Explanatory Notes Relating to the Income Tax Act and Other Legislation

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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 are provided to assist in an understanding of legislative proposals relating to the *Income Tax Act* and other legislation. These explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament, taxpayers and their professional advisors.

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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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Part 1 – Amendments to the *Income Tax Act* and Other Legislation

Amendments to the *Income Tax Act* (the “Act” or “ITA”)

Clause 2

Reasonable standby charge

ITA
6(2)

Subsection 6(2) provides rules concerning the calculation of a reasonable standby charge which must be included in computing an employee's income where an employer-provided automobile is made available to the employee. Currently, the standby charge may be reduced where personal use of the employer-provided automobile is less than 1,667 kilometres per month and the automobile is used primarily in connection with or in the course of the office or employment.

Elements B and D in the formula contained in the French version of subsection 6(2) are amended to better align the English and French versions.

Clause 3

Non-arm’s length relationship with trusts

ITA
7(1.11)

Section 7 of the Act contains provisions dealing with agreements under which an employee of a corporation or mutual fund trust may acquire securities of the employer or of an entity that deals at non-arm's length with the employer.

Subsection 7(1.11) deems a mutual fund trust to deal at non-arm's length with a corporation, for the purpose of section 7, only if the trust controls the corporation. Thus, in any other situation in which a corporation and a mutual fund trust deal at non-arm's length, the provisions of section 7 will not apply.

Subsection 7(1.11) is amended to expand the scope of the subsection to include a corporation and a mutual fund trust where the corporation owns securities that would give it more than 50% of the votes that could be cast at a meeting of unitholders of the trust. The securities to which such voting rights are attached would not be limited to units of the trust and could thus include, for example, securities that are exchangeable into units of the trust.

This amendment applies to rights exercised or disposed of after 2004 under agreements to sell or issue securities made after 2002.

Disposition of newly acquired security

ITA
7(1.31)

Subsection 7(1.31) contains a special provision (i.e., no cost averaging on disposition of securities) that applies when a taxpayer disposes of a security that is identical to other securities owned by the taxpayer within thirty days following the exercise of an employee stock option. The provision deems a particular security acquired on the exercise of the option, as designated by the taxpayer, to be the security that is the subject of the disposition. This allows an individual to exercise a stock option and sell the underlying share shortly thereafter without realizing a gain due to cost averaging (which could occur if the taxpayer held other securities with a lower cost base prior to exercising the option).

Subsection 7(1.31) is amended to expand the scope to include securities that are acquired on the surrender of an employee stock option.

This amendment comes into force on January 1, 2023.

Clause 4

Sales expenses

ITA
8(1)(f)(vi)

Paragraph 8(1)(f) permits a commissioned salesperson to deduct amounts expended for the purpose of earning income from employment, where the salesperson was not in receipt of a non-taxable travel allowance and was required by the contract of employment to pay his or her expenses and carry on the duties of employment away from the employer's place of business.

The French version of subparagraph 8(1)(f)(vi) is amended to better align the English and French versions.

Transport employee’s expenses

ITA
8(1)(g)

Paragraph 8(1)(g) permits the deduction of certain meal and lodging expenses by taxpayers who are employed by a person whose principal business was passenger, goods, or and passenger and goods transport.

The French version of the post amble of paragraph 8(1)(g) is amended to better align the English and French versions.

Dues and other expenses of performing duties

ITA
8(1)(i)

Paragraph 8(1)(i) permits an employee to deduct certain dues and other employment expenses that are paid by the employee.

The French version of paragraph 8(1)(i) is amended to better align the English and French versions.

Clause 5

Investment tax credit

ITA
12(1)(t)

The amount deducted from tax in respect of an investment tax credit (ITC) 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 ITC, 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 ITC.

Inducement, reimbursement, etc.

ITA
12(1)(x)(ix)

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 was received by the taxpayer as an "excluded loan" (now defined in subsection (11)).

New subparagraph 12(1)(x)(ix) comes into force on January 1, 2020 and applies to loans made after December 31, 2019.

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 "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 January 1, 2020 and applies to loans made after December 31, 2019.

Clause 6

COVID — time not counted

ITA
13(4.01)

Subsection 13(4) allows a taxpayer, who is required under subsection 13(1) to include in income recaptured depreciation resulting from the disposition of certain depreciable property, to elect to defer tax on the recapture to the extent that the taxpayer reinvests the proceeds of disposition in a replacement property within a certain period of time.

New subsection 13(4.01) provides that for the purposes of computing time under subsection 13(4), the period of time between March 15, 2020 and March 12, 2022 will not be counted. This amendment addresses challenges in purchasing replacement properties resulting from the global COVID-19 pandemic.

This amendment comes into force on March 15, 2020.

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 ITCs 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 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 ITC 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 ITC.

Subsection (7.1) is also amended by adding new paragraph (b.2), which provides that an amount received as 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 January 1, 2020 and applies to loans made after December 31, 2019.

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 ITC 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 ITC 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 ITC.

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 ITC.

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 ITC and refundable ITC 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 ITC 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 ITC.

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 ITC.

Clause 7

Meaning of capital gain and capital loss

ITA
39(1)(c)(iv)(C)

A taxpayer's business investment loss for a taxation year is determined under paragraph 39(1)(c).

Consequential on the replacement of the *Winding-up Act* with the *Winding-up and Restructuring Act*, clause 39(1)(c)(iv)(C) is amended to change the reference from the *Winding-up Act* to the *Winding-up and Restructuring Act*.

Clause 8

COVID — time not counted

ITA
44(1.01)

Subsection 44(1) allows a taxpayer who incurs a capital gain on the disposition of certain capital property to defer tax on the gain to the extent that the taxpayer reinvests the proceeds in a replacement property within a certain period of time.

New subsection 44(1.01) provides that for the purposes of computing time under subsection 44(1), the period of time between March 15, 2020 and March 12, 2022 will not be counted. This amendment addresses challenges in purchasing replacement properties resulting from the global COVID-19 pandemic.

This amendment comes into force on March 15, 2020.

Clause 9

Debts established to be bad debts and shares of bankrupt corporation

ITA
50(1)(b)(ii)

Subsection 50(1) provides that certain debt owed to a taxpayer is deemed to be disposed of by the taxpayer for no proceeds and to have been reacquired by the taxpayer at a cost of nil. This rule applies to debts established to have become bad debts by a taxpayer. Subsection 50(1) also applies to certain shares owned by a taxpayer, where the taxpayer so elects.

Subparagraph 50(1)(b)(i) treats a taxpayer as having disposed of a share of the capital stock of a corporation owned at the end of the taxation year in which it becomes bankrupt under the *Bankruptcy Act* and as having reacquired it at a nil cost immediately thereafter. Thus, a taxpayer is allowed to recognize a capital loss on the shares of a bankrupt corporation even though he may not have disposed of them. Amounts subsequently received on the actual disposition of the share are taxed as capital gains.

Subparagraph 50(1)(b)(ii) extends this rule to shareholders of corporations that are governed by the *Winding-up Act* such as banks and insurance corporations, rather than by the *Bankruptcy Act*. For the rule to apply, the corporation must be insolvent under the *Winding-up Act* and subject to a winding-up order made thereunder.

Consequential on the replacement of the *Winding-up Act* with the *Winding-up and Restructuring Act*, subparagraph 50(1)(b)(ii) is amended to change the reference from the *Winding-up Act* to the *Winding-up and Restructuring Act*.

Clause 10

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 ITCs 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 ITC 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 ITC.

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 ITC.

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 ITC 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 ITC.

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 ITC.

If Bill C-59 receives royal assent, paragraph 53(2)(c)(viii.1) will be renumbered as paragraph 53(2)(c)(vi.3) (see subclause 80(16)) and paragraph 53(2)(c)(viii.2) will be renumbered as paragraph 53(2)(c)(vi.4) (see subclause 80(17)).

Clause 11

Definitions

ITA
54

“exemption threshold”

The definitions “exemption threshold”, “flow-through share class of property” and “fresh-start date” were introduced to allow the exemption from capital gains tax on donations of shares of a class in which a taxpayer acquired shares issued pursuant to a flow-through share agreement entered into on or after March 22, 2011 only to the extent that cumulative capital gains in respect of dispositions of shares of that class exceed the original cost of the flow-through shares.

Paragraph (b) of element B of the definition of exemption threshold is amended to correct a typo in the term “flow-through share”.

“fresh-start date”

The fresh-start date of a taxpayer in respect of a flow-through share class of property is, except in the case of a partnership interest, the day that is the later of March 22, 2011, and the last day, if any, on which the taxpayer disposed of a property that is included in the flow-through share class of property and at the end of which the taxpayer held no such property.

The definition “fresh-start date” applies for the purpose of calculating a taxpayer's “exemption threshold” (as defined in section 54) in respect to a particular flow-through share class of property.

Paragraph (b) of the definition of fresh-start date is amended to correct a typo in the term “flow-through share”.

Clause 12

Amounts to be included in income for year

ITA
56(1)(a)(iv)

Paragraph 56(1)(a) includes in the income of a taxpayer certain amounts received in a taxation year. Subparagraph 56(1)(a)(iv) requires unemployment benefits to be included in the income of the beneficiary.

Subparagraph 56(1)(a)(iv) of the Act is amended to replace the reference to the repealed *Unemployment Insurance Act* with the *Employment Insurance Act*.

Clause 13

Transfer of superannuation benefits

ITA
60(j)(iv)

Paragraph 60(j) allows a taxpayer a special deduction in respect of amounts paid, in a year or within 60 days after the end of the year, to registered pension plans and registered retirement savings plans. The deduction available to a taxpayer under this paragraph is generally limited to lump sum payments received by a taxpayer from a non-registered pension plan attributable to services rendered while the taxpayer or the taxpayer's spouse was not resident in Canada and included in computing the taxpayer's income.

Subparagraph 60(j)(iv) is amended by adding clause (C), which refers to a registered retirement income fund under which the taxpayer is the annuitant. Accordingly, an amount transferred from a foreign pension plan to a registered retirement income fund of the taxpayer may be eligible for an offsetting deduction under paragraph 60(j) (if not otherwise deducted under paragraph 60(l)) to the extent the transfer amount is included in the taxpayer's income.

This amendment comes into force on August 4, 2023.

Repayment of pension or benefits

ITA
60(n)

Paragraph 60(n) provides a deduction for repayments of certain benefits included in income.

Paragraph 60(n) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

Amounts repaid in subsequent years

ITA
60(n.2)

Paragraph 60(n.1) provides a deduction for repayments of certain benefits included in income, but only in the year of repayment. If the repayment (e.g., of an overpaid pension benefit) is made in the same year that the overpaid benefit was received, the deduction can generally offset the income inclusion. But if the repayment year is after the year in which the benefit was received and included in income, the taxpayer might not have sufficient income in the year of repayment to fully utilize the available deduction.

Paragraph 60(n.2) is added to the Act to allow a taxpayer to deduct a repaid amount for the taxation year in which the overpaid benefit was received and included in computing the taxpayer's income under any of subparagraphs 56(1)(a)(i), (ii), (iv), (vi) or (vii) or paragraph

56(1)(r), to the extent that the repaid amount exceeds the taxpayer's income in the year of repayment and is not otherwise deducted in computing the taxpayer's taxable income.

This amendment applies to the 2019 and subsequent taxation years.

Amounts included under s. 146.2(6)

ITA
60(r)

Paragraph 60(r) provided for the deduction of amounts permitted under the previous section 146.2 which set out the rules relating to registered home ownership savings plans (“RHOSPs”).

Given the elimination of the RHOSP program in 1985, paragraph 60(r) is repealed.

EI benefit repayment

ITA
60(v.1)

Paragraph 60(v.1) of the Act provides a deduction where a taxpayer repays a benefit received under Part VII of the *Unemployment Insurance Act* or Part VII of the *Employment Insurance Act*.

Paragraph 60(v.1) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

Clause 14

Reductions in renunciations

ITA
66(12.73)(e)

Subsection 66(12.73) provides that, where a corporation purports to renounce amounts under subsection 66(12.6), (12.601) or (12.62) to one or more persons in excess of the amount that the corporation was entitled to renounce, the corporation must reduce the amount so renounced and file a statement with the Minister of National Revenue indicating the adjustments made. The statement must be filed within 30 days after notice in writing is forwarded to the issuing corporation by the Minister. The effect of the statement is to reduce the amount originally renounced by the excess identified in the statement.

Paragraph 66(12.73)(e) provides that where a corporation fails in the statement to apply the excess fully to reduce one or more purported renunciations, the Minister may at any time reduce the total amount purported to be renounced by the corporation by the amount of the unapplied excess. The amount purported to have been renounced by the corporation to a person is deemed, after that time, always to have been reduced by the amount of the unapplied excess allocated by the Minister in respect of that person.

To assist the Minister in reassessing a person in accordance with subsection 66(12.73), the Minister is provided an additional 3 years to reassess the person after the normal reassessment period pursuant to subparagraph 152(4)(b)(v).

The purpose of subsection 66(12.73) and subparagraph 152(4)(b)(v) are to assist the Minister in reassessing taxpayers who have claimed excessive deductions under subsections 66(12.6), (12.601) or (12.62) in respect of expenditures purported to have been renounced by a corporation to such taxpayers that exceed the amounts that the corporation was entitled to renounce.

Paragraph 66(12.73)(e) is amended to clarify that, if the corporation has not fully applied the excess amount in a statement filed with the Minister, the Minister may apply the excess fully to reduce the amount of one or more purported renunciations regardless of whether the corporation failed to fully apply the excess amount in the filed statement or failed to file the statement at all. This amendment to paragraph 66(12.73)(e) reverses the effect of a 2022 decision of the Tax Court of Canada, in which the Court held that the extended reassessment period provided by subparagraph 152(4)(b)(v) does not apply if a corporation fails to file a statement under subsection 66(12.73).

This amendment comes into force on August 4, 2023.

Clause 15

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 ITC of the taxpayer in respect of the fiscal period. The result is that ITCs 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 ITC 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 ITC.

Clause 16

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 deductions which would not be deductible 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 amount that would otherwise be deductible in the absence of new subsection 67.7(2) 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 rented or 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 by 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.

Clause 17

Ship of resident corporations

ITA
81(1)(c.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.

Certain government funded trusts

ITA
81(1)(g.3)(i)

Paragraph 81(1)(g.3) is relevant to the taxation of trusts established under the following agreements:

- the 1986–1990 Hepatitis C Settlement Agreement, an agreement executed by the federal, provincial and territorial governments in order to provide compensation for certain individuals infected with the Hepatitis C virus;
- the Pre-1986/Post-1990 Hepatitis C Settlement Agreement;
- the May 8, 2006 Indian Residential Schools Settlement Agreement;
- the September 15, 2021 agreement relating to long-term drinking water quality for impacted First Nations; and
- the January 18, 2023 Indigenous residential schools settlement agreement.

For a trust established under these agreements, as long as no contribution to the trust, other than contributions provided for under the agreement, is made before the end of a taxation year of the trust, the effect of paragraph 81(1)(g.3) is to exempt the trusts income from income taxation for that taxation year.

Paragraph 81(1)(g.3) is amended to add a reference to an agreement entered into by Her Majesty in Right of Canada effective dated effective as of April 19, 2023, in respect of the class actions relating to the First Nations Child and Family Services, Jordan's Principle and Trout Class.

This amendment comes into force on January 1, 2024.

Clause 18

Rules applicable

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 ITCs.

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 ITC.

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 ITC.

Clause 19

Winding-up

ITA
88(1)(e.31)

Subsection 88(1)(e.3) allows the flow-through of existing ITCs 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 ITC.

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 ITC.

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 ITC.

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 ITCs 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 ITCs 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 ITC, 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 ITC.

Clause 20

Late designation — transitional ERDTOH

ITA
89(14.2)

New subsection 89(14.2) provides that a corporation that has not made an eligible dividend designation in respect of a taxable dividend that it has paid can make a late eligible dividend designation, subject to certain conditions. First, the corporation must make the late designation within the six-year period immediately following the day on which the designation was first required to be made. Second, the designation must be made as a consequence of the application of new subparagraph (a)(iii) of the "eligible refundable dividend tax on hand" (ERDTOH) definition in subsection 129(4), which applies in respect of certain eligible dividends received during the transition to the ERDTOH regime. Third, the Minister must be of the opinion that accepting the late designation would be just and equitable in the circumstances.

Clause 21

Determination of certain components of foreign accrual property income

ITA
95(2)(a)(ii)(D)

Clause 95(2)(a)(ii)(D) generally recharacterizes, as income from an active business, income derived by a qualifying interest foreign affiliate (the first affiliate) of a taxpayer from amounts paid or payable by another qualifying interest foreign affiliate (the second affiliate) of the taxpayer as interest under a legal obligation arising in relation to borrowed money used to acquire, or the unpaid purchase price from the acquisition of, shares of yet another qualifying interest foreign affiliate (the third affiliate) of the taxpayer that are excluded property of the second affiliate, provided that certain conditions set out in the clause are satisfied.

The text of clause 95(2)(a)(ii)(D) is amended in two respects, to bring it into better alignment with its intended purpose. First, the phrase "under a legal obligation to pay interest" is relocated from the beginning of subclause (D)(I) to the preamble, since that qualification properly applies to both the borrowed money referenced in subclause (I) and the amount payable for property in subclause (II).

Second, the preposition "on" used to denote the relationship between the recharacterized income amount (i.e., interest) and the underlying debt (i.e., the borrowed money or unpaid purchase price) is replaced with "in respect of". Consistent with the original policy intent of the provision, this second amendment clarifies the scope of clause (D) as applying to both simple interest (that is, interest "on" a debt amount in the strict sense) and compound interest (that is, interest which accumulates by reference to unpaid interest on the debt amount). This clarification brings the text of clause (D) into line with clauses 95(2)(a)(ii)(A) to (C) in that respect.

Clause 22

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 ITCs required to be added by subsection 127(8), the amount of carbon capture, utilization and storage (CCUS) tax credits required to be added by subsection 127.44(11) and the amount of Clean Technology ITCs 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 ITC.

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 ITC.

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 ITC.

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 ITC.

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 ITC.

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 ITC.

Clause 23

Interest rate hedging agreements

ITA
108(2.1)

Subsection 108(2) sets out the requirements for a trust to be considered a unit trust for purposes of the Act. Subparagraph 108(2)(b)(iv) requires that not less than 95% of a trust's income be derived from, or from the disposition of, property described in subparagraph 108(2)(b)(iii).

New subsection 108(2.1) characterizes the income realized from certain interest rate hedging agreements for the purposes of subparagraph 108(2)(b)(iv). Where a trust realizes income from an agreement that can reasonably be considered to have been made to mitigate risk from fluctuations in interest rates on debt incurred by the trust to acquire or refinance property described in subparagraph 108(2)(b)(iii), new paragraph 108(2.1) deems that income to be derived from the property described in subparagraph 108(2)(b)(iii), rather than from the hedging agreement itself.

New subsection 108(2.1) applies to taxation years that end after 2021.

Clause 24

Losses deductible

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) (ITCs 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 ITCs 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 ITC. 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 ITC.

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 ITC.

Clause 25

Liability of purchaser

ITA
116(5)(a)

Section 116 establishes procedures for collecting tax from non-resident persons on the disposition of taxable Canadian properties.

Paragraph 116(5)(a) of the French version of the Act is amended to better align the French version of the Act with the English.

Treaty-protected property

ITA
116(5.01)(a)

Subsection 116(5.01) provides conditions related to the acquisition of treaty-property property. Generally, where the conditions are satisfied, a purchaser does not need to withhold.

Paragraph 116(5.01)(a) of the French version of the Act is amended to better align the French version of the ITA with the English.

Liability of purchaser in certain cases

ITA
116(5.3)(a)

Section 116 sets out rules that apply when a non-resident person disposes of certain types of property. Subsection 116(5.2) allows a non-resident vendor to obtain a certificate of compliance in respect of the disposition or proposed disposition of, among other things, depreciable property that is a taxable Canadian property. Subsection 116(5.3) provides that a purchaser must pay 50% of the amount by which the amount payable for the property exceeds the amount fixed in the certificate issued under subsection 116(5.2).

Paragraph 116(5.3)(a) of the French version of the Act is amended to better align the French version of the Act with the English.

Clause 26

Volunteer firefighter tax credit

ITA
118.06(2)

Subsection 118.06(2) provides for the calculation of the non-refundable Volunteer Firefighter Tax Credit for a taxation year.

Currently, the credit is determined by applying the appropriate percentage for the taxation year to $3,000.

Subsection 118.06(2) is amended to increase the amount to which the appropriate percentage applies to $6,000 for 2024 and subsequent taxation years.

Clause 27

Search and rescue volunteer tax credit

ITA
118.07(2)

Subsection 118.07(2) provides for the calculation of the non-refundable Search and Rescue Volunteers Tax Credit for a taxation year.

Currently, the credit is determined by applying the appropriate percentage for the taxation year to $3,000.

Subsection 118.07(2) is amended to increase the amount to which the appropriate percentage applies to $6,000 for 2024 and subsequent taxation years.

Clause 28

Medical expenses

ITA
118.2(2)(v)

Section 118.2 provides rules for determining the amount which may be claimed, as a tax credit, in respect of an individual's medical expenses.

Subsection 118.2(2) contains a list of expenditures that qualify as medical expenses for the purpose of claiming the medical expense tax credit in section 118.2.

Paragraph 118.2(2)(v) includes in the list of eligible medical expenses amounts paid to a fertility clinic or donor bank in Canada as a fee or other amount paid or payable, to obtain sperm or ova

to enable the conception of a child by the individual, the individual's spouse or common-law partner or a surrogate mother on behalf of the individual.

Paragraph 118.2(2)(v) is amended to add the term "embryos" to ensure that embryo transportation costs would be recognized under the Medical Expense Tax Credit.

This amendment comes into force on January 1, 2022.

Clause 29

Minimum tax carry-over

ITA
120.2(1)(b)(i)

Section 120.2 provides for the carry-over of additional taxes paid for previous taxation years under the minimum tax provisions. Under subsection 120.2(1), any additional tax payable by an individual for a year by reason of the provisions relating to the minimum tax may be carried forward and deducted from their regular tax liability in the seven subsequent years.

Subparagraph 120.2(1)(b)(i) is amended to provide that the determination of an individual's tax payable under this Part, against which the minimum tax may be claimed, is no longer made without taking into account the individual's ITC, logging tax credit, political donation credit and labour sponsored venture capital corporation credit.

Additional tax determined

ITA
120.2(3)(b)

Section 120.2 allows an individual to apply additional taxes, imposed for a given year under the minimum tax in section 127.5, against the individual's ordinary Part I tax liability for following years. Paragraph 120.2(3)(b) is amended to remove the reference in that paragraph to section 127 (the individual's ITC, logging tax credit and political donation credit) and section 127.4 (the individual's labour sponsored venture capital corporation credit).

Clause 30

Definitions

ITA
122.6

"shared-custody parent"

Section 122.6 defines a number of terms which apply for purposes of the Canada Child Benefit.

Paragraph 122.6(a) of the definition of shared-custody parent is amended to correct a typographical error.

Clause 31

Death of child — qualified dependant

ITA
122.62(9)

Section 122.62 deals with various situations in which a person becomes or ceases to become an eligible individual or a cohabiting spouse of such an individual for purposes of the Canada child benefit. New subsection 122.62(9) addresses circumstances in which there has been the death of a child. This new subsection will deem the child to be a qualified dependant for the purposes of the Canada child benefit for each of the six months following the death of the child if:

- the child's date of birth was not 18 years or more prior to the beginning of the particular month; and
- the child was a qualified dependant immediately prior to their death.

