Tax-Related Highlights of 2024 Fall Economic Statement

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With a federal election seemingly on the horizon, it is unclear to what extent Budget 2024 (which was introduced in Parliament by the former Deputy Prime Minister and Minister of Finance on April 16, 2024) - including, most prominently, the proposed increase in the capital gains inclusion rate from 50% to 66-2/3% - will survive if a party other than the Liberals forms the next federal Government. To view the Summary of Budget 2024 Proposals of Greatest Relevance to Clients of McLeod Law, click here).

Although a similar observation could be made regarding the 2024 Fall Economic Statement (the "**Fall Economic Statement**"), delivered on December 16, 2024, it includes far fewer controversial tax proposals and, in our view, is less likely to be dismissed by a new Government.

I In any event, as McLeod Law LLP's tax lawyers, we are pleased to provide a summary of the tax-related highlights of the Fall Economic Statement (the "**Summary**"). This Summary focuses on the provisions most relevant to our clients, rather than covering every tax-related measure included in the Fall Economic Statement.

Canada's Place as a Top Destination for Private Investment

A key focus of the Fall Economic Statement is the Government's commitment to ensuring that Canada remains a top destination for private capital.

In 2023, Canada led the G7 in foreign direct investment per capita, according to the OECD. Moreover, recent data on investment intentions indicates that businesses plan to significantly increase capital expenditures, particularly in power generation and sectors vital to achieving net-zero emissions by 2050.

To sustain Canada's position as a global leader in attracting private capital, the Fall Economic Statement proposed several initiatives. Below, we have highlighted the proposals we consider most significant.

Expanding Canada's Energy Export Capacity with TMX, LNG Canada and Cedar LNG

Canada is further strengthening its position as a global energy supplier, with significant advancements in exporting both oil and liquid natural gas (**"LNG"**). This is exemplified by the opening of projects such as the Trans Mountain Expansion Project (the **"TMX"**), LNG Canada (the country's largest liquid natural gas LNG project located in Kitimat, British Columbia), and the Cedar LNG project (also located in Kitimat).

In May of 2024, TMX became operational, increasing the pipeline's crude oil export capacity from 300,000 barrels per day to 890,000 barrels per day, enabling greater access to international markets. This expansion has contributed to narrowing the WCS-WTI price differential, which fell from a recent peak of $27 in late 2023 to approximately $12 by October 2024.

LNG Canada is set to begin operations in mid-2025, with an initial export capacity of 14 million tonnes per year, delivering low-carbon LNG to Asian markets.

In June 2024, Cedar LNG reached its final investment decision. Once operational, Cedar LNG will become one of the first majority Indigenous-owned LNG export facilities, with a projected capacity of 3 million tonnes per year and best-in-class low emissions performance. The project underscores Canada's commitment to responsible energy development and economic partnerships with Indigenous communities.

Projects, such as these, exemplify Canada's continued position as a desirable investment location across the oil and LNG sectors.

Strengthening AI in Canada

The Fall Economic Statement reiterated the Government's commitment to strengthening artificial intelligence ("**AI**") in Canada and securing Canada as a global leader. Earlier this year, Budget 2024 announced a $2.4 billion investment in AI support for developing and providing access to computing capabilities and technological infrastructure for Canada's leading AI researchers, start-ups and scale-ups.

Following consultations this summer, the Fall Economic Statement introduced the Canadian Sovereign AI Compute Strategy to support top-tier researchers and innovative AI firms. Funded by Budget 2024, this strategy includes:

1. $300 million over three years (starting in 2025-26) for the AI Compute Access Fund to help small- and medium-sized businesses reduce compute capacity costs.

2. $700 million over five years (starting in 2024-25) to support projects that will grow the Canadian AI ecosystem and create anchor firms, through a competitive call for proposals under Innovation, Science and Economic Development Canada's Strategic Innovation Fund.

3. Up to $200 million over two years (starting in 2025-26) for targeted investments to enhance existing compute infrastructure and capacity, including:

    (a) $85 million for the Digital Research Alliance of Canada to expand its national network,

    (b) $60 million for AI institutes (Mila, Vector, Amii) to provide compute capacity to their researchers and clients, and

    (c) $30 million for the VITAL initiative to pilot a secure digital AI infrastructure leveraging Canadian health data,

4. $800 million over four years (starting in 2025-26) for a transformational investment in large-scale public compute infrastructure.

Furthermore, Canada's early investments in the Pan-Canadian AI Strategy have created a robust ecosystem of AI researchers and experts, ready to drive global innovation and unlock commercial opportunities. To further enhance Canada's AI advantage and strengthen the Pan-Canadian AI Strategy's Commercialization Pillar, the Fall Economic Statement proposes:

1. $150 million over three years (starting in 2024-25) for the Global Innovation Clusters.

2. $24 million over two years (starting in 2025-26) for the National AI Institutes to continue their AI commercialization activities.

