Explanatory Notes to Legislative Proposals Relating to the Income Tax Act

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The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance

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Preface

These explanatory notes describe proposed amendments to the *Income Tax Act*. These explanatory notes describe these proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

The Honourable Chrystia Freeland, P.C., M.P.
Deputy Prime Minister and Minister of Finance

These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Section 127.48 provides a refundable investment tax credit for qualifying investments made in respect of qualifying clean hydrogen projects.

Section 127.48 is deemed to have come into force on March 28, 2023, and will generally apply to eligible property that is both acquired and available for use on or after that date and before 2035. References to the "CTM investment tax credit" and section 127.49 are deemed to have come into force on January 1, 2024.

Definitions

ITA
127.48(1)

Subsection 127.48(1) provides various definitions relevant for the purpose of the clean hydrogen tax credit.

"actual carbon intensity"

"Actual carbon intensity" in the context of the clean hydrogen tax credit means the carbon intensity of hydrogen that is produced by a qualified clean hydrogen project of a taxpayer, based on the emissions associated with actual inputs to the project's hydrogen production process and the actual process emissions from the production of hydrogen by the taxpayer.

The term "carbon intensity" is also defined in subsection 127.48(1). In calculating the carbon intensity of hydrogen produced, the rules in subsection 127.48(6) apply. For more information, see the commentary on the definition of "carbon intensity" and subsection 127.48(6).

Actual carbon intensity is a key component of the compliance report that is required to be filed with the Minister of National Revenue and the Minister of Natural Resources under subsection 127.48(16) for each operating year (cumulative 365 days of project operations) during the project's compliance period. It is also a key component of the "average actual carbon intensity" of a clean hydrogen project, which is relevant for the purpose of the recovery rule in subsection 127.48(18).

“average actual carbon intensity”

The “average actual carbon intensity” of a qualified clean hydrogen project means the average of the reported actual carbon intensities for each operating year of the project’s compliance period, weighted by the quantity of hydrogen produced in each year.

The average actual carbon intensity is determined by the formula $((A \times B) + (C \times D) + (E \times F) + (G \times H) + (I \times J)) \div K$.

Variables A, C, E, G and I each represent the actual carbon intensity of hydrogen produced by the project for each operating year of the compliance period.

Variables B, D, F, H and J each represent the quantity, in kilograms, of hydrogen produced by the project in an operating year of the compliance period.

Variable K represents the total quantity, in kilograms, of hydrogen produced by the project over the duration of the compliance period.

The average actual carbon intensity is used to determine the amount of any recovery tax for the project at the end of its compliance period, under subsection 127.48(18).

For more information, see the commentary on the “actual carbon intensity”, “operating year” and “compliance period” definitions in this subsection.

“captured carbon”

“Captured carbon” has the same meaning as in subsection 127.44(1).

For the purpose of the clean hydrogen tax credit, projects that use natural gas for hydrogen production (following paragraph (b) of the “eligible pathway” definition) are required to capture any associated carbon dioxide using a CCUS process.

Under paragraph 127.48(6)(c), any captured carbon that is subject to an ineligible use is deemed not to have been captured. For more information, see the commentary on subsection 127.48(6).

“carbon dioxide equivalent”

“Carbon dioxide equivalent” means the quantity in kilograms of carbon dioxide emissions that would be required to produce a warming effect equivalent to the emissions of any specified greenhouse gas, as determined under the Fuel LCA Model. The terms “specified greenhouse gas” and “Fuel LCA Model” are both defined in this subsection.

The concept of carbon dioxide equivalent allows for emissions of different greenhouse gases to be expressed in a common base, using the relative warming effects of each under the Fuel LCA Model. For example, if, under the Fuel LCA Model, each kilogram of methane emissions produced a warming effect equivalent to 28 kilograms of carbon dioxide emissions and each kilogram of nitrous oxide emissions produced a warming effect equivalent to 265 kilograms of carbon dioxide emissions, then a project that was responsible for 500 kilograms of methane emissions and 100 kilograms of nitrous oxide emissions gives rise to 40,500 kilograms of carbon dioxide equivalent ((500 × 28) + (100 × 265)).

"Carbon intensity" is then expressed in kilograms of carbon dioxide equivalent per kilogram of hydrogen produced.

For more information, see the commentary on the "carbon intensity", "Fuel LCA Model" and "specified greenhouse gas" definitions in this subsection.

"carbon intensity"

"Carbon intensity" means the quantity in kilograms of carbon dioxide equivalent created, including upstream emissions, per kilogram of hydrogen produced by a clean hydrogen project.

In calculating carbon intensity, including the project's expected carbon intensity before operations begin and the actual carbon intensity of any given operating year, the rules in subsection 127.48(6) apply.

For more information, see the commentary on the "actual carbon intensity", "carbon dioxide equivalent" and "expected carbon intensity" definitions in this subsection and the commentary on subsection 127.48(6).

"CCUS process"

"CCUS process" has the same meaning as in subsection 127.44(1).

Clean hydrogen projects that use natural gas for hydrogen production (following paragraph (b) of the "eligible pathway" definition), including projects that have dual-use electricity and heat equipment, are required to capture associated carbon dioxide using CCUS process.

"CFR carbon intensity"

"CFR carbon intensity" is defined by reference to the definition of the term "carbon intensity" in the *Clean Fuel Regulations*, rather than the definition of "carbon intensity" under subsection 127.48(1).

This definition of "CFR carbon intensity" is relevant for the purpose of the "eligible renewable natural gas" definition in this subsection and for subsection 127.48(6) in respect of the calculation of carbon intensity. For more information, see the commentary on those provisions.

“clean ammonia”

“Clean ammonia” means ammonia that is produced from clean hydrogen.

A clean hydrogen project that supports the production of clean ammonia must also produce the hydrogen that is used as feedstock to produce that ammonia.

“clean ammonia equipment”

“Clean ammonia equipment” means equipment used for the sole purpose of producing ammonia, including equipment for:

- converting hydrogen into ammonia,
- heat recovery and conversion,
- nitrogen generation,
- feed storage (unless the feed is stored hydrogen) and feed compression, and
- refrigeration and storage of ammonia.

Equipment for the storage of ammonia must be located within the same production facility as other clean ammonia equipment.

Clean ammonia equipment that meets the conditions in the “eligible clean hydrogen property” definition may qualify for the clean hydrogen tax credit at a 15% rate. For more information, see the commentary on the “eligible clean hydrogen property” and “specified percentage” definitions in this subsection.

“clean hydrogen”

“Clean hydrogen” means hydrogen produced, whether solely or in conjunction with other gases (e.g., syngas), that has a carbon intensity of less than four kilograms of carbon dioxide equivalent per kilogram of hydrogen produced.

This definition is relevant for the purposes of several provisions in section 127.48, including the “clean hydrogen project” and “clean ammonia” definitions in this subsection, and subsection 127.48(31), which describes the intended purpose of the clean hydrogen tax credit.

“clean hydrogen project”

A “clean hydrogen project” of a taxpayer is a project to support the operation of eligible clean hydrogen property, the production of clean hydrogen, and if applicable, the production of clean ammonia that uses a feedstock of hydrogen that is produced by the same project or another project of the taxpayer.

To qualify for the clean hydrogen tax credit, a clean hydrogen project must become a “qualified clean hydrogen project”. For more information, see the commentary on the “qualified clean hydrogen project” definition in this subsection.

“clean hydrogen project plan”

A “clean hydrogen project plan” is a plan for a clean hydrogen project of a taxpayer that includes:

- a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the project,
- the expected carbon intensity of the hydrogen to be produced by the project, determined in accordance with subsection 127.48(6) and supported by a report prepared by a qualified validation firm, and
- any additional information required by guidelines published by the Minister of Natural Resources.

If the project is intended to produce clean ammonia, the plan must also demonstrate:

- that the project, together with any other clean hydrogen projects of the taxpayer, have sufficient production capacity to satisfy the needs of the taxpayer’s ammonia production facility, and
- if the taxpayer’s hydrogen production facility and its ammonia production facility are not co-located, the feasibility of transporting hydrogen between the facilities.

The taxpayer must file the clean hydrogen project plan with the Minister of Natural Resources for confirmation, in the form and manner determined by the Minister of Natural Resources. Ultimately, confirmation by the Minister of Natural Resources is a requirement for the project to become a “qualified clean hydrogen project”.

“clean hydrogen tax credit”

The definition “clean hydrogen tax credit” contains two main elements. The first element includes the specified percentage of the capital cost to the taxpayer of eligible clean hydrogen property that is acquired in the year. The second element applies where the taxpayer is a member of a partnership that acquired eligible clean hydrogen property, and includes amounts required by subsection 127.48(12) to be added in computing the taxpayer’s clean hydrogen tax credit at the end of the year.

This definition is relevant primarily for the purpose of computing the amount of a qualifying taxpayer’s credit that may be claimed under subsection 127.48(2).

“compliance period”

The “compliance period” in respect of a clean hydrogen project of a taxpayer means the period of time beginning on the “first day of the compliance period” of the project and ending on the last day of the fifth “operating year” of the project. This period may be longer than five years if the project experiences any shutdown time. For more information, see the commentary on the “operating year” definition in this subsection.

The compliance period of a project is relevant primarily for the purposes of the annual information reporting requirements under subsection 127.48(15), the reporting of actual carbon intensity under subsection 127.48(16) and the potential recovery of previously deducted clean hydrogen tax credits under subsection 127.48(18).

“dual-use electricity and heat equipment”

A portion of the capital cost of “dual-use electricity and heat equipment” that is part of a clean hydrogen project that supports the production of hydrogen by reforming natural gas may qualify for a clean hydrogen tax credit under certain circumstances. To be included as dual-use electricity and heat equipment, equipment must be described in any of paragraphs (a) to (c) of the definition:

- paragraph (a) describes certain energy generation equipment,
- paragraph (b) describes certain electrical transmission equipment, and
- paragraph (c) describes certain energy distribution equipment.

Qualifying energy generation equipment (described in paragraph (a) of the definition) involves equipment that generates electrical energy, heat energy or a combination of electrical or heat energy, if more than 50% of either the electrical energy or heat energy that is expected to be produced over the first 20 years of project operations, based on the most recent clean hydrogen project plan, is expected to support a qualified CCUS project or qualified clean hydrogen project. However, qualifying energy generation equipment cannot use fossil fuels and emit carbon dioxide unless it is subject to capture by a CCUS process. Qualifying equipment does not include equipment that supports the qualified clean hydrogen project indirectly by way of an electrical utility grid.

Qualifying electrical transmission equipment (described in paragraph (b)) involves transmission equipment that directly transmits electrical energy generated by energy generation equipment (as described in paragraph (a)) to a qualified clean hydrogen project, if more than 50% of the electrical energy to be transmitted by the equipment over the first 20 years of project operations, based on the most recent clean hydrogen project plan, is expected to support the qualified CCUS project or qualified clean hydrogen project.

Qualifying energy distribution equipment described in paragraph (c) involves equipment that distributes electrical or heat energy.

Paragraphs 127.48(10)(f) and (g) contain rules setting out the portion of the capital cost of dual-use electricity and heat equipment that would be eligible for the clean hydrogen tax credit. For more information, see the commentary on subsection 127.48(10).

“dual-use hydrogen and ammonia equipment”

“Dual-use hydrogen and ammonia equipment” means equipment that is part of a clean hydrogen project used for the generation of oxygen and nitrogen to be used in both hydrogen and ammonia production.

Paragraph 127.48(10)(g) allocates the capital cost of dual-use hydrogen and ammonia equipment between the portion that would be eligible for the hydrogen credit rates (described in paragraph (a) of the "specified percentage" definition) and the portion that would be eligible for the ammonia credit rates (described in paragraph (b) of the "specified percentage" definition). For more information, see the commentary on subsection 127.48(10).

"eligible clean hydrogen property"

"Eligible clean hydrogen property" means property, other than "excluded property", that meets all three conditions in paragraphs (a) to (c).

Paragraph (a) requires the property to be acquired by a qualifying taxpayer and become available for use in connection with a qualified clean hydrogen project of the taxpayer in Canada on or after March 28, 2023.

The taxpayer that acquires the property must use the property in connection with its own qualified clean hydrogen project and not the project of another taxpayer.

In addition, the timing of the acquisition of property for the purpose of paragraph (a) is determined without reference to subsection 127.48(5), which otherwise deems property not to have been acquired until it is available for use. Accordingly, property that is acquired before March 28, 2023, but becomes available for use on or after that day, is not eligible for the clean hydrogen tax credit.

Paragraph (b) requires that the property has not previously been acquired for use or lease before it was acquired by the taxpayer. This ensures that the credit is only available for new equipment.

Paragraph (c) requires the property to be situated in Canada and lists five categories of eligible property in subparagraphs (i) to (v).

Subparagraph (c)(i) refers to property described in subparagraph (d)(xxii) of Class 43.1 of Schedule II (generally, equipment used all or substantially all to produce hydrogen through electrolysis of water).

Subparagraph (c)(ii) describes property used all or substantially all to produce hydrogen through natural gas reforming, including certain specified equipment.

Subparagraph (c)(iii) refers to three additional types of eligible equipment: "clean ammonia equipment", "dual-use electricity and heat equipment" and "dual-use hydrogen and ammonia equipment", which are all defined terms in this subsection. For more information, see the commentary on those definitions.

Subparagraph (c)(iv) describes certain integrated ancillary equipment. This integrated ancillary equipment must be physically and functionally integrated with the equipment described in any of subparagraphs (i) to (iii). It must also be used solely to support the functioning of such equipment within a hydrogen or ammonia production process as part of certain specified subsystems.