This is a relieving provision that allows an eligible individual to continue receiving the Canada child benefit for a deceased qualified dependant for up to six months following the qualified dependant's death. The new subsection does not apply for the purposes of subsection 122.62(4). As such, despite the extended eligibility for the Canada child benefit following the death of a child, the requirement to notify the Canada Revenue Agency of this death remains.

This amendment applies for deaths that occur after 2024.

Death of child — eligible individual

ITA
122.62(10)

New subsection 122.62(10) is a counterpart to new subsection 122.62(9). New subsection 122.62(10) addresses circumstances in which there has been the death of a child for whom an individual was an eligible individual in respect of the Canada child benefit immediately before the death of the child. This new subsection will deem this individual to be an eligible individual in respect of the deceased qualified dependant for the purposes of the Canada child benefit for each of the six months following the death of the qualified dependant child if that qualified dependant is deemed to be a qualified dependant at the beginning of that month because of new subsection 122.62(9).

This is a relieving provision that works in parallel with new subsection 122.62(9) and allows an eligible individual to continue receiving the Canada child benefit for a deceased child for up to six months following the child's death. The new subsection does not apply for the purposes of subsection 122.62(4). As such, despite the extended eligibility for the Canada child benefit following the death of a child, the requirement to notify the Canada Revenue Agency of this death remains.

This amendment applies for deaths that occur after 2024.

Death of child

ITA
122.62(11)

Subsection 122.61(1) provides for the calculation of the Canada child benefit. An eligible individual is entitled under subsection 122.61(1) to a maximum annual CCB of $7,437 (indexed to July 2023) per child under the age of 6 and $6,275 (indexed to July 2023) per child aged 6 through 17. The Canada child benefit amount is progressively reduced based on the family's adjusted net income. The Canada child benefit is calculated and paid monthly, with the benefit amount in respect of any particular child for a particular month being computed on the basis of whether that child was under age 6 or between ages 6 through 17 immediately before the beginning of the month.

New subsection 122.62(11) provides that for the purposes of paragraphs (a) and (b) of the description of E in subsection 122.61(1) (the age dependent amount of the maximum benefit for a given qualified dependant for a particular month), if a person is deemed to be a qualified dependant at the beginning of a month because of subsection (9), the person is deemed to be the age at the beginning of that month that the person would have been at the beginning of that month had the person not died. This will result in the deceased qualified dependant's Canada child benefit amount being computed on the basis of the age the qualified dependant would have been at the beginning of any particular month had that qualified dependant not died before the beginning of that month.

This amendment applies for deaths that occur after 2024.

Death of child — disability tax credit

ITA
122.62(12)

The Canada child benefit provides for an additional annual supplementary amount ($3,173 indexed as of July, 2023) for a qualified dependant for whom an amount could be deducted under section 118.3 (the tax credit for a medical or physical impairment) for the year in which the particular month falls. This supplementary amount of Canada child benefit is also progressively reduced based on the family's adjusted net income.

New subsection 122.62(11) provides that for the purposes of paragraph (a) of the description of F in subsection 122.61(1) (the determination of entitlement in respect of a qualified dependant for a particular month), if a person died on or after July 1 of a particular taxation year and an amount may have been deducted in respect of that person under section 118.3 for that taxation year, an amount is deemed to be deductible under section 118.3 in respect of that person for the immediately following taxation year. This has the effect of allowing the disability supplement to continue to apply for any portion of the six-month relieving period that falls after the end of the year in which a qualified dependant has died.

This amendment applies for deaths that occur after 2024.

Clause 32

Definitions

ITA
122.92(1)

“return of income”

Subsection 122.92(1) sets out definitions that apply for the purpose of the Multigenerational Home Renovation Tax Credit.

Subsection 122.92(1) is amended to add the definition of a “return of income” for the purposes of the Multigenerational Home Renovation Credit. The definition “return of income” is relevant in that the Multigenerational Home Renovation Tax Credit is intended to be only available to an individual in a taxation year if the individual has filed a return of income for the year. A return of income means the return (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is required to be filed for the taxation year or that would be required to be filed if the individual had tax payable under Part I of the Act for the taxation year.

This amendment comes into force on January 1, 2022.

Clause 33

Definitions

ITA
125.6(1)

“low threshold qualifying labour expenditure”

The journalism labour tax credit is based on a qualifying journalism organization's qualifying labour expenditures. A “qualifying labour expenditure” is defined in respect of an eligible newsroom employee and is generally the salary or wages payable by the organization to the employee. Qualifying labour expenditures in respect of an eligible newsroom employee are decreased by the amount of any assistance received in respect of the employee. These expenditures are currently subject to an annual cap of $55,000 (prorated for short taxation years).

Subsection 125.6(1) is amended to add a new definition “low threshold qualifying labour expenditure”. The new definition is introduced as a result of the increase in the “qualifying labour expenditure” limit from $55,000 to $85,000 as of January 1, 2023. The definition ‘low threshold qualifying labour expenditure” is relevant for taxation years of qualifying journalism organizations that straddle the 2022/2023 calendar years.

The low threshold qualifying labour expenditure for “an eligible newsroom employee” is allocated for a taxation year that straddles 2022/2023 on the basis of the number of days in the year that fall within 2022.

Paragraph (a) of this definition sets out a formula to determine the upper limit for the 2022 portion of the taxation year. The formula in paragraph (a) limits the 2022 portion of the taxation year’s qualifying expenditure to $55,000 multiplied by the portion of the taxation year that is before 2023. The 2023 portion of the taxation year’s qualifying expenditure is determined in the expanded definition “qualifying labour expenditure” discussed below.

Paragraph (b) of the definition “low threshold qualifying labour expenditure” sets out a formula to determine the second part of the limit for the 2022 portion of the taxation year, being the 2022 portion of the actual salary or wages paid, less the 2022 portion of assistance the taxpayer has received, is entitled to receive or is reasonably expected to receive. This is determined in the formula: A – B.

The description of A is the 2022 portion of the actual salary or wages paid, being the salary or wages paid to an eligible newsroom employee in the taxation year (the description of C) multiplied by the portion of the taxation year that is in 2022 (the description of D ÷ E). E is the number of days in the taxation year that are before 2022 in which the taxpayer is a qualifying journalism organization. F is the number of days in the taxation year in which the taxpayer is a qualifying journalism organization.

The description of B determines the 2022 portion of assistance, being the amount of any assistance the taxpayer has received, is entitled to receive or is reasonably expected to receive in respect of the salary or wages paid to an eligible newsroom employee in the taxation year (the description of F) multiplied by the fraction G ÷ H. G is the number of days in the taxation year before 2022 that the taxpayer was a qualifying journalism organization. H is the number of days in the taxation year that the taxpayer was a qualifying journalism organization.

“qualifying labour expenditure”

The journalism labour tax credit is based on a qualifying journalism organization's qualifying labour expenditures. A “qualifying labour expenditure” is defined in respect of an eligible newsroom employee and is generally the salary or wages payable by the organization to the employee. Qualifying labour expenditures in respect of an eligible newsroom employee are decreased by the amount of any assistance received in respect of the employee. These expenditures are currently subject to an annual cap of $55,000 (prorated for short taxation years).

The existing definition “qualifying labour expenditure” in subsection 125.6(1) is amended to separate the existing definition into two paragraphs.

Paragraph (a) of the definition is the 2023 mirror portion to the new definition “low threshold qualifying labour expenditure”. This paragraph sets the upper limit amount for a qualifying labour expenditure for the 2023 portion of a taxation year that straddles 2022/2023. The limit is increased to $85,000 as of January 1, 2023.

The formula in subparagraph (a)(i) limits the 2023 portion of the taxation year's qualifying labour expenditure to $85,000 multiplied by the portion of the taxation year that is after 2022. The 2022 portion of the taxation year's qualifying expenditure is determined by the new definition "low threshold qualifying labour expenditure" discussed above.

Subparagraph (a)(ii) of the definition "qualified labour expenditure" sets out a formula to determine the second limit for the 2023 portion of the taxation year, being the 2023 portion of the actual salary or wages paid, less the 2022 portion of assistance the taxpayer has received, is entitled to receive or is reasonably expected to receive. This is determined in the formula: A – B.

The description of A is the 2023 portion of the actual salary or wages paid, being the salary or wages paid to an eligible newsroom employee in the taxation year (the description of C) multiplied by the portion of the taxation year that is in 2023 (the description of D ÷ E). E is the number of days in the taxation year that are after 2022 in which the taxpayer is a qualifying journalism organization. F is the number of days in the taxation year in which the taxpayer is a qualifying journalism organization.

The description of B determines the 2023 portion of assistance, being the amount of any assistance the taxpayer has received, is entitled to receive or is reasonably expected to receive in respect of the salary or wages paid to an eligible newsroom employee in the taxation year (the description of F) multiplied by the fraction G ÷ H. G is the number of days in the taxation year after 2023 that the taxpayer was a qualifying journalism organization. H is the number of days in the taxation year that the taxpayer was a qualifying journalism organization.

Paragraph (b) of the definition reproduces the text of the existing definition "qualifying labour expenditure", for taxation years beginning after 2022, with the new $85,000 per year threshold.

The following examples assume that at all times a taxpayer is a qualifying journalism organisation with a July 1 to June 30 taxation year and the employee is an eligible newsroom employee.

Example 1: The taxpayer paid the employee $50,000 in 2022/2023 and received no assistance.

The low threshold qualifying labour expenditure for the year for the employee is $25,000, being the lesser of

Paragraph (a) $55,000 × ½ = $27,500; and

Paragraph (b) $50,000 × ½ = $25,000

The qualifying labour expenditure for the year for the employee is $25,000, being the lesser of

Paragraph (a)(i) $85,000 × ½ = $42,500; and

Paragraph (a)(ii) $50,000 × ½ = $25,000.

Example 2: The taxpayer paid the employee $70,000 in 2022/2023 and received no assistance.

The low threshold qualifying labour expenditure for the year for the employee is $27,500, being the lesser of

Paragraph (a) $55,000 × ½ = $27,500; and

Paragraph (b) $70,000 × ½ = $35,000

The qualifying labour expenditure for the year for the employee is $35,000, being the lesser of

Paragraph (a)(i) $85,000 × ½ = $42,500; and

Paragraph (a)(ii) $70,000 × ½ = $35,000.

Example 3: The taxpayer paid the employee $100,000 in 2022/2023 and received $10,000 in assistance.

The low threshold qualifying labour expenditure for the year for the employee is $27,500, being the lesser of

Paragraph (a) $55,000 × ½ = $27,500; and

Paragraph (b) ($100,000 × ½) – ($10,000 × ½) = $45,000

The qualifying labour expenditure for the year for the employee is $42,500, being the lesser of

Paragraph (a)(i) $85,000 × ½ = $42,500; and

Paragraph (a)(ii) ($100,000 × ½) – ($10,000 × ½) = $45,000.

Example 4: In this example, the taxation year begins after 2022. As such, the threshold is raised to $85,000 and the low threshold qualifying labour expenditure is no longer relevant. The taxpayer paid the employee $90,000 in the taxation year and received $10,000 in assistance.

The qualifying labour expenditure for the year for the employee is $80,000, being the lesser of

Paragraph (a) $85,000 × 365/365 = $85,000; and

Paragraph (b) $90,000 - $10,000 = $80,000.

Tax credit

ITA
125.6(2)

Subsection 125.6(2) provides the refundable labour tax credit for journalism organizations. The amount of the credit is equal to 25% of the organization's total qualifying labour expenditures for the taxation year. This subsection applies to taxpayers (other than partnerships). The partnership computation, which is allocated to the partners of the partnership, is addressed in subsection 125.6(2.1).

The existing credit of 25% is being increased to 35% for January 1, 2023 to December 31, 2026, inclusive. The amendments to subsection 125.6(2) increase the credit to 35% for this period. This is done in four separate paragraphs in subsection 125.6(2). New paragraph 125.6(2)(a) addresses the 2022/2023 straddle taxation year, in which the taxpayer would have a low threshold qualifying labour expenditure, subject to the 25% rate, and a qualifying labour expenditure subject to the post 2022, 35% rate. New paragraph 125.6(2)(b) addresses the period of time after 2022 and before 2027 during which the upper threshold has been raised to $85,000 and no part of a taxation year begins before 2023 or ends after 2026. As such, the 35% rate applies to all qualifying labour expenditures. New paragraph 125.6(2)(c) addresses the 2026/2027 straddle taxation year in which the taxpayer would have a threshold of $85,000, but part of that amount would be subject to a credit of 25% and part subject to a credit of 35%. New paragraph 125.6(2)(d) address taxation years beginning after 2026, where the qualifying labour expenditure threshold is $85,000 and the credit rate is 25%.

New paragraph 125.6(2)(a) provides that the credit for the 2022/2023 straddle year is: 25% of the total of all low threshold qualifying expenditures in the taxation year (the description of A) plus 35% of all qualifying labour expenditures in the taxation year (the description of B) minus the Aid to Publishers amounts received in the taxation year (the description of C). The apportionment of the 2022 and 2023 portion of the taxation year's qualifying expenditure amounts has been done in the definitions "low threshold qualifying labour expenditure" and "qualifying labour expenditure".

New paragraph 125.6(2)(b) provides that the credit for taxation years beginning after 2022 and ending before 2027 is: 35% of all qualifying labour expenditures in the taxation year (the description of A) minus the Aid to Publishers amounts received in the taxation year (the description of B).

New paragraph 125.6(2)(c) provides that the credit for the 2026/2027 straddle taxation year requires apportioning part of the salary or wages paid to eligible newsroom employees to 2026 and the other part to 2027. This apportionment is done on the basis of the portion of the taxation year that falls in 2026 and the portion of the taxation year that falls in 2027. For example, if the year is one half in 2026 and one half in 2027, the qualifying labour expenditures are split 50/50 between 2026 and 2027. If the taxpayer has a taxation year that is 75% in 2026 and 25% in 2027, the qualifying labour expenditures would be split 75% to 2026 and 25% to 2027. The 2026 portion of the qualifying labour expenditures receive a credit of 35%; the 2027 portion of the qualifying labour expenditures receive a credit of 25%. This is similar to the split done using the low threshold qualifying labour expenditures for 2022/2023, except in that case, this required a separate threshold computation step as the threshold was being increased along with the subsidy rate. The formula in paragraph 125.6(2)(c) is the same as in paragraph 125.6(2)(a): $0.35 \times A + 0.25 \times B - C$. However, in paragraph 125.6(2)(a), the apportionment between amounts subject to a 25% credit and amounts subject to a 35% credit was done by the computation of the low threshold qualifying labour expenditure and the qualifying labour expenditure amounts. In paragraph 125.6(2)(c), this apportionment is done in separate computations under the description of A (the 35% rate amount) and the description of B (the 25% rate amount). The description of C remains the deduction for amounts received from the Aid to Publishers.

The description of A is determined by the formula $D \times E \div F$. D is the total of all qualifying labour expenditures for the taxation year. E is the number of days in the taxation year that are before 2027 in which the taxpayer is a qualifying journalism organization. F is the number of days in the taxation year in which the taxpayer is a qualifying journalism organization.

The description of B is determined by the formula $G \times H \div I$. G is the total of all qualifying labour expenditures for the taxation year. H is the number of days in the taxation year that are after 2026 in which the taxpayer is a qualifying journalism organization. I is the number of days in the taxation year in which the taxpayer is a qualifying journalism organization.

New paragraph 125.6(2)(d) provides that the credit for taxation years beginning after 2026 is 25% of all qualifying labour expenditures in the taxation year (the description of A) minus the Aid to Publishers amounts received in the taxation year (the description of B). New paragraph 125.6(d) is identical to the formula in existing subsection 126.6(2).

Examples:

Example 1, An employer has a 365-day taxation year that begins in 2022 and ends in 2023. In that taxation year, the employer had two employees for which it had low threshold qualifying labour expenditures of $15,000 and $21,000 and qualifying labour expenditures of $20,000 and $30,000. It received $3,000 in Aid to Publishers. The employer's journalism credit for the taxation year is:

$0.25 \times (\$15{,}000 + \$21{,}000) + 0.35 \times (\$20{,}000 + \$30{,}000) - \$3{,}000$

$= \$9{,}000 + \$17{,}500 - \$3{,}000 = \$23{,}500$

Example 2, Using the same facts as in Example 1, except the 365-day taxation year begins in 2024 and ends in 2025. The employer's credit is:

$0.35 \times (\$35{,}000 + \$51{,}000) - \$3{,}000 = \$27{,}100$

Note the difference between examples 1 and 2 is $3,600, which is the10% difference between 35% and 25% on the $36,000 that was the low threshold qualifying labour expenditure amount.

Example 3, An employer has a taxation year that begins July 1, 2026 and ends June 30, 2027. The employer pays one employee $50,000 and one employee $60,000. It received no Aid to Publishers. Its credit for the year is:

$0.35 \times (\$110{,}000 \times 0.5) + 0.25 \times (\$110{,}000 \times 0.5) = \$33{,}000$

Example 4, An employer has a 365-day taxation year that begins after 2026. Other than this, the facts are the same as in Example 3. The credit for the year is:

$0.25 \times \$110{,}000 = \$27{,}500$

Note that the difference between Examples 3 and 4 is the difference between 0.35 and 0.25 times $110,000 times 0.5 = $5,500.

Partnership - tax credit

ITA
125.6(2.1)

Subsection 125.6(2.1) provides a labour tax credit for members of a qualifying journalism organization that is a partnership. The credit that would otherwise be claimed by a qualifying journalism organization under subsection 125.6(2) is effectively divided between the members of the partnership, other than other partnerships and specified members (as defined in subsection 248(1)) of the partnership. The total amount of the tax credit is allocated based on the relative specified proportions (as defined in subsection 248(1)) of each qualifying member of the partnership for each fiscal period of the partnership that ends in the taxpayer's taxation year.

Subsection 125.6(2.1) is amended in a manner similar to subsection 125.6(2), to account for the increase, as of January 1, 2023, from $55,000 to $85,000 in the limit per employee in qualifying expenditures. The computations in amended subsection 125.6(2.1) are the same as for subsection 125.6(2), except there is an extra computation at the end of subsection 125.6(2.1), where the total credit for the partnership's fiscal period is allocated to a partner based on that partner's fractional specified portion of all specified portions of the partnership.

The existing credit is 25% of the total qualifying labour expenditures for a fiscal period. This credit is being increased to 35% for January 1, 2023 to December 31, 2026, inclusive. The amendments to subsection 125.6(2.1) increase the credit to 35% for this period. However, as in subsection 125.6(2), this is done in four separate paragraphs. New paragraph 125.6(2.1)(a) addresses the 2022/2023 straddle fiscal period, in which the taxpayer would have a low threshold qualifying labour expenditure, subject to the 25% rate, and a qualifying labour expenditure subject to the 35% rate. New paragraph 125.6(2.1)(b) addresses periods during which the threshold has been raised to $85,000 and no part of a fiscal period begins before 2023 or ends after 2026. As such, the 35% rate applies to all qualifying labour expenditures. New paragraph 125.6(2.1)(c) addresses the 2026/2027 straddle fiscal period in which the taxpayer would have a threshold of $85,000, but part of that amount would be subject to a credit of 25% and the other part to a credit of 35%. New paragraph 125.6(2.1)(d) addresses fiscal periods beginning after 2026, where the threshold is $85,000 and the rate is 25%.

New paragraph 125.6(2.1)(a) provides that the credit for the 2022/2023 straddle fiscal period is 25% of the total of all low threshold qualifying expenditures in the fiscal period (the description of A) plus 35% of all qualifying labour expenditures in the fiscal period (the description of B) minus the Aid to Publishers amounts received in the taxation year (the description of C). The fraction E ÷ F computes an individual partner's share of the credit.

New paragraph 125.6(2.1)(b) provides for the computation of the credit for fiscal periods beginning after 2022 and ending before 2027. This is 35% of all qualifying labour expenditures in the fiscal period (the description of A) minus the Aid to Publishers amounts received in the fiscal period (the description of B). The fraction C ÷ D computes an individual partner's share of the credit.

New paragraph 125.6(2.1)(c) provides for the computation of the credit for the 2026/2027 straddle fiscal period. This requires apportioning the part of the salary or wages paid to eligible newsroom employees to 2026 and the other part to 2027. This apportionment is done on the basis of the portion of the fiscal period that falls in 2026 and the portion of the fiscal period that falls in 2027. If the fiscal period is one half in 2026 and one half in 2027, the qualifying labour expenditures are split 50/50 between 2026 and 2027. If the partnership has a fiscal period that is 75% in 2026 and 25% in 2027, the qualifying labour expenditures would be split 75% to 2026 and 25% to 2027. The 2026 portion of the qualifying labour expenditures receive a credit of 35% while the 2027 portion of the qualifying labour expenditures receive a credit of 25%. This is similar to the split done using the low threshold qualifying labour expenditures for 2022/2023, except in that case, this required a separate threshold computation step, as the threshold level was being increased along with the subsidy rate. The formula in paragraph 125.6(2.1)(c) is the same as in paragraph 125.6(2.1)(a): $0.35 \times A + 0.25 \times B - C$. In paragraph 125.6(2.1)(a), the apportionment between amounts subject to a 25% credit and amounts subject to a 35% credit is done by the computation of the low threshold qualifying labour expenditure and the qualifying labour expenditure amounts. In paragraph 125.6(2.1)(c), this is done in separate computations under the description of A (the 35% rate amount) and the description of B (the 25% rate amount). The description of C remains the deduction for amounts received from the Aid to Publishers.

The description of A is determined by $F \times G \div I$. F is the total of all qualifying labour expenditures for the fiscal period. G is the number of days in the fiscal period that are before 2027 in which the partnership is a qualifying journalism organization. I is the number of days in the fiscal period in which the partnership is a qualifying journalism organization.

The description of B is determined by $J \times K \div L$. J is the total of all qualifying labour expenditures for the fiscal period. I is the number of days in the taxation year that are after 2026 in which the partnership is a qualifying journalism organization. L is the number of days in the taxation year in which the partnership is a qualifying journalism organization.

The fraction $E \div F$ computes an individual partner's share of the credit.

New paragraph 125.6(2.1)(d) provides that the credit for fiscal periods after 2026 is: 25% of all qualifying labour expenditures in the fiscal period (the description of A) minus the Aid to Publishers amounts received in the fiscal period (the description of B). The fraction $C \div D$ computes an individual partner's share of the credit. New paragraph 125.6(2.1)(d) is identical to the existing formula in existing subsection 126.6(2.1).

Examples: The computation under the partnership computation rules is the same, except the credit is allocated out to each partner based on the partner's share.

Example 1, Assume the same facts as Example 1 above. The partner's share is 10%. The partner's credit is:

$(0.25 \times (\$15,000 + \$21,000) + 0.35 \times (\$20,000 + \$30,000) - \$3,000) \times 0.1$

$= (\$9,000 + \$17,5000 - \$3,000) \times 0.1 = \$2,350$

Example 2, Using the same facts as in Example 2 above. The partner's share is 10%. The partner's credit is:

(0.35 × ($25,000 + $51,000) - $3,000) × 0.1 = $2,710

Example 3, Using the same facts as in Example 2 above. The partner's share is 10%. The partner's credit is:

(0.35 × ($110,000 × 0.5) + 0.25 × ($110,000 × 0.5)) × 0.1 = $3,300

Example 4, Using the same facts as in Example 2 above. The partner's share is 10%. The partner's credit is:

(0.25 × $110,000) × 0.1 = $2,750

Clause 34

Definitions

ITA
127(9)

"flow-through mining expenditure"

Subsection 127(9) provides various definitions relevant for the purposes of calculating the ITCs of a taxpayer.

