

NOVA SCOTIA VENTURE CAPITAL TAX CREDIT GUIDELINES

**Nova Scotia Department of Finance and Treasury Board
Taxation and Federal Fiscal Relations Division**

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Nova Scotia Venture Capital Tax Credit Guidelines

General Information

The Venture Capital Tax Credit (VCTC) is a non-refundable personal and corporate income tax credit available to eligible investors who invest in qualifying venture capital funds.

The credit is meant to encourage investments in professionally managed venture capital funds which in turn make equity capital investments in eligible small and medium size corporations within Atlantic Canada.

The VCTC is administered by the Taxation and Federal Fiscal Relations Division of the Nova Scotia Department of Finance and Treasury Board (the Department).

The legislative authority for this tax credit is contained in

- [Section 37B of the Income Tax Act \(Nova Scotia\)](#), and
- [Venture Capital Tax Credit Regulations](#) (the Regulations).

Qualifying venture capital funds must ensure that each authorized raise of equity capital under this program complies with the [Securities Act \(Nova Scotia\)](#). More information on this can be found [here](#). VCTC approval from the Department does not constitute approval that may be required from the [Nova Scotia Securities Commission](#) under the *Securities Act* (Nova Scotia). Due diligence is required from all applicants on this matter.

Approval to complete an authorized raise of equity capital under the program does not constitute an endorsement by government of the venture capital fund completing the authorized raise of equity capital. The Province does not guarantee any investment. The investor is at risk for his or her investment.

Where there is a conflict between the information contained in these Guidelines and the Legislation and Regulations, the Legislation and Regulations governing the Venture Capital Tax Credit will take precedence over the Guidelines, application forms, advance rulings or any other published information.

Tax Credit

Eligible investors can qualify for a non-refundable personal or corporate income tax credit calculated in the following way:

$$\text{Investment Amount} \times \text{Tax Credit Rate}$$

where

Investment Amount = amount paid in cash for an eligible investment during an authorized raise of equity capital (up to a maximum annual investment amount of \$500,000*)

Tax Credit Rate = 15%

*Note: Investors can invest any amount in a qualifying venture capital fund, however, the tax credit is only available for investments up to a maximum of \$500,000 each year per eligible investor. Therefore, the maximum annual (personal or corporate) tax credit is \$75,000 per eligible investor.

The maximum annual VCTC across all qualifying venture capital funds is \$3 million per fiscal year of the province (April 1 – March 31). If the \$3 million maximum amount is reached during a fiscal year, the Department will not register any further applicants as qualifying venture capital funds or approve any further applications to raise equity capital until the next fiscal year.

Venture capital funds must first apply to become registered as a qualifying venture capital fund and then must apply for approval before each raise of equity capital from its investors.

For the 2019 and subsequent taxation years, eligible investors who are individuals, can make an eligible investment within the calendar year or within 60 days of the calendar year end, as long as the investment is made during the time period the qualifying venture capital fund is conducting an authorized raise of equity capital.

To avoid being required to repay the tax credit, eligible investors are required to hold their investment in the qualifying venture capital fund for a minimum of 4 years from the date the eligible investment was made and was fully paid for in cash, which can be supported by the date the share certificate or limited partnership receipt was issued.

Tax credit certificates are issued by the Department after an authorized raise of equity capital is complete. After the tax credit certificate has been issued to the eligible investor, the tax credit may be claimed via the individual's personal income tax return or the corporation's corporate income tax return for the taxation year in which the investment was made.

The VCTC is a non-refundable credit, however unused portions of the personal or corporate tax credit may be carried forward for 7 taxation years. It may also be carried back 3 taxation years for any taxation year ending after April 1, 2019.

Qualifying Venture Capital Funds

A venture capital fund can apply for registration as a **qualifying venture capital fund** provided that

- its head office is in Nova Scotia;
- it's in compliance with the *Securities Act* (Nova Scotia);
- it has equity capital of at least \$25,000 (i.e. money received by a venture capital fund for its issued common shares or limited partnership units);
- if the venture capital fund is a corporation,
 - it was incorporated under the laws of Canada or a province of Canada and is registered in Nova Scotia, and
 - it has an authorized capital consisting of at least 1 class of common voting shares;
- if the venture capital fund is a limited partnership, it is registered under the *Limited Partnership Act* (Nova Scotia).