Subparagraph (c)(v) describes equipment that is used as part of a control, monitoring or safety system solely to support the equipment described in any of subparagraphs (i) to (iv).

“eligible pathway”

“Eligible pathway” means producing hydrogen from either electrolysis or from natural gas reforming (with carbon dioxide captured using a CCUS process).

Producing hydrogen from an eligible pathway is a required condition for a clean hydrogen project to become a “qualified clean hydrogen project”.

“eligible power purchase agreement”

An “eligible power purchase agreement” means an agreement that allows a taxpayer to purchase electricity that meets the two conditions described in paragraphs (a) and (b).

Paragraph (a) requires the electricity purchased under the agreement to be sourced from hydro, solar or wind generation that first commenced electricity generation on or after March 28, 2023 and no more than one year before the taxpayer’s first clean hydrogen project plan is filed with the Minister of Natural Resources. It also requires that the source of the electricity be located in the same province or territory as the clean hydrogen project of the taxpayer and is connected to the electricity grid of that province.

These requirements seek to promote the addition of new renewable energy to the overall grid and avoid the situation where the use of power purchase agreements simply directs renewables away from other end-users, who may then turn to fossil-fuelled power generation.

Paragraph (b) requires the electricity purchased under the agreement to be for the sole purpose of operating a clean hydrogen project during all or any portion of the first 20 years of project operations. This could be evidenced, for example, by a contractual provision within the agreement itself or a related agreement.

Power purchased from eligible power purchase agreements may be taken into account in the calculation of carbon intensity, in accordance with subsection 127.48(6). For more information, see the commentary on that subsection.

“eligible renewable natural gas”

“Eligible renewable natural gas” refers to natural gas that meets the conditions in each of paragraphs (a), (b) and (c).

Paragraph (a) requires the natural gas to be produced from non-fossil carbon.

Paragraph (b) requires the natural gas to have a "CFR carbon intensity" determined under the *Clean Fuel Regulations* (CFR). This requirement serves two purposes:

- to require hydrogen producers that self-produce natural gas (used as an input in hydrogen production) to have a consistent method of determining the impact of that gas on the carbon intensity of the hydrogen produced, and
- to allow hydrogen producers that acquire natural gas from external suppliers to readily access the carbon intensity information associated with such gas.

Paragraph (c) requires the natural gas to be sourced from a facility that first commenced production no more than one year before the taxpayer's first clean hydrogen project plan is filed with the Minister of Natural Resources. Similar to eligible power purchase agreements, paragraph (c) of this definition seeks to add new renewable sources to the overall energy landscape, rather than directing existing sources of renewable energy away from other end-users.

Eligible renewable natural gas may be taken into account in the calculation of carbon intensity, in accordance with subsection 127.48(6). For more information, see the commentary on that subsection.

"excluded property"

"Excluded property" describes property that is ineligible for the clean hydrogen tax credit.

The list of excluded property includes equipment used for the off-site storage, transmission, transportation or distribution of hydrogen or ammonia. In this context, "off-site" means any location away from the hydrogen or ammonia production facility.

"expected carbon intensity"

"Expected carbon intensity" means the carbon intensity of hydrogen that is expected to be produced by a clean hydrogen project of a taxpayer, as documented in the taxpayer's most recent clean hydrogen project plan in respect of the project.

Once the project receives written confirmation from the Minister of Natural Resources and becomes a "qualified clean hydrogen project", the expected carbon intensity is used to determine which "specified percentage" (credit rate) is applicable in respect of each eligible clean hydrogen property acquired for a project and the calculation of a taxpayer's clean hydrogen tax credit.

"first day of the compliance period"

The "first day of the compliance period" marks the start of the taxpayer's "compliance period".

Under paragraph (a), the first day of the compliance period is the particular day that is 120 days after the day on which a clean hydrogen project of a taxpayer first produces hydrogen, unless the taxpayer files an election under paragraph (b) or (c).

Under paragraph (b), the taxpayer may file an election with its income tax return for the year that includes the particular day described in paragraph (a) to delay the first day of the compliance period until one year after the particular day.

If a taxpayer has filed the election described in paragraph (b), it may then file a second election with its income tax return for the following year. In that case, the first day of the compliance period is delayed for another year under paragraph (c). No further elections to delay the commencement of the compliance period are permitted.

“Fuel LCA Model”

The “Fuel LCA Model” is the Government of Canada’s Fuel Life Cycle Assessment Model. It is a tool that is published and periodically updated by the Minister of the Environment to calculate the life-cycle carbon intensity of fuels, energy sources and material inputs using life-cycle inventories for various pathways.

A taxpayer must perform carbon intensity calculations using the most recent version of the Fuel LCA Model at the time of filing its most recent related clean hydrogen project plan. For more information, see the commentary on subsection 127.48(6).

“government assistance”

“Government assistance” has the same meaning as in subsection 127(9).

The capital cost of property that is eligible for the clean hydrogen tax credit is reduced by the amount of any government assistance or non-government assistance pursuant to paragraph 127.48(10)(c). Those amounts could become eligible for the clean hydrogen tax credit if they are subsequently repaid, pursuant to subsection 127.48(11). For more information, see the commentary on those subsections.

“ineligible use”

“Ineligible use” has the same meaning as in subsection 127.44(1).

Under paragraph 127.48(6)(c), any captured carbon that is subject to an ineligible use is deemed not to have been captured. For more information, see the commentary on subsection 127.48(6).

“non-government assistance”

“Non-government assistance” has the same meaning as in subsection 127(9).

The capital cost of property that is eligible for the clean hydrogen tax credit is reduced by the amount of any government assistance or non-government assistance pursuant to paragraph 127.48(10)(c). Those amounts could become eligible for the clean hydrogen tax credit if they are subsequently repaid, pursuant to subsection 127.48(11). For more information, see the commentary on those subsections.

“non-hydrogen or ammonia use”

The definition “non-hydrogen or ammonia use” describes one of the circumstances where property that was previously an eligible clean hydrogen property could become subject to the recapture rules in subsections 127.48(21) and (22). It does so by applying a point-in-time test: if, after its acquisition by the taxpayer, the property no longer meets the criteria for being an eligible clean hydrogen property (other than the requirement that it was not previously used), it will be treated as having been converted to a non-hydrogen or ammonia use.

For example, auto-thermal reformers described in subparagraph (c)(ii) of the definition “eligible clean hydrogen property” could be subject to recapture if it was no longer used all or substantially all to produce hydrogen through natural gas reforming (e.g., the equipment is used to produce steel).

“operating year”

An “operating year” in the context of a clean hydrogen project means a cumulative 365-day period during which the project operates (i.e., produces hydrogen or ammonia, in any amount). As a result, any period during which the project is not operating is disregarded in the calculation of a project’s operating year.

A project’s first operating year begins on its “first day of the compliance period” and ends on the day the project achieves 365 days of operations. The next operating year would begin on the day after the first operating year ends and run for the next cumulative 365-day period.

For example, if the first day of the compliance period of a clean hydrogen project is on January 1, 2024, and it has 30 days of shutdown time before accumulating 365 days of operations, the project’s first operating year would end on January 30, 2025.

“preliminary clean hydrogen work activity”

Expenditures for a “preliminary clean hydrogen work activity” cannot be included in the capital cost of eligible clean hydrogen property because of paragraph 127.48(10)(e).

A preliminary clean hydrogen work activity is an activity that is preliminary to the acquisition, construction, fabrication or installation by or on behalf of a taxpayer of eligible clean hydrogen property. Generally, a preliminary clean hydrogen work activity includes (but is not limited to) the activities described in paragraphs (a) to (e).

Because this definition operates with paragraph 127.48(10)(e) to exclude amounts from the capital cost of eligible clean hydrogen property, the portion of paragraph (b) of the definition that excludes “detailed design or engineering work in relation to eligible clean hydrogen property” signifies that expenditures on such work are not affected by paragraph 127.48(10)(e) and may potentially be included in the capital cost of eligible clean hydrogen property.

“qualified CCUS project”

“Qualified CCUS project” has the same meaning as in subsection 127.44(1).

This definition is relevant for the purpose of the “dual-use electricity and heat equipment” definition in this subsection. Dual-use electricity and heat equipment may support a qualified CCUS project, but under paragraph 127.48(10)(f), only the portion of the capital cost of such equipment that can reasonably be expected to support hydrogen or ammonia production may be eligible for the clean hydrogen tax credit.

“qualified clean hydrogen project”

A “qualified clean hydrogen project” is a clean hydrogen project where, after the clean hydrogen project plan in respect of the project is filed with the Minister of Natural Resources, the Minister of Natural Resources has confirmed in writing that the conditions in paragraphs (a) to (c) have been met.

To qualify as eligible clean hydrogen property and be eligible for the clean hydrogen tax credit, property must be acquired for use in connection with a qualified clean hydrogen project.

“qualified validation firm”

A “qualified validation firm” in respect of a clean hydrogen project of a taxpayer means an engineering firm that meets the requirements in paragraphs (a) to (e). These include the requirement to have appropriate insurance coverage and the requirement to deal at arm’s length with the taxpayer. A qualified validation firm must also have expertise in modelling using the Fuel LCA Model as well as relevant engineering expertise.

Every clean hydrogen project plan (including any revised plan required under subsection 127.48(8)) that is filed by a taxpayer with the Minister of Natural Resources must be accompanied by a validation report prepared by a qualified validation firm supporting the expected carbon intensity contained in the plan.

“qualified verification firm”

A “qualified verification firm” in respect of a clean hydrogen project of a taxpayer means an engineering firm that meets the requirements in paragraphs (a) to (f). These include the requirements to have appropriate insurance coverage, to have expertise in life-cycle analysis of greenhouse gas emissions and to deal at arm’s length with the taxpayer.

A qualified verification firm in respect of a particular project must also be a different firm than the qualified validation firm in respect of that project.

Under subsection 127.48(16), each compliance report that is required to be filed by a taxpayer must include a verification report prepared by a qualified verification firm in respect of the actual carbon intensity of the project during the applicable operating year.

“qualifying taxpayer”

A “qualifying taxpayer” is a taxable Canadian corporation. “Taxable Canadian corporation” is defined in subsection 89(1) of the Act.

“specified greenhouse gas”

“Specified greenhouse gas” means carbon dioxide, methane, nitrous oxide, sulphur hexafluoride and any other greenhouse gases listed in the Fuel LCA Model and described in carbon intensity modelling guidance published by the Government of Canada at the time that a taxpayer files its most recent clean hydrogen project plan with the Minister of Natural Resources.

This definition sets out the greenhouse gases that are relevant in determining the carbon intensity of hydrogen produced. For more information, see the commentary on the “carbon dioxide equivalent” and “carbon intensity” definitions in this subsection.

“specified percentage”

The definition “specified percentage” sets out the tax credit rates used to determine the amount of a taxpayer’s clean hydrogen tax credit. The applicable specified percentage generally depends on the expected carbon intensity of the hydrogen to be produced by the taxpayer’s clean hydrogen project.

All rates drop by half for eligible property acquired in 2034 and are reduced to zero if the property is acquired after 2034. The rate is also zero if the expected carbon intensity of the project is four or greater.

Paragraph (a) provides the applicable credit rate tiers in respect of the capital cost of an eligible clean hydrogen property (other than clean ammonia equipment) acquired before 2034:

- 40% for an expected carbon intensity of less than 0.75,
- 25% for an expected carbon intensity equal to or greater than 0.75, but less than two, and
- 15% for an expected carbon intensity equal to or greater than two, but less than four.

Paragraph (b) provides for a credit rate of 15% in respect of the capital cost of clean ammonia equipment acquired by the taxpayer for use in a clean hydrogen project before 2034, on the condition that the hydrogen to be used in the production of ammonia has an expected carbon intensity less than four. Both the hydrogen used in ammonia production and the ammonia itself must be produced by the same taxpayer.

Note that, in respect of certain property prepared or installed on or after November 21, 2023 (the day on which section 127.46 comes into force), these credit rates assume that taxpayers will elect to meet the labour requirements in section 127.46. For taxpayers that do not elect to meet the labour requirements, each tax credit rate may be reduced by ten percentage points. For more information, see the commentary on section 127.46.

Clean hydrogen tax credit

ITA
127.48(2)

Subsection 127.48(2) deems the amount of the clean hydrogen tax credit to have been paid on account of tax payable by a qualifying taxpayer for the year, where the taxpayer has filed with its return of income for the year a prescribed form containing prescribed information. The deemed payment will effectively reduce the taxpayer's tax payable for the year, if any, and result in a refund to the extent the clean hydrogen tax credit exceeds its tax payable for the year.

Deemed deduction

ITA
127.48(3)

Subsection 127.48(3) ensures that any amount deemed to have been paid on account of tax payable under subsection 127.48(2) is also deemed to have been deducted from the taxpayer's tax otherwise payable under Part I. It causes these rules to operate in the same manner whether the clean hydrogen tax credit is received as a refund or is actually deducted against tax otherwise payable.

Time limit for application

ITA
127.48(4)

Subsection 127.48(4) places a time limit on filing the form necessary to be eligible for the clean hydrogen tax credit. The prescribed form claiming the clean hydrogen tax credit must be filed on or before the day that is one year after the taxpayer’s filing-due date for the year. A consequential change to subsection 220(2.2) removes the Minister's discretion to waive this requirement.