The definition "flow-through mining expenditure" in subsection 127(9) defines the expenses that qualify for the 15% ITC in respect of specified surface "grass-roots" mineral exploration, often referred to as the "mineral exploration tax credit". Under the existing definition, the credit is available in respect of eligible expenses renounced under a flow-through share agreement made after March 2019 and before April 2024.

This amendment effects a one-year extension of the mineral exploration tax credit. Specifically, the definition "flow-through mining expenditure" in subsection 127(9) is amended to include eligible expenses incurred by a corporation after March 2024 and before 2026, where the expenses are renounced under a flow-through share agreement entered into after March 2024 and before April 2025.

This amendment applies in respect of expenses renounced under a flow-through share agreement entered into after March 2024.

"government assistance"

The definition of "government assistance" in subsection 127(9) is relevant for various provisions in section 127 that require the ITC 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 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 January 1, 2020 and applies to loans made after December 31, 2019.

Second, the definition is amended to exclude the Clean Hydrogen tax credit in section 127.48 and the CTM ITC in section 127.49. This amendment is intended to ensure that the ITCs under section 127 (such as the Atlantic ITC) are not reduced by amounts received in respect of the Clean Hydrogen tax credit and the CTM ITC. 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 ITC itself is not reduced where the CTM ITC 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 ITC.

Clause 35

New section 127.421 creates the Canada Carbon Rebate for Small Businesses. It comes into force on royal assent.

Definitions

ITA
127.421(1)

Subsection 127.421(1) contains definitions that are relevant for the purposes of the rules in section 127.421.

“designated province”

The definition “designated province” means a province specified by the Minister of Finance for a calendar year. New subsection 127.421(4) authorizes the Minister of Finance to specify designated provinces for a calendar year. It is expected that the designated provinces for a calendar year will be any provinces that are listed provinces, as defined in section 3 of the *Greenhouse Gas Pollution Pricing Act*, in respect of the calendar year. This definition is relevant in subsections 127.421(2) and (3) in determining the eligibility and amount of a corporation’s carbon rebate in respect of a particular calendar year.

“fuel return specified”

The definition “fuel return specified” for a designated province for a calendar year, means the amount designated by the Minister of Finance for a person employed by a corporation for the designated province for the calendar year. New subsection 127.421(4) authorizes the Minister of

Finance to specify the fuel return specified for a designated province for a calendar year. This definition is relevant in subsections 127.421(2) and (3) in determining the eligibility and amount of a corporation's carbon rebate in respect of a particular calendar year.

"person employed"

The definition "person employed" by a corporation for a calendar year means a person who was at any time in the calendar year employed by the corporation in respect of whom the corporation issued (or a payroll service provider issued on behalf of the corporation) a statement of remuneration paid. This definition is relevant in subsections 127.421(2) and (3) in determining the eligibility and amount of a corporation's carbon rebate in respect of a particular calendar year.

"2023 business number"

The definition "2023 business number" means a business number of a corporation which was used to make remittances for employees of the corporation for the corporation's last taxation year ending in 2023.

Deemed amount 2019-2023

ITA
127.421(2)

New subsection 127.421(2) provides a method for calculating the amount of the carbon rebate for the 2019 to 2023 calendar years. It provides that if a corporation files, on or before July 15, 2024, a return of income for a taxation year ending in 2023 (other than a final return on dissolution) it is deemed to have paid, on a date specified by the Minister of Finance, an amount on account of tax payable under Part I for that taxation year. The amount deemed to have been paid is determined by reference to the number of employees of a corporation in designated provinces in each of the 2019 to 2023 calendar years.

To be eligible, a corporation must be a Canadian-controlled private corporation at all times for its taxation year ending in 2023.

This calculation must be done for each calendar year for each designated province in which the employer employed individuals in that calendar year. The amount determined for a corporation for a designated province for a calendar year is calculated by multiplying the fuel return specified by the Minister of Finance for the designated province for the calendar year by the total number of persons employed by the corporation in the calendar year in the designated province.

If the total number of persons, each of whom was a person employed by the corporation in a province at any time in the calendar year exceeds 499, the corporation is not eligible for an amount under this section for that calendar year.

Deemed amount after 2023

ITA
127.421(3)

New subsection 127.421(3) is similar to new subsection 127.421(2), except that subsection 127.421(3) applies on a year-by-year basis for calendar years that are after 2023. Subsection 127.421(3) provides that a corporation that files a return of income for a particular taxation year ending in a calendar year after 2023 (other than a final return on dissolution) is, if the return is filed on or before July 15 of the following calendar year, deemed to have paid an amount on its balance-due day for the year, on account of tax payable under Part I for that taxation year.

To be eligible in respect of any particular taxation year, a corporation must be a Canadian-controlled private corporation at all times during that taxation year.

The amount determined for a corporation for a particular designated province for a calendar year is calculated by multiplying the fuel return specified by the Minister of Finance for that designated province for the calendar year by the total number of persons employed by the corporation in the calendar year in that designated province.

If the total number of persons, each of whom was a person employed by the corporation in a province at any time in the calendar year exceeds 499, the corporation is not eligible for an amount under this section for that calendar year.

Authority to specify

ITA
127.421(4)

New subsection 127.421(4) provides the Minister of Finance with the authority to specify the fuel return specified for a designated province for a calendar year, as well as the designated provinces for that calendar year.

Amount not specified

ITA
127.421(5)

New subsection 127.421(5) provides that if the Minister of Finance does not specify the fuel return specified for a designated province for a calendar year under subsection 127.421(4), the rate for that calendar year for that province is deemed to be nil. Therefore, if the Minister does not specify the fuel return specified for a particular designated province for a particular calendar year, no carbon rebate is payable in respect of that designated province for that calendar year.

Assistance received

ITA
127.421(6)

New subsection 127.421(6) provides that the amount of tax that a taxpayer is deemed to have paid under subsection 127.421(2) or (3) is considered to be assistance received by the taxpayer from a government in the taxation year in which the assistance is received.

Deemed rebate in respect of fuel charges

ITA
127.421(7)

New subsection 127.421(7) provides that the amount of tax that a taxpayer is deemed to have paid under subsection 127.421(2) or (3) for a taxation year is deemed to have been paid during the taxation year as a rebate in respect of charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act* in respect of the designated province.

Predecessor corporation

ITA
127.421(8)

New subsection 127.421(8) provides that for the purposes of subsection 127.421(2), where there has been an amalgamation or merger of two or more corporations before 2023, the corporation filing a return of income in 2023 is deemed to be the same corporation as and a continuation of each predecessor corporation that was registered with the Minister to make remittances required under section 153 under the corporation's 2023 business number. This would allow an eligible successor corporation to receive an amount under subsection 127.421(2) in respect of preceding calendar years if the 2023 business number was used to make remittances in respect of persons employed by a predecessor corporation in a designated province in those calendar years.

Predecessor corporation

ITA
127.421(9)

New subsection 127.421(9) provides that for the purposes of subsections 127.421(2) and (3), where there has been an amalgamation or merger of two or more corporations in a calendar year after 2022, the number of persons employed in that calendar year by the corporation formed by the amalgamation or merger is deemed to be nil. This prevents a predecessor corporation and successor corporation from both receiving a carbon rebate for the year of the amalgamation.

Province of employment

ITA
127.421(10)

New subsection 127.421(10) addresses circumstances where a particular employee may be employed by the same corporation in more than one designated province in a calendar year. To prevent the double counting of that employee, subsection 127.421(10) provides that if a person is employed by the same corporation in more than one province in a calendar year, the person is deemed to be employed throughout the calendar year by that corporation in the province in respect of which the person has received the highest amount of remuneration paid by the corporation, and is deemed not to be employed in the calendar year in any other province.

Deemed taxation year

ITA
127.421(11)

New subsection 127.421(11) addresses circumstances where a corporation may have more than one taxation year ending in a calendar year after 2023. To prevent a double payment to that corporation for the calendar year, subsection 127.421(11) provides that, for the purposes of subsection 127.421(3), if a corporation has more than one taxation year ending in the same calendar year, the particular taxation year is the first taxation year that ends in that calendar year.

Clause 36

ITA
127.43

The heading in section 127.43 is repealed for improved readability and organization of Subdivision C (which does not include any other headings).

Clause 37

ITA
127.48

Section 127.48 provides a refundable ITC 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.

Section 127.48 is intended to include references to the ITCs for CCUS and for Clean Technology, both of which would be implemented by Bill C-59, which is currently before

Parliament. Clause 37 has been drafted on the assumption that Bill C-59 does not receive royal assent prior to this bill (accordingly, it does not include specific references to those credits).

Subclause 80(80) includes an alternative version of section 127.48 which would apply once Bill C-59 has received royal assent. It includes specific references to legislation implemented by Bill C-59. These explanatory notes have been drafted based on the version of section 127.48 that is included in subclause 80(80).

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 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 eligible hydrocarbons 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)(d), 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 carbon dioxide emissions that would be required to produce a warming effect equivalent to the emissions of any specified greenhouse gas, as determined in accordance with the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document* over an assessment period of 100 years. The term "specified greenhouse gas" is 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. For example, if 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" and "specified greenhouse gas" definitions in this subsection. Additional information regarding the warming effect of each specified greenhouse gas can be found in the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

"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 eligible hydrocarbons 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* (CFR), 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 hydrocarbon" 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 involves 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
- on-site refrigeration, transportation and storage of ammonia.

Equipment for the refrigeration, transportation and storage of ammonia must each 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 involving 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 clean hydrogen that is produced by the same 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 sources of electricity to be consumed in connection with the project, including sources described in any eligible power purchase agreements,
- 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, including the *Clean Hydrogen Investment Tax Credit – Validation and Verification Guidance Document*.

The report prepared by the qualified validation firm must contain attestations by the firm that the assumptions in the modelling of the expected carbon intensity are reasonable and that the expected carbon intensity was determined in accordance with the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

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

- that the project can reasonably be expected to have sufficient hydrogen 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 and supports the production of hydrogen from eligible hydrocarbons may qualify for a Clean Hydrogen tax credit under certain circumstances. Qualifying equipment does not include generation equipment that supports the project indirectly by way of an electrical utility grid.

To be included as dual-use electricity and heat equipment, equipment must be described in paragraph (a) or (b) of the definition.

Qualifying energy generation equipment (described in paragraph (a) of the definition) involves equipment that generates electrical energy, heat energy or a combination of electrical and 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 the project's 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 electrical transmission equipment (described in paragraph (b)) involves equipment that directly transmits electrical energy generated by the generation equipment 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 the project's operations, based on the most recent clean hydrogen project plan, is expected to support the qualified CCUS project or qualified clean hydrogen project.

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 or nitrogen to be used all or substantially all in both hydrogen and ammonia production for the project.

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 respect of 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 respect of 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 six categories of eligible property in subparagraphs (i) to (vi).

Subparagraph (c)(i) describes property used all or substantially all to produce hydrogen through electrolysis of water, including electrolysers, rectifiers and other specified equipment.

Subparagraph (c)(ii) describes property used all or substantially all to produce hydrogen from eligible hydrocarbons, including certain specified equipment.

Subparagraph (c)(iii) refers to four additional types of eligible equipment: "clean ammonia equipment", "dual-use electricity and heat equipment", "dual-use hydrogen and ammonia equipment" and "project support 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).

Subparagraph (c)(vi) describes certain conversion property, which is property that is used solely to convert another property that would not otherwise be described in subparagraphs (i) to (v) if the conversion causes the other property to satisfy the description in subparagraphs (i) to (v).

"eligible electricity generation source"

An "eligible electricity generation source" generally means an electricity generation source that is wind, solar, hydro or nuclear.

Geothermal or tidal generation also qualify under this definition if, at the time a taxpayer files its most recent clean hydrogen project plan, the technology-specific "input carbon intensity" (also defined in this subsection) for that generation source is available in the Fuel LCA Model and guidance in respect of that source is included in the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

An eligible source of electricity generation is a requirement for eligible power purchase agreements and certain types of "behind-the-meter" electricity generation by the taxpayer.

"eligible hydrocarbon"

"Eligible hydrocarbon" is defined to include natural gas, substances sourced all or substantially all from raw natural gas and eligible renewable hydrocarbons. It also includes by-products from

the first two categories, provided those by-products are included in the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document* at the relevant time.

This definition describes hydrocarbons that can be used as a feedstock for hydrogen production or as an input in the on-site generation of electricity to be used in connection with a clean hydrogen project (with carbon dioxide emissions captured using a CCUS process in both instances).

"eligible pathway"

"Eligible pathway" means producing hydrogen from either electrolysis of water or from the reforming or partial oxidation of eligible hydrocarbons (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 or other arrangement in writing that meets the conditions described in paragraphs (a) to (c).

A non-binding memorandum of understanding may qualify as an eligible power purchase agreement for the purpose of calculating the expected carbon intensity of a clean hydrogen project, but it must be converted to a legally binding agreement before the first day of the compliance period for the project to avoid potentially adverse tax consequences. See the commentary on subsection 127.48(7) for more information.

Paragraph (a) requires the electricity purchased under the agreement to be sourced from an "eligible electricity generation source" (see commentary to that definition) that commenced generation after the specified time. For these purposes, this would include both new generation facilities and incremental nameplate capacity at pre-existing facilities (i.e., increases to the total maximum generation capacity of an existing facility, such as new wind turbines added to an existing wind farm) that first commenced electricity generation on or after both:

- November 3, 2022, and
- the earlier of (1) the day that is 24 months before the taxpayer's first clean hydrogen project plan is filed with the Minister of Natural Resources, and (2) the day that is 36 months before the day on which hydrogen is first produced by the relevant clean hydrogen project.

For example, if a taxpayer files its first clean hydrogen project plan on June 1, 2025, and starts producing hydrogen on January 1, 2028, the eligible electricity generation source that provides electricity must have first commenced electricity generation on or after both: (1) November 3, 2022 and (2) the earlier of June 1, 2023 and January 1, 2025. Accordingly, the generation source must have first commenced electricity generation on or after June 1, 2023.

Paragraph (a) also requires that the source of the electricity be located:

- in the same province or territory as the clean hydrogen project of the taxpayer,
- in the exclusive economic zone of Canada, or
- in a neighbouring province, if the taxpayer has arranged for the necessary interprovincial transmission.

In all three cases, the generation source must be connected to the grid of the province in which the taxpayer's clean hydrogen project is located.

These requirements seek to promote the addition of new renewable energy sources to the overall grid and to 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 agreement to grant the taxpayer the sole and exclusive right to the environmental attributes associated with the purchased electricity. Environmental attributes could be in the form of environmental premiums or tradeable credits that can be separated from a "clean" energy source and transferred or sold to other parties who can use them to notionally offset their actual emissions footprints. An agreement will not qualify as an eligible power purchase agreement if the producer of the electricity is able to sell the attributes of that electricity to another purchaser in a separate arrangement.

Paragraph (c) requires the agreement to be entered into for the primary purpose of operating a clean hydrogen project during all or any portion of the first 20 years of the project's operations. This could be evidenced, for example, by a contractual provision within the agreement itself or a related agreement.

Power purchased, or to be purchased, under 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 hydrocarbon"

"Eligible renewable hydrocarbon" refers to a substance that meets the conditions in each of paragraphs (a) to (f) in respect of a taxpayer.

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

Paragraph (b) requires the substance to have a "CFR carbon intensity" that can be determined under the CFR. If, during the compliance period, the CFR carbon intensity cannot be determined (e.g., if the producer shuts down or ceases to comply with the CFR), it would cease to qualify as an "eligible renewable hydrocarbon".

This requirement serves two purposes:

- to require hydrogen producers that self-produce renewable hydrocarbons (used as an input in hydrogen production) to have a consistent method of determining the impact of those substances on the carbon intensity of the hydrogen produced, and

- to allow hydrogen producers that acquire renewable hydrocarbons from external suppliers to readily access the input carbon intensity information associated with the relevant substance.

Paragraph (c) provides that, at the time that the taxpayer files its most recent clean hydrogen project plan with the Minister of Natural Resources, the relevant substance must be included in the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

Paragraph (d) requires the substance to be sourced from a facility that first commenced production on or after both:

- November 3, 2022, and
- the earlier of (1) the day that is 24 months before the taxpayer's first clean hydrogen project plan is filed with the Minister of Natural Resources, and (2) the day that is 36 months before the day on which hydrogen is first produced by the relevant clean hydrogen project.

Similar to eligible power purchase agreements, paragraph (d) 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.

Paragraph (e) applies if the renewable hydrocarbons are acquired by the taxpayer under an agreement with another party. In such a case, the agreement must grant the taxpayer the sole and exclusive right to the environmental attributes associated with the substance. Similar to eligible power purchase agreements, this rule seeks to prevent the producers of renewable hydrocarbons from selling the environmental attributes associated with the renewable source to another purchaser in a separate arrangement.

Paragraph (f) requires the substance to be produced or acquired for the sole purpose of operating a clean hydrogen project during all or any portion of the first 20 years of the project's operations.

Eligible renewable hydrocarbons 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 off-site storage, as well as the off-site transmission, transportation or distribution of hydrogen or ammonia. In these four contexts, "off-site" means any location away from the hydrogen or ammonia production facility.

Equipment used to prepare hydrogen for transport, including liquefaction equipment and equipment used to compress hydrogen to levels suitable for transportation, are also excluded.

“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.

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, unless the taxpayer elects to use a more recent version in calculating actual carbon intensity during the compliance period. 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 generally reduced by the amounts 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).

“input carbon intensity”

The “input carbon intensity” of a fuel, energy source or material input means the quantity in kilograms of carbon dioxide equivalent per unit of the fuel, energy source or material input that is released over the life cycle of that fuel, energy source or material input. In this context, “material input” refers to a physical or tangible input rather than a quantitative threshold.

This term is used to distinguish the intensity of emissions associated with inputs to the production of hydrogen (e.g., electricity and eligible hydrocarbons) from the “carbon intensity” of hydrogen, which is also defined in this subsection.

Certain input carbon intensities are to be taken into account in the determination of the carbon intensity of the hydrogen produced by a clean hydrogen project. 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 generally 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 (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.

“project support equipment”

“Project support equipment” describes equipment that directly supports a qualified clean hydrogen project by:

- transmitting electrical energy from on-site electrical generation equipment directly to the project,
- distributing electrical or heat energy, or
- delivering, collecting, recovering, treating or recirculating water.

Paragraphs 127.48(10)(f) and (g) contain rules setting out the portion of the capital cost of project support equipment that would be eligible for the Clean Hydrogen tax credit. For more information, see the commentary on subsection 127.48(10).

“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 a portion of the capital cost of such equipment 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 respect of a qualified clean hydrogen project.

"qualified validation firm"

A "qualified validation firm" in respect of a clean hydrogen project of a taxpayer means an engineer or engineering firm that meets the requirements in paragraphs (a) to (e). These include the requirement to have appropriate insurance coverage and the requirement to be independent of and deal at arm's length with the taxpayer. An individual engineer must not be an employee of 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 engineer, engineering firm or verification body 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 be independent of, deal at arm's length with and not be an employee of 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), the compliance report that is required to be filed by a taxpayer in respect of the project's fifth operating year must include a verification report prepared by a qualified verification firm in respect of the actual carbon intensity of the project during each operating year of the compliance period.

“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 the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document* 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 property described in paragraph (b) of this definition) 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 certain clean ammonia equipment, or certain equipment described in subparagraphs (c)(iv) to (vi) of the definition “eligible clean hydrogen property” that is used solely in connection with clean ammonia equipment, acquired by the taxpayer before 2034. However, this rate is subject to several conditions, including the condition that the hydrogen to be produced by the project and used in the production of ammonia has an expected carbon intensity less than four.

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 later of December 31, 2025 and 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.

In addition, if the prescribed form is filed after the taxpayer’s filing-due date for the year, no overpayment by the taxpayer is deemed to arise under subsection (2) until the prescribed form containing prescribed information has been filed with the Minister.

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).

Calculation 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 (6)(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, unless the taxpayer elects to use a subsequent version for determining actual carbon intensity. As a result, taxpayers and projects will not be adversely affected by changes to the Fuel LCA Model after the project becomes a "qualified clean hydrogen project".

Paragraph (6)(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 (6)(c) provides that the quantity of hydrogen that is used in the calculation of carbon intensity is to be adjusted to take into account any hydrogen that is consumed in the production process. More information regarding this adjustment will be provided in the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

Paragraph (6)(d) provides that, if hydrogen is produced from eligible hydrocarbons, any captured carbon that is subject to an "ineligible use" (e.g., in enhanced oil recovery) is deemed not to be captured.

Paragraph (6)(e) describes how electricity generated by the taxpayer or purchased (either from the provincial grid or under an eligible power purchase agreement) and used in connection with a clean hydrogen project is to be taken into account in calculating the carbon intensity of the project.

Subparagraph (e)(i) provides rules for how to account for the three different types of self-generated electricity that may be used in connection with a qualified clean hydrogen project, which consist of:

- an eligible electricity generation source,
- certain on-site generation, and

- startup or emergency backup generators.

If the generation source is not in one of the categories listed above, then the carbon intensity of the project is deemed to be greater than 4.5 (and the project would not be eligible for the Clean Hydrogen tax credit). This is to ensure that clean hydrogen projects use electricity from recognized sources that can be modelled using the Fuel LCA Model.

Under subparagraph (e)(ii), 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 input 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.

Under subparagraph (e)(iii), if the project sources any of its electricity from the provincial grid, then the input carbon intensity of the provincial grid that supplies the project with electricity is to be used in applying the Fuel LCA Model to calculate the carbon intensity of the hydrogen produced or to be produced.

The contribution of this grid electricity to the carbon intensity of hydrogen is to be based on the net positive quantity of the electricity purchased from the grid. This requires the calculation of the net amount of electricity taken from the grid after subtracting any electricity generated by the taxpayer or purchased by the taxpayer under an eligible power purchase agreement that is transmitted to the grid by the taxpayer. In calculating actual carbon intensity, which is required to be reported for each operating year, the determination of the net positive quantity of electricity purchased from the grid is also to be made for each operating year.

Paragraph (6)(f) provides an ordering rule that applies where a project consumes electricity from both self-generation and an eligible power purchase agreement. If the total electricity from these two categories of sources exceeds the total electricity consumed or to be consumed by the project, then the quantity consumed or to be consumed by the project is deemed to be self-generated first, and then the amount of any excess is deemed to be sourced from the eligible power purchase agreement. This may be relevant for determining the relative contribution of each source of electricity to the carbon intensity of the hydrogen produced or to be produced by the project.

Paragraph (6)(g) describes how eligible hydrocarbons are to be taken into account in the calculation of carbon intensity of a project that uses eligible hydrocarbons to produce hydrogen.

Similar to eligible power purchase agreements, subparagraph (g)(i) requires the contribution of any "eligible renewable hydrocarbon" to the overall carbon intensity calculation to correspond with the CFR carbon intensity of the relevant hydrocarbon, and that it be calculated by taking into account the number of years for which the hydrocarbon will be used during the first 20 years of project operations.

If the project will not use any eligible renewable hydrocarbons, then under subparagraph (g)(ii), the default input carbon intensity of the relevant eligible hydrocarbon 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 (6)(h) provides that if the taxpayer disposes of any environmental attributes associated with any electricity described in subparagraph (e)(i) or (ii) or any eligible renewable hydrocarbon described in subparagraph (g)(i), the carbon intensity of the project is deemed to be greater than 4.5. This rule seeks to ensure that the "clean" attributes remain associated with the relevant inputs.

Paragraph (6)(i) provides that the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document* (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, except as otherwise provided in section 127.48.

