

Navigating Uncertainty Surrounding The Clean Economy ITCs



Canada's Clean Economy Investment Tax Credits (ITCs), some of which were enacted into law in 2024¹, are a cornerstone of the federal government's strategy to accelerate the transition to a green economy and achieve Canada's 2050 net-zero objective. These refundable ITCs, which provide significant incentives for investments in renewable energy, hydrogen, carbon capture and other green technologies, have been instrumental in attracting private capital to the sector. However, as Canada quickly approaches its next federal election—scheduled for April 28, 2025, potentially ushering in a new government with different priorities—many project stakeholders are wrestling with how to deal with the considerable uncertainty around the future of the Clean Economy ITCs.

Considering the significant projected Federal budget deficits (which were forecasted even before taking into account the recent pronouncement that the government is scrapping the proposed increase to the capital gains inclusion rate) and the impact of the impending Canada-U.S. trade war, the risk is that a new government may look to reduce or eliminate these large incentive programs in order to balance the budget. Although the Conservative Party of Canada has recently made statements that appear to be supportive of the Clean Technology ITC and Clean [Technology] Manufacturing ITC, in

some cases even suggesting expanding eligibility, uncertainty surrounding the ITCs continues to make investment decisions in this sector difficult².

Could grandfathering relief apply to ITCs?

When the federal government historically has eliminated certain tax incentives, it has sometimes provided grandfathering relief to mitigate the effects on taxpayers that have already made investments, acquired property or made investment decisions based on the assumption that the incentives would be available. It is helpful to consider past examples of how grandfathering has been implemented in the *Income Tax Act* (Canada) to anticipate what similar relief might look like with respect to the ITCs should a future government scale back or eliminate the ITCs.

Example one: grandfathered property for oil sands projects

One example of grandfathering certain tax incentives can be seen in the former accelerated capital cost allowance (CCA) regime for oil sands projects³, which was phased out beginning in 2011. The grandfathering rules associated with this change involved the introduction of a separate class of “specified oil sands property” that was acquired before 2012 and that was required to complete a “specified development phase” of a taxpayer’s “oil sands project”⁴. Essentially, the amendments introduced a new CCA class and allowed certain property to remain in the previous class of property to which the accelerated CCA continued to apply. The “grandfathered” property that remained in the previous class included certain property that was acquired to complete a project phase on which major construction began before the amendments were originally announced. The Technical Notes accompanying the changes provided guidance about when major construction would

be considered to have begun for these purposes, indicating that, generally, it should be when physical fabrication or installation has begun on (or the taxpayer has acquired) buildings, structures, or machinery and equipment in at least one of the major facilities required to complete that phase of the project.

Example two: transitional relief in the mining industry

A second example of grandfathering can be found in the transitional relief that was implemented in respect of the phase-out of accelerated CCA for certain capital assets used in the mining industry. These changes phased out certain expenses incurred on or after the day that the 2013 Federal Budget was released (2013 Budget Day) but allowed for the existing accelerated CCA to be maintained for “eligible mine development property”. Generally, to qualify as “eligible mine development property”, the property must have been acquired by a taxpayer before 2018 for the purpose of gaining or producing income, and certain milestones must have been met. These milestones generally looked at whether a written contract under which the property was acquired had been entered into before the 2013 Budget Day and/or whether the engineering and design work was started before 2013 Budget Day.

Applying similar methodology to these examples, we would generally expect that if a future government amends or repeals the ITC rules, grandfathering (if any) of the ITCs would likely utilize similar methodologies. Accordingly, the eligibility of a project sponsor to claim an ITC in respect of eligible property or expenses may depend on:

- when engineering and design work was started;
- when the particular property is actually acquired;
- the execution date of the written contracts governing the acquisition of the property; and/or
- whether property that is subsequently acquired is required in order to complete a phase of the project (or

the entire project) that has already had major construction begin prior to any changes to the ITC rules being announced.

In addition to considering the timing involved and the potential for grandfathering rules to apply, stakeholders should also consider how to incorporate flexibility for changes to the ITC rules into all related agreements (e.g., supply contracts, financing documents, EPC contracts and power purchase agreements).

Footnotes

1. The Carbon Capture, Utilization and Storage ITC, Clean Hydrogen ITC, Clean Technology ITC and Clean Technology Manufacturing ITC were enacted in June 2024.
2. See "[Poilievre Promises to Axe The Entire Carbon Tax](#)", March 2025.
3. These tax incentives were originally announced in the 2007 Federal Budget.
4. Regulation 1104(2) of the *Tax Act*. The phrase "specified development phase" was defined with reference to a threshold level of activity involving a "designated asset" that must have been acquired or under construction before March 19, 2007.

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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