Time of acquisition

ITA
127.48(5)

Subsection 127.48(5) deems eligible clean hydrogen property not to have been acquired until it has become available for use by the taxpayer. Accordingly, the clean hydrogen tax credit cannot be claimed before the year the property is available for use, even if expenditures to acquire the property are incurred in an earlier year.

This rule does not apply for the purpose of paragraph (a) of the definition of “eligible clean hydrogen property”, with the result that property that is acquired prior to March 28, 2023 (but becomes available for use on or after that date) is not deemed to be eligible for the clean hydrogen tax credit. However, this rule could impact the specified percentage applicable during the phase-out period. For more information, see the commentary on the “specified percentage” definition in subsection 127.48(1).

Determination of carbon intensity

ITA
127.48(6)

Subsection 127.48(6) contains various rules that apply for the purposes of calculating the actual and expected carbon intensities of hydrogen produced and to be produced by a clean hydrogen project of a taxpayer.

Paragraph (a) requires taxpayers to use the most recent Fuel LCA Model at the time of filing of the most recent related clean hydrogen project plan with the Minister of Natural Resources. The same version of the Fuel LCA Model will be used to determine expected and actual carbon intensities, so taxpayers and projects will not be affected by changes to the Fuel LCA Model after the project becomes a “qualified clean hydrogen project”.

Paragraph (b) requires a “cradle-to-gate” approach in determining carbon intensity by requiring an assessment of the emissions from the production of hydrogen by the project, together with upstream emissions from the production of inputs to the hydrogen-production process, in applying the Fuel LCA Model.

Paragraph (c) provides that, if hydrogen is produced from natural gas reforming, any captured carbon that is subject to an “ineligible use” (e.g., in enhanced oil recovery) is deemed not to be captured.

Paragraph (d) describes how eligible power purchase agreements are to be taken into account in the calculation of carbon intensity of a project that uses qualifying electricity supplied through the provincial grid.

Under subparagraph (d)(i), if there is an eligible power purchase agreement in place, the contribution of the electricity that is purchased under that agreement to the overall carbon intensity calculation is to correspond with the carbon intensity of the technology-specific electricity specified in the Fuel LCA Model and be calculated by taking into account the number of years for which the agreement is to be in place during the first 20 years of project operations. For example, if an eligible power purchase agreement will provide wind-based electricity to supply 100% of the electricity needs of a project for a period of five years (i.e., 25% of the 20-year period), the carbon intensity contribution to the project associated with that wind-generated electricity will be calculated based on a 25% contribution to the project’s electricity usage.

If the project does not have an eligible power purchase agreement in place, then under subparagraph (d)(ii), the carbon intensity of the provincial grid that supplies the project with electricity must be taken into account in applying the Fuel LCA Model to calculate the carbon intensity of the hydrogen produced or to be produced.

Paragraph (e) describes how natural gas is to be taken into account in the calculation of carbon intensity of a project that uses natural gas to produce hydrogen.

Similar to eligible power purchase agreements, subparagraph (e)(i) requires that the contribution of any “eligible renewable natural gas” to the overall carbon intensity calculation correspond with the carbon intensity of such gas determined under the *Clean Fuel Regulations*, and that it be calculated by taking into account the number of years for which the eligible renewable natural gas will be used during the first 20 years of project operations.

If the project will not use eligible renewable natural gas, then under subparagraph (e)(ii), the default contribution to carbon intensity of natural gas must be taken into account in applying the Fuel LCA Model to calculate the carbon intensity of the hydrogen produced or to be produced.

Paragraph (f) provides that any carbon intensity modelling guidance published by the Government of Canada (the version published at the time of filing by the taxpayer of the most recent clean hydrogen project plan with the Minister of Natural Resources) is to apply conclusively with respect to the calculation of carbon intensity. This would include guidance on how to account for the sale of electricity (for instance, from periodic oversupply from renewable sources supplying the clean hydrogen project directly or through an eligible power purchase agreement) back to provincial or territorial grids in the context of calculating the carbon intensity of hydrogen produced.

Changes to clean hydrogen project

ITA
127.48(7)

Subsection 127.48(7) sets out two situations where subsection 127.48(8) would apply in respect of a clean hydrogen project of a taxpayer. Both cases would only arise before the first day of the compliance period of the project.

The first situation is where the Minister of Natural Resources determines that there has been a change to the project design that may reasonably be expected to result in an increase (as compared to the most recent project plan for the project) of more than 0.25 kilograms of carbon dioxide equivalent per kilogram of hydrogen to be produced by the project and requests the taxpayer to file a revised project plan in respect of the project.

The second situation is if the taxpayer reasonably expects an increase (as compared to the most recent project plan for the project) of more than 0.25 kilograms of carbon dioxide equivalent per kilogram of hydrogen to be produced by the project.

For more information, see the commentary on subsection 127.48(8).

Rules relating to revised project plan

ITA
127.48(8)

Subsection 127.48(8) contains several rules that apply after one of the events described in subsection 127.48(7) occurs.

Paragraph (8)(a) requires the taxpayer to file, within 180 days after the occurrence of either of the events described in paragraph 127.48(7)(a) or (b), a revised clean hydrogen project plan in respect of the project with the Minister of Natural Resources, in the form and manner determined by the Minister of Natural Resources.

Paragraph (8)(b) sets out the applicable rules after a taxpayer has filed a revised project plan in accordance with paragraph (a) and the Minister of Natural Resources is satisfied that certain conditions mirroring the "qualified clean hydrogen project" definition in subsection 127.48(1) are met. In that scenario,

- the Minister of Natural Resources is required to confirm the revised plan with all due dispatch,
- the taxpayer's clean hydrogen tax credit shall be redetermined as of the date of the filing of the revised plan, based on the expected carbon intensity set out in the revised plan, and
- if the taxpayer previously deducted an amount in respect of a clean hydrogen tax credit, subsection 127.48(18) applies to add to its tax payable an amount equal to the difference between the credit claimed and the amount that would be the credit amount based on the revised expected carbon intensity.

Paragraph (8)(c) seeks to cover the scenario where the Minister of Natural Resources is not satisfied that the revised plan meets the conditions listed in paragraph (8)(b) and does not issue a confirmation within one year of the filing of the revised plan. In that scenario, as of the expiry of the one-year period:

- the project is deemed not to be a qualified clean hydrogen project,
- the average actual carbon intensity of the project is deemed to be greater than 4.25, and
- subsection (18) applies as if the compliance period of the project ended on that date.

Effectively, if paragraph (8)(c) applies, then the project is deemed to no longer be a "qualified clean hydrogen project" and there will be a full recovery of any prior credit amounts claimed as of the date of the expiry of the one-year period.

Paragraph (8)(d) is an enforcement mechanism for the requirement to file a revised clean hydrogen project plan under paragraph (8)(a). If that requirement is not met, then, until the revised project plan is filed, the project is deemed not to be a qualified clean hydrogen project, the average actual carbon intensity of the project is deemed to be greater than 4.25 and recovery tax is payable as of the expiry of the 180-day period described in paragraph (8)(a). Once the revised project plan is filed, the rule ceases to apply and is deemed never to have applied.

Clean hydrogen project determination

ITA
127.48(9)

Subsection 127.48(9) provides that, for the purposes of section 127.48, the Minister of National Revenue may, in consultation with the Minister of Natural Resources, determine whether one or more clean hydrogen projects of a taxpayer is one project or multiple projects.

The Minister of National Revenue may make this determination at any time before the Minister of Natural Resources confirms the expected carbon intensity of a project (or, if the taxpayer files or is required to file a revised project plan under subsection 127.48(8), at any time before the Minister of Natural Resources confirms the revised plan).

Paragraph (9)(c) requires a separate clean hydrogen project plan to be filed for each project determined under paragraph (a) within 180 days of the determination.

Each project so determined will have its own expected carbon intensity, which may lead to different credit rates. Each project will also have its own compliance period and average actual carbon intensity, which are relevant for the determination of any recovery amounts under subsection 127.48(18).

Paragraph (9)(d) empowers the Minister of Natural Resources to request any necessary documentation or information, and describes a potential consequence if the taxpayer fails to provide such material within 180 days of the request.

Capital cost of clean hydrogen property

ITA
127.48(10)

Subsection 127.48(10) contains several rules relating to the determination of the capital cost of eligible clean hydrogen property for the purpose of section 127.48.

Under paragraph (a), the capital cost of eligible clean hydrogen property cannot include any amounts in respect of which a clean hydrogen tax credit was previously deducted by any person, or for which a CCUS tax credit in section 127.44, a clean technology investment tax credit in section 127.45 or a CTM investment tax credit under section 127.49 was deducted. In addition, amounts added to the cost of property under section 21 may not form part of the capital cost of an eligible clean hydrogen property.

Under paragraph (b), the capital cost is determined without reference to subsections 13(7.1) and (7.4). Among other things, this allows clean hydrogen tax credits to be disregarded in determining the cost of eligible clean hydrogen property.

Under paragraph (c), the capital cost is required to be reduced by the amount of any government assistance or non-government assistance in respect of the property. Amounts that are repaid or are no longer expected to be received may be eligible for the clean hydrogen tax credit under subsection 127.48(11).

Under paragraph (d), adjustments in subsections 127(11.6) to 127(11.8) may apply to the cost of property transferred between non-arm's length parties for investment tax credit purposes. Those rules are imported for the purpose of the clean hydrogen tax credit, subject to certain necessary adjustments.

Under paragraph (e), any amount in respect of a “preliminary clean hydrogen work activity” (defined in subsection 127.48(1)) must be excluded from the capital cost of an eligible clean hydrogen property. For more information, see the commentary on that definition.

Paragraph (f) excludes the portion of the cost of certain equipment — namely, certain dual-use electricity and heat equipment, integrated ancillary equipment (described in subparagraph (c)(iv) of the “eligible clean hydrogen property” definition) and safety and monitoring equipment (described in subparagraph (c)(v) of the “eligible clean hydrogen property” definition) — that can reasonably be expected to support a process other than the production of hydrogen or ammonia, as indicated in the taxpayer’s most recent clean hydrogen project plan. For example, the portion of the capital cost of equipment that is used to support a qualified CCUS project would be excluded.

Paragraph (g) allocates the cost of certain property that may be used in both hydrogen and ammonia production between two separate capital cost categories: one in respect of clean ammonia equipment and the other in respect of other types of eligible clean hydrogen property. The allocation is determined based on the percentage of the expected use of the equipment that is attributable to hydrogen production versus ammonia production.

The capital cost amount that is attributable to ammonia production is deemed to be in respect of clean ammonia equipment (which could be eligible for the clean ammonia rate under paragraph (b) of the “specified percentage” definition in subsection 127.48(1)), and the capital cost amount that is attributable to hydrogen production is deemed to be in respect of other eligible clean hydrogen property (which could be eligible for one of the tiered rates under paragraph (a) of the “specified percentage” definition, depending on the expected carbon intensity of the clean hydrogen project to which the equipment belongs).

Example

A taxpayer acquires eligible clean hydrogen property that is dual-use electricity and heat equipment to be used in both hydrogen and ammonia production with a capital cost of $5,000.

If the equipment is expected to be used 60% in hydrogen and ammonia production and 40% to support a qualified CCUS project, paragraph (10)(f) would reduce the capital cost amount for the purpose of section 127.48 to $3,000 ($5,000 × 60%).

If, of the 60% used in hydrogen and ammonia production, 80% is expected to be used in hydrogen production and 20% is expected to be used in ammonia production, then $600 ($3,000 × 20%) is allocated to clean ammonia equipment under subparagraph (g)(i) and the remaining $2,400 is allocated to eligible clean hydrogen property other than clean ammonia equipment under subparagraph (g)(ii).

If the expected carbon intensity of the project was 1.5, the $2,400 amount could be eligible for the 25% rate tier and the $600 could be eligible for the 15% clean ammonia rate.

Repayment of assistance

ITA
127.48(11)

Subsection 127.48(11) applies if a taxpayer has repaid (or has not received and can no longer reasonably be expected to receive), in a particular taxation year, an amount of government assistance or non-government assistance that was applied to reduce the capital cost of eligible clean hydrogen property under paragraph 127.48(10)(c) for a preceding year. The amount of the reduced capital cost is added to the amount otherwise determined to be the capital cost of eligible clean hydrogen property.

Partnerships

ITA
127.48(12)

Subsection 127.48(12) applies if a qualifying taxpayer is a member of a partnership in a particular taxation year, and a clean hydrogen tax credit would be determined in respect of the partnership for its taxation year that ends in the particular year if the partnership were a taxable Canadian corporation. Subsection (12) provides a rule, similar to subsections 127.44(11), 127.45(8) and 127.49(8), that effectively flows the portion of a clean hydrogen tax credit that can reasonably be considered to be a member's share of the credit to the member.

Subsection 127.48(12) is subject to section 127.47, which provides a number of rules relevant to the allocation of certain tax credits by partnerships to their members. For more information, see the commentary on that section.

Unpaid amounts

ITA
127.48(13)

Subsection 127.48(13) provides that if any part of the capital cost of a taxpayer's eligible clean hydrogen property is unpaid on the day that is 180 days after the end of the taxation year of a taxpayer in which the property was acquired, that part of the cost is added to the capital cost of the property at the time it is paid for the purpose of section 127.48.

Tax shelter investment

ITA
127.48(14)

Subsection 127.48(14) provides that the clean hydrogen tax credit is unavailable if an eligible clean hydrogen property (or an interest in a person or partnership with a direct or indirect interest in such property) is a tax shelter investment under section 143.2.