Changes to clean hydrogen project

ITA
127.48(7)

Subsection 127.48(7) sets out various situations where subsection 127.48(8) would apply in respect of a clean hydrogen project of a taxpayer. Each case 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 material change to the project design and requests the taxpayer to file a revised project plan in respect of the project. For example, the Minister of Natural Resources could make this determination after receiving and reviewing final engineering designs for the project.

Subsection 127.48(8) also applies if:

- the taxpayer does not file final detailed engineering designs with the Minister of Natural Resources in accordance with paragraph (9)(d),
- the taxpayer changes the project's eligible pathway,
- the taxpayer reasonably expects an increase (as compared to the most recent project plan for the project) of more than 0.5 kilograms of carbon dioxide equivalent per kilogram of hydrogen to be produced by the project,
- an eligible power purchase agreement referenced in the taxpayer's most recent clean hydrogen project plan has not been finalized and executed (e.g., a memorandum of understanding did not result in a finalized and binding legal agreement before the first day of the compliance period),
- the eligible power purchase agreement has been materially modified or terminated, or
- the taxpayer disposes of any environmental attributes associated with the electricity purchased under the eligible power purchase agreement.

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 any of the events described in subsection 127.48(7), 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 the main conditions in 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 after 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 4.5, 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 4.5 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 and rules

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) requires the taxpayer to file final detailed engineering designs with the Minister of Natural Resources by the earlier of:

- the day that the project first produces hydrogen, and
- the day that is 60 days after the final detailed engineering designs are prepared.

These final engineering designs are necessary to evaluate the project’s compliance with the rules in section 127.48 and may assist the Minister of Natural Resources in determining whether to request that the taxpayer file a revised clean hydrogen project plan under paragraph 127.48(7)(a).

Paragraph (9)(e) 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 (10)(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 ITC in section 127.45 or a CTM ITC 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 (10)(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 (10)(c), the capital cost is required to be reduced by the amount of any government assistance or non-government assistance that can reasonably be considered to be in respect of the property. Subparagraph (c)(i) reduces the capital cost by assistance received in or before the taxation year in which the property was acquired (or was deemed to be acquired). Subparagraph (c)(ii) reduces the capital cost in circumstances where an amount has not yet been received during the year, but the taxpayer is nevertheless entitled to or can reasonably be expected to receive the amount in the year or a subsequent year, and that amount would be government assistance or non-government assistance to the taxpayer if it were received by the taxpayer. 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 (10)(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 ITC purposes. Those rules are imported for the purpose of the Clean Hydrogen tax credit, subject to certain necessary adjustments.

Under paragraph (10)(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 (10)(f) provides rules for the inclusion of the specified portion of the cost of certain eligible clean hydrogen property, where that property is not used all or substantially all to support a qualified clean hydrogen project. In general, the included portion is the proportion of the output from the equipment that is expected to be used in the project relative to the total output from the equipment, with each determined over the first 20 years of the project’s operations.

Specifically, if the equipment is energy generation equipment (paragraph (a) of the “dual-use electricity and heat equipment” definition), the proportion of the capital cost of the equipment to be included is the proportion that the quantity of energy expected to be produced for use in the project is of the total quantity of energy expected to be produced by the equipment, based on the project’s most recent clean hydrogen project plan. For this purpose, any energy produced and consumed by the equipment in the process of producing energy is not taken into account.

The proportion of the cost of electrical transmission equipment (paragraph (b) of the “dual-use electricity and heat equipment” definition or paragraph (a) of the “project support equipment” definition) or energy distribution equipment (paragraph (b) of the “project support equipment” definition) is determined in a similar manner as is the case for the energy generation equipment, as explained above.

In the case of energy distribution equipment that expands the capacity of existing equipment, the eligible portion of its cost is the proportion of the electrical or heat energy expected to be distributed by the new and existing equipment for use in the project is of the total electrical or heat energy expected to be distributed by the new and existing equipment.

In the case of water supply equipment (paragraph (c) of the "project support equipment" definition), the proportion of the capital cost that would be eligible for the credit is equal to the proportion that the mass of water expected to be supplied to the project is of the total mass of water expected to be processed by the equipment, based on the project's most recent project plan.

In the case of property described in subparagraphs (c)(iv) to (vi) of the "eligible clean hydrogen property" definition (ancillary equipment, safety, control and monitoring equipment and conversion property) that supports equipment described in one of subparagraphs (10)(f)(i) to (iv) (generation, transmission, distribution or water equipment) the proportion that applies to this property would be the same as the proportion that applies to the equipment that the property supports.

Paragraph (10)(g) allocates the cost of certain property that is used in both hydrogen and ammonia production (after having adjusted the cost under paragraph (f), if applicable) between two separate capital cost categories:

- one in respect of property described in paragraph (a) of the "specified percentage" definition (which would be eligible for one of the tiered rates under that paragraph), and
- the other in respect of property described in paragraph (b) of the "specified percentage" definition (which would be eligible for the clean ammonia rates under that paragraph).

The allocation is determined based on the percentage of the expected use of the equipment that is attributable to hydrogen production versus ammonia production, respectively.

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 as part of a qualified clean hydrogen project 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 the same equipment is expected to be used 80% in hydrogen production and 20% in ammonia production, then $2,400 of its revised capital cost ($3,000 × 80%) would then be allocated to hydrogen-related property described in paragraph (a) of the "specified percentage" definition, and the remaining $600 of its revised capital cost ($3,000 × 20%) would be allocated to ammonia-related property described in paragraph (b) of the "specified percentage" definition.

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 in respect of a qualified clean hydrogen project 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.

For the compliance report in respect of the project's fifth operating year, the taxpayer is required to include a report prepared by a "qualified verification firm" that verifies the actual carbon intensity for each operating year in the compliance period.

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 $((4\% \times A) \div 365)) \times B$, 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 $(A - B) \times C$, 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 0.5 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 respect of 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 0.5, 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 0.5 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 $(A – B) \times (C \div D)$.

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 respect of 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 and subsection 127.48(22) applies, 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.

If, by application of subsection 127.48(25), subsection (22) applies to a partnership, the partnership is required to notify the Minister 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 fiscal period of the partnership in which the recapture event occurred.

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 (23) 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 (before applying this subsection) 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.

Clause 38

ITA
127.49

New section 127.49 provides a fully refundable Clean Technology Manufacturing ITC (CTM ITC) 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 ITC 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 ITC 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 qualifying taxpayer (i.e., a taxable Canadian corporation). Alternatively, it also permits the property to be leased to a partnership all the members of which are qualifying taxpayers. 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 (vi), 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.
(vi) Property that would be described in any of the above categories if the word “mine” in Schedule II of the *Income Tax Regulations* were read as “mine, well or tailing pond”. For example, this category would include property described in one of the above categories if it is used in the extraction of lithium brines from well sites or scandium from tailing ponds.

“CTM use”

To be eligible for the CTM ITC, 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 ITC 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 referred to in section 7300 of *the Income Tax Regulations*.

“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 ITCs in section 127, the capital cost of property that is eligible for the CTM ITC 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 ITC 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 ITC. 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: hydrogen, carbon, nitrogen, oxygen, phosphorus, sulfur, selenium, sodium, potassium, halogens, and noble gases.

“qualifying material”

One of the objectives of the CTM ITC 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 (paragraph (a)).
2. Processing of minerals that occurs at a mine site, well site, tailing pond, mill, smelter or refinery (paragraph (b)).

   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, read without reference to the requirement in subparagraph (b)(i) that the activity be performed at a mine site, well site, tailing pond, mill, smelter or refinery (paragraph (c)).
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, also read without reference to the requirement in subparagraph (b)(i) that the activity be performed at a mine site, well site, tailing pond, mill, smelter or refinery) (paragraph (d)).

5. Spheronization of graphite or the coating of spheronized graphite (paragraph (e)).

“qualifying taxpayer”

The definition “qualifying taxpayer” ensures that only taxable Canadian corporations are eligible for the CTM ITC. 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 ITC.

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 ITC.

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 ITC 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 ITC 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 ITC. The prescribed form claiming the CTM ITC 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. If the form is filed after the taxpayer's filing-due date but within the one year period, the deemed payment of tax under subsection (2) is deemed not to arise under that subsection until the prescribed form and information have been filed with the Minister.

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 ITC 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 ITC claims.

Under paragraph (a), the CTM ITC is not available for any property for which a CTM ITC was previously claimed by any person, for which a CCUS tax credit in section 127.44 was deducted, for which a Clean Technology ITC 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 ITC 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 ITCs 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 relating to "government assistance" and "non-government assistance" (as those terms are defined in subsection 127(9)) that can reasonably be considered to be in respect of the property. Subparagraph (c)(i) reduces the capital cost of CTM property by assistance received in or before the taxation year in which the property was acquired (or was deemed to be acquired).

Subparagraph (c)(ii) reduces the capital cost of CTM property in circumstances where an amount has not yet been received during the year, but the taxpayer is nevertheless entitled to receive the amount in the year, or can be reasonably be expected to receive the amount in the year or a subsequent year, and that amount would be government assistance or non-government assistance to the taxpayer if it were received by the taxpayer. Amounts that are repaid or are no longer expected to be received may be eligible for the CTM ITC 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 ITC purposes. Those rules are imported for the purpose of the CTM ITC, 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 ITC 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 ITC 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 ITC would be determined in respect of the partnership if it were a qualifying taxpayer. The CTM ITC 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 ITCs under section 127. However, some important modifications to the partnership rules are made for the clean economy ITCs 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 ITC 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 ITC 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 ITC 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 ITC 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 ITC associated with that property will be recaptured. Recapture of the CTM ITC will in no case exceed the CTM ITC associated with the particular property.

Where a CTM property is disposed of to a person or partnership 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 ITC will be deferred where CTM property is disposed of by a taxpayer to a related qualifying taxpayer 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 ITCs 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 qualifying taxpayer 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 ITC 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 ITC 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 ITC of a member of the partnership (i.e., the partnership computed a CTM ITC, 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 ITC 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 ITC 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 ITC: 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.

Clause 39

Subsection 127.491(1) provides rules that apply to partnerships for the purposes of the Clean Hydrogen ITC and the CTM ITC. It mirrors the rules that are in proposed section 127.47 of the ITA, which is included in Bill C-59. If Bill C-59 receives royal assent section 127.491 would be repealed and instead section 127.47 would be amended so that it also applies to both those credits. See subclauses 80(72) to (78) and (83).

Definitions

ITA
127.491(1)

“at-risk amount”

For the purposes of new section 127.491, “at-risk amount” has the meaning assigned by subsection 96(2.2).

Under new subsection 127.491(3), the total clean economy tax credit amount that may be allocated to a limited partner by a partnership is restricted to the partner’s at-risk amount in respect of the partnership.

“clean economy allocation provision”

For the purposes of new section 127.491, “clean economy allocation provision” means any of subsections 127.48(12) (the partnership allocation provision for the Clean Hydrogen tax credit) and 127.49(8) (the partnership allocation provision under the CTM ITC).

“clean economy expenditure”

A “clean economy expenditure” means the capital cost of eligible clean hydrogen property, as determined under section 127.48 or the capital cost of CTM property, as defined in and determined under section 127.49.

This definition serves to consolidate expenditures that qualify for the new clean economy tax credits. Under new subsection 127.491(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.

“clean economy provision”

A “clean economy provision” means any of sections 127.48, 127.49 and 127.491.

This definition allows the tiered partnership rule in new subsection 127.491(7) to apply for the purposes of all clean economy provisions.

“clean economy tax credit”

A “clean economy tax credit” means any of a Clean Hydrogen tax credit, as defined in subsection 127.48(1), and a CTM investment tax credit, as defined in subsection 127.49(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 127.491(2) and, for limited partners, based on the partner’s at-risk amount under new subsection 127.491(3). It is also relevant for the purpose of apportioning any aggregate credit amounts back to each clean economy tax credit under new subsection 127.491(4).

“limited partner”

For the purposes of section 127.491, “limited partner” has the meaning assigned by subsection 96(2.4), read without reference to the words “if the member’s partnership interest is not an exempt interest (within the meaning assigned by subsection (2.5)) at that time and”. The deleted words refer to a legacy provision.

Credits in unreasonable proportions

ITA
127.491(2)

New subsection 127.491(2) ensures that the allocation of a clean economy tax credit among partners is reasonable in the circumstances, notwithstanding any agreement providing otherwise. Relevant factors in the determination of a reasonable allocation include the capital invested and work performed by members of the partnership.

Limited partners

ITA
127.491(3)

New subsection 127.491(3) restricts the total amount of clean economy tax credits that may be allocated by a partnership at the end of its fiscal period to a limited partner, notwithstanding any allocation otherwise made under a clean economy allocation provision or under subsection 127.491(2).

In general terms, a partnership may allocate to a limited partner a share of clean economy tax credits (based on investments made by the partnership) only to the extent that the allocation does not exceed the limited partner's at-risk amount in respect of the partnership at the end of the partnership’s fiscal period.

Apportionment rule

ITA
127.491(4)

New subsection 127.491(4) provides that the amount required by any clean economy allocation provision to be added in computing a particular clean economy tax credit of a taxpayer in respect of a partnership for the taxation year in which the partnership’s fiscal period ends is deemed to be the portion of the amount otherwise determined under this section in respect of the taxpayer that is reasonably attributable to each particular clean economy tax credit.

This provision apportions the total clean economy tax credit of a taxpayer who receives an allocation from a partnership that was limited by any provision in section 127.491. The portion of the total allocated to each clean economy tax credit should be the amount that is reasonably attributable to the clean economy tax credit.

Assistance received by member of partnership

ITA
127.491(5)

New subsection 127.491(5) provides for a reduction of a partnership's clean economy expenditures (on which a partnership may calculate a clean economy tax credit) where a member of the partnership has received, is entitled to receive, or can reasonably be expected to receive, government assistance or non-government assistance in respect of the expenditure.

This provision essentially mirrors paragraph 127(11.1)(d) and applies to the new clean economy tax credits.

Credit received by member of partnership

ITA
127.491(6)

New subsection 127.491(6) ensures that the amount of any clean economy tax credit allocated to a member of a partnership reduces the capital cost of the related depreciable property (that is owned by the partnership) under subsection 13(7.1) as assistance from government.

This provision essentially mirrors subsection 127(12) and applies to the new clean economy tax credits.

Tiered partnerships

ITA
127.491(7)

New subsection 127.491(7) provides a "look-through" rule for the situation where a partnership (i.e., an upper-tier partnership) is a member of another partnership (i.e., a lower-tier partnership). Under this rule, a person or partnership that is a member of an upper-tier partnership is deemed to be a member of the lower-tier partnership.

This rule applies for the purposes of each clean economy provision (defined in subsection 127.491(1)), including for determining the amount of a clean economy tax credit earned by a lower-tier partnership (i.e., the clean economy expenditure is incurred by the lower-tier partnership) to be allocated to the members of the upper-tier partnership. It would also apply for the purposes of determining the amount of any addition to tax payable of taxpayers who are members of an upper-tier partnership from the recovery or recapture of clean economy tax credits that were allocated through a lower-tier partnership.

Clause 40

Minimum amount determined

ITA
127.51

Section 127.51 provides for the calculation of an individual's minimum tax, if any, for the year. An individual's minimum tax for a taxation year is determined in accordance with the formula:

$$A \times (B - C) - D.$$

A is the appropriate percentage (currently 15%); B is the individual's adjusted taxable income determined in accordance with the rules providing for the minimum tax; C is the individual's basic minimum tax exemption for the year; and D is the individual's basic tax credit for the year.

The description of A is amended to provide that the minimum tax percentage will be 20.5%.

The description of C in the formula in section 127.51 reduces the minimum tax amount by an individual's basic exemption for the year, which is currently $40,000.

The description of C is amended to provide that the basic exemption will be the first dollar amount referred to in paragraph 117(2)(d). This is the lower bound for the fourth income tax bracket ($173,205 in 2024). The existing income tax bracket inflation indexing will apply to this basic exemption amount.

Currently the basic exemption is only available to individuals (other than trusts) and graduated rate estates. Paragraph C is also amended to provide that the basic exemption is available to qualified disability trusts (as defined in subsection 122(3)). The reference to graduated rate estates is also removed because graduated rate estates are exempt from the minimum tax under new clause 127.55(f)(i)(A).

These amendments will apply for taxation years that begin after 2023.

Clause 41

Adjusted taxable income determined

Section 127.52 includes rules for calculating an individual's adjusted taxable income for the purposes of the minimum tax payable under section 127.5. This is the base on which minimum tax is calculated. An individual's adjusted taxable income is generally their income for the year calculated based on regular rules except with fewer deductions, exemptions and tax credits.

Section 127.52 is amended in several ways. These amendments apply to taxation years that begin after 2023.

ITA
127.52(1)(d)(i)

Subparagraph 127.52(1)(d)(i) provides that in computing an individual's adjusted taxable income for minimum tax purposes, taxable capital gains (paragraph 38(a)), allowable capital losses (paragraph 38(b)), allowable business investment losses (paragraph 38(c)) and gains from listed personal property (section 41) are included at a rate of 4/5, or 80%. These amounts would otherwise be included at a rate of 50%.

This amendment will set the minimum tax inclusion rate for capital gains, allowable capital losses and gains from listed personal property at 100%, or 1/1. Allowable business investment losses will now be included at a rate of 50% (like under regular rules), since the inclusion rate applicable to allowable business investment losses under paragraph 38(c) is no longer modified by subsection 127.52(1).

The exception for gifts to qualified donees is also removed, such that capital gains on gifts to qualified donees would be included at the 100% rate. An exception is provided in new paragraph 127.52(1)(d.1) to address gifts of publicly listed securities, which would be included at a 30% rate.

ITA
127.52(1)(d)(ii)

Subparagraph 127.52(1)(d)(ii) provides that in computing an individual's adjusted taxable income for minimum tax purposes, there is an inclusion in the individual's income of a taxable capital gain where a trust designates a taxable capital gain to be a taxable capital gain of a beneficiary. This inclusion is currently computed as 80% of the capital gain.

This amendment will change the taxable capital gain inclusion rate for a taxable capital gain allocated by a trust to a beneficiary to be 100% of the capital gain. This will now match the 100% taxable capital gain inclusion rate provided for in newly amended subparagraph 127.52(d)(i).

The amendment will apply for taxation years that begin after 2023.

ITA
127.52(1)(d.1)

This amendment adds new paragraph 127.52(1)(d.1). Paragraph 38(a.1) provides that the taxable capital gains inclusion rate is 0% on the donation of publicly listed securities to qualified donees. This amendment provides that the taxable capital gains inclusion rate on the donation of publicly listed securities will be 3/10 (or 30%) for the purposes of computing an individual's minimum tax.

ITA
127.52(1)(g)(ii)

Paragraph 127.52(1)(g) is relevant to calculating the minimum tax of a trust. It deals with taxable capital gains of a trust that are generally deductible by the trust and included in the income of a beneficiary (including, if applicable, for minimum tax purposes). More specifically, paragraph 127.52(1)(g) provides that, for the purpose of computing the adjusted taxable income of a trust for a year, the non-taxable portion of certain net taxable capital gains of the trust is to be deducted. These net taxable capital gains are those designated by the trust under subsection 104(21), those included by virtue of subsection 104(13) or section 105 in computing the income of a non-resident beneficiary and those paid to a beneficiary by a trust governed by an employee benefit plan.

Under subparagraph (g)(i) the trust can deduct the amount otherwise deductible under 127.52, which is generally 1/2 of relevant capital gains (i.e., the taxable capital gain amount). Under existing subparagraph (g)(ii), the trust can deduct an extra 3/5 of those amounts. This provides an additional deduction of 30% of the capital gain (i.e., 3/5 × 1/2 = 3/10). As such, the total trust deduction for relevant taxable capital gain amounts for the purposes of the minimum tax is currently 80% of the capital gain (i.e., 3/10 + 1/2 = 8/10). This matches the current 80% minimum tax inclusion of the trust beneficiary.

This amendment removes the reference to 3/5 in the formula. As such, the trust's deduction for minimum tax purposes is now 100% (i.e., 1/2 + 1/2 = 100%) of relevant capital gains that are allocated to beneficiaries. This matches the new 100% minimum tax inclusion by the recipient of the allocated amount.

ITA
127.52(1)(h)(i) to (vi)

Paragraph 127.52(1)(h) limits, for the purposes of computing an individual's minimum tax, the amounts deductible under sections 110 to 110.7. Only those amounts specifically listed in paragraph 127.52(1)(h) may be deducted. This amendment replaces subparagraphs 127.52(1)(h)(i) to (v) with new subparagraphs (i) to (iv). Existing subparagraph 127.52(1)(h)(vi) (amounts deductible under paragraph 110(1)(g), tuition assistance for basic adult education) is not changed by these amendments.

New subparagraph 127.52(1)(h)(i) retains the deduction available under subsection 110(2) (the deduction for those taking vows of perpetual poverty).

New subparagraph 127.52(h)(ii) provides for the deduction under subsections 110.6(2) and (2.1) (the lifetime capital gains exemption) and paragraph 110(1)(d.01) (the deduction for donated stock options of publicly listed shares). For the purposes of computing an individual's minimum tax, these deductions are being increased by a factor of 7/5. The amendment to paragraph 127.52(h) removes the 50% deduction under paragraph 110(1)(d), the regular stock option deduction which would otherwise decrease the stock option inclusion rate to 50%. It is now 100%. As such, with the capital gains inclusion rate and stock option rate being increased to 100%, an increased 7/5 deduction for the lifetime capital gains exemption and donated stock

options, provides that the minimum tax net inclusion rate for capital gains that are subject to the lifetime capital gains exemption and income from donated stock options will be 30%. Other deductions for stock options provided under paragraphs 110(1)(d.1) – (d.3) will no longer be available.

Example

Daniel realizes a capital gain of $3,000,000 in 2024 on the disposition of shares that qualify for the lifetime capital gains exemption. For regular income tax purposes, he claims a lifetime capital gains deduction of $500,000 under subsection 110.6(2.1). Pursuant to amended paragraph 127.52(1)(d), 100% of the $3,000,000 capital gain must be included in Daniel's income for alternative minimum tax purposes. Amended subparagraph 127.52(h)(ii) will allow Daniel to claim a deduction, for minimum tax purposes, equal to 7/5 of $500,000 (i.e., a deduction of $700,000). Accordingly, for minimum tax purposes, Daniel will have a net inclusion of $2.3 million dollars in respect of the capital gain. This is equal to a 30% inclusion rate for the portion of the capital gain that benefited from the lifetime capital gains inclusion rate (i.e., $1,000,000 of the capital gain) and a 100% inclusion rate for the balance (i.e., $2,000,000).

Example

In 2024, Caroline exercises an employee stock option with a nominal strike price, pursuant to which she acquires publicly listed shares worth $1,000,000. Immediately thereafter she disposes of the underlying shares to a qualified donee. For regular income tax purposes, Caroline includes $1,000,000 in her income under subsection 7(1), but is entitled to deduct $500,000 under paragraph 110(1)(d) (the stock option deduction) and an additional $500,000 under paragraph 110(1)(d.01) (the deduction for donated securities). For minimum tax purposes, she must include $1,000,000 in her income and cannot claim a deduction under paragraph 110(1)(d). However, she can claim a deduction equal to 7/5 of her deduction under 110(1)(d.01) (i.e., $700,000). Accordingly, her net inclusion for minimum tax purposes is $300,000 (or 30% of her employment benefit). If Caroline had not qualified for a deduction under paragraph 110(1)(d.01), for minimum tax purposes she would have been required to include in income the full $1,000,000 employment benefit with no deduction.

New subparagraph 127.52(h)(iii) provides for deductions available under paragraph 110(1)(f). New clauses 127.52(h)(iii)(A) and (B) limit to 50% the amount otherwise deductible for the deduction for Canadian Forces and police for designated international missions (deductible under subparagraph 110(1)(f)(v)).

