporation makes its report available after the date the report was due but within 6 months of the due date, the Crown corporation will be liable to repay an amount equal to $\frac{1}{12}$ of the Reporting Penalty Amount multiplied by the greater of (a) 1; and (b) the number of complete months from the day on or before which the report was due to the date on which the report was made.

Expanded Eligibility of the CE ITC for the Canada Infrastructure Bank

The Fall Economic Statement proposes to expand eligibility for the CE ITC by including the Canada Infrastructure Bank as an eligible entity for purposes of the CE ITC.

Under the August 12 Proposals, for purposes of the CE ITC, the capital cost of a clean electricity property to a qualifying entity is reduced by the amount of any government assistance or non-government assistance received by the qualifying entity in, or before, the taxation year in which the property is acquired. The Fall Economic Statement proposes to introduce an exception so that financing provided by the Canada Infrastructure Bank will not reduce the capital cost of a clean electricity property to a qualifying entity for purposes of the CE ITC.

The measures with respect to the Canada Infrastructure Bank and the CE ITC are proposed to apply to clean electricity property that is acquired and becomes available for use on or after December 16, 2024.

Additional Particulars for the EV ITC

Background

To support investments in Canada's electric vehicle industry, Budget 2024 announced the EV ITC as a 10% investment tax credit in respect of the cost of buildings used in the three qualifying segments of the Canadian electric vehicle supply chain: (1) electric vehicle assembly; (2) electric vehicle battery production; and (3) cathode active material production. The Fall Economic Statement includes additional design and implementation details for the EV ITC and indicates that other design elements will generally be based on those of the Clean Technology Manufacturing Investment Tax Credit ("CTM ITC") under section 127.49.

Eligible Property

Property eligible for the EV ITC will include buildings and structures, including their component parts, described in paragraph (q) of capital cost allowance Class 1 in Schedule II to the *Income Tax Regulations*. Eligible property must be used in one of the three qualifying segments which the Fall Economic Statement defines as follows:

- electric vehicle assembly which comprises the final assembly of a fully electric vehicle or a plug-in hybrid vehicle with a battery capacity of at least 7kWh;
- electric vehicle battery production which comprises the manufacturing of battery cells or battery modules used in the powertrain of a fully electric vehicle or plug-in hybrid vehicle; and
- cathode active material production which includes the production of cathode active material used as an input to manufacture battery cells used in the powertrain of a fully electric or plug-in hybrid vehicle other than preliminary processing activities such as activities that could generally allow property to qualify for the

CTM ITC.

Investment Requirement

As initially described in Budget 2024, to be eligible for the EV ITC, a corporation must have invested in, and claimed the CTM ITC in respect of, each of the three qualifying segments. The Fall Economic Statement provides that, in order to satisfy this requirement, a corporation or a related group of which the corporation is a part, must:

- acquire property eligible for the CTM ITC at a cost of at least \$100 million and that has become available for use in each of the three segments; or
- acquire property eligible for the CTM ITC at a cost of at least \$100 million and that has become available for use in two of the three segments and hold shares of an unrelated corporation, representing at least 10 per cent of the voting rights and 10 per cent of the value of the shares of that corporation, that acquires property eligible for the CTM ITC at a cost of at least \$100 million in the other qualifying segment.

Recapture

The EV ITC is proposed to be subject to repayment obligations similar to the existing recapture rules for the CTM ITC.

Application and Phase-Out

The EV ITC will be available in respect of property that is acquired and becomes available for use on or after January 1, 2024. The Fall Economic Statements confirms that the EV ITC will be phased out with a reduced rate of 5% for property that becomes available for use in 2033 or 2034, and no credit available for property that becomes available for use after 2034.

Expanded Eligibility of CH ITC for Methane Pyrolysis Projects

The CH ITC was enacted on June 20, 2024 when Bill C-69 received royal assent. The CH ITC is currently available in respect of hydrogen produced from electrolysis of water or from the reforming or partial oxidation of natural gas or other eligible hydrocarbons (where emissions are abated using a carbon capture, utilization and storage (“CCUS”) process). The Fall Economic Statement proposed to expand the CH ITC to include methane pyrolysis as an eligible production pathway and the Government indicates that it will continue to review eligibility for other low-carbon hydrogen production pathways.

