

Tips To Maximize Clean Economy Investment Tax Credits



After years of Canadian industry groups pressing successive federal governments for new economy refundable tax credits – which have driven renewable energy growth across the United States – Canada finally has a functional tax credit system that assists companies with a variety of projects. However, to take full advantage of the Canadian Clean Economy Investment Tax Credits (“**ITC**”) for most ITCs, and to avoid a 10% credit rate reduction, project owners must meet specific labour requirements.

To maximize entitlement to these incentives, it is essential for project owners to engage in strategic negotiations and carefully consider ITC implications when drafting a new agreement or modifying a standard form agreement. Doing so ensures a clear delineation of obligations and responsibilities, while also effectively allocating risks.

What are the Clean Economy Investment Tax Credits?

Currently, there are four refundable ITCs: Carbon Capture, Utilization, and Storage (“**CCUS**”), Clean Technology (“**CT**”), Clean Hydrogen (“**CH**”), and Clean Technology Manufacturing (“**CTM**”). Because these credits are refundable, project owners may receive cash refunds from the government before the

project begins to generate income.

For previous articles written on this topic, see [Hydrogen: Hollywood fiction, tax facts, and what's in it for producers](#), [Canada's clean energy future: Clean hydrogen tax credit recent developments](#), and [Miller Thomson Discusses Hot Topics in Energy and Energy Transition: A ESG and Carbon Finance Panel](#).

What are the labour requirements?

To qualify for the maximum ITC credit rate for the CCUS ITC, CT ITC, and CH ITC, both the prevailing wage requirements and apprenticeship requirements must be met. These labour requirements do not apply to the CTM ITC.

Prevailing wage requirements

To meet the prevailing wage requirement, “covered workers” must be paid in accordance with an “eligible collective agreement,” or at a wage and benefit level that closely aligns with the agreement most applicable to the worker’s experience, tasks, and location.

A “covered worker” is defined as an individual engaged in the preparation or installation of clean energy property at a designated work site, primarily performing manual or physical tasks. Workers in administrative, clerical, or executive roles do not qualify as covered workers.

Importantly, a “covered worker” can be employed by the project owner **or by a third party such as a contractor, subcontractor, or other service provider**. As a result, wages and benefits paid to employees of the project owner, as well as those of contractors and subcontractors, are all relevant for eligibility and compliance purposes.

Apprenticeship requirements

To meet the apprenticeship requirements, the project owner must make reasonable efforts to ensure that apprentices registered in a [Red Seal](#) trade work at least 10% of the total hours worked by Red Seal trade workers at a designated work site during the year. This requirement applies to all Red Seal trade workers on the site, not just those employed by the project owner.

Checklist of matters to consider

To fully maximize entitlement to the CCUS, CH, or CT ITC, parties involved with the construction of a clean energy project should consider the following matters:

- Identifying the party responsible for ensuring that covered workers' wages and benefits meet the prevailing wage requirements.
- Determining the party responsible for identifying the collective agreement that most closely aligns with the worker's experience, tasks, and location.
- Establishing the process for controlling, monitoring, and documenting compliance with prevailing wage and apprenticeship requirements, and setting out the contractual obligation to follow such processes and procedures. If a third-party consultant or audit firm will be used, identifying the party responsible for engaging the firm and incurring the associated costs.
- Defining the project owner's entitlement to supporting documentation and information, including third-party business information, and ensuring that such entitlement extends to information from parties with whom the project owner does not have privity of contract, such as subcontractors.
- Outlining obligations and entitlements if the Canada Revenue Agency contacts the contractor or subcontractor

directly. For example: is there an obligation to notify the project owner? Is the project owner entitled to review responses before they are submitted? Is the project owner entitled to comment on responses before they are submitted, and if so, is the other party required to make changes or merely take such comments under advisement?

- Determining the allocation of risk if the labour requirements are found not to be satisfied.
- Addressing any other relevant matters that will enable the project owner to claim the ITC at the maximum eligible rate.

Conclusion

Maximizing the clean economy ITC for a project owner requires a collaborative effort and a willingness to navigate new, often complex issues. As parties negotiate in light of these unfamiliar requirements, it is essential to approach these discussions with a strategic mindset to ensure the full potential of the ITC is realized.

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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