New subparagraph 127.52(h)(iv) reduces to 50% the Northern Residents deduction (available under subsection 110.7(1)).

ITA
127.52(1)(i)(i)(A)

For the purpose of calculating an individual's adjusted taxable income for the minimum tax, paragraph 127.52(i) restricts the application of an individual's losses arising in other taxation years that are deductible in computing the individual's taxable income under Part I of the Act.

The carried losses from other years that may be deducted for the purposes of the minimum tax under paragraphs 111(a), (c), (d) and (e) are the lesser of those that were otherwise deducted in the year (clause 127.52(1)(i)(i)(A)) and the calculation of those losses for the other years by reference to how the relevant portions of subsection 127.52(1) applied in those other taxation years (clause 127.52(l)(i)(i)(B)). In general, if, for minimum tax purposes, such losses would have been reduced in calculating adjusted taxable income for the taxation years in which the losses arose, they will not be available in calculating adjusted taxable income for the current taxation year.

The amendment to clause 127.52(1)(i)(i)(A) limits the use of other years' non-capital loss (paragraph 111(1)(a)), restricted farm losses (paragraph 111(c)), farm losses (paragraph (111(1)(d)) and limited partnership loss (paragraph 111(1)(e)) carried amounts. For the purposes of determining an individual's minimum tax, the amounts that may be deducted under paragraphs 111(1)(a), (c), (d) and (e) are half of the amounts that the individual otherwise deducted for the year under those paragraphs.

ITA
127.52(1)(i)(i)(B)

Clause 127.52(l)(i)(i)(B) provides that the calculation of losses available under paragraphs 111(a), (c), (d) and (e) for other years is by reference to how the relevant portions of subsection 127.52(1) applied in those other taxation years.

The amendment to clause 127.52(1)(i)(i)(B) limits the use of other years' non-capital loss (paragraph 111(1)(a)), restricted farm losses (paragraph 111(c)), farm losses (paragraph (111(1)(d)) and limited partnership loss (paragraph 111(1)(e)) carried amounts under the alternative calculation of the losses that are available. For the purposes of determining an individual's minimum tax, the amounts that may be deducted under paragraphs 111(1)(a), (c), (d) and (e) are half of the amounts that would otherwise be deductible by the individual for the respective year under those paragraphs.

ITA
127.52(1)(i)(ii)(A)

Subparagraph 127.52(1)(i)(ii) allows the use of other year's capital loss carried amounts (provided under paragraph 111(1)(b)). The maximum amount that may be deducted is the amount that the taxpayer would have deducted under paragraph 111(1)(b) if paragraph 127.52(1)(d) had been applicable in computing the amount deductible under paragraph 111(1)(b). This allows the taxpayer to calculate and deduct their loss carry amount using the higher inclusion rate provided in 127.52(1)(d) (currently 80%).

Similar to subparagraph 127.52(1)(i)(i), the carried losses from other years that may be deducted for the purposes of the minimum tax under paragraph 111(1)(b) are the lesser of those amounts that would have been deducted in the year (determined based on the inclusion rate in 127.52(1)(d), as described above) and the calculation of those losses for the other years by reference to how the relevant portions of subsection 127.52(1) applied in those other taxation years (clause 127.52(l)(i)(ii)(B)).

The amendment to clause 127.52(1)(i)(ii)(A) removes the application of paragraph 127.51(1)(d) in determining the amount of other year capital losses that may be deducted. As such, for the purposes of determining an individual's minimum tax, the amount that may be deducted under paragraph 111(1)(b) is the amount that the individual actually deducted for the year under that paragraph. Accordingly, the inclusion rate for capital loss carryforwards is reduced to 50%, instead of the current 80%.

ITA
127.52(1)(i)(ii)(B)

Clause 127.52(l)(i)(ii)(B) provides that the calculation of capital losses available under paragraph 111(b) for other years is by reference to how the relevant portions of subsection 127.52(1) applied in those other taxation years.

The amendment to clause 127.52(1)(i)(ii)(B) removes, for taxation years beginning after 2023, the application of paragraph 127.52(1)(d) in determining the computation of capital losses that are available to be carried forward or backward for a year.

ITA
127.52(1)(j)

Paragraph 127.52(1)(j) currently provides for an adjustment for certain payments made out of pension funds made in 1972 or 1973 that are referred to in section 40 of the *Income Tax Application Rules*. This rule is no longer relevant and existing paragraph 127.52(1)(j) is replaced by new paragraph 127.52(1)(j).

New paragraph 127.52(1)(j) limits certain deductions to a rate of 50% for the purposes of computing an individual's minimum tax. As such, for the purposes of computing an individual's minimum tax, the individual may only deduct one half of the amounts otherwise deducted in the year:

- For certain office and employment expenses.
- For interest and financing expenses in respect of an amount borrowed to earn income from property. This limitation does not apply for the purposes of other provisions of the minimum tax rules that apply to limit the deduction of interest and financing expenses for specific purposes.
- For Canada Pension Plan/Quebec Pension Plan contributions on self-employed earnings, enhanced CPP contributions and Quebec parental insurance plan self-employed premiums.
- For moving expenses.
- For child care expenses.
- For the disability supports deduction.

Clause 42

Basic minimum tax credit determined

ITA
127.531(a) and (b)

An individual's basic minimum tax credit, which is deductible under 127.51 in computing minimum tax, is determined under section 127.531. Paragraph 127.531(a) is amended so that the tax credit provided under subsections 118.3(2) (which provides criteria for determining the entitlement of a supporting individual of a disabled person to claim the disabled person's unused disability tax credit) and (3) (the allocation of the disability tax credit where more than one individual is entitled to the credit in respect of the same dependant) and sections 118.8 to 118.9 (the transfer of unused tuition credits), are included in computing the basic minimum tax credit.

The section is also amended to provide that the basic minimum tax credit would include ½ of all amounts described in that credit under paragraphs 127.531(a) and (b). These paragraphs include credits that are part of the basic minimum tax credit other than the charitable donation credit, the deduction allowed under section 119 and the logging credit under section 127(1).

New paragraph 127.531(c) provides that the basic minimum tax credit would include 4/5 of the amounts described under section 118.1 (the charitable donation credit).

New paragraph 127.531(d) allows for inclusion in the basic minimum tax credit of 100% of amounts deducted under section 119 and subsection 127(1). Section 119 is a relieving rule that addresses the possible overlap between the tax resulting from a deemed disposition of a capital property upon emigration and the Part XIII tax on dividends for that property. In general terms, the rule allows a tax credit equal to the tax on those dividends, up to the amount of the tax on the capital gain that arose on emigration from Canada.

The amendment will apply for taxation years that begin after 2023.

Clause 43

Definitions

ITA
127.54(1) and (2)

Section 127.54 provides that an individual subject to the minimum tax may claim a special foreign tax credit in an amount equal to or, in certain circumstances, greater than the credit to which they are entitled under the usual rules in section 126. Under the special credit, an individual may deduct from their federal minimum tax payable an amount equal to the lesser of 15% of their foreign income for the year and the foreign tax paid in respect of that income. For the purposes of this deduction, the foreign tax paid by the individual is the aggregate of the foreign tax which has been paid by the individual in respect of businesses carried on by the individual in foreign countries and two-thirds of the foreign tax paid by the individual in respect

of foreign-source non-business income. This takes into account the fact that, while the provinces provide a foreign tax credit in respect of non-business income, they do not provide a credit for foreign tax on business income which is generally not subject to provincial tax.

The definition "foreign income" in subsection 127.54(1) provides that an individual's foreign income for the year is the total of the individual's income from businesses carried on in foreign countries and the individual's income for which they have paid non-business income taxes (within the meaning of subsection 126(7)) to foreign governments. Consequential to the increase in the taxable capital gains inclusion rate to 100% for the purposes of the alternative minimum tax, paragraph (b) of the definition "foreign income" is amended to ensure that the full amount of any applicable capital gain is included in computing an individual's non-business foreign income for the purposes of determining their foreign tax credit.

Consequential on the increase in the alternative minimum tax rate to 20.5% in section 127.51, the description of A in subparagraph 127.54(2)(b)(ii) is amended to provide that under the special foreign tax credit, an individual may deduct from his federal minimum tax payable an amount equal to the lesser of 20.5% of his foreign income for the year and the foreign tax paid in respect of that income.

These amendments will apply for taxation years that begin after 2023.

Clause 44

Application of s. 127.5

ITA
127.55(f)

Section 127.55 limits the application of the minimum tax set out in section 127.5. Paragraph 127.55(f) is amended to provide that certain trusts will not be subject to the minimum tax. These exempted trusts are trusts which throughout the taxation year are:

- A mutual fund trust.
- A related segregated fund trust.
- A master trust.
- A graduated rate estate.
- An employee life and health trust.
- A trust governed under:
    - a deferred profit sharing plan,
    - a pooled registered pension plan,
    - a registered education savings plan,
    - a registered pension plan,
    - a registered retirement income fund,
    - a registered retirement savings plan,
    - a tax-free savings account,
    - an employee profit sharing plan,
    - a registered supplementary unemployment benefit plan, or

  - a first home savings account.
- An investment fund as defined under subsection 251.2(1), unless the trust qualifies as an investment fund because of or in connection with a transaction or event or series of transactions or events one of the main purposes of which is to avoid the minimum tax.
- A trust that meets the following conditions:
  - all of the beneficiaries of the trust are exempt from minimum tax or are trusts, all of the beneficiaries of which are described in the subparagraph setting out these conditions (essentially, allowing tiering of trusts as beneficiaries),
  - no beneficiary, other than one described above, can be added,
  - all of the interests are fixed interests (as defined in subsection 94(1)), and
  - it is irrevocable.
- A unit trust if the total fair market value of the units of the trust that are listed on a designated stock exchange represents all or substantially all of the total fair market value of all the units of the trust.
- A trust that is otherwise exempt from tax under Part I.
- A trust deemed to have been created under paragraph 143(1)(a) (a communal organization).

The amendment will apply for taxation years that begin after 2023.

Clause 45

Definitions

ITA
128.1(10)

“excluded right or interest”

The definition “excluded right or interest” in subsection 128.1(10) applies for the purpose of the deemed disposition of property when an individual taxpayer ceases to be resident in Canada. Paragraph (g) of the definition refers to the right to a benefit under the *Canada Pension Plan* and similar provincial pension plans.

Subparagraph (g)(i) of the definition “excluded right or interest” in the English version of the ITA is amended to refer directly to the definition “provincial pension plan” that appears in the *Canada Pension Plan* statute. This is already provided for in the French version.

This amendment comes into force on August 4, 2023.

Clause 46

Definitions

ITA
129(4)

“eligible refundable dividend tax on hand”

New subparagraph (a)(iii) of the definition “eligible refundable dividend tax on hand” (ERDTOH) in subsection 129(4) is added to include eligible dividends received by a particular corporation from payer corporations it is connected with to the extent that such dividends:

a) caused a dividend refund to those payer corporations from their refundable dividend tax on hand (RDTOH) at the end of their first taxation year that ended after 2018, and
b) are not otherwise included in determining the particular corporation’s ERDTOH.

This amendment is intended to address situations where a dividend recipient has (in its first taxation year under the ERDTOH regime) received an eligible dividend from a connected corporation (in its last taxation year under the old RDTOH regime) that caused the payer corporation to receive a dividend refund and that was thus subject to Part IV tax. This situation could arise if a dividend recipient and a payer corporation have different taxation year-ends.

This amendment applies to taxation years that begin after 2018.

Clause 47

Sections not applicable

ITA
131(4.1)

Subsection 131(4.1) of the Act prevents the exchange of shares of different classes of a mutual fund corporation from occurring on a tax deferred basis where the shares derive their value from different property. Exceptions are provided in paragraphs 131(4.1)(a) and (b) where the shares are of the same class (determined without reference to subsection 248(6)) and certain conditions are met, including that the shares derive their value from the same property or group of properties.

Subsection 131(4.1) is amended to add an additional exception in paragraph (c) where the shares are of Capital régional et coopératif Desjardins (the shares do not need to be of the same class), and certain conditions are met, including that the shares derive their value from the same property or group of properties.

This amendment applies to the exchange or other disposition of a share on or after October 25, 2018.

Clause 48

Definitions

ITA
146(1)

"earned income"

Subsection 146(1) defines "earned income", which is relevant in determining the maximum tax-deductible contributions that a taxpayer may make to RRSPs.

The French versions of paragraphs (a), (c), (e), and (g) of the definition "earned income" are amended to better align the French and the English versions of these paragraphs.

Deemed receipt of refund of premiums

ITA
146(8.1)

Subsection 146(8.1) allows the legal representative of a deceased RRSP annuitant's estate and a qualifying beneficiary under the estate to jointly designate to have the RRSP proceeds that were paid to the estate treated as a "refund of premiums" (as defined in subsection 146(1)) received by the beneficiary from the RRSP. When such a designation is made, the beneficiary may include the deemed refund of premiums in income. If a corresponding amount is used to acquire a qualifying annuity or is paid into an RRSP or registered retirement income fund of the surviving spouse (or common-law partner) and certain other conditions are satisfied, the beneficiary will be entitled to an offsetting deduction under paragraph 60(l).

Subsection 146(8.1) is amended to permit a joint designation to be filed for a deemed receipt of "refund of premiums" in cases where a spouse or common-law partner is neither a beneficiary of the RRSP nor the estate of the deceased RRSP annuitant, but where a payment is made from the estate (not exceeding the RRSP proceeds) to a surviving spouse or common-law partner in accordance with a court order or written agreement relating to rights or interests in respect of the property from a marriage or common-law partnership.

This amendment comes into force on January 1, 2020.

Subsection (8.92) not applicable

ITA
146(8.93)

Subsection 146(8.93) sets out conditions which must generally be satisfied in order for the deduction under subsection (8.92) to be available.

The French version of subsection 146(8.93) is amended to better align the French and the English versions of this subsection.

Transfer of funds

ITA
146(16)

Subsection 146(16) allows a taxpayer to transfer funds on a tax-deferred basis from their RRSP to registered vehicles listed in that subsection, before the maturity of the transferor RRSP.

The French version of subsection 146(16) is amended to better align the French and the English versions of this subsection.

Specified pension plan — account

ITA
146(21.2)

Subsection 146(21.2) applies for various purposes of the Act and Regulations to deem an individual's account under a specified pension plan (i.e., the Saskatchewan Pension Plan) to be a registered retirement savings plan under which the individual is the annuitant.

A reference to subsection 60.011 is added to subsection 146(21.2). As a result, the rules in section 60.011 will apply to amounts transferred from an individual’s account under a specified pension plan to a qualifying annuity under which a trust is the annuitant (where the beneficiary of the trust is the individual’s spouse or common-law partner).

This amendment comes into force on August 4, 2023.

Clause 49

Definitions

ITA
146.01(1)

Subsection 146.01(1) sets out definitions that are relevant for the purposes of the Home Buyers' Plan (HBP). The definitions “regular eligible amount” and “supplemental eligible amount” are amended to increase the eligible HBP withdrawal limit from $35,000 to $60,000.

These amendments apply in respect of the 2024 and subsequent taxation years in respect of eligible amounts received after April 16, 2024.

Portion of eligible amount not repaid

ITA
146.01(4)

Subsection 146.01(4) of the Act is amended consequential on the addition of new subsection 146.01(4.1), a temporary rule that will apply to eligible amounts received for which the completion date occurs in 2023 to 2026 (generally, HBP withdrawals made in years 2022 to 2025). Specifically, the words "Subject to subsection (4.1)" are added to the opening words of subsection (4) to indicate that the income-inclusion formula is modified in respect of taxation years that are subject to the new rule.

Temporary repayment relief

ITA
146.01(4.1) and (4.2)

Subsection 146.01(4) generally requires that HBP repayments to an RRSP commence in the second taxation year after the year in which the individual received an eligible amount under the HBP program. Any portion of the required annual repayment not contributed to an RRSP and designated as an HBP repayment is included in the HBP participant's income for that taxation year.

New subsection 146.01(4.1) will temporarily defer the start of the 15-year repayment period. Specifically, the start of the repayment period will be deferred by an additional three years for participants making a first withdrawal between January 1, 2022 and December 31, 2025. For example, under current rules, an individual who makes a withdrawal under the HBP in 2022 would be required to start making minimum HBP repayments in 2024 and would have until 2038 to fully repay. Under the new temporary relief measure, the individual would not be required to start making minimum HBP repayments before 2027 and would have until 2041 to fully repay.

Subsection (4.1) operates by requiring certain elements of the formula in subsection (4) to be re-read as if certain temporary relief conditions are met.

Where an individual's completion date in respect of an HBP withdrawal occurs in 2023 to 2026, paragraph (4.1)(a) will apply to re-read subparagraphs (a)(i) and (a)(ii) of variable A in subsection 146.01(4). Specifically, paragraph (a) will be re-read as having an additional subparagraph (iii), which is satisfied when subsection (4.2) applies. Subsection (4.2) sets out the various combinations of taxation year and completion dates in respect of HBP withdrawals for which temporary repayment relief applies. Accordingly, variable A will be nil for the four years following the year of the first HBP withdrawal (i.e., the year of the completion date—the year after the first withdrawal—plus an additional three years).

Paragraph (4.1)(b) effectively ensures that variable B does not begin to cumulate previously designated repayments three years too early. Variable B works in tandem with Variable E to ensure 'credit' for any early repayments during the 'grace period' is first applied against the first required repayment. Then, the amount of repayments in excess of the first required repayment

will reduce the participant's remaining balance, thereby reducing the average minimum required repayment in each of the second to fifteenth repayment years.

Paragraph (4.1)(c) ensures that the required 15-year repayment schedule of an HBP participant that satisfies the eligibility conditions for temporary repayment relief is appropriately delayed by three years. In other words, the amendment will ensure that the denominator "(15 – D)" appropriately counts the 15-year required repayment schedule as the 5th to 19th years after the year of the HBP withdrawal.

Finally, paragraph (4.1)(d) ensures that variable E cumulates any designated repayments made in the temporarily extended grace period and applies them fully against the first required repayment (which the measure defers for three years).

New subsection 146.01(4.2) identifies the combinations of particular taxation years (in respect of which an income inclusion could arise in the absence of the measure) and completion dates (in respect of which HBP withdrawals are made) for which the formula in subsection 146.01(4) is modified by the application of the "read as" rules in subsection (4.1). Overall, the measure provides temporary repayment relief according to the following table:

First Withdrawal	**Completion Date**	**Original Repayment Period**	**Revised Repayment Period**
2022	2023	2024 to 2038	2027 to 2041
2023	2024	2025 to 2039	2028 to 2042
2024	2025	2026 to 2040	2029 to 2043
2025	2026	2027 to 2041	2030 to 2044

Illustration of the application of subsections (4.1) and (4.2)

Example 1 (without intentional early repayment)

To illustrate the effect of these amendments, suppose Matias makes an HBP withdrawal of $30,000 in 2022. Matias' completion date is in 2023, and he expects to begin repaying his RRSP in 2024.

In the absence of the measure, Matias designates $2,000 as a repayment in each of 2024, 2025, and 2026. Assume he makes no other repayments (i.e., includes the required repayment amount in his income for 2027 onward). The formula in subsection (4) results in the following:

Year	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029+**
A	0	0	30,000	30,000	30,000	30,000	30,000	30,000

B	0	0	0	2,000	4,000	6,000	6,000	6,000
C	0	0	0	0	0	0	2,000	4,000
D	0	0	0	1	2	3	4	5
E	0	0	2,000	2,000	2,000	0	0	0
Result	0 ÷ 15 – 0 = 0	0 ÷ 15 – 0 = 0	30,000 ÷ 15 – 2,000 = 0	28,000 ÷ 14 – 2,000 = 0	26,000 ÷ 13 – 2,000 = 0	24,000 ÷ 12 – 0 = 2,000	22,000 ÷ 11 – 0 = 2,000	20,000 ÷ 10 – 0 = 2,000

Now, suppose the same fact pattern, but with the measure in place. The formula in subsection (4) results in the following:

Year	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029+**
A	0	0	**0**	**0**	**0**	30,000	30,000	30,000
B	0	0	0	**0**	**0**	**0**	6,000	6,000
C	0	0	0	0	0	0	**0**	**1,714**
D	0	0	0	**0**	**0**	**0**	**1**	**2**
E	0	0	2,000	**4,000**	**6,000**	**6,000**	0	0
Result	0 ÷ 15 – 0 = 0	0 ÷ 15 – 0 = 0	0 ÷ 15 – 2,000 = 0*	0 ÷ 15 – 4,000 = 0*	0 ÷ 15 – 6,000 = 0*	30,000 ÷ 15 – 6,000 = 0*	24,000 ÷ 14 – 0 = 1,714	22,286 ÷ 13 – 0 = 1,714

* Result is zero due to the application of section 257 of the *Income Tax Act*.

Note that, in the example above, Matias ends up making contributions to his RRSP in 2024 under the expectation of repayment requirement under the current rules. These repayments, if designated, will reduce Matias' HBP balance once the repayment period re-commences. Alternatively, if Matias has RRSP room, he could opt to not designate these contributions as HBP repayments, and instead claim them as regular (deductible) RRSP contributions when filing his 2024 personal income tax return in 2025.

Example 2 (with intentional early repayment)

Under current rules, any contributions made to an RRSP before the start of the 15-year repayment period that an individual wishes to designate as HBP repayments (i.e., "early

repayments") would be credited against the amount due on the first year of the 15-year repayment period. Any excess early repayment (i.e., above the required first-year repayment) would reduce the HBP balance when calculating the required repayment due in subsequent years.

To illustrate, suppose Bernie makes an HBP withdrawal of $30,000 in 2022. Bernie's completion date is in 2023. Bernie expects to begin repayments in 2024. In the absence of the measure, she designates $2,000 as a repayment in each of 2023, 2024, 2025, and 2026. This means that she makes an early repayment of $2,000 in 2023. Assume she makes no other repayments (i.e., includes the required repayment amount in her income for 2027 onward). The formula in subsection (4) results in the following:

Year	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029+**
A	0	0	30,000	30,000	30,000	30,000	30,000	30,000
B	0	0	0	4,000	6,000	8,000	8,000	8,000
C	0	0	0	0	0	0	1,833	3,666
D	0	0	0	1	2	3	4	5
E	0	2,000	4,000	2,000	2,000	0	0	0
Result	0 ÷ 15 – 0 = 0	0 ÷ 15 – 2,000 = 0*	30,000 ÷ 15 – 4,000 = 0*	26,000 ÷ 14 – 2,000 = 0*	24,000 ÷ 13 – 2,000 = 0*	22,000 ÷ 12 – 0 = 1,833	20,167 ÷ 11 – 0 = 1,833	18,334 ÷ 10 – 0 = 1,833

* Result is zero due to the application of section 257 of the *Income Tax Act*.

Now, suppose the same fact pattern, but with the measure in place. The formula in subsection (4) results in the following:

Year	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029+**
A	0	0	**0**	**0**	**0**	30,000	30,000	30,000
B	0	0	0	**0**	**0**	**0**	8,000	8,000
C	0	0	0	0	0	0	**0**	**1,571**
D	0	0	0	**0**	**0**	**0**	**1**	**2**
E	0	2,000	**4,000**	**6,000**	**8,000**	**8,000**	0	0
Result	0 ÷ 15 – 0 = 0	0 ÷ 15 – 2,000 =	0 ÷ 15 – 4,000 =	0 ÷ 15 – 6,000 =	0 ÷ 15 – 8,000 =	30,000 ÷ 15 – 8,000 =	22,000 ÷ 14 – 0	20,429 ÷ 13 – 0 =

		0*	0*	0*	0*	0*	= 1,571	1,571

* Result is zero due to the application of section 257 of the *Income Tax Act*.