The CH ITC will only be available in respect of hydrogen produced from the pyrolysis of natural gas and other eligible hydrocarbons on or after December 16, 2024.

Eligible Methane Pyrolysis Projects

The Fall Economic Statement proposes to expand the eligibility for the CH ITC to include projects that produce hydrogen from the pyrolysis of natural gas and other eligible hydrocarbons. The existing legislation regarding the CH ITC will generally apply in respect of such projects subject to certain modification:

- a pyrolysis process is not required to capture carbon dioxide using a CCUS process; however, dual-use heat and power equipment must still capture carbon dioxide using a CCUS process;
- support for the capital costs of the pyrolysis reactor system is limited to \$3,000 per tonne of annual hydrogen production capacity;
- the taxpayer will be required to track the end use of its solid carbon produced from a methane pyrolysis project through an end-use plan. Such plan must account for all solid carbon produced, and its end use, for a

period of 7 years beginning from when the project first produces hydrogen (the **“End-Use Plan Requirement”**);

- a taxpayer that undertakes a methane pyrolysis project will be required to establish solid carbon offtake contracts prior to the beginning of its compliance period for the CH ITC. Such contract must bind the purchaser to use the solid carbon as described in the end-use plan and include terms to facilitate information sharing to confirm the end-use of the solid carbon;
- methane pyrolysis projects will be restricted from venting or flaring hydrogen produced by the project with an exception for venting or flaring for system integrity and safety (the **“Venting/Flaring Restriction”**).

The Fall Economic Statement indicates that additional details regarding the information that would be required to satisfy the End-Use Plan Requirement, and regarding how the Venting/Flaring Restriction will apply, will be provided at a later date.

Eligible Methane Pyrolysis Equipment

The Fall Economic Statement expands the property eligible for the CH ITC to, when part of an eligible pyrolysis process, include property that is used to produce all or substantially all hydrogen from methane pyrolysis, determined without reference to any solid carbon that is produced. Such eligible property will include pyrolysis reactors, heat exchangers, separation equipment and purifiers, and compression and on-site storage equipment. Downstream equipment will not be eligible including dryers, pulverisers, bag collectors, densifiers, and pin mixers.

Carbon Intensity

Methane pyrolysis will generally be required to follow existing rules for measuring carbon intensity of hydrogen produced and to be produced using the Fuel LCA Model. The

Government intends to expand its Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document to include methane pyrolysis projects.

In addition to the existing rules with respect to measuring carbon intensity, the carbon intensity of a methane pyrolysis project will depend on the end-use of the solid carbon produced by the project:

- if the solid carbon is converted or incorporated into a product that is not intended for use as a fuel source by the taxpayer or a purchaser then the project will be able to allocate project emissions between the hydrogen and solid carbon co-product based on relative production adjusted for energy content;
- if the solid carbon is treated as waste and sent to a landfill, the project will not be permitted to allocate any carbon emissions to the solid carbon (*i.e.*, all of the carbon intensity will be allocated to hydrogen production); or
- if the solid carbon is used for any other purpose, or the use of the solid carbon is not accounted for, then the project will be assumed to have disposed of it in a manner that results in converting the solid carbon to carbon dioxide that is released into the atmosphere and any carbon emission would be included in the calculation of the project's carbon intensity.

The end-use of a project's solid carbon, as described in the taxpayer's end-use plan (described above), will factor into the calculation of the project's "actual carbon intensity" and "expected carbon intensity" (each as defined in subsection 127.47(1)).

Updated Timeline for Clean Economy Tax

Credit Legislation

The August 12 Proposals included draft legislation for the CE ITC, the proposed expansion of the Clean Technology Investment Tax Credit (“CT ITC”) to support the generation of electricity and/or heat from waste biomass, and the proposed expansion of the CTM ITC to support certain polymetallic mining projects.

Since the 2023 Fall Economic Statement, the Government’s timeline had indicated such legislation would be introduced in Parliament by Fall 2024. The Fall Economic Statement indicates that the Government will introduce legislation to enact the CE ITC and the expanded CT ITC “soon”. The Fall Economic Statement also states that the Government intends to publish draft legislation with respect to the EV ITC “soon”.

To view the original article click [here](#)

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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