NOVA SCOTIA
CAPITAL INVESTMENT TAX CREDIT
GUIDELINES

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

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NOVA SCOTIA

Nova Scotia Capital Investment Tax Credit Guidelines

General Information

The Nova Scotia Capital Investment Tax Credit (CITC) is a refundable corporate income tax credit for "qualified property" acquired for use in Nova Scotia on or after January 1, 2015. The qualified property must be acquired as part of an "approved project".

The CITC is aligned, but not harmonized, with the federal government's Atlantic Investment Tax Credit (AITC). With certain exceptions, the tax credit is available to corporations in manufacturing, processing, fishing, farming, logging, storing grain and harvesting peat sectors.

The CITC 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 49A of the *Income Tax Act* (Nova Scotia),
- *CITC Regulations*, and
- *Maximum Amount of CITC for Approved Projects Regulations*.

Where there is a conflict between the information contained in these Guidelines and the Legislation and Regulations, the Legislation and Regulations governing the CITC will take precedence over the guidelines, application forms, advance ruling, or any other published information.

Tax Credit Calculation

The CITC is issued on a per taxation year basis and is calculated as follows:

Qualified Property acquired before October 1st, 2022:

CITC = 15% * (Capital Cost of Acquired Qualified Property – Related Government Assistance)

Qualified Property acquired on or after October 1st, 2022:

CITC = 25% * (Capital Cost of Acquired Qualified Property – Related Government Assistance)

The maximum tax credit available for each approved project is $100 million across the duration of the project.

As shown in the formula above, the tax credit is calculated based on the capital cost of the acquired qualified property less the amount of any government assistance that the corporation has received that may reasonably be considered to relate directly to the qualified property. To receive the tax credit the qualified property must become available for use in the taxation year that the tax credit is being applied for.

Capital Cost is defined in paragraph 1.45 of the Canada Revenue Agency's (CRA) Capital Cost Allowance Income Tax Folio. It is generally the sum of:

- the purchase price (not including the cost of land, which is not depreciable), and
- the corporation's legal, accounting, engineering, installation, and other fees that relate to the purchase or construction of the depreciable property (not including the part that applies to land).

For the CITC, capital cost does not include any sales tax (GST/HST) paid unless the item was purchased outside of Canada.

Government assistance is defined in clause 49A(1)(c) of the *Income Tax Act* (Nova Scotia), which references the definition in subsection 127(9) of the *Income Tax Act* (Canada). It means assistance from a government, municipality, or other public authority whether as a grant, subsidy, forgivable loan, deduction from tax, investment allowance or as any other form of assistance other than as a deduction from an investment tax credit.

A public authority is generally an entity that:

- has a duty to the public,
- is subject to a significant degree of government control, and
- uses its profits for the benefit of the public.

Whether a repayable loan is considered government assistance is dependent on the terms within the actual loan agreement. If the loan agreement establishes an ordinary business arrangement, made in the same way and for the same reasons as a loan by a private business (i.e. to advance the interests of the payor), then it is not considered government assistance. If the loan agreement does not establish an ordinary business arrangement, it will be considered government assistance. This interpretation is used by the CRA for the federal Investment Tax Credit and is supported by case law.

Corporations that have repayable loans deducted as government assistance can apply to the Department for the CITC amount pertaining to the repayable government loans that were repaid no later than 18 months after the end of the taxation year in which the qualified property was acquired.

The AITC is not considered government assistance for the purposes of this credit.

Eligible Corporations

To be eligible for the CITC, the applicant must be an "eligible corporation" (as defined in Section 4 of the *CITC Regulations*). An "eligible corporation" is a corporation that satisfies all the following requirements:

- It is a taxable Canadian corporation.
  A Canadian corporation, as defined in subsection 89(1) of the Income Tax Act (Canada), is one which was incorporated in Canada (either federally or in one of the provinces).

- The corporation has a permanent establishment in Nova Scotia.
  A permanent establishment normally refers to a fixed place of business in the Province, assets in the Province and personnel in the Province who can contract on behalf of the corporation (see below).

- The corporation's principal activity must not fall within one of the following classes under the North American Industry Classification System (NAICS) Canada:
  - Industry group 2111 (Oil and gas extraction);
  - Industry group 2212 (Natural gas distribution);
  - Sector 23 (Construction);
  - Industry group 3273 (Cement and concrete product mixing);
  - Industry 32712 (Clay building material and refractory manufacturing);
  - Industry 32412 (Asphalt paving, roofing and saturated materials manufacturing);
  - Sector 44-45 (Retail trade);
  - Industry 323113 (Commercial screen printing);
  - Industry 323114 (Quick printing);

- Industry 323115 (Digital printing).