These amendments apply to the 2024 and subsequent taxation years.

Clause 50

Subsection (6.3) not applicable

ITA
146.3(6.4)

Subsection 146.3(6.4) sets out conditions which must generally be satisfied in order for the deduction under subsection (6.3) to be available.

The French version of subsection 146.3(6.4) is amended to better align the French and the English versions of this subsection.

Clause 51

Plan conditions

ITA
146.4(4)

Subsection 146.4(4) sets out registration conditions applicable to registered disability savings plans.

The French version of paragraphs (f) and (g) in subsection 146.4(4) are amended to better align the French and the English versions of these paragraphs.

Clause 52

RPP annuity contract

ITA
147.4(1)(c)

Where an individual acquires ownership of an annuity in satisfaction of the individual's entitlement to benefits under a registered pension plan (RPP) and certain other conditions are met, subsection 147.4(1) deems the individual not to have received an amount from the RPP as a result of acquiring the annuity and deems amounts received under the contract to be amounts received under the RPP. As a consequence, there is no immediate taxation on acquisition of the annuity and any payments under the contract are included in the recipient's income in the year in which they are received.

One of the conditions that must be met in order for this deeming rule to apply is that the RPP annuity contract does not provide for any further premiums to be paid after the contract is acquired by the individual. Paragraph 147.4(1)(c) is amended (and divided into subparagraphs (i) and (ii)) to permit additional premiums to be paid to the annuity contract to acquire additional benefits that are consequential to proceedings commenced under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act*.

This amendment comes into force on January 1, 2018.

Clause 53

Member's account

ITA
147.5(12)

Subsection 147.5(12) deems an individual's account under a pool registered pension plan to be an RRSP under which the individual is the annuitant, for the purposes of a number of listed provisions of the Act and Regulations.

A reference to section 60.011 is added to subsection 147.5(12). As a result, the rules in section 60.011 will apply to amounts transferred from an individual's account under a pool registered pension plan to a qualifying annuity under which a trust is the annuitant (where the beneficiary of the trust is the individual's spouse or common-law partner).

This amendment comes into force on August 4, 2023.

Clause 54

Information returns

ITA
149.1(14.1)

Subsection 149.1(14.1) requires that each "registered journalism organization" file an information return and a public information return for the year in prescribed form and containing prescribed information. Information contained in a public information return will be disclosed to the public by the Minister of National Revenue pursuant to subsection 149.1(15), including the name of each donor whose total gifts to the organization in a taxation year exceed $5,000 and the total amount of donations from each such donor.

The returns must be filed within 6 months from the end of the organization's taxation year.

The French version of paragraph 149.1(14.1) of the Act is amended to correct typographical errors.

Clause 55

Exception — trusts

ITA
150(1.2)

Subsection 150(1.2) provides for a limitation on the return-filing exceptions in subsection 150(1.1). In particular, by stipulating that subsection (1.1) does not apply, it causes subsection 150(1) to require tax return filing for a trust that is both

- resident in Canada (including trusts that are deemed resident in Canada under section 94), and
- an express trust (or for civil law purposes a trust other than a trust that is established by law or by judgement).

Subsection 150(1.2), however, also includes a number of exceptions to the requirement to file a return, which are listed in paragraphs (a) to (o). In addition, a trust that meets one of the exceptions listed in paragraphs 150(1.2)(a) to (o) is not required to provide the additional information set out in section 204.2 of the Regulations. Trusts that are required to file a return, will be required to provide the additional information outlined in section 204.2 of the Regulations.

Subsection 150(1.2) is amended to add an exemption for an “eligible trust” as defined in subsection 135.2(1). Generally speaking, this is a trust formed on the continuation of the Canadian Wheat Board.

This amendment comes into force on December 30, 2023. This is the same coming into force date of existing subsection 150(1.1).

Clause 56

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 ITC 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 ITC 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 ITC.

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 ITC recapture rules.

This amendment comes into force on January 1, 2024.

Extended period of assessment

ITA
152(4.01)(b)

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.

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 ITC.

This amendment comes into force on January 1, 2024.

If Bill C-59 receives royal assent, subparagraphs 152(4.01)(b)(x.1) and (x.2) would be repealed and replaced by subparagraphs (xiii) and (xiv). See subclauses 80(90) to (92).

Clause 57

Withholding

ITA
153(1)(d.1)

Subsection 153(1) requires the withholding of tax from certain payments described in paragraphs 153(1)(a) to (t). The person making the payment is required to remit the amount withheld to the Receiver General on behalf of the payee.

Paragraph 153(1)(d.1) is amended to add a reference to an income replacement benefit under the *Veterans Well-being Act* (i.e., a new reference to subparagraph 56(1)(a)(viii)).

This amendment comes into force on April 1, 2019.

Canada Emergency Wage Subsidy claimed

ITA
153(1.05)

Subsection 153(1.2) provides for the Temporary Wage Subsidy (TWS). The TWS was introduced in the initial phase of the COVID-19 pandemic in the spring of 2020. This was a 10% subsidy on wages paid between March 18, 2020 and June 19, 2020. It was structured as a deemed remittance on account of required income tax withholding/remittance amounts for wages paid in that period.

The government subsequently introduced the Canada Emergency Wage Subsidy (CEWS) for periods beginning March 15, 2020. The CEWS paid a direct subsidy to eligible employers for wages paid. The initial periods of the CEWS and the periods of the TWS overlapped. In order to prevent a double subsidy under the CEWS and TWS in respect of the same wages paid, the formula in the CEWS provided for a reduction in a subsidy amount for a period by the amount of TWS received for that period. This reduction is in the description of B of the CEWS formula in subsection 125.7(2).

This amendment deems an amount to have not been remitted under subsection 153(1.02) if the employer made a claim for the same period for the CEWS and did not deduct the otherwise deemed remitted amount from the CEWS claim as required. This amendment would prevent an employer from receiving a double subsidy (TWS and CEWS) in respect of the same wages paid.

This amendment comes into force on March 18, 2020.

Clause 58

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 ITC.

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 ITC.

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 ITC.

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 ITC.

Clause 59

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 ITC).

Clause 60

Interest on refunds and repayments

ITA
164(3)

Subsection 164(3) provides for the payment of interest on tax refunds, other than any portion of a refund that arises in relation to the GST/HST Credit, Canada Child Benefit, COVID-19 emergency subsidies or Climate Action Incentive.

Subsection 164(3) is amended consequential on the introduction of paragraph 60(n.2) that allows a taxpayer to retroactively deduct certain repaid benefits from the taxpayer’s income for the taxation year in which the benefits were received and included in income. Repaid amounts deducted under paragraph 60(n.2) are added to the list of amounts in subsection 164(3) in respect of which the payment of interest will not be made.

This amendment applies to the 2019 and subsequent taxation years.

Subsection 164(3) is also amended consequential on the introduction of section 127.421 that provides for the carbon rebate. Amounts paid under section 127.421 are added to the list of amounts in subsection 164(3) in respect of which the payment of interest will not be made.

Clause 61

Waiver of tax

ITA
204.1(4)

Part X.1 (sections 204.1 to 204.3) imposes a special tax on excess contributions to registered retirement savings plans and deferred profit sharing plans.

The French version of subsection 204.1(4) is amended to better align the French and the English versions of this subsection.

Clause 62

Undeducted RRSP premiums

ITA
204.2(1.2)

Subsection 204.2(1.2) provides rules for determining the amount of an individual's "undeducted RRSP premiums" at any time. This amount is used to calculate the individual's cumulative excess amount (subject to a monthly tax) in respect of RRSPs under subsection 204.2(1.1).

Variable H in subsection 204.2(1.2) is amended to add subparagraph (b)(ii), which subtracts employer pool registered pension plan (PRPP) contributions that were included in previous taxation years. Given that contributions to an individual's PRPP account reduce the individual's RRSP contribution room for subsequent years, this relieving amendment to subsection 204(1.2) fixes a technical error to ensure that employer contributions do not increase the individual's "undeducted RRSP contributions" in the subsequent years.

This amendment applies to the 2012 and subsequent taxation years.

Clause 63

Waiver of tax

ITA
204.91(2)

Subsection 204.91(2) allows the Minister of National Revenue to waive a tax applicable to RESP subscribers where it is just and equitable to do so.

The French version of subsection 204.91(2) is amended to better align the French and the English versions of this subsection.

Clause 64

Waiver of tax

ITA
205(3)

Subsection 205(3) provides that the Minister of National Revenue may waive all or part of the tax under Part XI if the cumulative excess amount on which the tax is based arose as a consequence of a reasonable error and if reasonable steps are being taken to eliminate the cumulative excess amount.

The French version of subsection 205(3) is amended to better align the French and the English versions of this subsection.

Clause 65

Marital breakdown or death

ITA
207.01(10)

Subsection 207.01(10) sets out the conditions that must be met for subsection 207.01(11) to apply in respect of a property. Subsection 207.01(11) provides for the preservation of grandfathered property status for certain property that has been transferred from an individual's RRSP or RRIF to an RRSP or RRIF of the individual's current or former spouse or common-law partner. Such grandfathered property is not subject to certain taxes (prohibited investment and advantage taxes).

One of the conditions outlined in subsection 207.01(10) is that the controlling individual of an RRSP or RRIF and their current or former spouse or common-law partner must make a joint election in respect of transferred property.

Subsection 207.01(10) is amended to extend the application of the rule to situations involving transfers of property from the controlling individual's RRSP or RRIF as a consequence of the death of the controlling individual. In such cases, the joint election is to be made between the recipient and the legal representative of the controlling individual's estate. Moreover, in such cases, the election must be filed with the Canada Revenue Agency no later than 90 days after the end of the taxation year of the recipient that includes the time that the property is transferred.

This amendment comes into force on January 1, 2020.

Clause 66

Election

ITA
207.5(2)

Where the balance of refundable tax of an RCA at the end of the year exceeds the value of assets held by an RCA trust, subsection 207.5(2) permits the custodian of the RCA to elect to reduce the refundable tax to an amount equal to the value of trust assets. This election is available only if the property held at the end of the taxation year consists solely of cash, debt obligations and shares listed on a designated stock exchange.

Subsection 207.5(2) is amended to expand the types of property that may be held by the RCA trust for the election to be available. Specifically, the preamble to subsection (2) is amended to add a reference to units of a mutual fund trust listed on a designated stock exchange. A consequential amendment to refer to such units is made to paragraph 207.5(2)(c). As a result, an RCA trust could generally hold units of exchange-traded funds without precluding the availability of the election.

These amendments apply to elections made in respect of the 2020 and subsequent taxation years.

Clause 67

Waiver of tax payable

ITA
207.64(a)

Section 207.64 authorizes the Minister of National Revenue to waive or cancel a tax (or a portion of a tax) payable if the Minister considers it just and equitable to do so.

The French version of paragraph 207.64(a) is amended to better align the French and the English versions of this paragraph.

Clause 68

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 ITC.

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 ITC.

Clause 69

Definition of amount payable

ITA
223(1)(b.1)

Section 223 allows the Canada Revenue Agency to register with the Federal Court a certificate specifying an amount payable by a taxpayer under the Act or certain other acts. Paragraph 223(1)(b.1) provides for an amount payable under the *Unemployment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 223(1)(b.1) of the Act is repealed.

Clause 70

Penalty

ITA
227(9.1)

Subsection 227(9.1) restricts the application of the penalty contained in subsection 227(9) for late or deficient remittances to the amount by which the total of the required remittance of source deductions and amounts required to be remitted under the *Canada Pension Plan* and the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, subsection 227(9.1) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

Clause 71

Judicial authorization

ITA
231.2(3)

Subsection 231.2(3) provides that a judge, on an ex parte application, may grant a judicial authorization subject to such conditions that the judge considers appropriate if the judge is satisfied that the unnamed person or persons is ascertainable and that the requirement is made to verify compliance with the Act.

Subsection 231.2(3) is amended to correct a reference from “section” to “subsection”.

Clause 72

Penalty for failing to file corporate returns

ITA
235

Section 235 provides a penalty for large corporations that fail to file, as and when required, a tax return under Part I (income tax) or Part VI (minimum tax on financial institutions).

Paragraph 235(1)(a) is amended to clarify that the term “the corporation’s taxable capital employed in Canada” has the meaning assigned in Part I.3 of the Act.

Clause 73

Offences and punishment

ITA
238(1)

Subsection 238(1) makes it an offence for a person to fail to comply with a number of provisions in the Act and the *Income Tax Regulations*. An offender is liable to a fine of not less than $1,000 and not more than $25,000, and to imprisonment for up to 12 months.

Subsection 238(1) is amended to provide that the failure to file an information return in respect of a reportable or notifiable transaction under section 237.3 or 237.4 is removed from the scope of this general penalty provision. The mandatory disclosure rules in sections 237.3 and 237.4 include their own specific penalties, making the application of this general penalty provision unnecessary.

This amendment is deemed to have come into force on June 22, 2023.

Clause 74

Provision of information

ITA
241(1)(c)

Section 241 sets out a prohibition against the unauthorized communication of information obtained by government officials in administering the tax system. The existing section does not, however, prohibit the personal or other use by an authorized official of any information obtained. Paragraph 241(1)(c) expressly prohibits CRA employees and other government officials from using taxpayer information, other than as expressly provided for purposes other than the administration and enforcement of the Act, the *Canada Pension Plan* and the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(1)(c) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

Communication where proceedings have been commenced

ITA
241(3)(b)

Subsection 241(3) authorizes the disclosure of tax information in respect of any legal proceedings relating to the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act* or any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(3)(b) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

Where taxpayer information may be disclosed

ITA
241(4)(a)

Paragraph 241(4)(a) authorizes the communication of information to government officials outside the CRA, for the purposes of the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(4)(a) of the Act is amended to remove the reference to the repealed *Unemployment Insurance Act*.

ITA
241(4)(d)(vi.2)

Paragraph 241(4)(d) authorizes the communication of information obtained under the Act to specific persons for specific purposes.

New subparagraph 241(4)(d)(vi.2) permits the communication of taxpayer information to a person employed or engaged in the service of an office or agency of the Government of Canada (e.g., Canada Revenue Agency, Natural Resources Canada and Environment and Climate Change Canada) solely for the purpose of administering or enforcing the clean economy tax credits or the evaluation or formulation of related policies or guidelines.

For example, certain taxpayer information relating to clean hydrogen projects may be shared among departments for the development and maintenance of the Fuel LCA Model and the *Clean Hydrogen Investment Tax Credit – Carbon Intensity Modelling Guidance Document*.

ITA
241(4)(d)(vii.91)

Subparagraph 241(4)(d)(vii.10) is renumbered to 241(4)(d)(vii.91) in accordance with numbering conventions.

ITA
241(4)(h)

Paragraph 241(4)(h) authorizes the use of taxpayer information solely for a purpose relating to the supervision, evaluation or discipline of an authorized person by His Majesty in right of Canada in respect of a period during which the authorized person was employed by or engaged by or on behalf of His Majesty in right of Canada to assist in the administration or enforcement of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*, to the extent that the information is relevant for the purpose.

Consequential on the repeal of the *Unemployment Insurance Act*, paragraph 241(4)(h) of the Act is amended to remove the reference to the *Unemployment Insurance Act*.

Definitions

ITA
241(10)

“authorized person”

Subsection 241(10) provides definitions that apply for the purposes of section 241. Subsection 241(10) defines an “authorized person” as a person who is engaged or employed, or who was formerly engaged or employed, by or on behalf of His Majesty in right of Canada to assist in carrying out the provisions of the Act, the *Canada Pension Plan*, the *Unemployment Insurance Act* or the *Employment Insurance Act*.

Consequential on the repeal of the *Unemployment Insurance Act*, the definition of "authorized person" in subsection 241(10) of the Act is amended to remove the reference to the *Unemployment Insurance Act*.

Clause 75

Definitions

ITA
248(1)

"automobile"

Paragraph (d) of the definition "automobile" in subsection 248(1) excludes motor vehicles that are acquired to be sold, rented or leased in the course of carrying on a business, except that this exclusion does not apply for the purposes of the employee benefit rules in section 6 of the Act. Paragraph (d) of the definition of automobile is amended to also include a reference to section 15.

This amendment would provide that the exclusion also does not apply for the purposes of section 15 (the shareholder benefit rules). This would ensure that a shareholder who uses a vehicle that otherwise meets the exclusion from the "automobile" definition (for example, a vehicle acquired by a car dealership for resale) would be subject to the rules in section 15 that apply where a shareholder receives the use of an automobile.

This amendment applies as of August 4, 2023.

Clause 76

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)

“eligible entity”

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.

Amendments to the *Income Tax Regulations* (the "Regulations" or "ITR")

Clause 77

Interpretation

ITR
100(1)

"remuneration"

Consequential to the addition of income replacement benefits in paragraph 153(1)(d.1) of the Act, new paragraph (r) is added to the definition "remuneration" in subsection 100(1) of the Regulations. This addition ensures that the tax withholding rules in the Regulations apply as intended to income replacement benefits.

This amendment comes into force on April 1, 2019.

Clause 78

Interpretation

ITR
5202

"qualified zero-emission technology manufacturing activities"

The definition "qualified zero-emission technology manufacturing activities" in section 5202 describes the activities that may qualify for the zero-emission technology manufacturing deduction.

Subclause (J)(I) describes the type of zero-emission vehicles that may be manufactured within the definition of "qualified zero-emission technology manufacturing activities". Subclause (J)(I) is amended to remove the requirement in paragraph (d) of the definition of "zero-emission vehicle" in subsection 248(1) of the *Income Tax Act*, for the purpose of determining whether the manufacturing of a vehicle is within the definition of "qualified zero-emission technology manufacturing activities". This amendment removes the requirement that a "zero-emission vehicle" meet certain conditions in the "accelerated investment incentive property" rules in order for the manufacturer of the vehicle to claim the zero-emission technology manufacturing deduction . This amendment applies after December 31, 2023.

Clause 79

Class 43.1 clause (d)(xviii)(A) and subclause (d)(xviii)(B)(I)

ITR
Schedule II

Subparagraph (d)(xviii) of Class 43.1 describes fixed location energy storage property that is used primarily for the purpose of storing electrical energy. Clause (d)(xviii)(A) and subclause (d)(xviii)(B)(I) are amended to improve readability and to clarify that this property only qualifies as part of Class 43.1 if it both stores and discharges electrical energy. Fixed location energy storage property that discharges thermal energy is not included in the class.

These amendments come into force on Royal Assent.

Class 43.1 subparagraph (d)(xix)

ITR
Schedule II

Subparagraph (d)(xix) of Class 43.1 describes certain pumped hydroelectric energy storage installations that may qualify under that class. The opening words of the subparagraph are amended to clarify that this property only qualifies if it both stores and discharges electrical energy. Accordingly, pumped hydroelectric energy storage installations that discharge thermal energy are not included under this subparagraph.

These amendments come into force on Royal Assent.

Class 43.1 subparagraph (e)(i)

ITR
Schedule II

Subparagraph (e)(i) of Class 43.1 requires that Class 43.1 property must be situated in Canada. Subparagraph (e)(i) is amended to clarify that certain wind and water energy properties, as described in subparagraphs (d)(v) and (d)(xiv) of Class 43.1, are considered to be situated in Canada if they are installed in Canada's exclusive economic zone.

These amendments come into force on Royal Assent.

Coordinating Amendments

Clause 80

C-59

Clause 80 includes amendments to the ITA and ITR that would apply if Bill C-59, which is currently before Parliament, receives royal assent.

Subclauses (2) to (11)

Subclauses 80(2) to (11) include amendments to various sections of the ITA that are consequential on the implementation of the investments tax credits (ITCs) in this bill (i.e., the Clean Hydrogen ITC and the CTM ITC) and Bill C-59 (i.e., the CCUS ITC and the Clean Technology ITC). These amendments update the ITA to include cross-references to all applicable ITCs.

Each ITA amendment is discussed in more detail earlier in this commentary in relation to the first clause that amends the relevant ITA section.

Subclauses (12) and (13)

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 ITC.

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 ITC.

Subclauses (14) to (19)

Subclauses 80(14) to (19) include amendments to various sections of the ITA that are consequential on the implementation of the ITCs in this bill and Bill C-59. These amendments update the ITA to include cross-references to all applicable ITCs.

Each ITA amendment is discussed in more detail earlier in this commentary in relation to the first clause that amends the relevant ITA section.

Subclause (20)

Continuing corporation

ITA
87(2)(j.6)

Paragraph 87(2)(j.6) provides continuity rules for the purposes of a number of provisions of the Act. Specifically, it provides, for certain enumerated purposes, the corporation formed as the result of an amalgamation is considered to be the same corporation as, and a continuation of, each predecessor corporation. Because of paragraph 88(1)(e.2), these continuity rules also apply in the context of a winding-up to which subsection 88(1) applies.

Paragraph 87(2)(j.6) is amended to add references to the definition “qualifying business transfer” in subsection 248(1) and to new section 110.61, which provides the conditions for the application of the capital gains deduction for qualifying business transfers to an employee ownership trust.

This amendment is consequential upon the introduction of new section 110.61. This amendment ensures that an amalgamation (as defined in subsection 87(1)) of a subject corporation and a purchaser corporation (as defined under the definition “qualifying business transfer” in subsection 248(1)) and a winding-up under subsection 88(1) of a subject corporation into a purchaser corporation, are permitted under new section 110.61, which will continue to apply to the reorganized corporate group. For more information, see the commentary on section 110.61.

This amendment is deemed to have come into force on January 1, 2024.

Subclauses (21) to (36)

Subclauses (21) to (36) include consequential amendments related to the ITCs included in this bill and Bill C-59. Each ITA amendment is discussed in more detail earlier in this commentary in relation to the first clause that amends the relevant ITA section.

Subclause (37)

Capital gains deduction for qualifying business transfer – conditions

ITA
110.61(1)

New subsection 110.61(1) provides the conditions for the application of the capital gains deduction under subsection (2) available upon a qualifying business transfer (as defined in subsection 248(1)) to an employee ownership trust. The conditions in subsection (1) are summarized and discussed in further detail below.

Claimant is an individual (other than a trust)

New subsection 110.61(1) requires that a person claiming the deduction under subsection (2) must be an individual (other than a trust).

Disposition occurs between 2024 and 2026

New subsection 110.61(1) further provides that for subsection (2) to apply, the disposition of the subject shares must occur after 2023 and before 2027.

Disposition occurs under a qualifying business transfer

New subsection 110.61(1) also provides that subsection (2) applies if, at the time of a disposition (referred to as the "disposition time") of shares (referred to as "subject shares") of the capital stock of a corporation (referred to as the "subject corporation") to a trust (or to a purchaser corporation wholly owned by the trust), the disposition satisfied the conditions for a qualifying business transfer (as defined in subsection 248(1)).

Deduction has not previously been sought in respect of the same business

New paragraph 110.61(1)(a) provides that for subsection (2) to apply, no individual may have, prior to the disposition time, claimed a deduction under subsection (2) in respect of another disposition of shares that, at the time of that disposition, derived their value from an active business that is also relevant to the determination of whether the disposition of the subject shares satisfies the condition set out in paragraph (a) of the definition qualifying business transfer in subsection 248(1). This condition is intended to ensure that an interest in a business is effectively transferred only once pursuant to a qualifying business transfer for which the capital gains deduction in subsection (2) is available, preventing multiplication of the deduction under subsection (2) in respect of the same business.