Annual information reporting requirement

ITA
127.48(15)

Subsection 127.48(15) provides that a taxpayer that deducted a clean hydrogen tax credit in any taxation year is required to file, with its tax return for each taxation year that begins during the compliance period of the taxpayer's qualified clean hydrogen project, a prescribed form containing prescribed information regarding the operations of the project.

Among other things, this information may be relevant to keeping track of when a project shuts down, thereby extending the duration of an operating year and the entire compliance period of the project. Accordingly, the information reporting requirement under subsection 127.48(15) is in addition to any annual carbon intensity reporting requirement under subsection 127.48(16).

Compliance – annual carbon intensity reporting

ITA
127.48(16)

Subsection 127.48(16) sets out the requirement for a taxpayer that has deducted a clean hydrogen tax credit to file with both the Minister of National Revenue and the Minister of Natural Resources, within 180 days after the end of each operating year, a compliance report containing certain information in respect of that operating year.

Among other things, this information is relevant for the determination of the project's average actual carbon intensity at the end of the compliance period, which will be used to determine the amount of any recovery tax payable under subsection 127.48(18).

Under subsection 127.48(19), the Minister of Natural Resources will review each of the taxpayer's compliance reports and the Minister of National Revenue may, in consultation with the Minister of Natural Resources, make a determination or redetermination of the actual carbon intensity of the hydrogen produced.

Failure to report

ITA
127.48(17)

Subsection 127.48(17) sets out a penalty if a taxpayer fails to file a compliance report for a qualified clean hydrogen project as required by subsection 127.48(16). There is a separate penalty for each compliance report that the taxpayer fails to file as required.

The penalty is calculated as an amount, determined by the formula ((4% × A) ÷ 365)) × B, but not exceeding the total clean hydrogen tax credits deducted by the taxpayer in respect of the project.

Variable A is total clean hydrogen tax credits deducted by the taxpayer in respect of the project before the applicable deadline set out in subsection (16), while variable B is the number of days during which the failure continues.

Recovery – change in carbon intensity

ITA
127.48(18)

Subsection 127.48(18) may require a taxpayer to pay a recovery tax if, at the end of the compliance period of its qualified clean hydrogen project, the project's average actual carbon intensity is higher than the most recent expected carbon intensity that was used to determine a clean hydrogen tax credit amount in respect of the project.

The tax payable is determined by the formula (A – B) × C, applied to each eligible clean hydrogen property forming part of the project.

Variable A is the specified percentage that was applied to the capital cost of the eligible clean hydrogen property in determining a clean hydrogen tax credit of the taxpayer.

Variable B is the specified percentage that would have applied to that capital cost amount using the average actual carbon intensity to determine the credit tier.

Variable C is the capital cost amount on which the clean hydrogen tax credit was deducted.

In addition, if there was a redetermination of the expected carbon intensity of a project due to the filing of a revised clean hydrogen project plan under subsection 127.48(8) prior to the first day of the compliance period of the project, then the most recent revised expected carbon intensity is to be used in applying subsection (18) at the end of the project's compliance period.

The recovery tax is subject to a de minimis exception under subsection 127.48(20) where the difference between the average actual carbon intensity and the expected carbon intensity of the project is 0.25 or less.

Example – recovery tax

A taxpayer acquires eligible clean hydrogen property (other than clean ammonia equipment) with a capital cost of $1 million in connection with a qualified clean hydrogen project. In its initial clean hydrogen project plan, the taxpayer had an expected carbon intensity of 0.5, so the taxpayer receives a clean hydrogen tax credit equal to $400,000 (40% × $1 million).

Before the first day of the compliance period, the project undergoes a redesign that results in an expected increase to carbon intensity of more than 0.25, so the taxpayer files a revised clean hydrogen project plan with the Minister of Natural Resources in accordance with subsection 127.48(8). The revised expected carbon intensity is now 1.5, so the taxpayer has an addition to tax equal to $150,000 ((40% – 25%) × $1,000,000) as of the date of filing the revised plan.

After the compliance period ends, if the average actual carbon intensity ends up being 2.5, the recovery tax under subsection (18) would be $100,000 ((25% – 15%) × $1,000,000).

Minister's determination

ITA
127.48(19)

Subsection 127.48(19) requires the Minister of Natural Resources to review each compliance report filed under subsection 127.48(16) and allows the Minister of National Revenue, in consultation with the Minister of Natural Resources, to make a determination or redetermination of the actual carbon intensity contained in the compliance report.

De minimis exception

ITA
127.48(20)

Subsection 127.48(20) provides for an exception to the recovery tax under subsection 127.48(18) if the difference between the average actual carbon intensity of a qualified clean hydrogen project and the expected carbon intensity that was used to determine the taxpayer's clean hydrogen tax credit is 0.25 or less.

This exception is intended to provide some tolerance and flexibility for variations in a project's carbon intensity that are unanticipated or outside of the taxpayer's control.

Recapture of clean hydrogen tax credit – application

ITA
127.48(21)

Subsection 127.48(21) sets out three conditions for when recapture of all or part of the clean hydrogen tax credit applies.

Paragraph (a) requires that the taxpayer have acquired an eligible clean hydrogen property in the particular year or in any of the preceding 20 calendar years. This means that the recapture rules could apply based on actions that occur during the 20 calendar years after a property is acquired.

Paragraph (b) requires that the taxpayer was entitled to a clean hydrogen tax credit in respect of all or a portion of the capital cost of that property.

Paragraph (c) requires that the property be converted to a non-hydrogen or ammonia use, be exported from Canada or be disposed of. It does not apply if the property was previously converted to a non-hydrogen or ammonia use or exported from Canada, which ensures that recapture is not triggered twice for the same property.

Recapture of clean hydrogen tax credit

ITA
127.48(22)

Subsection 127.48(22) provides that, where recapture applies in respect of an eligible clean hydrogen property, a taxpayer is required to add to the tax otherwise payable for the year the amount determined by the formula (A – B) × (C ÷ D).

Variable A is the amount of the taxpayer's clean hydrogen tax credit in respect of the property.

Variable B is the portion of any recovery tax previously paid by the taxpayer in respect of the property due to subsection 127.48(18).

Variable C is the amount, not exceeding the original capital cost of the property, equal to either the proceeds of disposition of the property or the fair market value of the property, depending on the circumstances.

Variable D is the capital cost of the property on which the clean hydrogen tax credit was deducted.

Example – recapture from sale of property

In 2024, a taxpayer acquires eligible clean hydrogen property (other than clean ammonia equipment) with a capital cost of $1 million in connection with a qualified clean hydrogen project. In its initial clean hydrogen project plan, the taxpayer had an expected carbon intensity of 0.5, so the taxpayer receives a clean hydrogen tax credit equal to $400,000 (40% × $1 million).

When the compliance period ends in 2029, the average actual carbon intensity of the project is 1.5. As a result, the recovery tax under subsection (18) in respect of the project is $150,000 ((40% – 25%) × $1,000,000).

In 2031, the taxpayer sells an eligible clean hydrogen property from the project to an arm's-length party for proceeds of $50,000. The original capital cost on acquisition was $100,000.

Each variable of the formula in subsection (22) would be determined as follows:

- Variable A: $400,000 credit × ($100,000 capital cost of the particular property ÷ $1 million total capital cost) = $40,000 credit in respect of the property
- Variable B: $150,000 recovery × ($100,000 capital cost of the particular property ÷ $1 million total capital cost) = $15,000 recovery tax paid in respect of the property
- Variable C: $50,000 proceeds of disposition
- Variable D: $100,000 original capital cost

Applying the formula in subsection (22), the recapture tax in respect of this property would be equal to ($40,000 – $15,000) × ($50,000 ÷ $100,000) = $12,500.

Election – sale of clean hydrogen project

ITA
127.48(23)

Subsection 127.48(23) provides an election to avoid the recapture under subsection 127.48(22) if certain conditions are met. The election may be available where a qualifying taxpayer (referred to as the vendor) disposes of all or substantially all of its properties that are part of a qualified clean hydrogen project of the taxpayer to another taxable Canadian corporation (referred to as the purchaser). Instead of applying subsection (22), the purchaser can assume the relevant tax history of the vendor so that recovery and recapture taxes under section 127.48 can apply appropriately at a later time if necessary. This provision is intended to facilitate bona fide inter-company transfers of assets comprising all or substantially all of a qualified clean hydrogen project without prematurely triggering recapture tax.

If the vendor and the purchaser elect to have the rules in subsection (23) apply, subsection (22) does not apply to the vendor in respect of the disposition of any eligible clean hydrogen property, and instead the rules in paragraphs (a) to (d) apply to the purchaser. These rules effectively require the purchaser to step into the shoes of the vendor for purposes of any future recovery or recapture of tax associated with the related clean hydrogen project.

Recapture event reporting requirement

ITA
127.48(24)

Where a recapture event described in subsection 127.48(21) occurs, subsection 127.48(24) requires the taxpayer to notify the Minister in prescribed form and manner on or before the taxpayer's filing-due date for that year. Consequential amendments to subsections 152(4) and (4.01) will extend the normal reassessment period in respect of the clean hydrogen tax credit where the notification has not been filed in prescribed form and manner.

Partnerships

ITA
127.48(25) to (28)

Subsections 127.48(25) to (28) provide rules that allocate tax obligations under section 127.48 in the context of partnerships.

Recovery and recapture – partnerships

ITA
127.48(25)

When a member of a partnership has claimed a clean hydrogen tax credit in respect of a project allocated to it by the partnership under subsection 127.48(12), subsection 127.48(25) provides that subsections 127.48(18) to (24) apply to determine amounts in respect of the partnership as if it were a taxable Canadian corporation and as if the deemed corporation had claimed all the clean hydrogen tax credits that were claimed by any member of the partnership.

Member's share of recovery or recapture

ITA
127.48(26)

Subsection 127.48(26) requires that the amount of tax determined in respect of the partnership be allocated to the partnership's members and added to their tax payable. All members of the partnership, regardless of when they acquired their partnership interest, would generally be liable to pay a share of any tax payable under section 127.48 because of this rule. Subsection 127.48(26) is subject to an elective provision in subsection 127.48(27).

Election by member

ITA
127.48(27)

Subsection 127.48(27) enables a taxable Canadian corporation that is a member of a partnership at the end of the partnership's fiscal period to elect to pay the entire amount determined in respect of the partnership under subsection 127.48(25).

Joint, several and solidary liability

ITA
127.48(28)

Subsection 127.48(28) creates joint and several liability (or, for civil law, solidary liability) for partnership members for any tax determined because of subsection 127.48(25) in respect of the partnership, except to the extent that the tax has been paid by a taxable Canadian corporation that elected under subsection 127.48(27) or has been allocated to a member of the partnership and added to its tax payable under subsection 127.48(28).

Interest on recovery tax

ITA
127.48(29)

Subsection 127.48(29) provides that, when applying subsection 161(1) to an amount of recovery tax payable under subsection 127.48(18) (other than an amount payable because of subsection 127.48(8)), the balance-due day of a taxpayer for the taxation year is deemed to be the balance-due day of the taxation year for the related clean hydrogen tax credit under subsection 127.48(2). This has the potential effect of creating a liability for interest from the taxation year in which the tax credit was originally claimed.

Credit after compliance period

ITA
127.48(30)

Subsection 127.48(30) provides that, in determining a clean hydrogen tax credit for eligible clean hydrogen property acquired after the compliance period of a qualified clean hydrogen project, the expected carbon intensity (used to determine the appropriate specified percentage for the new property) is deemed to be the greater of the expected carbon intensity otherwise determined and the project's average actual carbon intensity.

Purpose

ITA
127.48(31)

Subsection 127.48(31) is an interpretative provision that describes the intended purpose of the clean hydrogen tax credit: to encourage the investment of capital in the production of clean hydrogen and clean ammonia in Canada.

Authority of the Minister of Natural Resources

ITA
127.48(32)

Subsection 127.48(32) gives the Department of Natural Resources the authority to publish technical guidance that will apply conclusively with respect to engineering and scientific matters, for the purpose of determining whether a property is an eligible clean hydrogen property.

Clean Technology Manufacturing Investment Tax Credit

Clause 1

Clean Technology Manufacturing Investment Tax Credit

ITA
127.49

New section 127.49 provides a fully refundable clean technology manufacturing investment tax credit (CTM investment tax credit) for acquisitions of certain clean technology manufacturing property (CTM property) that is used in qualifying manufacturing and processing activities or the extraction and processing of six key critical minerals. The credit may apply to CTM property that is both acquired and becomes available for use on or after January 1, 2024.

Definitions

ITA
127.49(1)

Subsection (1) contains definitions that apply in new section 127.49.

"CTM investment tax credit"

The definition "CTM investment tax credit" contains two elements. The first element includes the specified percentage of the capital cost to the taxpayer of CTM property acquired by the taxpayer in the year for a CTM use. The second element applies where the taxpayer is a member of a partnership that acquired CTM property, and includes amounts required by subsection (8) to be added in computing the taxpayer's CTM investment tax credit at the end of the year. This definition is relevant to computing the amount of a taxpayer's credit that may be claimed under subsection 127.49(2).

"CTM property"

The definition "CTM property" is added to describe the property for which the CTM investment tax credit may be available. The definition contains four general requirements, which are set out in paragraphs (a) to (d). It also excludes certain property ("excluded property"), which is the subject of a separate definition in subsection 127.49(1).

Paragraph (a) requires that the property be situated in Canada and be intended for use exclusively in Canada.