A **head office** is considered to be either

- the registered office as listed with the Nova Scotia Registry of Joint Stock Companies, or
- the place where the majority of its employees report to work (if a law office is listed as the registered office).

Eligible Investors

For an investment in a qualifying venture capital fund to be eligible for the VCTC, it must be made by an eligible investor during the time frame the qualifying venture capital fund is authorized to raise equity capital under the program.

An **eligible investor** is

- an individual who is a resident of Nova Scotia and at least 19 years of age, or
- a taxable Canadian corporation which
 - is registered to carry on business in Nova Scotia, and
 - has its head office in Nova Scotia.

NOTE: For a qualifying venture capital fund which is a limited partnership, the general partner is not considered an eligible investor.

NOTE: An individual must make the investment directly or through a registered retirement savings plan under which the annuitant is the individual or spouse/common-law partner of the individual. An “individual” does not include a trust.

Eligible investors must not make or hold an investment in a qualifying venture capital fund if the investor, either alone or with 1 or more of the following persons, will own (directly or indirectly) shares or limited partnership units carrying 20% or more of the votes for the election of directors or general partners of the qualifying venture capital fund or will control the qualifying venture capital fund in any manner:

- affiliates or associated corporations of the eligible investor,
- shareholders of the eligible investor or their affiliates or associated corporations,
- directors of the eligible investor or their affiliates, or
- officers of the eligible investor or their affiliates.

All of the following are considered **affiliates** of a person:

- A corporation in which the person owns (directly or indirectly) shares carrying 10% or more of the voting rights for the election of directors.
- A business partner of the person.
- A participant in a joint venture with the person.
- A trust or estate in which the person has a substantial beneficial interest or if the person serves as trustee (or in a similar capacity).
- A spouse, parent, grandparent, child, grandchild, brother or sister of the person.
- A parent, grandparent, child, grandchild, brother or sister of the person’s spouse (if they reside at the same address as the person).

Eligible Investments within an Authorized Raise of Equity Capital

Provided that a qualifying venture capital fund receives approval to conduct an authorized raise of equity capital, eligibility for the VCTC begins the day that the application for approval of a raise of equity capital was received by the Department. This allows the qualifying venture capital fund to raise the funds (as stated in their application) through an authorized raise of equity capital. Any investments made in a qualifying venture capital fund *before* the application is received by the Department are *not eligible* for the VCTC.

An **eligible investment** is comprised of an investment made in a qualifying venture capital fund by an eligible investor in exchange for:

- (a) newly issued common voting shares (if the qualifying venture capital fund is a corporation), or
- (b) limited partnership units or to fulfil a capital commitment that was made in exchange for limited partnership units (if the qualifying venture capital fund is a limited partnership).

Eligible investments must be fully paid for in cash by the eligible investor.

The investments may not be any of the following:

- a replacement investment,
i.e. A share/limited partnership unit purchased as a replacement for another share/limited partnership unit of a qualifying venture capital fund that was previously disposed of by the investor,
- eligible for another tax credit/deduction (other than one in respect of an individual's RRSP),
- made mainly for the purpose of obtaining the tax credit.

Holding period: All eligible investments must be held by the eligible investor in the qualifying venture capital fund for a minimum of 4 years from the date the date the eligible investment was made and was fully paid for in cash.

Required Use of Funds Raised

Funds raised through the VCTC program must be used by the qualifying venture capital fund to make qualifying small business investments.

A **qualifying small business investment** is an investment in a **qualifying small business** that is

- made in exchange for newly issued
 - common voting shares,
 - preferred shares, or
 - convertible debentures;
- fully paid for in cash by the qualifying venture capital fund;
- in compliance with the *Securities Act* (Nova Scotia); and
- not used by the qualifying small business for a prohibited purpose (*see page 6*).

These qualifying small business investments must be made within a specified timeframe:

- At least 40% of the funds raised by the qualifying venture capital fund through issuing eligible investments in any given year must be invested by the end of the following tax year, and
- At least 80% of the funds raised by the qualifying venture capital fund through issuing eligible investments in any given year must be invested by the end of the second following tax year.

Qualifying venture capital funds may incur annual expenses of no more than 20% of the total eligible investments received.