24-month holding period

New paragraph 110.61(1)(b) provides the conditions that the subject shares must meet throughout the 24 months immediately prior to the disposition time under the qualifying business transfer. Subparagraph (i) requires that, during this period, the subject shares were not owned by anyone other than the individual or a person or partnership related to the individual. For more

information on the interpretation of related persons for the purposes of this section, see the commentary on subsection (11).

Active business requirement

New subparagraph (b)(ii) requires that, during the 24-month period immediately prior to the disposition time, more than 50% of the fair market value of the subject shares was derived from assets which were used principally in an active business.

Subject corporation is not a professional corporation

New paragraph 110.61(1)(c) provides the conditions that the trust and the subject corporation must meet immediately before the disposition time. Subparagraph (c)(i) ensures the deduction in subsection (2) is not available on a qualifying business transfer if the subject corporation, or any corporation affiliated with the subject corporation in which the subject corporation owns (directly or indirectly) shares, is a professional corporation (as defined in subsection 248(1)).

Trust does not already control a corporation whose employees are beneficiaries of the trust

New subparagraph (c)(ii) provides that the trust acquiring the subject shares under the qualifying business transfer must not already control a corporation whose employees are beneficiaries of that trust. If a sale of a business is made to a pre-existing employee ownership trust (EOT), or a similar trust with employee beneficiaries, under a qualifying business transfer, such a transfer would not qualify for the deduction under subsection (2).

This condition is intended to improve neutrality by ensuring that an established EOT does not hold a tax advantage (in the form of a deduction under subsection 110.61(2)) over its non-EOT competitors when acquiring a new business. Similarly, this condition mitigates the advantage held by an established EOT (due to greater access to financing) bidding against a newly formed trust for the benefit of workers of a target business who wish to form their own EOT. The deduction under subsection (2) is intended to reduce the disincentive of selling a business to a newly created EOT that may not have the financial resources of a third-party buyer.

Claimant is an adult

New paragraph 110.61(1)(d) provides the conditions that the individual and the individual’s spouse or common-law partner, and the beneficiaries of the trust must meet at the disposition time. Subparagraph (d)(i) requires that the individual claiming the deduction under subsection (2) must be at least 18 years of age at the disposition time.

Claimant (or spouse or common-law partner) was actively engaged in the underlying business

New subparagraph 110.61(1)(d)(ii) requires that throughout any 24-month period ending before the disposition time, the individual claimant, or a spouse or common-law partner of the individual, was actively engaged on a regular and continuous basis in the business that is relevant to the determination of whether the subject shares satisfy the condition set out in paragraph (a) of the definition “qualifying business transfer” in subsection 248(1). This requirement restricts the deduction under subsection (2) to owner-managers and their spouses or common-law partners.

Example

In 2015, Daniella started a business in which she was engaged on a full-time basis throughout the following six years. In 2021, she began to transition most of her management and employment duties to her current employees and has been relatively uninvolved in the day-to-day operations of the business ever since. In 2024, Daniella decided to sell her business to her employees through a trust under a qualifying business transfer.

Because Daniella was actively engaged in the business on a full-time basis for six years prior to the disposition time, she satisfies the condition in subparagraph 110.61(1)(d)(ii).

75% of trust beneficiaries reside in Canada

New subparagraph (d)(iii) provides that at least 75% of the beneficiaries of the trust must be resident in Canada at the disposition time. This requirement is intended to ensure that the transfer of a business undertaken as a consequence of the deduction under subsection (2) predominantly benefits Canadian workers.

Joint election

New paragraph 110.61(1)(e) recognizes that the deduction under subsection (2) may be shared among multiple individuals disposing of subject shares under a qualifying business transfer. This paragraph also recognizes that the actions of the trust and any purchaser corporation owned by the trust could potentially cause a disqualifying event, as described under subsection (3), and trigger the relevant consequences described under subsection (4).

New subparagraph (i) requires that the trust, any purchaser corporation owned by the trust, the individual and any other individual entitled to a deduction under subsection (2) in respect of the qualifying business transfer must jointly elect, in prescribed form, for the deduction provided under subsection (2) to apply in respect of the disposition of the subject shares.

Under new clause (ii)(A), the election must provide the elected amount (i.e., the total amount of capital gains that the parties agree may be eligible for a deduction under subsection (2) with respect to the qualifying business transfer), not exceeding $10,000,000. If multiple individuals are eligible for a deduction in respect of the qualifying business transfer, new clause (ii)(B) requires that the election include the percentage of the elected amount that is assigned to each eligible individual. The total percentages assigned to all individuals must not exceed 100%.

The election must be filed with the Minister of National Revenue on or before the trust's filing-due date for the taxation year that includes the disposition time.

See the commentary to new subsections 110.61(3) and (4) for more information regarding disqualifying events, and the commentary to new subsection 160(1.6) for information regarding joint and several liability of the parties to an election under paragraph 110.61(1)(e) if the deduction under subsection (2) is denied.

Capital gains deduction — qualifying business transfers

ITA
110.61(2)

New subsection (2) sets out the rules for calculating an individual's entitlement to the capital gains deduction on qualifying business transfers. If the conditions provided under subsection (1) have been met and the individual is eligible for a deduction under subsection (2), then in computing the taxable income for a taxation year of the individual, the individual may deduct such amount as they may claim not exceeding the least of the amounts provided under paragraphs (a) and (b).

New paragraph (a) provides that the deduction cannot exceed the amount that would be determined in respect of the individual for the year under paragraph 3(b) in respect of capital gains and capital losses if the only properties referred to in paragraph 3(b) were subject shares. Paragraph (a) also provides that, in making that determination, there is not to be included any amounts already included in the amount determined under paragraph 3(b) for the purposes of paragraphs 110.6(2)(d) and 110.6(2.1)(d) (i.e., the lifetime capital gains deductions for dispositions of qualified farm property and qualified small business corporation shares) in respect of the individual.

New paragraph 110.61(2)(b) provides that the deduction cannot exceed the amount that would be determined under the formula: $A \times B \times C - D$.

Variable A is the elected amount included in the joint election referred to in paragraph 110.61(1)(e) (i.e., the total amount of capital gains that the parties agree may be eligible for a deduction under subsection (2) with respect to the qualifying business transfer, not exceeding $10,000,000).

Variable B is 1, unless more than one individual is entitled to a deduction under this subsection in respect of the qualifying business transfer. If more than one individual is entitled to the deduction, then variable B is the percentage assigned to the individual in the joint election referred to in paragraph (1)(e), if a percentage is assigned to the individual in accordance with clause (1)(e)(ii)(B). In any other case, variable B is nil.

Variable C is the fraction of the taxpayer's capital gain from the disposition of the subject shares that is a taxable capital gain under paragraph 38(a) that applies to the subject shares in the year.

Variable D recognizes that an individual may use the reserve provided under subparagraph 40(1)(a)(iii) to report the capital gain from a qualifying business transfer over multiple taxation years. Variable D is the total of each amount claimed by the taxpayer under subsection (2) in a prior taxation year in respect of the disposition of the subject shares multiplied by the amount determined by the formula $E \div F$ (which adjust past deductions claimed to compensate for any difference between the capital gains inclusion rates in the current and past taxation years).

Variable E is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the current year.

Variable F is the fraction of a capital gain that is a taxable capital gain under paragraph 38(a) in the prior year in respect of the disposition of the subject shares.

See the commentary to new subsections 110.61(3) and (4) for more information regarding disqualifying events that could deny the deduction under subsection (2), and the commentary to paragraph 152(4)(b.94) for information regarding the 3-year extension of the normal reassessment period for an individual in respect of a deduction claimed under subsection (2).

Disqualifying event

ITA
110.61(3)

New subsection 110.61(3) provides the meaning of a disqualifying event in respect of a qualifying business transfer. A disqualifying event occurs at the earliest of the times in which the events described in paragraphs (a) and (b) occur.

New paragraph (a) provides that a disqualifying event could occur when the trust that participated in the qualifying business transfer ceases to be an employee ownership trust. An employee ownership trust would cease to be an employee ownership trust if the trust no longer met any of the requirements in the definition "employee ownership trust" in subsection 248(1).

Under new paragraph (b), a disqualifying event could occur at the time that is the beginning of the taxation year of a qualifying business of the trust in which less than 50% of the fair market value of the shares of the qualifying business is attributable to assets used principally in an active business carried on by one or more qualifying businesses controlled by the trust at both that time and at the beginning of the preceding taxation year of the qualifying business.

Example 1 – Asset lease to an arm's length party

In 2024, an employee ownership trust (EOT) acquired 100% of the shares of a qualifying business (Aco). Aco carries on an active business of manufacturing widgets. When EOT acquired Aco, Aco owned two manufacturing facilities: Facility 1 and Facility 2. Sixty per cent of the fair market value of the Aco shares was attributable to Facility 2, an asset used principally in Aco's active business. Aco has a December 31 taxation year-end.

In December 2027, Aco rented Facility 2 to an arm's length tenant under a 3-year lease. Aco continued to carry on its active business using Facility 1. However, during this period, less than 50% of the fair market value of the Aco shares was attributable to assets used principally in Aco's active business.

As a result of having leased Facility 2, at the beginning of two of Aco's consecutive taxation years (i.e., January 1, 2028 and January 1, 2029), more than 50% of the fair market value of Aco's shares was not attributable to assets used principally in an active business carried on by one or more qualifying businesses controlled by EOT. Consequently, a disqualifying event within the meaning of paragraph 110.61(3)(b) occurred on January 1, 2029, and paragraph 110.61(4)(b) applies to EOT at that time.

Example 2 – Asset lease to a qualified business controlled by the trust

In 2024, an employee ownership trust (EOT) acquired 100 per cent of the shares of a qualifying business (Holdco), which controls and wholly-owns a subsidiary corporation (Opco). Opco carries on an active business in which the beneficiaries of EOT are employed. Holdco also owns equipment that it leases to Opco. Holdco and Opco have December 31 taxation year ends. For the following several years, Opco uses the equipment principally to carry on its active business and over 50% of the fair market value of the Holdco shares is attributable to the leased equipment.

A disqualifying event under paragraph 110.61(3)(b) occurs if less than 50% of the fair market value of the shares of a qualifying business is attributable to assets used principally in an active business carried on by one or more qualifying businesses controlled by the trust at both the beginning of the taxation year of the qualifying business and at the beginning of the preceding taxation year of the qualifying business. In this case, the conditions for paragraph 110.61(3)(b) to apply are not met by virtue of Holdco leasing its equipment to Opco because at least 50% of the fair market value of the Holdco shares was attributable to assets (the leased equipment) used principally in an active business carried on by a qualifying business (Opco) controlled by EOT.

See the commentary to subsection 110.61(4) for information regarding the consequences of a disqualifying event.

Consequences of a disqualifying event

ITA
110.61(4)

New subsection 110.61(4) provides the consequences of a disqualifying event.

If the disqualifying event occurs within 24 months of the disposition time for the qualifying business transfer, new paragraph (a) deems the capital gains deduction provided under subsection (2) to have never applied in respect of the subject shares disposed of under the qualifying business transfer. See the commentary to paragraph 152(4)(b.94) for information regarding the 3-year extension of the normal reassessment period for an individual in respect of a deduction claimed under subsection (2), and subsection 160(1.6) regarding joint and several liability of the parties to an election under paragraph 110.61(1)(e) if the deduction under subsection (2) is denied.

If the disqualifying event occurs any time after the day that is 24 months after the disposition time for the qualifying business transfer, new paragraph (b) deems the trust to have realized a capital gain equal to the elected amount (within the meaning of clause (1)(e)(ii)(A)) included in the joint election referred to in paragraph (1)(e), for the year in which the disqualifying event occurs.

Example

In Year 1, EOT is an "employee ownership trust" as defined in subsection 248(1). EOT became an employee ownership trust immediately following a qualifying business transfer of all the common shares of corporation (EmployerCo) that employs the beneficiaries of the trust. The individual that sold the EmployerCo shares to EOT claimed the capital gains deduction under subsection 110.61(2) in respect of the sale. The only property held in EOT is the EmployerCo common shares. EmployerCo is a "qualifying business", as defined under subsection 248(1).

In Year 5, EOT sells all of its common shares in EmployerCo to an arm's length third-party purchaser in exchange for cash.

EOT's sale of the EmployerCo shares in Year 5 is a disqualifying event within the meaning of paragraph 110.61(3)(a). This result occurs because EOT would no longer satisfy the conditions in the definition "employee ownership trust" in subsection 248(1) (for example, paragraph (b) of the definition which requires the trust to control a qualifying business in which its beneficiaries are employed, and paragraph (j) of the definition which requires that all or substantially all the fair market value of the property of the trust is attributable to shares of the capital stock of one or more qualifying businesses that the trust controls).

As a result of the disqualifying event, paragraph 110.61(4)(b) would apply to deem the EOT to realize a capital gain (equal to the elected amount of capital gains eligible for a deduction under subsection (2)) at the time of the disqualifying event.

Anti-avoidance

ITA
110.61(5)

New subsection 110.61(5) is an anti-avoidance rule, which applies despite any other provision in section 110.61. This subsection provides that the deduction provided under subsection (2) does not apply in respect of a qualifying business transfer if it is reasonable to consider that one of the purposes of any transaction (as defined in subsection 245(1)), or series of transactions, is to:

- involve the trust (or the purchaser corporation) in the qualifying business transfer to accommodate the direct or indirect acquisition of subject shares (or the acquisition of all or substantially all of the risk of loss and opportunity for gain or profit in respect of the subject shares) by another person or partnership (other than the trust or the purchaser corporation) in a manner that permits an individual to claim a deduction under subsection (2) that would otherwise not be available; or
- organize or reorganize a subject corporation or any other corporation, partnership or trust in a manner that allows a deduction to be claimed under subsection (2) in respect of more than one qualifying business transfer of a business that is relevant to the determination of whether subject shares satisfied the condition set out in paragraph (a) of the definition "qualifying business transfer" in subsection 248(1).

This subsection is intended to ensure employee ownership trusts are not used as accommodating intermediaries to facilitate the avoidance of tax that would otherwise be payable on a direct sale of shares to a third party. This provision is also intended to address planning that seeks to multiply the deduction under subsection (2) by selling a business in separate parts.

Failure to report capital gain

ITA
110.61(6)

New subsection 110.61(6) applies where an individual has realized a capital gain on a disposition of subject shares under a qualifying business transfer in a taxation year and knowingly or under circumstances amounting to gross negligence fails to report the disposition in their return of income for that taxation year or fails to file a return for that taxation year within one year following the taxpayer's filing-due-date for the taxation year and the Minister of National Revenue establishes the facts justifying the denial. Subsection 110.61(6) applies notwithstanding that an amount could have been claimed as a capital gains deduction under subsection 110.61(2).

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(6)).

Deduction not permitted

ITA
110.61(7)

New subsection 110.61(7) is an anti-avoidance rule to prevent the conversion of taxable capital gains of corporations into exempt capital gains of individuals. Any such gain will be denied the capital gains deduction otherwise provided under subsection 110.61(2).

There are a number of provisions in the Act which permit property to be transferred between corporations on a tax-deferred basis. This subsection is not intended to restrict the operation of these provisions. However, this provision is necessary to ensure that these provisions are not utilized to effect a sale of corporate property in such a manner that a capital gain on corporate property is transmogrified into a capital gain of an individual shareholder in order to qualify for the deduction under subsection (2).

For example, where a corporation disposes of a property by first transferring the property to another corporation for consideration that is less than the fair market value of the property and an individual realizes a capital gain on the sale of the shares of either corporation as part of that series of transactions, he will not be permitted to claim the deduction under subsection (2) with respect to that gain. Similarly, an individual will be denied a deduction under subsection (2) with respect to a capital gain realized as part of a so-called butterfly transaction or series of transactions where corporate property is disposed of in an arm’s length transaction, either directly or indirectly, on a tax-free or tax deferred basis.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(7)).

Deduction not permitted

ITA
110.61(8)

New subsections 110.61(8) and (9) are anti-avoidance rules to prevent the conversion of dividend income into exempt capital gains of individuals. These rules are intended to prevent corporations from issuing shares that have attributes designed to facilitate the realization of the yield by way of a capital gain rather than by way of dividends. These rules would apply, for example, to preferred shares that do not pay dividends or pay relatively low dividends but that are retractable or redeemable at a substantial premium. An individual will be denied the deduction under subsection (2) with respect to capital gains realized on a disposition of those types of shares. This rule will not apply, however, in the case of prescribed shares (within the meaning of subsection 110.6(8)).

New subsection 110.61(8) provides that an individual may not claim the deduction under subsection (2) with respect to a capital gain realized on a disposition of property where it is reasonable to conclude that a significant portion of the capital gain is attributable to the fact that dividend payments on a share (other than a prescribed share within the meaning of subsection 110.6(8)) have either not been made or have been deferred. For this purpose, dividend payments will be considered to have been deferred where the dividends actually paid on the share in a year are less than 90% of the average annual rate of return on the share for the year (as defined in subsection (9)).

Similar provisions apply in respect of the lifetime capital gains deductions (see subsections 110.6(8) and (9)).

Average annual rate of return

ITA
110.61(9)

New subsection 110.61(9) defines the average annual rate of return on a share (other than a prescribed share within the meaning of subsection 110.6(8)) for the year. The average annual rate of return on a share for a year is based on an objective standard, that is, the rate of return that a knowledgeable and prudent investor would expect to receive based on certain assumptions. By virtue of these assumptions, any delay, postponement or variation in the amount of dividends is generally ignored. Also ignored are any proceeds the investor might expect on the redemption or disposition of the share that differs from the original issue price.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(9)).

Deduction not permitted

ITA
110.61(10)

New subsection 110.61(10) is an anti-avoidance rule that prevents individuals from claiming disproportionate amounts received from or allocated by a partnership or trust (other than a personal trust), as being eligible for the capital gains deduction under subsection 110.61(2). This new subsection will deny a deduction under subsection (2) in circumstances where it is reasonable to consider that one of the main reasons that an individual acquires, holds or has an interest in a partnership or trust (other than a personal trust) or that one of the main reasons for the attributes of such interest is to enable the individual to receive a disproportionate percentage of any capital gain or taxable capital gain of the partnership or trust.

A similar provision applies in respect of the lifetime capital gains deductions (see subsection 110.6(11)).

Related persons, etc.

ITA
110.61(11)

New subsection 110.61(11) provides certain interpretation rules that apply to section 110.61.

Ordering rule

New paragraph 110.61(11)(a) provides an ordering rule for the disposition of shares that are identical properties for the purpose of determining whether a share satisfies the holding period test under subparagraph 110.61(1)(b)(i). Where a taxpayer disposes of shares only some of which meet the holding requirements of the subject shares under subparagraph 110.61(1)(b)(i), new paragraph 110.61(11)(a) deems the taxpayer to have disposed of the shares in the order in which they were acquired by the taxpayer.

Personal trusts

Under new subparagraph 110.61(11)(b)(i) a beneficiary of a personal trust is deemed to be related to the trust while they are a beneficiary.

New subparagraph 110.61(11)(b)(ii) provides that a personal trust will also be treated as being related, in respect of the subject shares, to any person from whom it acquired those shares where, at the time the trust disposes of the shares, all beneficiaries (other than registered charities) of the trust are related to the person from whom the trust acquired the shares (or would be related to that person if he or she were living at that time).

For the purposes of the capital gains deduction for qualifying business transfers, this paragraph provides that the period of time during which subject shares were held by a personal trust of which the individual was a beneficiary will be included in determining whether the holding period requirement for the subject shares set out in paragraph 110.61(1)(b) have been met.

Partnerships

New paragraph 110.61(11)(c) provides that a partnership shall be deemed to be related to a person for any period throughout which the person was a member of the partnership. For the

purposes of the capital gains deduction for qualifying business transfers, the period of time during which shares were held by a partnership of which the individual was a member will be included in determining whether the holding period requirements for the subject shares set out in paragraph 110.61(1)(b) have been met.

New paragraph 110.61(11)(d) deems a person who is a member of a partnership that is a member of another partnership (a lower-tiered partnership) to be a member of the lower-tiered partnership. This paragraph will permit such a taxpayer to have access to the capital gains deduction arising on the disposition of a subject shares under a qualifying business transfer by the lower-tiered partnership.

Holding corporations

New paragraph 110.61(11)(e) provides that a holding corporation will be deemed to be related to any of its shareholders from whom it acquired shares in another corporation in respect of the acquired shares where all or substantially all of the consideration received by a shareholder from the corporation in respect of the acquisition was common shares of the corporation. Paragraph (e) is a relieving provision which ensures that shareholders who held subject shares (within the meaning of subsection 110.61(1)) will not disentitle themselves to the capital gains deduction for qualifying business transfers by reason only of the interposition of a holding company between themselves and the subject corporation (within the meaning of subsection 110.61(1)).

Issued shares

Paragraph 110.61(11)(f) deems shares issued by a corporation to a particular person or partnership, except in certain circumstances, as having been owned immediately before their issue to the particular person or partnership by a person who was not related to the particular person or partnership.

Shares that are not subject to this rule are described in subparagraphs (i) to (iii). More specifically, subparagraph (i) provides that shares issued as consideration for other shares will not be subject to this rule.

Subparagraph (ii) provides that shares issued as part of a transaction or series of transactions in which the person or partnership disposed of all or substantially all of the assets used in an active business carried on by that person or the members of the partnership or disposed of an interest in a partnership where all or substantially all of the partnership's assets were used in an active business carried on by the members of that partnership are not subject to this rule.

Subparagraph (iii) provides that shares issued by the corporation as stock dividends on other shares of the capital stock of the corporation will not be subject to this rule. Paragraph 248(5)(b) provides that a share received in payment of a stock dividend on a particular share of the capital stock of a corporation is deemed to be property substituted for that particular share. Therefore, the holding period in paragraph 110.61(1)(b) operates effectively where shares are received as stock dividends on other shares of the capital stock of a corporation.

The effect of the rule in paragraph 110.61(11)(f) is to require shares, other than those issued in circumstances provided for in the exceptions in subparagraphs (i), (ii) and (iii), to be owned for

the full 24 month holding period by the taxpayer or persons or partnerships related to the taxpayer to qualify for the capital gains deduction for a qualifying business transfer. This rule ensures that the holding period requirement provided under paragraph 110.61(1)(b) in respect of the subject shares cannot be circumvented through the issue of shares of a corporation from treasury.

Similar interpretation rules apply in respect of the lifetime capital gains deduction for dispositions of qualified small business corporation shares (see subsection 110.6(14)).

These amendments are deemed to have come into force on January 1, 2024.

Subclauses (38) and (39)

Subclauses (38) and (39) amend clause 111(1)(e)(ii)(A) of the ITA so that it includes references to all the ITCs included in this bill and Bill C-59. See the commentary related to Clause 24 for more information on clause 111(1)(e)(ii)(A).

Subclause (40)

Subclause (40) amends the description of E in the definition *non-capital loss* in subsection 111(8) to correct a cross-reference that was inadvertently changed in Bill C-59. This amendment applies to taxation years that begin after September 30, 2023 (with an anti-avoidance rule that may change the application date), consistent with the application of the corresponding amendment in Bill C-59.

Subclauses (41) to (43)

Subclauses (41) to (43) amend the definition *government assistance* in subsection 127(9) of the ITA to add references to the ITCs.

Subclauses (44) to (62)

Subclauses (44) to (62) amend section 127.44 of the ITA, which is included in Bill C-59 to implement the CCUS ITC.

Carbon capture, utilization and storage tax credit

ITA
127.44

A number of generally minor changes are proposed for the legislation included in Bill C-59 that implements the tax credits for certain expenditures related to CCUS. The notes below have generally been prepared as if C-59 were already enacted. The amendments generally apply as of January 1, 2022, consistent with the announced effective date for CCUS tax credits.