Paragraph (b) requires that the property has not previously been acquired for use or lease before it was acquired by the taxpayer. This ensures that the credit is only available for new equipment.

Paragraph (c) requires that if the property is leased by the taxpayer to another person, that person must be a taxable Canadian corporation. Alternatively, it also permits the property to be leased to a partnership all the members of which are taxable Canadian corporations. Paragraph (c) also requires that the property be leased in the ordinary course of carrying on a business in Canada by the taxpayer whose principal business is one of the specified activities, or any combination thereof.

Paragraph (d) requires that the property be included in one of subparagraphs (i) to (v), which describe specific types of equipment. These subparagraphs set out certain property described in Schedule II to the *Income Tax Regulations*, with certain qualifications and exceptions. In general terms, qualifying property falls within the following categories, each of which corresponds to a separate subparagraph:

(i) Machinery and equipment used for manufacturing or processing, such as industrial robots used to manufacture electric vehicles or vats used to process cathode active materials.
(ii) Certain tangible property attached to buildings and other structures used for manufacturing or processing or that is required for machinery or equipment, such as ventilation systems used to remove chemical fumes or specialized electrical wiring used to provide power to solar panel manufacturing equipment.
(iii) Certain property used for mineral extraction and processing, such as equipment used to crush rock containing copper ore or kilns used to calcinate nickel ore.
(iv) Certain specialized tooling, such as moulds used to cast copper ingots at smelters or cutting parts of a machine used to cut solar cells.
(v) Non-road vehicles and automotive equipment, such as electric vehicles designed for use in factories or hydrogen-powered vehicles designed for extracting rock from mine sites.

“CTM use”

To be eligible for the CTM investment tax credit, a taxpayer must acquire the relevant property for a CTM use. There are two categories of use that qualify as CTM use. In particular, the use of the property must be:

- all or substantially all for certain qualified zero-emission technology manufacturing activities (described in paragraph (a) or (c) of the definition of that term in section 5202 of the *Income Tax Regulations*); or
- in a qualifying mineral activity (also defined in subsection 127.49(1)) producing all or substantially all qualifying materials (also defined in subsection 127.49(1)).

If a particular property is used for a use other than a CTM use, it will constitute a “non-CTM use” of the property. That term is also defined in subsection 127.49(1).

“excluded property”

The term “excluded property” is defined to carve out from property that may qualify for the CTM investment tax credit any property used in the production of battery cells or modules if the production has benefitted from, or can reasonably be expected to benefit from, a contribution agreement with the Government of Canada.

“government assistance” and **“non-government assistance”**

For the purpose of section 127.49, the terms “government assistance” and “non-government assistance” have the meanings assigned by subsection 127(9). As is the case for existing investment tax credits in section 127, the capital cost of property that is eligible for the CTM investment tax credit is reduced by the amount of any government assistance or non-government assistance pursuant to paragraph 127.49(5)(c). Those amounts could become eligible for the CTM investment tax credit if they are subsequently repaid, pursuant to subsection 127.49(7).

“non-CTM use”

The definition “non-CTM use” describes one of the circumstances where a previously-eligible CTM property could become subject to the recapture rules in subsections 127.49(11) or (16). If, after its acquisition by the taxpayer, the property is used for a use other than a CTM use, it will be treated as having been converted to a non-CTM use.

For example:

- CTM property that is manufacturing property, and originally met the requirement in paragraph (a) of “CTM use” (*i.e.*, it was used all or substantially all for “qualified zero-emission technology manufacturing activities” as described therein) could be subject to recapture if it was converted to a more general manufacturing activity that did not qualify under either of those provisions.
- CTM property that was originally used all or substantially all for the extraction of a particular qualifying material, but is later used to extract non-qualifying materials, could be subject to recapture. This could happen, for example, if a particular mine site is no longer financially viable and the taxpayer moves its CTM property to a different mine site that extracts non-qualifying materials.

“permitted element”

The definition “permitted element” is used in clause (b)(ii)(B) of the definition “qualifying mineral activity”. It allows certain processes that combine a qualifying material with a permitted element to be eligible under paragraph (b) of the “CTM use” definition for the purpose of qualifying for the CTM investment tax credit. For example, because of this definition, the chemical reaction of lithium hydroxide with sulfuric acid to produce lithium sulfate is eligible under paragraph (b) of the “qualifying mineral activity” definition. The permitted elements are non-metals: hydrogen, carbon, nitrogen, oxygen, phosphorus, sulfur, selenium, halogens, and noble gases.

“qualifying material”

One of the objectives of the CTM investment tax credit is to encourage investment in the extraction and processing of the six key critical minerals as well as similar recycling activities and similar synthetic graphite activities in the definition “qualifying material”. The qualifying materials are lithium, cobalt, nickel, copper, rare earth elements and graphite.

“qualifying mineral activity”

The definition “qualifying mineral activity” describes the types of activities that CTM property can be used for to meet one of the requirements in paragraph (b) of the “CTM use” definition.

Qualifying mineral activities fall into five categories:

1. Extraction of resources from a mineral deposit or from a tailing pond.
2. Processing of minerals that occurs at a mine site, well site, tailing pond, mill, smelter or refinery. Processing activities in this category may include activities that occur before or after the prime metal stage or its equivalent. Subparagraph (b)(ii) requires that these activities must occur prior to or as part of a process intended to:
    a. increase the purity of at least one qualifying material, or
    b. produce a material with non-trace amounts of a single qualifying material, so long as the activities are not intended to produce a material with non-trace amounts of any elements other than “permitted elements”.

In effect, subparagraph (b)(ii) establishes the stage up until which point a midstream or upstream processing activity could be considered a “qualifying mineral activity” and satisfy paragraph (b) of the “CTM use” definition. For example, the production of certain upstream mixed metal materials, such as intermediate alloys from smelters, black mass from battery recycling, and mixed rare earth element oxides from mine sites would be considered qualifying mineral activities since they occur prior to purification and refining.

In contrast, the production of lithium nickel manganese cobalt oxides used for electric vehicle batteries or neodymium boron iron alloys used for electric vehicle motors are not qualifying mineral activities as these produce mixed metal materials and as they occur well after purification and refining (however, these activities may instead qualify as activities described under paragraph (a) of the “CTM use” definition).

3. Recycling of materials, including processing activities substantially similar to the processing activities in category 2, above (paragraph (b)).
4. Activities in the production of synthetic graphite that are performed during or after the graphitization stage, and that are substantially similar to the activities in category 2, above (paragraph (b)).
5. Spheronization of graphite or the coating of spheronized graphite.

“qualifying taxpayer”

The definition “qualifying taxpayer” ensures that only taxable Canadian corporations are eligible for the CTM investment tax credit. Qualifying taxpayers that are members of a partnership that acquires CTM property may also be eligible for the credit.

“specified percentage”

The definition “specified percentage” sets out the rates for determining the amount of the CTM investment tax credit.

Under paragraph (a), the rate is nil for property that is acquired before January 1, 2024. Paragraph (a) applies without reference to subsection 127.49(4), which otherwise deems property not to have been acquired until it is available for use. Accordingly, property that is acquired before January 1, 2024, but becomes available for use on or after that day, is ineligible for the CTM investment tax credit.

Under paragraph (b), the rate is 30 per cent for property acquired after December 31, 2023 and before 2032.

Under paragraph (c), the rate is 20 per cent for property acquired in 2032. Subsection 127.49(4) would deem property that was acquired in 2031 or earlier, but became available for use in 2032, to be acquired in 2032 so that it would be subject to the 20 per-cent rate.

Under paragraph (d), the rate is 10 per cent for property acquired in 2033.

Under paragraph (e), the rate is 5 per cent for property acquired in 2034.

Under paragraph (f), the rate is nil for property acquired after 2034. Subsection 127.49(4) would deem property that was acquired in 2034 or earlier, but became available for use in 2035, to be acquired in 2035 so that it would be subject to the nil rate.

CTM investment tax credit

ITA
127.49(2)

Subsection 127.49(2) deems the amount of the CTM investment tax credit to have been paid on account of tax payable by a qualifying taxpayer for a taxation year, where the taxpayer has filed with its return of income for the year a prescribed form containing prescribed information. The deemed payment will effectively reduce the taxpayer’s tax payable for the year, if any, and result in a refund to the extent the CTM investment tax credit exceeds its tax payable for the year.

Time limit for application

ITA
127.49(3)

Subsection 127.49(3) places a time limit on filing the form necessary to be eligible for the CTM investment tax credit. The prescribed form claiming the CTM investment tax credit must be filed no later than one year after the taxpayer's filing-due date for the applicable year. A consequential change to subsection 220(2.2) removes the Minister's discretion to waive this requirement.

Time of acquisition

ITA
127.49(4)

Subsection 127.49(4) deems CTM property not to have been acquired until it has become available for use by a taxpayer. Accordingly, the CTM investment tax credit cannot be claimed before the year the property is available for use, even if expenditures to acquire the property are incurred in an earlier year. This could also impact the specified percentage applicable during the phase-out period. See the commentary on the definition "specified percentage" in subsection 127.49(1) for more information.

Special rules – adjustments

ITA
127.49(5)

Subsection (5) sets out a number of restrictions on CTM investment tax credit claims.

Under paragraph (a), the CTM investment tax credit is not available for any property for which a CTM investment tax credit was previously claimed by any person, for which a CCUS tax credit in section 127.44 was deducted, for which a clean technology investment tax credit in section 127.45 was deducted or for which a clean hydrogen tax credit in section 127.48 was deducted. In addition, amounts added to the cost of property by virtue of section 21 will not form part of the capital cost of a CTM property for CTM investment tax credit purposes.

Under paragraph (b), the cost of the taxpayer's CTM property shall be determined without reference to subsections 13(7.1) and (7.4). Among other things, this allows CTM investment tax credits to be disregarded in determining the cost of CTM property for these purposes.

Under paragraph (c), the capital cost of CTM property is reduced by amounts of "government assistance" and "non-government assistance" (as those terms are defined in subsection 127(9)) in respect of the property. Amounts that are repaid or are no longer expected to be received may be eligible for the CTM investment tax credit under subsection (7).

Under paragraph (d), adjustments in subsections 127(11.6) to 127(11.8) may apply to the cost of property transferred between non-arm's length parties for CTM investment tax credit purposes. Those rules are imported for the purpose of the CTM investment tax credit, subject to certain necessary adjustments.

Deemed deduction

ITA
127.49(6)

Subsection 127.49(6) ensures that any amount deemed to have been paid on account of tax payable under subsection 127.49(2) is also deemed to have been deducted from the taxpayer's tax otherwise payable under Part I. This deeming rule applies for the purpose of various provisions of the Act. It causes these rules to operate in the same manner whether the CTM investment tax credit is received as a refund or is actually deducted against tax otherwise payable.

Repayment of assistance

ITA
127.49(7)

The capital cost of CTM property may be reduced under paragraph 127.49(5)(c) by the amount of "government assistance" and "non-government assistance" that is received, is receivable or is reasonably expected to be received, in respect of the property. If such assistance is subsequently repaid or can no longer reasonably be expected to be received, those amounts may once again be eligible for the CTM investment tax credit because of subsection 127.49(7).

Partnerships

ITA
127.49(8)

Subsection 127.49(8) applies if a taxpayer in a particular taxation year is a member of a partnership, and a CTM investment tax credit would be determined in respect of the partnership if it were a taxable Canadian corporation. The CTM investment tax credit rules are generally intended to apply to partnerships and their partners that are qualifying taxpayers in a manner similar to the partnership rules for the investment tax credits under section 127. However, some important modifications to the partnership rules are made for the clean economy investment tax credits described in section 127.47, to which subsection 127.49(8) is subject. See the commentary on section 127.47 for more information.

Unpaid amounts

ITA
127.49(9)

Subsection 127.49(9) ensures that if any part of the capital cost of a taxpayer's CTM property is unpaid on the day that is 180 days after the end of the taxation year of a taxpayer in which the CTM property was acquired, that part of the cost is added to the capital cost of the CTM property at the time it is paid for the purpose of section 127.49.

Tax shelter investment

ITA
127.49(10)

Subsection 127.49(10) provides that the CTM investment tax credit is unavailable if a CTM property (or an interest in a person or partnership with a direct or indirect interest in such property) is a tax shelter investment under section 143.2.

Recapture – conditions for application

ITA
127.49(11)

Subsection 127.49(11) sets out three conditions for when recapture of all or part of the CTM investment tax credit applies.

Paragraph (a) requires that the taxpayer have acquired a CTM property in the particular year or in any of the preceding ten calendar years. This means that the recapture rules could apply based on actions that occur during the ten calendar years after a property is acquired.

Paragraph (b) requires that the taxpayer became entitled to a CTM investment tax credit in respect of all or a portion of the capital cost of that property.

Paragraph (c) requires that the property (or another property that incorporates the property) be converted to a non-CTM use, be exported from Canada or be disposed of. Paragraph (c) does not apply if the property was previously converted to a non-CTM use or exported from Canada, which ensures that recapture is not triggered twice for the same property. In cases where the property has been disposed of without having previously been converted to a non-CTM use or exported from Canada, recapture may be deferred in some cases by virtue of subsections 127.49(13) and (14).

Recapture of credit

ITA
127.49(12)

Where recapture applies in respect of a CTM property, it is effectively calculated based on the proportion of the value of the property that has been utilized by the taxpayer prior to its conversion to a non-CTM use, its export or its disposition. For example, if a CTM property is sold to an arm's-length party for 80% of the original capital cost of the property to the taxpayer, 80% of the CTM investment tax credit associated with that property will be recaptured. Similarly, if a CTM property is converted to a non-CTM use at a time when its fair market value is 50% of its original capital cost, 50% of the CTM investment tax credit associated with that property will be recaptured. Recapture of the CTM investment tax credit will in no case exceed the CTM investment tax credit associated with the particular property.