The corporation can be controlled by either foreign or Canadian owners and there is no restriction on the size of the corporation (e.g., market capitalization, number of employees, etc.).

Normally an eligible corporation has a permanent establishment in the Province if it has a fixed location where the corporation conducts its business. This will be determined in accordance with Regulation 400(2) of the *Income Tax Act* (Canada) and associated Interpretation Bulletin. The Department will evaluate an applicant on a case-by-case basis to determine whether it has a permanent establishment in Nova Scotia.

Approved Project

"Approved project" is defined in Section 3 of the *CITC Regulations*. It is a project that satisfies the following conditions:

- It is a single project of an eligible corporation where $15 million or more is spent on "qualified property" and meets the following minimum expenditure requirements:
  - A minimum of $5 million during the first 24 months of the "effective date";
  - A minimum of $7.5 million during the first 36 months of the "effective date";
  - A minimum of $10 million during the first 48 months of the "effective date";
  - A minimum of $15 million before the end of the first 60 months of the "effective date".

  "Effective date" is the date identified by the applicant as the earliest date that qualified property in respect to the project is, or is expected to be, acquired.

- The project is not eligible where 50% or more of the revenue for the project is received from government sources (i.e. a federal, provincial, or municipal government, including crown corporations, agencies, boards, or tribunals).

- The project must be, in the opinion of the Minister of Finance and Treasury Board (the Minister), consistent with the Province of Nova Scotia's priority of achieving sustained economic development and growth through investments in significant capital projects such as new technologies or expansions that result in gains in innovation, productivity or competitiveness as well as increased international trade.

Since capital cost of qualified property is the pre-sales tax amount, the minimum expenditures listed above are also pre-sales tax.

If the project is deemed to be an approved project the applicant will be issued an eligibility certificate.

If the qualified property is sold or moves out of the province, the total expenditures for the project would be reduced. This would trigger a further review on whether the project still meets the minimum expenditure requirements.

As the project progresses, eligibility will be automatically revoked if the minimum expenditure limits are not met. If this happens, any previously issued tax credits will be clawed back.

Qualified Property

Qualified property eligible for the CITC is property that:

- Meets the definition of "qualified property" in subsection 127(9) of the *Income Tax Act* (Canada).

- Is acquired by the eligible corporation between January 1, 2015 and December 31st, 2029 for use in Nova Scotia.
  Property is considered acquired if it was purchased or leased by the applicant and becomes available for use within the dates listed above.

- Will be used by the applicant corporation primarily for the purpose of
  - manufacturing or processing goods for sale or lease,
  - farming or fishing,
  - logging,
  - storing grain, or
  - harvesting peat.

- Is a new building and/or new machinery/equipment as prescribed in Regulation 4600 under the *Income Tax Act* (Canada).
  Regulation 4600 describes the asset classes applicable to the definition of Qualified Property. Building renovations no longer qualify for the CITC based on CRA's position provided in paragraph 1.59 of Income Tax Folio S4-F15-C1.

The Department considers
- "In the Province" to include the Nova Scotia offshore region, which is consistent with the meaning of "in Canada" contained in the definition of "qualified property" in the *Income Tax Act* (Canada).
- "Use" in Nova Scotia to mean "use primarily" in Nova Scotia (i.e. more than 50% of the time).

Acquired/Available for Use

As with the federal government's AITC, qualified property under the CITC is considered to have been acquired on the date it becomes available for use. This is described in subsections 127(11.2) and 248(19) of the *Income Tax Act* (Canada).

Applicants should become familiar with the definition of available for use. As per the subsection 2(1) of the *CITC Regulations*, the definition of this is based on subsections 13(27) and 13(28) of the *Income Tax Act* (Canada) – without reference to certain paragraphs.

The dates on which qualified property becomes available for use are essential in assessing whether the project meets the minimum expenditure requirements for the CITC.

Application Process

To receive the CITC, there are 2 required steps:

Step #1: Obtain an Eligibility Certificate (Part A)

Applicant corporations must submit a mandatory Part A application and receive an "eligibility certificate" before an application for the tax credit can be made. Part A application provides necessary information for the Minister to assess whether the corporation is an eligible corporation and the project to be undertaken by the corporation is an approved project.