Definitions

ITA
127.44(1)

Subsection 127.44(1) provides definitions for a number of terms relevant to CCUS tax credits. The definitions apply for the purposes of section 127.44 and Part XII.7 of the Act.

“dedicated geological storage”

In general terms, “dedicated geological storage” means a geological formation capable of permanently storing captured carbon in a “designated jurisdiction”. The proposed definition “dedicated geological storage” included a reference to the time that the first “qualified CCUS expenditure” was made in respect of a CCUS project. This reference was intended to ensure, in general terms, that otherwise qualifying expenditures for projects in designated jurisdictions remained eligible even if the designation of the jurisdiction was later revoked under subsection 127.44(14), as long as the jurisdiction retained a regulatory regime for the permanent storage of captured carbon. Wording related to timing and specific projects is removed and replaced by specific rules in new subsection 127.44(14.1). For more information, see the commentary on that subsection below.

“dual-use equipment”

A portion of expenditures for “dual-use equipment” may qualify for CCUS tax credits under certain circumstances. To be included as dual use equipment, equipment must be described in any of paragraphs (a) to (d) of the definition. In addition, in the case of property acquired before the first day of commercial operations of the CCUS project, the equipment must be verified by the Minister of Natural Resources as being dual-use equipment.

The definition “dual-use equipment” is amended to refer to “property” rather than equipment in its opening words and in paragraph (c) of the definition, given that paragraph (c) contemplates that buildings or other structures may be included in the definition “dual-use equipment”. It is further amended to clarify that property described in Class 57 or 58 of Schedule II to the *Income Tax Regulations* is excluded from being “dual-use equipment”. This change (relative to the wording in Bill C-59) better delineates dual-use equipment as a third category of assets, a portion of the cost of which may qualify for CCUS tax credits.

The definition is also amended to replace references in clause (a)(i)(B) and subparagraph (a)(iii) to certain types of hydrogen production with references to qualified clean hydrogen projects, consequential on the introduction of that defined term in new subsection 127.48(1). This change applies as of March 28, 2023, the effective date for the Clean Hydrogen ITC rules.

Finally, subparagraphs (a)(iii) and (iv) are amended to replace references to “distribution equipment” and “transmission equipment” with the word “equipment” in each case, consequential on the introduction of the definitions “distribution equipment” and “transmission equipment” in subsection 248(1) of the Act.

“preliminary CCUS work activity”

Expenditures in respect of a “preliminary CCUS work activity” cannot be included as qualified CCUS expenditures because of subparagraph 127.44(9)(b)(iii). This definition is amended to include a reference to dual-use equipment.

“project plan”

In general terms, a “project plan” is a plan for a CCUS project that reflects a front-end engineering design study (or an equivalent study as determined by the Minister of Natural Resources) for the project and describes the quantity of captured carbon that the CCUS project is expected to support for storage, in each calendar year over the life of the project, in eligible use and ineligible use. The definition also effectively includes a filing deadline. The definition is amended to allow for later filing of project plans, in situations where the filing could not be made because the Minister of Natural Resources was not yet accepting project plan submissions. In these cases, the project plan may be filed up to 90 days after the earliest date on which filings are being accepted.

“qualified carbon capture expenditure”

The definition “qualified carbon capture expenditure” is relevant to determining the amount of the taxpayer's CCUS development tax credit under subsection (4) and CCUS refurbishment tax credit under subsection (5). In general terms, it represents a portion of the taxpayer's capital expenditures incurred in the year to acquire property that is used for the capture aspect of a CCUS project (in contrast to property used in other parts of a CCUS project, such as for transportation, storage or use). This definition is amended to remove the word “distribution” from the phrase “distribution equipment”, consequential on the introduction of “distribution equipment” as a defined term in subsection 248(1) of the Act. No policy change is intended by this amendment.

“specified percentage”

The definition “specified percentage” sets out the tax credit rate used to determine the amount of a taxpayer's CCUS development tax credit and the taxpayer's CCUS refurbishment tax credit under subsections (4) and (5).

The introductory words of this definition are amended slightly to better accommodate the inclusion of a portion of expenditures on “dual-use equipment” as qualified carbon capture expenditures.

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 (2) to have been deducted from the taxpayer's tax otherwise payable under Part I. Subsection 127.44(3) is amended to add a reference to section 129 of the

Act, effective after 2021, to ensure that the refundable dividend tax rules in that provision operate in the intended manner. Subsection 127.44(3) is also amended to add references to new sections 127.48 and 127.49, effective March 28, 2023 and January 1, 2024 respectively, consequential on the introduction of the Clean Hydrogen tax credit and the CTM ITC.

Qualified CCUS project determination

ITA
127.44(8)(a)(ii)

Subsection 127.44(8) of the Act provides that, for the purpose of the definition of "qualified CCUS project" in subsection (1), the Minister of National Revenue may, in consultation with the Minister of Natural Resources, determine whether one or more CCUS projects of a taxpayer is one project or multiple projects. Subparagraphs 127.44(8)(a)(i) and (ii) provide a time limit on this determination. Subparagraph (8)(a)(ii) is amended to refer to subsection 127.44(6), thus contemplating the circumstances in either paragraph of subsection 127.44(6), which may apply to require the filing of a revised project plan.

Special rules — adjustments

ITA
127.44(9)(a)

Subsection 127.44(9) of the Act contains several special rules that apply for the purposes of the CCUS tax rules. Paragraph 127.44(9)(a) specifies the treatment of certain amounts of assistance in respect of the cost of property for the purposes of, among other things, determining a taxpayer's qualified CCUS expenditures. The introductory portion of paragraph (a) is amended to add a reference to dual-use equipment and to refer to property that is "described" in Class 57 or 58 of Schedule II.

Under subparagraph (9)(a)(i), for the purposes of the CCUS tax credit, the capital cost of a taxpayer's property is determined without reference to the adjustments applied by subsections 13(7.1) and (7.4).

Under subparagraph (9)(a)(ii), the capital cost of a property is reduced by amounts relating to "non-government assistance" (as that term is defined in subsection 127(9)) that can reasonably be considered to be in respect of the property. Clause (ii)(A) reduces the capital cost of property by assistance received in or before the taxation year in which the property was acquired (or was deemed to be acquired). Clause (ii)(B) reduces the capital cost of property in circumstances where an amount has not yet been received during the year, but the taxpayer is nevertheless entitled to, or can reasonably be expected to, receive the amount in the year or a subsequent year, and that amount would be non-government assistance to the taxpayer if it were received by the taxpayer. Amounts that are repaid or are no longer expected to be received may be eligible for the CCUS tax credit under subsection (10).

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

Paragraph 127.44(9)(b) causes certain amounts to be excluded from a taxpayer's qualified CCUS expenditures. This includes, for instance, an expenditure to acquire property for which a Clean Technology credit or a section 127 ITC is claimed. Paragraph (b) is amended consequential on the introduction of sections 127.48 and 127.49 (effective March 28, 2023 and January 1, 2024 respectively) to also exclude an expenditure to acquire property for which a Clean Hydrogen tax credit or a CTM ITC is claimed.

ITA
127.44(9)(h)

Paragraph 127.44(9)(h) is added to prevent expenditures from being excluded from eligibility for CCUS tax credits due to taxpayers' inability to provide project plans to the Minister of Natural Resources because the Minister of Natural Resources was not yet accepting them (i.e., because the enabling legislation was not enacted). In these circumstances, provided the project in due course becomes a qualified CCUS project, paragraph (h) deems the otherwise-ineligible expenditures to have been incurred in respect of a qualified CCUS project in the year that they were actually incurred, or in the year that they were deemed to have been incurred because of paragraph (e).

ITA
127.44(9)(i)

Paragraph 127.44(9)(i) is added to subsection (9) to ensure that the cost of buildings or other structures that are used for the operation or installation of a combination of specific types of property is not excluded from CCUS tax credit eligibility. This is achieved by deeming such buildings or structures to be described in paragraph (f) of Class 57 of Schedule II to the *Income Tax Regulations*.

Jurisdiction not designated

ITA
127.44(14.1)

New subsection 127.44(14.1) is added to address certain situations where a geological formation either begins to be "dedicated geological storage" (i.e. because its jurisdiction is newly designated under subsection 127.44(13)) or ceases to be "dedicated geological storage" because it does not meet either of paragraphs (a) or (c) in that definition in subsection 127.44(1) at the time of an expenditure that might otherwise qualify for a CCUS tax credit. That is, the geological formation is either located in a jurisdiction that is not, at that time, a "designated jurisdiction" (as defined in subsection 127.44(1)), or it is not authorized or regulated under the laws of a designated jurisdiction.

Paragraph (a) provides grandfathering, in that those conditions are deemed to be met if they were met at the time of an earlier qualified CCUS expenditure in respect of the same CCUS project.

While this situation is expected to be unlikely to occur, this rule would preserve eligibility for CCUS tax credits in circumstances where either the designation of a jurisdiction, or the status of a geological formation as authorized and regulated, is revoked after a CCUS project has begun.

Paragraph (b) provides that, where that grandfathering does not apply (and those conditions are not met at the time of the expenditure), the calculation of the CCUS tax credit and any recovery tax under Part XII.7 will, effectively, ignore that expenditure. In general terms, this means that, if paragraph (a) does not apply, expenditures only begin to qualify for CCUS tax credits once a jurisdiction is designated and the geological storage is duly authorized. This is achieved, more specifically, as follows:

- Subparagraph (b)(i) provides that, in the calculation in subsection 127.44(1) of the qualified carbon capture expenditure or qualified carbon transportation expenditure in respect of a property acquired, the projected eligible use percentage does not include any quantity of captured carbon stored in the geological formation (notwithstanding that the formation may, at some subsequent time, become authorized and regulated under a designated jurisdiction where it is located).
- Subparagraph (b)(ii) provides that, where the cost of the property would be a qualified carbon storage expenditure, the portion of that cost that relates to the storage of carbon in that formation will not be included in the calculation of that expenditure.

The cumulative CCUS development tax credit under subsection 127.44(3) effectively operates as a pool. During the development stage of a project spanning more than one year, a taxpayer may update the calculation of projected eligible use of captured carbon as updates are made to the project plan. Rather than re-file earlier claims when a plan is revised, the taxpayer is to recalculate eligible expenditures for all development years based on the new projections.

Paragraph 127.44(14.1)(b) is an exception to this general approach. As such, even though a taxpayer may expect, according to their most recent CCUS project plan, that captured carbon will be stored in a geological formation that will, at the time of such storage, meet all the conditions of the definition “dedicated geological storage”, in the calculation of the taxpayer’s CCUS tax credit for any taxation year, if the formation did not meet the above-noted conditions at the time of a particular expenditure, then any quantity of stored carbon in that formation shall not be included in the calculation of the projected eligible use percentage for the purpose of calculating the qualified carbon capture or transportation expenditures (if applicable) in respect that particular expenditure. Likewise for the calculation of the actual eligible use percentage for the purposes of the recovery tax in Part XII.7. Similarly, a portion of the cost of property that would otherwise be a qualified carbon storage expenditure will be permanently excluded.

Paragraph (c) provides that, where the grandfathering in paragraph (a) applies, the calculation of actual eligible use percentage under Part XII.7 will include any quantity of carbon stored in the geological formation.

Subsection 127.44(14.1) is deemed to have come into force on January 1, 2022.

Late filing

ITA
127.44(17)

Subsection 127.44(17) is an administrative rule for the purpose of ensuring efficient administration of the CCUS tax credits by the Minister of National Revenue.

The rule generally permits the Minister to accept the late-filing by a qualifying taxpayer of the prescribed form referred to in subsection (2) only until one year after the filing-due date referred to in subsection (2). Subsection (17) is amended to provide an extension of this late-filing deadline until December 31, 2025.

Subclauses (63) to (69)

Subclauses (63) to (69) amend section 127.45 of the ITA, which is included in Bill C-59 to implement the Clean Technology ITC.

Time limit for application

ITA
127.45(3)

Subsection 127.45(3) places a time limit on filing the form necessary to be eligible for the Clean Technology ITC. The prescribed form claiming the Clean Technology ITC 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. If the form is filed after the taxpayer's filing-due date but within the one-year period, the deemed payment of tax under subsection (2) is deemed not to arise under that subsection until the prescribed form and information have been filed with the Minister.

Special rules - adjustments

ITA
127.45(5)

Subsection 127.45(5) sets out a number of restrictions on Clean Technology ITC claims.

Under paragraph (a), the Clean Technology ITC is not available for any property for which a Clean Technology ITC 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 ITC purposes.

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

Under paragraph (c), the capital cost of clean technology property is reduced by amounts relating to “government assistance” and “non-government assistance” (as those terms are defined in subsection 127(9)) that can reasonably be considered to be in respect of the property. Subparagraph (c)(i) reduces the capital cost of clean technology property by assistance received in or before the taxation year in which the property was acquired (or was deemed to be acquired). Subparagraph (c)(ii) reduces the capital cost of clean technology property in circumstances where an amount has not yet been received during the year, but the taxpayer is nevertheless entitled to receive the amount in the year, or can be reasonably be expected to receive the amount in the year or a subsequent year, and that amount would be government assistance or non-government assistance to the taxpayer if it were received by the taxpayer. Amounts that are repaid or are no longer expected to be received may be eligible for the Clean Technology ITC 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 Clean Technology ITC purposes. Those rules are imported for the purpose of the Clean Technology ITC, subject to certain necessary adjustments.

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 ITC. This amendment is intended to ensure that the Clean Technology ITC is not available for any property for which a Clean Hydrogen tax credit or a CTM ITC 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 ITC.

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 ITC 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 ITC, and a reference to section 129 for the purpose of dividend refunds.

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 ITC.

Subclauses (70) and (71)

Subclauses (70) to (71) amend section 127.46 of the ITA, which is included in Bill C-59 to implement the labour requirements that apply to the CCUS and Clean Technology ITCs. These

amendments would amend subsection 127.46 in order to extend the labour requirements to the Clean Hydrogen ITC, applicable to property prepared or installed after November 27, 2023.

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 ITC 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 ITC 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.

Subclauses (72) to (78)

Subclauses (72) to (78) amend section 127.47 of the ITA, which is included in Bill C-59 to implement the partnership rules that apply to the CCUS and Clean Technology ITCs. These amendments would amend subsection 127.47(1) in order to extend these partnership rules to the Clean Hydrogen and the CTM ITCs.

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 ITC).

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 ITC.

"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 ITC.

“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 ITC.

“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 ITC, 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 ITC, 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 ITC.

Subclauses (79) and (80)

Subclauses (79) and (80) would replace the Clean Hydrogen ITC in section 127.48 of the Act (as enacted by clause 37) with a version that includes cross-references to legislation enacted by Bill C-59. See the explanatory notes accompanying clause 37 for more detail.

Subclauses (81) and (82)

Subclauses (81) and (82) would replace the CTM ITC in section 127.49 of the Act (as enacted by clause 38) with a version that includes cross-references to legislation enacted by Bill C-59. See the explanatory notes accompanying clause 38 for more detail.

Subclause (83)

Subclause (83) repeals section 127.491 of the ITA, which was enacted by clause 39 as a temporary section. Following royal assent of Bill C-59 section 127.491 is no longer required since section 127.47 of the ITA (as amended by subclauses 72 to 78) contains the same rules.

Subclause (84)

New subparagraph 127.52(h)(vi) provides for a deduction, for alternative minimum tax purposes, of all gains that were subject to a deduction under subsection 110.61(2) (capital gains deduction for a qualifying business transfer to an employee ownership trust).

Subclause (85)

Subclause (85) amends paragraph 127.55(f) of the ITA to exempt *employee ownership trusts* from the alternative minimum tax in section 127.5 of the ITA. This amendment applies to taxation years that begin after December 31, 2023.

Subclauses (86) and (87)

Subclauses (86) and (87) include consequential amendments to paragraph 152(1)(b) related to the ITCs included in this bill and Bill C-59. See clause 56 for discussion of the amendment to 152(1)(b).

Subclause (88)

Subclause (88) renumbers paragraph 152(4)(b.10) as 152(4)(b.91) and paragraph 152(4.01)(b) is amended accordingly.

Subclause (89)

Assessment and reassessment

ITA
152(4)(b.94)

Subsection 152(4) generally provides that the Minister of National Revenue may at any time assess tax and other amounts payable by a taxpayer for a taxation year but may not assess after the normal reassessment period for the year. An individual taxpayer’s normal reassessment period for a year is generally three years from the date of the initial notice of assessment.

New paragraph 152(4)(b.94) is introduced to support the Minister of National Revenue in verifying and reassessing a taxpayer who does not satisfy the conditions required for the application of the capital gains deduction for qualifying business transfers under section 110.61.

Specifically, paragraph 152(4)(b.94) provides an additional three year reassessment period after the end of the normal reassessment period for the taxpayer in respect of the year of a disposition for which the taxpayer claimed a deduction under subsection 110.61(2). Because a disqualifying

event (as described in paragraph 110.61(3)(a)) in respect of the capital gains deduction may occur up to a maximum period of 24 months after the disposition, an extended reassessment period is required to afford the Minister of National Revenue the ability to verify compliance.

For more information, see the commentary to new section 110.61.

This amendment is deemed to have come into force on January 1, 2024.

Subclauses (90) to (96)

Subclauses (90) to (96) include consequential amendments related to the ITCs included in this bill and Bill C-59. For ITA amendments related to section 157, see clause 58.

Temporary subparagraphs 152(4)(b)(x.1) and (x.2) are repealed and replaced by new subparagraphs (xiii) and (xiv).

Subclause (97)

Joint liability — qualifying business transfer capital gains deduction

ITA
160(1.6)

New subsection 160(1.6) is added consequential on the introduction of the joint election provided by new paragraph 110.61(1)(e) to satisfy the conditions listed in new subsection 110.61(1) for the application of the capital gains deduction for qualifying business transfers in subsection 110.61(2).

For subsection 110.61(2) to apply, new paragraph 110.61(1)(e) requires an individual who wishes to claim a deduction under subsection 110.61(2) in respect of a qualifying business transfer to a trust (or a purchaser corporation wholly owned by a trust) to jointly elect, in prescribed form, with the trust, the purchaser corporation, and any other individuals sharing the capital gains deduction from the qualifying business transfer.

The joint election, and the joint and several liability imposed by this new subsection, recognize that the actions of the trust or the purchaser corporation could potentially cause a disqualifying event (as described in subsection 110.61(3)) to occur, causing the denial of the deduction under subsection 110.61(2) to the individual pursuant to paragraph 110.61(4)(a).

Consequently, a trust and purchaser corporation that jointly elect under paragraph 110.61(1)(e) for subsection 110.61(2) to apply are, in the event paragraph 110.61(4)(a) subsequently applies, jointly and severally, or solidarily, liable for tax payable by the individual under Part I of the Act, to the extent that the tax payable by the individual is greater than it would have been had the conditions for the application of subsection 110.61(2) been satisfied.

For more information, see the commentary on paragraph 110.61(1)(e), subsections 110.61(2) to (4), and paragraph 152(4)(b.94).

This amendment is deemed to have come into force on January 1, 2024.

Subclauses (98) to (101)

Subclauses (98) to (101) amend paragraph 163(2)(d.1) of the ITA so that it includes references to all the ITCs included in this bill and Bill C-59. See the commentary related to Clause 59 for more information on paragraph 163(2)(d.1).

Subclause (102)

Definitions

ITA
183.3(1)

“reorganization transaction”

The definition of “reorganization transaction” in subsection 183.3(1) sets out the circumstances in which a redemption, acquisition, or cancellation of equity (or a portion thereof) by a covered entity are excluded from Part II.2 tax payable under subsection (2).

New paragraph (b.1) is added to the definition, effective for a redemption, acquisition, or cancellation of equity on or after January 1, 2024, to include a vertical amalgamation to which subsection 87(11) applies. This addition ensures that a vertical amalgamation of a “parent” corporation with a covered entity that is a subsidiary wholly-owned corporation of the parent is not subject to Part II.2 tax.

Subclause (103)

Definitions

ITA
211.92(1)

Subsection 211.92(1) provides various definitions relevant for the purpose of determining the CCUS tax credit recovery tax liability of a taxpayer and for the reporting requirements in section 211.93.

“reporting-due day”

The definition “reporting-due day” establishes the reporting-due day for annual climate risk disclosure, the construction and completion knowledge sharing report and the annual operations knowledge sharing reports. The definition is amended to extend the deadline for these reports and disclosures to the later of December 31, 2025 and each otherwise specified deadline.

This amendment applies as of January 1, 2022, consistent with the announced effective date for CCUS tax credits.

Subclauses (104) and (105)

Subclauses (104) and (105) amend subsection 220(2.2) of the ITA so that it includes references to all the ITCs included in this bill and Bill C-59. See the commentary related to Clause 68 for more information on subsection 220(2.2).

Subclauses (106) and (107)

Clean economy tax credits

ITA
241(3.41)

Section 241 prohibits the use or communication of taxpayer information by any official or other representative of the government, except as authorized.

New subsection 241(3.41) is added to provide authority to the Minister of National Revenue and the Minister of Finance to publish certain taxpayer information that reasonably relates to the claimants or recipients of a "clean economy tax credit" (as defined in subsection 127.47(1)).

The information includes:

- the name of any corporation or trust that claimed or received a clean economy tax credit, as well as the name of any partnership in respect of which the corporation or trust claimed or received the tax credit as a member of the partnership or as a deemed member thereof under subsection 127.47(7),
- the specific clean economy tax credit, and
- the period for which the clean economy tax credit pertains to.

This amendment comes into force on Royal Assent.

Where taxpayer information may be disclosed

ITA
241(4)(d)

Paragraph 241(4)(d) authorizes the communication of taxpayer information obtained under the Act for specific purposes.

New subparagraph 241(4)(d)(i.1) is added to permit taxpayer information to be shared with any person, including the Minister of National Revenue and the Minister of Finance, for the purposes of new subsection 241(3.41).

This amendment comes into force on Royal Assent.

Subsection (108) to (110)

Subclauses (108) to (110) amend subparagraph 241(4)(d)(vi.2) of the ITA so that it includes references to all the ITCs included in this bill and Bill C-59. See the commentary related to Clause 74 for more information on subparagraph 241(4)(d)(vi.2).

Subsection (111)

Definitions

ITA
248(1)

“employee ownership trust”

Subsection 248(1) provides the definition “employee ownership trust” (EOT). An EOT is an irrevocable trust, which at all relevant times, satisfies the conditions provided under paragraphs (a) through (j) of the definition.

Paragraph (b) of the definition “employee ownership trust” provides employee beneficiary conditions. Paragraph (b) is amended consequential upon the introduction of the capital gains deduction in section 110.61 to include new subparagraph (v) which requires that a beneficiary cannot be an individual who claimed, or is related to an individual who claimed, a deduction under subsection 110.61(2) in respect of a qualifying business controlled by the trust. This amendment prevents an individual from claiming a deduction under subsection 110.61(2) upon the sale of an interest in a business to an EOT while, at the same time, re-acquiring their interest in the business as beneficiary of the EOT.

This amendment is deemed to have come into force on January 1, 2024.

Subsection (112)

Class 57

ITR
Schedule II

Class 57 of Schedule II to the Regulations describes certain property that is part of a CCUS project.

Subparagraphs (a)(iii) and (iv) of Class 57 are amended, consequential on the introduction of defined terms “distribution equipment” and “transmission equipment” in subsection 248(1) of the Act, to avoid using those terms. No change in the types of property included in Class 57 is intended as a result of these amendments.

This amendment applies as of January 1, 2022, consistent with the announced effective date for CCUS tax credits.

Subsections (113) to (212)

Subclauses (113) to (212) include the application and coming into force rules for all the foregoing subclauses.