An investment is not considered a qualifying small business investment if all or a portion of the funds being invested are used, or intended to be used, by the qualifying small business for:

- lending;
- acquiring securities;
- investment outside of Atlantic Canada;
- purchasing land (other than land that is required for the active business that the qualifying small business is primarily engaged in);
- funding the purchase of any services or assets at a price that is greater than the fair market value.
- paying dividends;
- purchasing goods or services from the following (unless sold at fair market value in the ordinary course of the seller's business):
 - the qualifying venture capital fund,
 - a director, officer, shareholder or partner of the qualifying venture capital fund, or
 - an affiliate of a director, officer, shareholder or partner of the qualifying venture capital fund;
- redeeming or purchasing previously issued shares of the qualifying small business (or an associated corporation);
- retiring a liability of a shareholder of the qualifying small business (or an associated corporation); or
- repaying a debt to a director, officer or shareholder of the qualifying small business (or one of their affiliates).

If the funds being invested in a qualifying small business by a qualifying venture capital fund were raised other than through an authorized raise of equity capital, the investment is not restricted by the above prohibitions. However, in these cases, the investments would be outside of the VCTC program and thus not be eligible for the VCTC.

Furthermore, qualifying venture capital funds are permitted to make investments in small businesses that are not considered qualifying small businesses, however those investments will not count toward the "required use of funds" percentages that the qualified venture fund must maintain in qualifying small business investments (i.e. 40% in first year and 80% in second year; see page 5). This could result in the revocation of the qualified venture capital fund's certificate of registration.

Qualifying Small Businesses

A corporation is a **qualifying small business** provided that it

- is a taxable Canadian corporation;
- carries on a business in Atlantic Canada (and is registered in an Atlantic Canadian province);
- has its head office in Atlantic Canada;
- was incorporated less than 10 years ago;
- has authorized capital consisting of at least 1 class of common voting shares;
- has less than \$15 million in assets (including assets of associated corporations);
- has fewer than 100 employees (including employees of associated corporations);
- pays at least 50% of its remuneration to employees or full-time contractors (*see page 8*) who are residents of Atlantic Canada and report to or deal with a permanent establishment of the corporation in Atlantic Canada;

A corporation is not considered a qualifying small business if

- its principal business includes any of the following:
 - construction,
 - developing, leasing or selling real property,
 - hotel ownership or management,
 - retail, including food and beverage services,
 - oil or gas exploration, development and production,
 - film, digital animation, or digital media,
 - membership based recreational activities (e.g. golf courses, fitness clubs, sports centers, etc.),
 - financial or insurance services;
- it is incorporated for a self-regulated professional practice (*see page 8*);
- it is a business for which public financial support would be contrary to public policy;
- it has been issued a Film Industry Tax Credit, Digital Media Tax Credit, Digital Animation Tax Credit, or Capital Investment Tax Credit; or
- it has been approved for or received a payroll rebate or an innovation rebate from Nova Scotia Business Incorporated.

NOTE: The following criteria do not apply to the same qualifying small business receiving a *subsequent* investment from a qualifying venture capital fund:

- was incorporated less than 10 years ago,
- has less than \$15 million in assets (including assets of associated corporations), and
- has fewer than 100 employees (including employees of associated corporations).

The qualifying small business would have to meet the above criteria at the time the qualifying venture capital fund makes its *first* qualifying small business investment, however, this criteria would no longer apply if that qualifying venture capital fund made another qualifying small business investment in the same qualifying small business at a later date.

A corporation is considered **associated** with another corporation if it falls under the definition of ‘associated corporation’ in [Section 256 of the Income Tax Act \(Canada\)](#), except that the association is determined at the time of the corporation’s application for approval rather than in a taxation year of the corporation.

A **full-time contractor** is considered to be a contractor/consultant of a corporation whose only client is the corporation or who provides services to the corporation for more than 20 hours a week.

Self-regulated professional practices include, but are not limited to, accountants, lawyers, dentists, medical doctors, veterinarians, and chiropractors.

Control of the qualifying small business is prohibited:

Qualifying venture capital funds must not make or hold an investment in a qualifying small business if it, along with any other qualifying venture capital fund(s), either alone or with 1 or more of the following, will own (directly or indirectly) shares carrying 50% or more of the votes for the election of directors of the qualifying small business or will (directly or indirectly) have influence resulting in control in fact of the qualifying small business:

- their affiliates,
- their shareholders or their affiliates,
- their directors or their affiliates,
- their officers or their affiliates, or
- their partners or their affiliates.