Where a CTM property is disposed of to a person that deals at arm's length with the taxpayer, variable B of the formula in subsection 127.49(12) will be the proceeds of disposition of the particular property. In the other cases (being the disposition to a non-arm's length party, conversion to a non-CTM use or export), variable B of the formula in subsection 127.49(12) will be the fair market value of the particular property.

There is an exception to the recapture rules if the property is disposed of to certain related persons, in which case recapture may be deferred pursuant to subsections 127.49(13) and (14).

Certain non-arm's length transfers – recapture deferred

ITA
127.49(13) and (14)

Subsection 127.49(13) sets out the conditions for the deferral of recapture under subsection 127.49(14).

Under subsection 127.49(13), recapture of the CTM investment tax credit will be deferred where CTM property is disposed of by a taxpayer to a related taxable Canadian corporation in circumstances where the property would be CTM property to the purchaser (but for the requirement that the property not have been previously used under paragraph (b) of the "CTM property" definition) and is used by the purchaser for a CTM use. This relieving provision is intended to facilitate bona fide transfers of CTM property within corporate groups. It is similar to subsection 127(33), which provides for deferral of the recapture of certain other investment tax credits where property is transferred to a non-arm's length party.

Subsection 127.49(14) provides for the deferred recapture. It generally causes the purchaser (or transferee) to be treated as if it had claimed credits of the vendor (or transferor) in respect of the property, ensuring that the purchaser is subject to recapture if it changes the use of the property to a non-CTM use, disposes of the property or exports the property. To achieve this result, subsection 127.49(14) makes subsection 127(34) applicable, with such modifications as the circumstances require. See the commentary on subsections 127(33) and (34) for more information.

Recapture event reporting requirement

ITA
127.49(15)

Where a recapture event described in subsection 127.49(11) occurs, or a deferral of recapture occurs because a taxpayer transferred CTM property to a related taxable Canadian corporation under subsection 127.49(13), the taxpayer is required to notify the Minister in prescribed form and manner on or before the taxpayer's filing-due date for that year. Consequential amendments to subsections 152(4) and (4.01) will extend the assessment period in respect of CTM investment tax credit recapture assessments where the notification has not been filed in prescribed form and manner.

Recapture of credit – partnerships

ITA
127.49(16) and (17)

Subsection 127.49(16) sets out the conditions for the recapture of a CTM investment tax credit received through a partnership. These conditions are substantially similar to the recapture conditions that would apply to a qualifying taxpayer who acquired a CTM property directly.

Under paragraph (a), the partnership must have acquired a CTM property in the fiscal period or in any of the ten preceding calendar years.

Under paragraph (b), the cost, or a portion of the cost, of the CTM property must have been included in computing the CTM investment tax credit of a member of the partnership (i.e., the partnership computed a CTM investment tax credit, which is attributable to the property, and allocated that credit to its members under subsection (8)).

Under paragraph (c), in the fiscal period, the partnership must have converted the property (or another property that incorporates the property) to a non-CTM use, exported it from Canada or disposed of it, in each case without having previously exported it or converted it to a non-CTM use.

In these circumstances, subsection 127.49(17) provides for an addition to tax in respect of a recaptured CTM investment tax credit for a member of a partnership during its fiscal period where all the conditions in paragraphs (a) to (c) of subsection (16) are met.

The recaptured amount is the taxpayer's share of the lesser of (a) the amount that can reasonably be considered to have been included in respect of the property in computing the partnership's credit amount that was available for allocation under subsection (8), and (b) the percentage of the partnership's credit amount in respect of the property, applied to either the proceeds of disposition of the property (if the property is disposed of to an arm's length person) or the fair market value of the property at the time the property is converted to a non-CTM use, exported, or disposed of (in any other case).

Information return – partnerships

ITA
127.49(18)

Where a recapture event described in subsection 127.49(16) that gives rise to recapture under subsection 127.49(17) occurs, the partnership is required to notify the Minister in prescribed form and manner on or before the day when a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period. Consequential amendments to subsections 152(4) and (4.01) will extend the period during which an assessment may be made in respect of the recapture of the CTM investment tax credit where the notification has not been filed in prescribed form and manner.

CTM investment tax credit – purpose

ITA
127.49(19)

Subsection (19) is an interpretative provision that describes the intended purpose of the CTM investment tax credit: to encourage bona fide investments of capital in Canada for qualified zero-emission technology manufacturing activities as described in section 5202 of the *Income Tax Regulations* and the extraction and processing of six key critical minerals as well as similar recycling activities and similar synthetic graphite activities.

Consequential amendments related to the Clean Hydrogen and Clean Technology Manufacturing Investment Tax Credits

Clause 1

Investment tax credit

ITA
12(1)(t)

The amount deducted from tax in respect of an investment tax credit may reduce the tax basis of a related expenditure — that is, the undepreciated capital cost of depreciable property, the adjusted cost base of certain interests in a partnership or a trust, the amount of deductible scientific research expenditures, or the amount of Canadian exploration expenses. To the extent that such reductions in tax basis do not take place, paragraph 12(1)(t) requires the amount of any credit claimed to be included in the taxpayer's income.

Paragraph 12(1)(t) is amended to reflect the introduction of the new clean hydrogen tax credit and the CTM investment tax credit, by adding references to new sections 127.48 and 127.49, under which the new credits are provided. References are also added to new subparagraphs 53(2)(c)(vi.3) and 53(2)(c)(vi.4), which apply cost base reductions to partners claiming the new credits.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 2

Deemed capital cost of certain property

ITA
13(7.1)

Section 13 provides a number of special rules related to the treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance (CCA) regulations.

Subsection 13(7.1) provides for reductions in the capital cost of a depreciable property equal to the amounts of deducted investment tax credits and certain other assistance from government in respect of the property.

Subsection (7.1) is amended by adding references to new sections 127.48 and 127.49, in the preamble and in paragraph (e). These amendments are consequential to the introduction of the new clean hydrogen tax credit and the CTM investment tax credit under sections 127.48 and 127.49.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Definitions

ITA
13(21)

“undepreciated capital cost”

Element I of the definition of “undepreciated capital cost” (UCC) reduces the UCC of the depreciable property of a class by the amount of any investment tax credit claimed in respect of a property which was in the class in the year where that credit was claimed subsequent to the disposition of the property. Because an investment tax credit claim reduces the balance of the class and may cause it to become negative, thereby giving rise to an income inclusion for a year which, in turn, may affect the amount of the credit which can be claimed, this calculation can become circular where the credit reduces UCC in the same year as that in which the credit is claimed. Accordingly, a reduction of the UCC of the class is required only for taxation years following the year in which a related credit is claimed.

Element I of the definition is amended, by adding references to new subsections 127.48(3) and 127.49(6), consequential to the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Loss restriction event

ITA
13(24)(a)

Subsection 13(24) is a special rule that applies where a corporation or partnership of which a corporation is a majority interest partner has acquired a depreciable property within the 12-month period ending immediately before a change of control of the corporation and the property was not used, or acquired for use, in a business carried on before that period. Under this rule, the capital cost of property acquired in the 12-month period is not included in computing undepreciated capital cost until after the change of control. Also, for the purposes of the investment tax credit and refundable investment tax credit rules in sections 127, 127.1, 127.44 and 127.45, the property will be considered not to have been acquired until after the change of control.

Where the property was disposed of and not reacquired before the change of control, the property is treated for capital cost allowance purposes as having been acquired immediately before the disposition. The purpose of this special rule is to prevent the transfer of depreciable property in contemplation of a change of control in order to reduce taxable income where the person acquiring control would not themselves be in a position to use the capital cost allowance or investment tax credit on the property.

Paragraph 13(24)(a) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 3

Definitions

ITA
18.2(1)

“adjusted taxable income”

A taxpayer’s adjusted taxable income is a measure of its earnings before interest, taxes, depreciation and amortization and is determined based on tax, rather than accounting, concepts. It is relevant to the proposed excessive interest and financing expense limitation rules.

Paragraph (l) of Variable B includes in adjusted taxable income an amount deducted under subsection 127(5) or (6), 127.44(3) or 127.45(6) that was not included in income under paragraph 12(1)(t) and was not included in calculating adjusted taxable income for a preceding year, to the extent to the amount is included in an amount determined under paragraph 13(7.1)(e), subparagraphs 53(2)(c)(vi) to (c)(vi.2) or (h)(ii), or for I in the definition “undepreciated capital cost” in subsection 13(21).

Paragraph (l) of Variable B is amended to add references to sections 127.48 and 127.49, and subparagraphs 53(2)(c)(vi.3) and (vi.4), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after September 30, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 4

Adjustments to cost base

ITA
53(1)(e)(xiii)

Subparagraph 53(1)(e)(xiii) provides additions to the adjusted cost base of a taxpayer’s partnership interest where investment tax credits have been recaptured (added to the taxpayer’s tax otherwise payable) as required by subsection 127(30) or 127.45(17) or section 211.92. Where an investment tax credit is recaptured, the adjusted cost base of a partnership interest is increased to reflect the amount recaptured.

Subparagraph 53(1)(e)(xiii) is amended to add a reference to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Amounts to be deducted

ITA
53(2)(c)

Paragraph 53(2)(c) provides for certain amounts that must be deducted in computing the adjusted cost base to a taxpayer of a partnership interest. New subparagraph 53(2)(c)(vi.3) is added to the paragraph to require that a deduction be made for that part of a clean hydrogen tax credit claimed by a taxpayer pursuant to subsection 127.48(2) which can reasonably be attributed to the taxpayer’s share of a partnership’s clean hydrogen tax credit. New subparagraph 53(2)(c)(vi.4) is added to the paragraph to require that a deduction be made for that part of a CTM investment tax credit claimed by a taxpayer pursuant to subsection 127.49(2) which can reasonably be attributed to the taxpayer’s share of a partnership’s CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 5

Resource expenses of limited partner

ITA
66.8(1)(a)(ii)(B)(I)

Subsection 66.8(1) provides for the reduction of a taxpayer's share of a partnership's resource expenditures incurred in a fiscal period in certain cases where the taxpayer's share of such resource expenditures exceeds the taxpayer's “at-risk amount” at the end of the fiscal period in respect of the partnership. Subclause 66.8(1)(a)(ii)(B)(I) provides a further adjustment in respect of the amount required by subsection 127(8) in respect of the partnership to be added in computing the investment tax credit of the taxpayer in respect of the fiscal period. The result is that investment tax credits are subtracted from the “at-risk amount” in making the determination in subsection 66.8(1).

Subclause 66.8(1)(a)(ii)(B)(I) is amended to adjust for amounts required by subsections 127.48(12) and 127.49(8) in respect of the partnership to be added in computing the clean hydrogen tax credit and the CTM investment tax credit of the taxpayer in respect of the fiscal period.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 6

Continuation of corporation

ITA
87(2)(qq.1)

Paragraph 87(2)(qq) treats the corporation formed on an amalgamation as the same corporation as, and a continuation of, each of its predecessors, for the purposes of computing the new corporation’s investment tax credits.

New paragraph 87(2)(qq.1) is added to provide the same treatment for the purposes of new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 7

Winding-up

ITA
88(1)(e.31)

Subsection 88(1)(e.3) allows the flow-through of existing investment tax credits to a parent corporation on a wind-up of the subsidiary. However, a parent corporation may also be subject to recapture or recovery of the new clean hydrogen tax credit and CTM investment tax credit.

New paragraph 88(1)(e.31) is added to ensure this result for the purposes of new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Winding-up of Canadian corporation

ITA
88(2)(c)

Subsection 88(2) applies to a winding-up of a Canadian corporation to which subsection 88(1) does not apply. Paragraph 88(2)(c) provides that paragraph 12(1)(t), which generally requires investment tax credits claimed in a preceding taxation year to be included in computing a taxpayer's income to the extent that they have not been applied to reduce certain related expenditures or amounts, may also apply in respect of investment tax credits claimed by the corporation in the year in which all or substantially all of its property is distributed on a winding-up.

Paragraph 88(2)(c) is amended to reflect the introduction of the new clean hydrogen tax credit and the CTM investment tax credit, by adding references to new sections 127.48 and 127.49. References are also added to new subparagraphs 53(2)(c)(vi.3) and 53(2)(c)(vi.4), which apply cost base reductions to partners claiming the new credits.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 8

Limited partnership losses

ITA
96(2.1)(b)(ii)

Subsection 96(2.1) deals with the losses of limited partnerships. This subsection generally limits the deduction by a limited partner of losses to the extent of the limited partner's "at-risk amount" in respect of a partnership at the end of the fiscal period of the partnership ending in that year.

Subparagraph 96(2.1)(b)(ii) further limits the deduction of limited partner losses, beyond the "at-risk amount" limitation, by the amount of investment tax credits required to be added by subsection 127(8), the amount of CCUS tax credits required to be added by subsection 127.44(11) and the amount of clean technology investment tax credits required to be added by subsection 127.45(8).

Subparagraph 96(2.1)(b)(ii) is amended to reduce limited partnership losses by the amount required to be added by new subsections 127.48(12) and 127.49(8), in respect of the new clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

At-risk amount

ITA
96(2.2)

Subsection 96(2.2) defines the "at-risk amount" of a limited partner for the purposes of determining deductible losses and tax credits allocated to the partner.