Enhancing Trade in Canada

The Fall Economic Statement introduced several initiatives to enhance interprovincial trade and labor mobility. The federal Government plans to publish a list of restrictive measures in each province and territory that hinder trade within Canada. Additionally, the Government is considering imposing conditions on major federal transfers to provinces and territories, requiring the removal of specific barriers to interprovincial trade and labor mobility.

To ensure the Canadian Free Trade Agreement remains beneficial amid global trade uncertainties, the Minister of Public Safety, Democratic Institutions, and Intergovernmental Affairs will lead a review of the agreement. Furthermore, the Government proposes to allocate $4.3 million over three years, starting in 2025-26, to the Canadian Food Inspection Agency. This funding aims to advance mutual recognition in the agriculture and agri-food sector and help businesses comply with federal regulations and expand trade across the country.

Supporting Indigenous Economic Participation

Indigenous communities often face challenges in accessing affordable capital due to limited collateral options. To address this, the Government has introduced the Indigenous Loan Guarantee Program, announced in Budget 2024. This program will provide up to $5 billion in loan guarantees to support Indigenous ownership in natural resource and energy projects. The newly established Canada Indigenous Loan Guarantee Corporation will manage these guarantees, helping Indigenous groups secure better borrowing rates. This initiative aims to enhance Indigenous ownership of profitable assets in these sectors, fostering economic benefits for Indigenous communities and contributing to overall Canadian prosperity. The application portal for the loan guarantees is now open for interested Indigenous applicants.

A loan guarantee is a financial tool that ensures a lender or financial institution will be repaid even if the borrower defaults, with the Government of Canada assuming the debt obligation after other recovery methods have been explored. This reduces borrowing costs. It is important to appreciate that a loan guarantee is not direct financing; the Canada Indigenous Loan Guarantee Corporation will not offer loans, grants, or guarantees for non-equity loans.

Leadership in Non-Emitting Nuclear Energy

Canada is a global leader in nuclear energy, playing a vital role in achieving net-zero emissions, driving economic growth, and ensuring energy security for both the country and its allies. Alongside significant economic investment tax credits for the nuclear sector, the Government has pledged up to $3 billion in export financing to Romania for two new CANDU reactors and allocated $50 million for Bruce Power's nuclear expansion. Additionally, the Canada Infrastructure Bank is investing $970 million in Ontario Power Generation's small modular reactor project at Darlington.

In order to bolster this industry, the Fall Economic Statement proposed to have the Canadian Nuclear Safety Commission process solely apply to certain brownfield nuclear projects, as opposed to also requiring a federal impact assessment. In addition, to meet the demand for allied enriched nuclear fuel and strengthen supply chain resilience, the Fall Economic Statement revealed the Government's plan to support up to $500 million in enriched nuclear fuel purchase contracts from the United States or other allied nations, including high-assay low-enriched uranium. This

Further Changes to the Impact Assessment Act

In order to continue accelerating economic growth and encouraging investment, the Government is developing a regulatory framework designed to deliver timely and predictable decisions, balance economic and environmental priorities, and meaningfully engage with Indigenous communities.

Building on these efforts, the Fall Economic Statement outlined the Government's intent to:

1. Focus the scope of impact assessments for provincially regulated projects, like mines, exclusively on effects in federal areas of jurisdiction. This will expedite assessments, reduce duplication with provincial and territorial assessments, and improve investor certainty and review timelines.

2. Amend the Physical Activities Regulations (the Project List - that sets out projects which are subject to the Impact Assessment Act) to advance the principle of "one project, one review" by:

> (a) Including only physical activities with high potential impacts in federal jurisdiction, consistent with the revised Impact Assessment Act, and
>
> (b) Removing some physical activities to rely more on federal lifecycle regulators, such as having the Canadian Nuclear Safety Commission's process apply solely to certain brownfield nuclear projects, without requiring a federal impact assessment.

3. As announced in Budget 2024, establish a Crown Consultation Coordinator, following consultation with Indigenous Peoples, to ensure meaningful Crown consultation with First Nations, Métis, and Inuit communities on the issuance of federal authorizations. This aims to improve efficiency and reduce consultation fatigue.

Cutting Red Tape

Regulations are crucial for ensuring the health, safety, and environmental protections that Canadians expect. However, they can accumulate and become outdated over time. In emerging sectors, regulations need to be modernized to keep pace with industry advancements. To address this, the Government is reducing the regulatory burden and cutting red tape through regulatory stock and red tape reviews, as well as innovative approaches like regulatory sandboxes.