Non-arm's length investment in a qualifying small business is prohibited:

Qualifying venture capital funds must not make or hold an investment in a qualifying small business if any of the shares of the qualifying venture capital fund are held by a major shareholder who is or was in the 2 preceding years any of the following:

- a major shareholder of the qualifying small business (or an affiliate of a major shareholder of the qualifying small business), or
- the qualifying small business or an affiliate of the qualifying small business.

A **major shareholder** means a person (together with their affiliates) whose shares in a corporation carry 10% or more of the voting rights in the corporation.

Qualifying venture capital funds must not make or hold an investment in a qualifying small business if the qualifying small business (or an affiliate, director, officer, shareholder or associated corporation) provides or has provided (directly or indirectly) a loan, guarantee or other financial assistance to

- the qualifying venture capital fund or an affiliate of the qualifying venture capital fund,
- a director, officer, shareholder or partner of the qualifying venture capital fund, or
- another person (for the purpose of that person making an investment in the qualifying venture capital fund).

Application Processes and Reporting

There are multiple steps that a venture capital fund must take to ensure that their eligible investors are able to claim the tax credit and retain the tax credit:

1. Apply to be registered as a qualifying venture capital fund under the VCTC program.
2. Apply for the approval to raise equity capital.
3. Accept eligible investments from eligible investors during an authorized raise of equity capital.

4. Apply for tax credit certificates for the eligible investors (after an authorized raise of equity capital is complete).
5. Submit an annual return for each of the 4 years after the date its authorized raise of equity capital expires.

Instructions for each step can be found below.

1. Application for a Certificate of Registration (Register as a Qualifying Venture Capital Fund)

Application packages consisting of the following must be sent via email to the VCTC administrator (paper copies are not accepted):

- An application form (found on the Department's website).
The application form must be signed by an authorized officer of the applicant venture capital fund. Electronic signatures like Adobe's EchoSign are acceptable, as are forms that have been signed by hand and then scanned. If the venture capital fund is a limited partnership, the authorized officer of the general partner would be considered an authorized officer of the limited partnership.
- Financial statements (for the previous tax year), together with a review engagement report or auditor's report, for the venture capital fund.
Note: interim financials may also be requested by the administrator.
The financial statements must be audited/reviewed by a person who is licensed as a public accountant under an Act of the Province. If the venture capital fund was recently incorporated, financial statements are not required.
- Income Tax Return (for the previous tax year) of the venture capital fund (including all forms and schedules).
This is not required if the venture capital fund is in its first tax year.
- Up-to-date and notarized shareholder's register or record of limited partners.
*The shareholder register/record of limited partners must contain information on **all** share/limited partnership unit transactions (from the time when the corporation was incorporated or the limited partnership was formed) including, but not limited to, the name of the investor and the date, type and number of shares/limited partnership units that have been bought, sold and transferred.*
- Corporate chart/structure (if applicable).
- Certified copy of Limited Partnership agreement or shareholder agreement (if any).
- Certified copy of constitution/articles of incorporation, certificate of incorporation, and memorandum of association **or** certificate of limited partnership.

At times, the venture capital fund may be required to submit additional information beyond what is listed above.

If the application is approved, the venture capital fund will receive a certificate of registration signifying the registration of the venture capital fund as a qualifying venture capital fund. After a qualifying venture capital fund receives its certificate of registration, it can apply to conduct a raise of equity capital from eligible investors.

If a certificate of registration has not been issued to a venture capital fund within 6 months from the application date, the application may be considered lapsed.

2. Application for the approval to raise equity capital

Before a qualifying venture capital fund can accept eligible investments from eligible investors, it must first apply to the Department for approval to raise equity capital. These applications are *required each time* that the qualifying venture capital fund wants to raise funds from their investors under the VCTC program.

If the qualifying venture capital fund wishes to raise funds from investors outside of the VCTC program, it does not need to submit an application.

For example, if the qualifying venture capital fund knows that the small business investment it wishes to make with the funds to be raised does not qualify as a qualifying small business investment there is no need to submit an application (i.e. funds raised for that investment are not eligible for the VCTC).