Subsection 96(2.2) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Limited partner

ITA
96(2.4)

Subsection 96(2.4) provides an extended definition of “limited partner” for the purpose of applying the limited partnership at-risk rules in subsection 96(2.2).

Subsection 96(2.4) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 9

Limited partnership losses

ITA
111(1)(e)(ii)(A)

Paragraph 111(1)(e) contains rules for carryforwards of limited partnership losses. In general, limited partnership losses may not exceed a limited partner’s at-risk amount, and amounts required by subsection 127(8) (investment tax credits of a partnership), amounts required by subsection 127.44(11) (CCUS tax credits of a partnership) and amounts required by subsection 127.45(8) (clean technology investment tax credits of a partnership) to be included in computing the tax credits of the taxpayer for the taxation year.

Clause 111(1)(e)(ii)(A) is amended to add references to new subsections 127.48(12) and 127.49(8), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit. The effect of this amendment is to reduce losses available to a limited partner by the limited partner’s share of a clean hydrogen tax credit or CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 10

Deemed deduction

ITA
127.44(3)

Subsection 127.44(3) of the Act deems the amount that is deemed to have been paid on account of tax payable under subsection 127.44(2) to have been deducted from the taxpayer's tax otherwise payable under Part I. This deeming rule applies for purposes of paragraph 12(1)(t), subsection 13(7.1), variable I of the definition "undepreciated capital cost" in subsection 13(21), subsection 53(2), section 127.45 and Part XII.7 of the Act. It causes these rules to operate in the same manner whether the CCUS credit is received as a refund or deducted against tax otherwise payable.

Subsection 127.44(3) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Special rules – adjustments

ITA
127.44(9)(b)(ii)(C)

Subsection 127.44(9) of the Act contains several special rules that apply for the purposes of the CCUS tax rules.

Paragraph (b) causes certain expenditures to be excluded from a taxpayer's qualified CCUS expenditures. In particular, clause 127.44(9)(b)(ii)(C) excludes any amount in respect of any expenditure incurred to acquire property for which a clean technology investment tax credit or a section 127 investment tax credit is claimed.

Clause 127.44(9)(b)(ii)(C) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit. This amendment is intended to ensure that any amount in respect of an expenditure on which a clean hydrogen tax credit or a CTM investment tax credit is claimed is also excluded from the taxpayer's qualified CCUS expenditures.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 11

Special rules - adjustments

ITA
127.45(5)

Subsection 127.45(5) sets out a number of restrictions on clean technology investment tax credit claims.

Under paragraph (a), the clean technology investment tax credit is not available for any property for which a clean technology investment tax credit was previously claimed by any person, or for which a CCUS tax credit in section 127.44 was deducted. In addition, amounts added to the cost of property by virtue of section 21 may not form part of the capital cost of a clean technology property for clean technology investment tax credit purposes.

Subparagraph 127.45(5)(a)(ii) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit. This amendment is intended to ensure that the clean technology investment tax credit is not available for any property for which a clean hydrogen tax credit or a CTM investment tax credit was deducted.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Deemed deduction

ITA
127.45(6)

Subsection 127.45(6) ensures that any amount deemed to have been paid on account of tax payable under subsection 127.45(2) is also deemed to have been deducted from the taxpayer’s tax otherwise payable under Part I. This deeming rule applies for the purpose of various provisions of the Act. It causes these rules to operate in the same manner whether the clean technology investment tax credit is received as a refund or is actually deducted against tax otherwise payable.

Subsection 127.45(6) is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 12

Definitions

ITA
127.46(1)

"designated work site"

A designated work site is a site where "specified property" of an incentive claimant is located.

The definition of "designated work site" in subsection 127.46(1) is amended to add a reference to the site of a "clean hydrogen project", as defined in new section 127.48, consequential on the introduction of the clean hydrogen tax credit.

"regular tax credit rate"

This term means the "specified percentage" as defined in subsections 127.44(1) and 127.45(1), as the case may be, and is the tax credit rate available for taxpayers who meet the labour requirements.

The definition of "regular tax credit rate" in subsection 127.46(1) is amended to add a reference to new subsection 127.48(1), consequential on the introduction of the clean hydrogen tax credit.

"specified tax credit"

For the purpose of the labour requirements in section 127.46, this term means a CCUS tax credit under section 127.44 or a clean technology investment tax credit under section 127.45.

The definition of "specified tax credit" in subsection 127.46(1) is amended to add a reference to the clean hydrogen tax credit under new section 127.48.

Reduced or regular rate

ITA
127.46(2)

Subsection 127.46(2) specifies that, in order to qualify for the "regular tax credit rate", an incentive claimant must elect in prescribed form and manner to meet the labour requirements. An incentive claimant that does not elect under subsection (2) is limited to claiming the CCUS tax credit and clean technology investment tax credit at the "reduced tax credit rate", which is ten percentage points less than the rate that would otherwise be available in respect of those credits under section 127.44 or 127.45, as applicable.

Where an incentive claimant elects to meet the labour requirements but fails to do so, the incentive claimant generally maintains its entitlement to the credit at the regular tax credit rate but will be required to take corrective measures or pay related penalties. An incentive claimant loses its entitlement to a credit at the regular tax credit rate if it fails to meet the labour requirements knowingly or in circumstances amounting to gross negligence. Subsections 127.46(6) and (7) specify the ordinary consequences of failing to meet the prevailing wage and apprenticeship requirements, respectively, in the absence of intentional conduct or gross negligence. Subsection (9) sets out the consequences of intentional conduct or gross negligence.

Subsection 127.46(2) is amended to add a reference to new section 127.48, consequential on the introduction of the clean hydrogen tax credit.

This amendment applies to specified property prepared or installed on or after November 28, 2023.

Clause 13

Definitions

ITA
127.47(1)

"clean economy allocation provision"

For the purposes of new section 127.47, "clean economy allocation provision" means any of subsections 127.44(11) (the partnership allocation provision for the CCUS tax credit) and 127.45(8) (the partnership allocation provision under the clean technology investment tax credit).

The definition of "clean economy allocation provision" is amended to add references to new subsections 127.48(12) and 127.49(8), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

"clean economy expenditure"

A "clean economy expenditure" means a qualified CCUS expenditure, as defined in and determined under section 127.44, and the capital cost of a clean technology property, as defined in and determined under section 127.45.

This definition serves to consolidate expenditures that qualify for the new clean economy tax credits. Under new subsection 127.47(5), government or non-government assistance received by a partner of a partnership in respect of a clean economy expenditure of the partnership is deemed to have been received by the partnership.

The definition of "clean economy expenditure" is amended to add references to the capital cost of eligible clean hydrogen property determined under new section 127.48 and the capital cost of CTM property determined under new section 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

“clean economy provision”

A “clean economy provision” means any of sections 127.44, 127.45, 127.46 and 127.47 and Part XII.7.

This definition allows the tiered partnership rule in new subsection 127.47(7) to apply for the purposes of all clean economy provisions.

The definition of “clean economy provision” is amended to add references to new sections 127.48 and 127.49, consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

“clean economy tax credit”

A “clean economy tax credit” means any of a CCUS tax credit, as defined in subsection 127.44(1), and a clean technology investment tax credit, as defined in subsection 127.45(1).

This definition serves to consolidate the new clean economy tax credits for the purposes of limiting the total clean economy tax credit amount based on reasonableness under new subsection 127.47(2) and, for limited partners, based on the partner’s at-risk amount under new subsection 127.47(3). It is also relevant for the purpose of apportioning any aggregate credit amounts back to each clean economy tax credit under new subsection 127.47(4).

The definition of “clean economy tax credit” is amended to add references to the clean hydrogen tax credit, as defined in new subsection 127.48(1), and the CTM investment tax credit, as defined in new subsection 127.49(1).

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 14

Assessment

ITA
152(1)(b)

Section 152 contains rules relating to assessments and reassessments of tax, interest and penalties payable by a taxpayer. Subsection 152(1) lists certain refunds and deemed payments on account of tax that are to be determined in the course of assessment of tax.

Consequential on the introduction of the new refundable clean hydrogen tax credit under section 127.48 and the CTM investment tax credit under section 127.49, paragraph 152(1)(b) is amended to add references to new subsections 127.48(2) and 127.49(2).

Subsection 127.48(2) deems an amount equal to the clean hydrogen tax credit to have been paid on account of tax payable by a qualifying taxpayer.

Subsection 127.49(2) deems an amount equal to the CTM investment tax credit to have been paid on account of tax payable by a qualifying taxpayer.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Assessment and reassessment

ITA
152(4)(b.92)

New subsection 127.48(24) requires taxpayers (and partnerships because of subsection 127.48(25)) that trigger recapture under subsection 127.48(22) to notify the Minister in prescribed form and manner. Notice must be filed by a taxpayer, for a recapture event that occurred in the year, on or before the taxpayer's filing-due date for the year.

Subsection 152(4) is amended to add new paragraph 152(4)(b.92), which allows the Minister to reassess a taxpayer outside the normal reassessment period when either the taxpayer has failed to notify the Minister in prescribed form and manner, or a partnership of which the taxpayer is a member has failed to notify the Minister in prescribed form and manner, of a recapture amount or event described in subsections 127.48(21), (22) or (25) to (28). When this paragraph applies, the Minister may reassess the taxpayer within four years (in the case of a corporation other than a Canadian-controlled private corporation) or three years (in any other case) from the date the form is filed. The Minister's ability to reassess under this paragraph is limited to reassessments related to the application of the clean hydrogen tax credit recapture rules.

This amendment comes into force after March 27, 2023.

ITA
152(4)(b.93)

New subsections 127.49(15) and (18) require taxpayers and partnerships that could trigger recapture events described in subsections 127.49(11) to (14), or (16) and (17), including a tax-deferred transfer of CTM property from a taxpayer to a related taxable Canadian corporation under subsection 127.49(13), to notify the Minister in prescribed form and manner. Notice must be filed by a taxpayer, for a recapture event that occurred in the year, on or before the taxpayer's filing-due date for the year. Notice must be filed by a partnership, for a recapture event that occurred during its fiscal period, on or before the day when a return is required by section 229 of the *Income Tax Regulations* to be filed in respect of the period.

Subsection 152(4) is amended to add new paragraph 152(4)(b.93), which allows the Minister to reassess a taxpayer outside the normal reassessment period when either the taxpayer has failed to notify the Minister in prescribed form and manner, or a partnership of which the taxpayer is a member has failed to notify the Minister in prescribed form and manner, of a recapture event described in subsections 127.49(11) to (14), or (16) and (17). When this paragraph applies, the Minister may reassess the taxpayer within four years (in the case of a corporation other than a Canadian-controlled private corporation) or three years (in any other case) from the date the form is filed. The Minister’s ability to reassess under this paragraph is limited to reassessments related to the application of the CTM investment tax credit recapture rules.

This amendment comes into force on January 1, 2024.

Extended period of assessment

ITA
152(4.01)(b)(xiii)

Subsection 152(4.01) limits the matters in respect of which the Minister can reassess when a reassessment to which paragraph 152(4)(a), (b), (b.1) or (b.5) to (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year.

Consequential on the addition of paragraph 152(4)(b.92), subparagraph 152(4.01)(b)(xiii) is added with a reference to that paragraph. As such, a reassessment for a taxation year, made by the Minister after the normal reassessment period as a result of paragraph 152(4)(b.92), is limited to the recapture of the clean hydrogen tax credit.

This amendment comes into force after March 27, 2023.

ITA
152(4.01)(b)(xiv)

Subsection 152(4.01) limits the matters in respect of which the Minister can reassess when a reassessment to which paragraph 152(4)(a), (b), (b.1) or (b.5) to (c) applies is made beyond the normal reassessment period for a taxpayer in respect of a taxation year.

Consequential on the addition of paragraph 152(4)(b.93), subparagraph 152(4.01)(b)(xiv) is added with a reference to that paragraph. As such, a reassessment for a taxation year, made by the Minister after the normal reassessment period as a result of paragraph 152(4)(b.93), is limited to the recapture of the CTM investment tax credit.

This amendment comes into force on January 1, 2024.

Clause 15

Reduced instalments

ITA
157(3)(e)

Section 157 requires a corporation to pay instalments of its total tax payable under Parts I, VI, VI.1 and XIII.1 of the Act. Paragraph 157(3)(e) allows a corporation to reduce its monthly installments by certain refundable amounts under the Act.

Paragraph 157(3)(e) is amended to add references to new subsections 127.48(2) and 127.49(2), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Amount of payment – three-month period

ITA
157(3.1)(c)

Subsection 157(1.1) allows small Canadian-controlled private corporations that meet certain conditions to pay their annual tax liability by quarterly instalments instead of monthly.

Subsection 157(3.1) allows these corporations to reduce each quarterly instalment by 1/4 of the amount of certain tax refunds. Paragraphs 157(3.1)(b) and (c) list these tax refunds.

Paragraph 157(3.1)(c) is amended to add references to new subsections 127.48(2) and 127.49(2), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Clause 16

False statements or omissions

ITA
163(2)(d.1)

Subsection 163(2) imposes a penalty where a taxpayer knowingly, or in circumstances amounting to gross negligence, participates in or makes a false statement or omission for the purposes of the Act. Paragraph 163(2)(d.1) is amended to apply where false information is provided in respect of an amount claimed under new subsection 127.48(2) (the clean hydrogen tax credit) or 127.49(2) (the CTM investment tax credit).