Part A applications must be submitted electronically (i.e. via email) to the CITC Program Administrator in the Department. Paper applications are not necessary.

Corporations are required to submit the following documentation in support of their Part A application for an eligibility certificate:

- Part A application form
    - A listing of the qualified property that will be acquired in respect to the project.
      This listing (i.e. the qualified property tab of the application form) must include the qualified property's CCA class, description, estimated capital cost, date of purchase and date it will be available for use.
    - CITC Questionnaire
      These questions (i.e. the questionnaire tab of the application form) will assist the Department in assessing whether the proposed project meets subsection 3(c) of the CITC Regulations (see the Approved Project section of these Guidelines).
- Proof that the corporation is an "eligible corporation" and that its corporate registration is in good standing.
- Financial statements:
    - Projected financial statements for taxation years during project period.
    - Financial statements for the preceding taxation year.
- A business plan for the project under consideration that includes
    - a description of the project's expected outcomes – including the impact on the economic development of the province,
    - a statement outlining how the qualified property is necessary to achieve the project's expected outcomes, and
    - a statement indicating that the minimum expenditure requirements outlined in the "Approved Project" section of these Guidelines will be met.
- T2 corporate tax return (including Schedule 31) and notice of assessment if the project is underway and qualified property has already been acquired.
- Loan agreements for all loans provided by public authorities.
- Any additional information deemed necessary by the Minister.

An eligibility certificate will be *automatically* revoked for projects where the minimum expenditure requirements are not met (see the "Approved Project" section of these Guidelines). A corporation may apply to have the eligibility certificate reinstated if it can demonstrate that there were circumstances beyond the corporation's control that caused the project to fail to meet the minimum expenditure requirements.

In addition, the Minister may revoke the eligibility certificate under any of the following circumstances:

- The corporation does not acquire the qualified property or have it available for use in accordance with the timeline set out in their business plan.
- The corporation has not complied with a provision of the Act or Regulations, or their spirit and intent.
- The eligibility certificate was issued based upon false or misleading information or the information has materially changed since the Part A application.

Step #2: Tax Credit Application (Part B)

Once an eligible corporation has obtained an eligibility certificate and has acquired qualified property as part of the approved project, a Part B application can be submitted for a tax credit certificate.

Part B applications must be submitted electronically (i.e. via email) to the CITC Program Administrator in the Department. Paper applications are not necessary.

Since approved projects can run over a period of time, multiple Part B applications for tax credit certificates can be made. However, Part B applications must be submitted no later than 18 months following the end of the taxation year in which the qualified property was acquired by the corporation.

Applicants are required to submit the following information in support of their Part B application(s) for a tax credit certificate(s):

- Part B application form
    - A listing of the qualified property that was acquired in respect of the approved project.
      This listing (i.e. the qualified property tab of the application form) must include the qualified property's CCA class, description, capital cost, date of purchase and date it became available for use.
    - CITC Questionnaire
      These questions (i.e. the questionnaire tab of the application form) will assist the Department in assessing whether the proposed project meets subsection 3(c) of the CITC Regulations (see the Approved Project section of these Guidelines).
- Proof of the capital cost of each qualified property.
  For instance: invoices, contracts, purchase orders, lease agreements, etc.
- A statement identifying that the qualified property was acquired in respect of an approved project and matches the business plan submitted in the Part A application.
- A statement detailing any government assistance with respect to qualified property acquired for the approved project.
- A status report of the corporation's approved project and an explanation for any deviation from the business plan submitted in the Part A application.
- T2 corporate tax return and notice of assessment for the taxation year immediately preceding the taxation year for which a tax credit certificate is sought.
- A draft copy of the corporation's Schedule 31 for the T2 corporate return in the taxation year for which the tax credit is being applied for.
- A copy of the corporation's CITC eligibility certificate.
- Any additional information deemed necessary by the Minister.
  This may include providing a representative of the Department with access to the qualified property acquired, if deemed necessary.

When all the requirements are satisfied, the Minister will issue a tax credit certificate to the corporation based upon capital costs for qualified property acquired in the taxation year. The corporation can then claim the tax credit on its T2 corporate tax return with the CRA.

The Minister may revoke a previously issued tax credit certificate if the project ceases to be an approved project or if any information provided by the corporation to obtain the tax credit certificate was false, misleading or failed to disclose a material fact.

As stated, in some cases, the Department may also require additional documentation or information to issue an eligibility certificate or a tax credit certificate. All documentation or information received from an applicant will be maintained in strictest confidence by the Department.