Application packages for approval to raise equity capital under the VCTC program consist of the following and must be sent via email to the VCTC administrator (paper copies are not accepted):

- An application form (found on the Department's website).
The application form must be signed by an authorized officer of the qualifying venture capital fund. Electronic signatures like Adobe's EchoSign are acceptable, as are forms that have been signed by hand and then scanned. If the venture capital fund is a limited partnership, the authorized officer of the general partner would be considered an authorized officer of the limited partnership.
- A copy of the qualifying venture capital fund's certificate of registration.
- Up-to-date and notarized shareholder's register or record of limited partners.
*The shareholder register/record of limited partners must contain information on **all** share/limited partnership unit transactions (from the time when the corporation was incorporated or the limited partnership was formed) including, but not limited to, the name of the investor and the date, type and number of shares/limited partnership units that have been bought, sold and transferred.*
- A listing of all eligible investors and the amount they will be investing.

- An investment plan describing what the equity capital raised will be used for and the timing for using it.
- A statement (found on the Department's website) from each of the qualifying small business(es) in which the qualifying venture capital fund will be investing stating that the qualifying small business meets the criteria set out in the Regulations and will not use the funds for a prohibited purpose.
The statement(s) must be signed by an authorized officer of the qualifying small business(es). Electronic signatures like Adobe's EchoSign are acceptable, as are forms that have been signed by hand and then scanned.

At times, the qualifying venture capital fund may be required to submit additional information beyond what is listed above.

If the application is approved, the qualifying venture capital fund will receive a letter of approval stating

- the amount of equity capital the qualifying venture capital fund is authorized to raise,
- the time period that the qualifying venture capital fund is authorized to raise the equity capital,
- any other conditions deemed necessary.

Only eligible investments that are fully paid and issued within this timeframe are eligible for the tax credit.

Extensions may be granted if the qualifying venture capital fund needs more time to raise funds than the timeframe allotted on the letter of approval. Extension requests must be made via email to the VCTC administrator, preferably 3-4 weeks before the current approval lapses to allow enough time for the request to be processed.

The amount of funds raised within an authorized raise of equity capital may be increased at the written request of a qualifying venture capital fund. Requests for an increase in equity capital to be raised must be made via email to the VCTC administrator **before** completing any transaction(s) that will make the qualifying venture capital fund go above the authorized amount on their original letter of approval. These additional funds must be used for the purposes described in the investment plan that was submitted with the original application.

If approval to raise equity capital (or an extension) has not been issued to a qualifying venture capital fund within 6 months from the application date, the application may be considered lapsed.

3. Application for Tax Credit Certificates

After an authorized raise of equity capital is complete, qualifying venture capital funds must apply for tax credit certificates for their eligible investors. This application should be submitted as soon as possible after an authorized raise of equity capital and must be made no later than 6 months after the expiry date on its letter of approval.

Applications for tax credit certificates consist of the following and must be sent via email to the VCTC administrator (paper copies are not accepted):

- A signed statement from an authorized officer of the qualifying venture capital fund.
The form can be found on the Department's website. Electronic signatures like Adobe's EchoSign are acceptable, as are forms that have been signed by hand and then scanned. If the venture capital fund is a limited partnership, the authorized officer of the general partner would be considered an authorized officer of the limited partnership.
- Up-to-date and notarized shareholder's register or record of limited partners.
*The shareholder register/record of limited partners must contain information on **all** share/limited partnership unit transactions (from the time when the corporation was incorporated or the limited partnership was formed) including, but not limited to, the name of the investor and the date, type and number of shares/limited partnership units that have been bought, sold and transferred.*
- Investor Data Report (in Excel).
The form can be found on the Department's website. It must list all eligible investors that made eligible investments during the timeframe stated in the qualifying venture capital fund's letter of approval.
- If the qualifying venture capital fund is a
 - corporation: A copy of each share certificate issued to each eligible investor showing the terms of the share(s) purchased during the authorized raise of equity capital;
 - limited partnership: A copy of the receipt issued to each eligible investor which fulfilled a capital commitment made in exchange for limited partnership units.
- Signed statements from each eligible investor.
The form can be found on the Department's website.
- Proof of payment from each eligible investor displaying the amount invested and date of investment.

At times, the qualifying venture capital fund may be required to submit additional information beyond what is listed above.