Clause 17

Exception

ITA
220(2.2)

Subsection 220(2.2) provides that the Minister's discretion to waive a requirement to file a prescribed form, receipt or other document, or to provide prescribed information, does not extend to such items filed on or after the day specified for the purposes of subsection 37(11),paragraph (m) of the definition of "investment tax credit" in subsection 127(9) or subsection 127.44(17) or 127.45(3).

Subsection 220(2.2) is amended to extend the restriction on Ministerial discretion to waive filing requirements by adding references to new subsections 127.48(4) and 127.49(3), consequential on the introduction of the clean hydrogen tax credit and the CTM investment tax credit.

This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Concessional Loans

Clause 1

Income inclusions

ITA
12(1)(x)

Paragraph 12(1)(x) provides that certain inducements, reimbursements, contributions, allowances and assistance received by a taxpayer in the course of earning income from a business or property must be included in income "to the extent that" the particular amounts have not otherwise been included in income or reduced the cost of a property or the amount of an outlay or expense.

New subparagraph 12(1)(x)(ix) provides that the income inclusion does not apply to the extent the amount is an "excluded loan" (now defined in subsection (11)).

New subparagraph 12(1)(x)(ix) comes into force on November 21, 2023.

Definitions

ITA
12(11)

“excluded loan”

The new definition “excluded loan” applies for the purposes of new subparagraph 12(1)(x)(ix), new paragraph 13(7.1)(b.2) and the amended definition of “government assistance” in subsection 127(9). For the purposes of these provisions, excluded loans are effectively excluded from treatment as assistance from government.

To satisfy the definition, a loan must be evidenced in writing and must not be a forgivable loan.

Paragraph (a) of the definition is satisfied if the loan is from a payer that is a government, municipality or other public authority in Canada. Alternatively, it would be satisfied if the loan is from a person resident in Canada or a Canadian partnership and it is reasonable to conclude that the payer would not have made the loan but for the direct or indirect receipt by the payer of amounts from a government, municipality or other public authority in Canada. This is similar to the provision in clause 12(1)(x)(i)(C), but is restricted to Canadian intermediaries.

Paragraph (b) requires that, at the time the loan was made, bona fide arrangements were made for repayment of the loan within a reasonable time. For example, an unsecured fifty-year loan would generally not be considered to have bona fide reasonable repayment terms because this characterization would likely be inconsistent with commercial reality of the arrangement.

Paragraph (c) provides that the excluded loan must be used for the purpose of earning income from a business or property.

The new definition of “excluded loan” comes into force on November 21, 2023.

Clause 2

Deemed capital cost of certain property

ITA
13(7.1)

Section 13 provides a number of special rules related to the treatment of depreciable property. Generally, these rules apply for the purposes of sections 13 and 20 and the capital cost allowance (CCA) regulations.

Subsection 13(7.1) provides for reductions in the capital cost of a depreciable property equal to the amounts of deducted investment tax credits and certain other assistance from government in respect of the property, but does not apply to amounts described in paragraph (a), (b) or (b.1).

Subsection (7.1) is amended by adding new paragraph (b.2), which provides that an “excluded loan” (defined in subsection 12(11)) will also not reduce the capital cost of a related depreciable property.

This amendment comes into force on November 21, 2023.

Clause 3

Definitions

ITA
127(9)

“government assistance”

The definition of “government assistance” in subsection 127(9) is relevant for various provisions in section 127 that require the investment tax credit to be calculated by reference to the cost of property or the amount of an expenditure made net of any grant, inducement or other assistance received in respect of the cost of the property or the expenditure. The definition is also relevant for the purposes of the clean economy tax credits in sections 127.45, 127.48 and 127.49.

The definition is amended in two principal ways.

First, the definition is amended to exclude the clean hydrogen tax credit in section 127.48 and the CTM investment tax credit in section 127.49. This amendment is intended to ensure that the investment tax credits under section 127 (such as the Atlantic Investment Tax Credit) are not reduced by amounts received in respect of the clean hydrogen tax credit and the CTM investment tax credit. This amendment also seeks to ensure that the clean hydrogen tax credit itself is not reduced where the clean hydrogen tax credit is deducted and that the CTM investment tax credit itself is not reduced where the CTM investment tax credit is deducted. This amendment applies after March 27, 2023 with respect to the clean hydrogen tax credit and after December 31, 2023 with respect to the CTM investment tax credit.

Second, the definition is amended to provide that an “excluded loan” (as defined in subsection 12(11)) is not government assistance. This amendment seeks to ensure that bona fide loans with reasonable repayment terms from public authorities in Canada will generally not be considered government assistance.

This amendment comes into force on November 21, 2023.

Short-Term Rentals

Clause 1

Definitions

ITA
67.7(1)

New subsection 67.7(1) introduces definitions that are relevant for the expense deduction denial rule in new subsection 67.7(2) related to non-compliant short-term rentals.

“non-compliant amount”

The definition “non-compliant amount” is relevant for determining the amount of the outlays or expenses in respect of a short-term rental which cannot be deducted in computing the income earned in the year from the short-term rental. A non-compliant amount for a short-term rental for a taxation year is determined by multiplying the total outlays and expenses incurred for a residential property in respect of its use as a short-term rental in the taxation year by a fraction. The fraction is the number of days in the taxation year that the residential property is a non-compliant short-term rental divided by the number of days in the taxation year that the residential property is a short-term rental. If a taxpayer owns multiple short-term rentals, the “non-compliant amount” must be calculated separately with respect to each short-term rental.

“non-compliant short-term rental”

There are two reasons that a short-term rental could be non-compliant. First, a non-compliant short-term rental includes a short-term rental that is located in a province or municipality that does not permit the operation of a short-term rental at the location of the short-term rental. Second, a short-term rental is a non-compliant short-term rental if it does not comply with all registration, licensing and permit requirements, if any, that apply in the province or municipality in which the short-term rental is located.

“residential property”

A residential property is all or any part of a house, apartment, condominium unit, cottage, mobile home, trailer, houseboat or other property, the use of which is permitted for residential purposes under the applicable laws of the province or municipality in which the residential property is located.

“short-term rental”

A short-term rental is a residential property that is offered for rent for a period of less than 90 consecutive days.

Non-deductibility of expenses – short-term rental

ITA
67.7(2)

Income from the operation of a short-term rental is taxable. In calculating the income of a taxpayer from a business or property, the *Income Tax Act* generally permits the deduction of reasonable expenses incurred in the ordinary course of earning that income. New subsection 67.7(2) prohibits the deduction of any amount for an outlay or expense in respect of a short-term rental to the extent that it is a "non-compliant amount".

Both "short-term rental" and "non-compliant amount" are defined in new subsection 67.7(1).

Deemed compliance

ITA
67.7(3)

New subsection 67.7(3) is a transitional relieving rule applicable in respect of the 2024 taxation year.

This subsection provides that a short-term rental of a person or partnership is deemed not to be a non-compliant short-term rental for the person or partnership's 2024 taxation year if

- the short-term rental is located in a province or municipality that requires registration, a license or a permit to operate as a short-term rental; and
- the short-term rental complies with all registration, licensing and permit requirements on December 31, 2024.

The effect of deeming a short-term rental not to be a non-compliant short-term rental for the person or partnership's 2024 taxation year means that the numerator in the formula for determining the non-compliant amount in respect of the short-term rental would be zero for the 2024 taxation year. As such, the non-compliant amount of the short-term rental would also be zero.

This rule would apply where, for example, an individual operates a short-term rental throughout 2024 in a jurisdiction that requires registration. The individual only obtains the proper registration in December 2024. This rule would deem the short-term rental not to be a non-compliant short-term rental throughout 2024 since the proper registration was in place on December 31, 2024. Accordingly, subsection (2) would not apply to deny any expenses in 2024 in respect of the short-term rental.

As another example, assume a corporation has a June 30th year-end. The corporation obtains the proper registration as of October 1, 2024 (and the registration remains in place as of December 31, 2024). The short-term rental would be deemed not to be a non-compliant short-term rental throughout the corporation's taxation year ending on June 30th, 2024. However, it would still be a non-compliant short-term rental for the portion of the corporation's 2025 taxation year prior to it obtaining the proper registration (i.e., from July to September 2024).

Reassessments

ITA
67.7(4)

New subsection 67(4) empowers the Minister of National Revenue to reassess taxation years in order to give effect to the expense deduction denial rule in new subsection 67.7(2), without regard to the normal time limits on reassessments.

This amendment applies to expenses incurred after 2023.

International Shipping

Clause 1

Ship of resident corporations

ITA
81(1)

Subsection 81(1) of the Act provides that certain amounts are not included in income and therefore are exempt from income tax. Paragraph 81(1)(c) generally provides an exemption for a non-resident's income from international shipping. International shipping companies managed in Canada can access this exemption by being deemed non-resident if they meet the conditions in subsection 250(6). One of the conditions in subsection 250(6) is incorporation outside of Canada.

Canada recently introduced legislative proposals to implement the new *Global Minimum Tax Act* (GMTA) as part of a multilaterally agreed framework for a 15-per-cent global minimum tax. The GMTA contains an exclusion for international shipping income in accordance with the multilaterally agreed framework.

Subsection 81(1) of the Act is amended to add new paragraph 81(1)(c.1) which makes the exemption for income from international shipping available to certain Canadian resident corporations. This will allow international shipping companies managed in Canada to access the exemption without incorporating outside of Canada, as well as allowing international shipping companies that are subject to the GMTA to access both the exemption in the Act and the exclusion in the GMTA.

To benefit from the exemption in new paragraph 81(1)(c.1), a corporation must be resident in Canada if the Act were read without reference to subsection 250(4). That is, it must be resident in Canada under the general common law test of central management and control, and not solely due to incorporation in Canada. New paragraph 81(1)(c.1) also requires that the corporation meet the conditions set out in paragraphs 250(6)(a) and (b). More specifically, its principal business in a taxation year must consist of the operation of ships used primarily in transporting passengers or goods in international traffic and all or substantially all of its gross revenue for the year must be from the operation of ships in transporting such passengers and goods. Holding eligible interests in entities that meet those conditions is also taken into account for the purposes of the principal business and gross revenue tests in paragraphs 250(6)(a) and (b).

The deeming rule in subsection 250(6) will continue to be available to qualifying taxpayers that elect for it to apply. For more information regarding 250(6), see the notes accompanying that subsection.

This amendment applies to taxation years that begin on or after December 31, 2023.

Clause 2

Residence of international shipping corporation

ITA
250(6)

Subsection 250(6) deems international shipping companies that are incorporated outside of Canada, and that meet certain conditions, to be resident in the country in which they are incorporated and not to be resident in Canada. This allows shipping companies that are incorporated outside of Canada, and that would otherwise be resident in Canada under the general common law test of central management and control, to be deemed non-resident so that the exemption for international shipping income in paragraph 81(1)(c) can apply.

Subsection 250(6) is amended to add new paragraph (d) which provides an additional condition for subsection 250(6) to apply. Under new paragraph 250(6)(d), a corporation must file an election in the form and manner prescribed by the Minister of National Revenue in respect of a year to be deemed non-resident for that year. Since the exemption in new paragraph 81(1)(c.1) is generally available for international shipping companies resident in Canada, new paragraph (d) ensures that these companies may remain resident in Canada and obtain the exemption in new paragraph 81(1)(c.1) even if they are incorporated outside of Canada. Canadian resident international shipping companies that are incorporated outside of Canada and that prefer to access the exemption in 81(1)(c) may make the election and continue to be deemed non-resident.

For more information regarding new paragraph 81(1)(c.1), see the notes accompanying subsection 81(1).

Service providers

ITA
250(6.03)

Subsections 250(6.02) and (6.03) facilitate the use of single-purpose entities that provide services within an international shipping group. These provisions deem certain ancillary services provided by a member of an international shipping group in support of core shipping activities carried on by members of the group to qualify as international shipping activities, provided certain conditions set out in subsection 250(6.02) are met. If these conditions are met, subsection (6.03) deems the service provider to have international shipping as its principal business and to have earned gross revenue from international shipping. As a result, the service provider would meet the conditions in paragraphs 250(6)(a) and (b) which would allow it to potentially access the exemption in paragraph 81(1)(c).

Subsection 250(6.03) is amended in order to apply for the purposes of new paragraph 81(1)(c.1). As a result, service providers that meet the conditions in subsection 250(6.02) will meet the conditions in paragraphs 250(6)(a) and (b) for the purposes of applying the new exemption in paragraph 81(1)(c.1). See the notes accompanying new paragraph 81(1)(c.1) for more information.

Definitions

ITA
250(6.04)

Subsection 250(6.04) defines certain terms for the purposes of subsections 250(6) to (6.03). The term "eligible entity" is used in these provisions to take into account holding entities and tiers of ownership within an international shipping group.

The definition of "eligible entity" is amended by introducing paragraph (a.1) which expands the term to include certain corporations resident in Canada that meet the conditions set out in paragraphs 250(6)(a) and (b). As a result of this change, a corporation that meets the conditions for the exemption in new paragraph 81(1)(c.1) will be considered an "eligible entity" for purposes of subsections 250(6) to (6.03).

Consistent with new paragraph 81(1)(c.1), new paragraph (a.1) only includes corporations that would be resident in Canada if the Act were read without reference to subsection 250(4). That is, a corporation must be resident in Canada under the general common law-test of central management and control (and not solely due to incorporation in Canada) in order to be an "eligible entity" under new paragraph (a.1). For more information see the commentary on new paragraph 81(1)(c.1).

These amendments apply to taxation years that begin on or after December 31, 2023.