Once approved, tax credit certificates are issued directly to the investors and may then be claimed via the individual's personal income tax return or corporation's corporate income tax return for the tax year stated on the certificate.

If duplicate or replacement tax credit certificates are needed, please contact the VCTC administrator.

Tax credit certificates will be issued if all of the following conditions are satisfied:

- The qualifying venture capital fund and its eligible investors are complying with the Act and Regulations.

- The qualifying venture capital fund or its directors, officers, shareholders or general partners are not conducting the corporation's business or affairs in a manner that is contrary to the spirit and intent of the Act or the Regulations.
- The eligible investment does not constitute a type of security that entitles the holder to claim/receive any of the following:
 - a tax credit under the Act or the *Income Tax Act* (Canada), other than the VCTC,
 - a deduction from income under the Act or the *Income Tax Act* (Canada), other than one in respect of an individual's RRSP,
 - any other financial assistance from any government, municipality or public authority.
- No tax credit has previously been allowed for the eligible investment under the Act or the *Income Tax Act* (Canada).
- All other conditions imposed on the qualifying venture capital fund have been met.

Tax credit certificates will not be issued if

- a qualifying venture capital fund's certificate of registration is revoked after an authorized raise of equity capital is completed but before the tax credit certificates are issued,
- a qualifying venture capital fund's approval for an authorized raise of equity capital is cancelled after an authorized raise of equity capital is completed but before the tax credit certificates are issued, or
- the specified issue or eligible investment to which the tax credit certificate relates in an avoidance transaction as defined in Section 80A of the Act.

4. Annual Return

Qualifying venture capital funds, which have completed an authorized raise of equity capital, must submit an annual return to the VCTC administrator. The annual returns are necessary to confirm that the qualifying venture capital fund is complying with the Act and Regulations.

Each annual return must be submitted within 6 months of the qualifying venture capital fund's tax year end for each of the 4 years after its authorized raise of equity capital expires.

Annual returns consist of the following and must be sent via email to the VCTC administrator (paper copies are not accepted):

- Annual Report – signed by an authorized officer of the qualifying venture capital fund. *This can be found on the Department's website. Electronic signatures like Adobe's EchoSign are acceptable, as are forms that have been signed by hand and then scanned. If the venture capital fund is a limited partnership, the authorized officer of the general partner would be considered an authorized officer of the limited partnership.*
- Up-to-date and notarized shareholder's register or record of limited partners. *The shareholder register/record of limited partners must contain information on **all** share/limited partnership unit transactions (from the time when the corporation was incorporated or the limited partnership was formed) including, but not limited to, the name of*

the investor and the date, type and number of shares/limited partnership units that have been bought, sold and transferred.

- Financial statements (for the previous tax year), together with a review engagement report or auditor's report, for the qualifying venture capital fund.
The financial statements must be audited/reviewed by a person who is licensed as a public accountant under an Act of the Province.
- Income Tax Return (for the previous tax year) of the qualifying venture capital fund (including all forms and schedules).

At times, the qualifying venture capital fund may be required to submit additional information beyond what is listed above.

Tax Credit Repayment

Eligible investors are required to hold their investment in the qualifying venture capital fund for a minimum of 4 years from the date the eligible investment was made and was fully paid for in cash, which may be supported by the date the share certificate or receipt for limited partnership unit(s) is issued. Tax credit(s) must be repaid back to the Province if, within 4 years, an eligible investor disposes of the eligible investment or receives a return of capital¹ in relation to an eligible investment.

There are several exceptions to this rule. The credit is not required to be repaid if:

- the investment is disposed of (or deemed to be disposed of) due to the eligible investor's death,
- the investment is transferred to the shareholder's RRSP or Registered Retirement Income Fund (RRIF),
- the qualifying venture capital fund ceases to conduct business due to financial failure, or
- a share was exchanged for a share of a different series in the same class of shares, if each series of shares within the class meets the eligibility requirements.

If the disposal of an eligible investment is a result of the wind-up or dissolution of the qualifying venture capital fund for reasons other than financial failure, a prorated credit amount must be repaid to the Province. The amount is calculated as follows:

$$TC \times ((48 - MH) / 48)$$

where

TC = the total VCTC received for the eligible investment

MH = the number of months the eligible investment has been held

If a qualifying venture capital fund repurchases, redeems or repays an eligible investment or makes a return of capital in a transaction not permitted under the Act or Regulations, the qualifying venture

¹ A return of capital occurs when capital is returned to the holder of a limited partnership unit; this should be reported on the T5013 slip issued to the limited partner in Box 113.

capital fund must withhold the amount of the credit from the eligible investor. The credit amount must be remitted, along with the details of the transaction, to the Department within 30 days of the transaction.

The qualifying venture capital fund is jointly and severally liable for all tax credit repayments that any of its eligible investors are required to repay.

The qualifying venture capital fund is jointly and severally liable for the repayment of all issued tax credits if the qualifying venture capital fund's certificate of registration is revoked.

The qualifying venture capital fund may surrender its certificate of registration if it pays back all tax credits issued to its eligible investors in respect of all authorized raises of equity capital in the last 4 years.

NOTE: Any amount required to be repaid is a debt due to the Crown and may be recovered in a court.

Changes in the Eligibility of a Qualifying Small Business, Prohibited Qualifying Small Business Investment & Associated Penalties

Qualifying Small Business Investment Becomes Prohibited

A qualifying small business investment will become prohibited if

- a portion or all of the funds being invested in the qualifying small business were used, or intended to be used, by the qualifying small business for a prohibited purpose (*see page 6*),
- it results in control of the qualifying small business (*see page 8*), or
- it is a non-arm's length investment (*see page 8*).

If a qualifying small business investment becomes prohibited after the investment is made by the qualifying venture capital fund, the fund has 12 months to either

- dispose of that investment,
- pay a penalty (*see page 16*), or
- change the circumstance(s) which caused investment to be prohibited so that the investment is no longer prohibited.

Changes in Eligibility of Qualifying Small Business

If a qualifying small business which has received a qualifying small business investment from a qualifying venture capital fund stops being considered a qualifying small business, the fund has 12 months to either

- dispose of that investment, or
- pay a penalty (*see page 16*), or
- change the circumstance(s) which caused the non-conformance so that it becomes a qualifying small business again.

This does not apply to qualifying small businesses which no longer meet the following criteria:

- incorporated less than 10 years ago,
- less than \$15 million in assets (including assets of associated corporations), and
- fewer than 100 employees (including employees of associated corporations).

Penalties

The penalty referred to in both cases above to be paid by the qualifying venture capital fund is determined by the following formula:

$$(A / B) \times 15\% \times C$$

where

A = The amount of equity capital that was eligible for the VCTC

B = The total amount of equity capital

C = Amount of investments that are prohibited or are non-conforming as described above.

Revocation of Certificate of Registration & Associated Penalties

A qualifying venture capital fund's certificate of registration will be automatically revoked if the qualifying venture capital fund misrepresented any information to the Minister either knowingly or negligently.

A qualifying venture capital fund's certificate of registration may be revoked if any of the following occurs:

- The qualifying venture capital fund's head office relocates out of Nova Scotia within 4 years after the date its authorized raise of equity capital expires.
- The qualifying venture capital fund has not complied with the Act or Regulations, or the spirit and intent of the Act or Regulations.
- The qualifying venture capital fund is no longer conforming to the investment plan submitted with their application for approval to raise equity capital.
- The qualifying venture capital fund has not used the funds raised through an authorized raise of equity capital within the required timeframe.

A penalty may be imposed on a qualifying venture capital fund if its certificate of registration was revoked. If a qualifying venture capital fund's certificate of registration is revoked, the qualifying venture capital fund may apply to the Department for reinstatement of the certificate of registration.

In cases where the certificate of registration was not *automatically* revoked (*see above*), a penalty may also be imposed on a qualifying venture capital fund in lieu of revoking its certificate of registration.

The penalty can be any amount up to the total of all tax credits that were issued to all eligible investors of the qualifying venture capital fund across all authorized raises of equity capital.

Notice

A qualifying venture capital fund must inform the Department within 30 days if any of the following occur:

- It moves its head office out of Nova Scotia.
- It changes its tax year end.
- It discovers it has failed to comply with any section of the Regulations.
- A qualifying small business it has invested in stops meeting the criteria to be considered a qualifying small business (with the exception of being over 10 years old, having more than \$15 million in assets, and having more than 100 employees).
- It acquires, redeems or cancels any of its own shares or limited partnership units.
- It proposes to wind up or dissolve.