To reduce unnecessary barriers to innovation, productivity, and economic growth, and lower regulatory costs for Canadians and businesses, the Fall Economic Statement proposed $27.8 million over five years (starting in 2025-26) for a new Red Tape Reduction Office, funded from existing Treasury Board Secretariat resources. Focusing on key industries, such as health and telecommunications, this office will:

> 1. Accelerate the removal of red tape from the regulatory system, focusing on overly burdensome or outdated requirements;
>
> 2. Establish measures to track, assess, and communicate the results of regulatory actions, ensuring a stronger, evidence-based regulatory framework; and

3. Improve accountability, oversight, and transparency through stronger engagement with Canadians and businesses, and a dedicated feedback channel for regulatory red tape

Unlocking Canadian Pension Investment

In Budget 2024, the Government tasked Stephen Poloz, former governor of the Bank of Canada, with exploring ways to boost domestic investment opportunities for Canadian pension funds. Since then, Mr. Poloz has actively engaged with pension funds, equity investors, academics, unions and industry representatives to identify strategies for facilitating domestic pension investment. As a result, the Government is now implementing a series of measures to increase pension fund investment within Canada.

The Fall Economic Statement outlined several of these measures to facilitate increased pension fund investment in Canada:

1. **Amending Regulations:** The Government intends to remove the 30 percent rule for investments in Canadian entities, making it easier for Canadian pension funds to make significant investments in them. During the development of these regulatory amendments, the federal Government will consult with provinces on the treatment of provincially regulated pension plans.

2. **Lowering Ownership Thresholds:** The Government is exploring lowering the 90 percent threshold that currently limits municipal-owned utility corporations from attracting more than 10 percent private sector ownership. This change would allow Canadian pension funds to acquire a higher ownership share in these entities. For example, enabling municipally-owned electricity utilities to access more capital for future demand and expansion of electricity production and distribution grids.

3. **Increasing Transparency:** The Government is consulting on proposed regulations to increase public transparency of pension investments for large federally regulated plans. This would require the Office of the Superintendent of Financial Institutions to publish the distribution of investments, by jurisdiction and asset class, for federally regulated pension plans with assets under management greater than $500 million. Additionally, the largest public sector pension funds in Canada are working to adopt similar disclosures.

4. **Attracting Investment for Better Airports:** The Government intends to engage airports and pension funds on potential measures that would further incentivize investment and development on airport lands. This includes exploring potential changes to airport authority ground leases

5. **Attracting Investment in High-Growth Companies:**

(a) The Fall Economic Statement proposed launching the fourth round of the Venture Capital Catalyst Initiative with $1 billion in funding for 2025-26. This round aims to attract more private venture capital by offering more favorable terms for pension funds and institutional investors.

(b) To support mid-cap companies in accessing long-term growth capital, the Fall Economic Statement also proposes up to $1 billion in aggregate investments for mid-cap growth companies. These investments will bemanaged by a qualified fund manager with a proven track record in supporting Canadian mid-cap growth companies. The Government's investment will be concessional, matching 25 percent of net new private investments to attract additional private capital into the growth equity market.

6. **Catalyzing AI Infrastructure:**

(a) The Government plans to develop a program offering up to $15 billion in loan and equity investments for AI data centre projects that receive investment from Canadian pension funds. To qualify, pension funds must invest at a 2:1 ratio of their own capital, either through debt or equity, and become significant shareholders in the AI data centre projects. Seven pension funds have already shown interest in collaborating on detailed project parameters, with more information to be provided in Budget 2025

[Comment: It may be unlikely the current Government will deliver Budget 2025, so it is unknown whether or not this program will continue].

(b) To enhance Canada's competitiveness in this rapidly growing sector, the Government will expand the mandates of the Cabinet Committee on Canada-U.S. Relations, the Ministerial Working Group on Regulatory Efficiency for Clean Growth Projects, and the Privy Council Office's Clean Growth Office to expedite the construction of AI data centres. Additionally, the federal Government will work with provincial and municipal governments, energy utilities and other stakeholders to eliminate regulatory barriers beyond federal jurisdiction.

Business Income Tax Measures

One of the areas of focus for the Government in the Fall Economic Statement is ensuring that Canada's tax system is competitive with other investment destinations and provides enough incentives to encourage private investment in the renewable sectors.

Broadly speaking, Canada has the lowest marginal effective tax rate ("**METR**") across the G7 which includes a 5.2% competitive advantage over the United States

[Comment: Although this may be the case at present, the recent election of Donald Trump may alter this advantage. Incoming President Trump has promised a number of significant tax reforms, which may well result in reduced U.S. tax rates. Canada's tax advantage will need to be reassessed once the full impact of these proposed tax reforms from incoming President Trump materialize]

Canada's Major Economic Investment Tax Credits

One way that the Government is accomplishing their goal of creating a competitive tax system is through the enactment of six investment tax credits (each, an **"ITC"**) which are aimed at encouraging investment in renewable and green technologies. These ITCs will, collectively, represent a total of $94 billion in federal incentives. Prior to the Fall Economic Statement, the Government had delivered four of its six major ITCs. These include:

1. The Carbon Capture, Utilization and Storage ITC ("**CCUS ITC**"), which was available as of January 1, 2022;

2. The Clean Technology ITC (**the** "**CT ITC**"), available as of March 28, 2023;

3. The Clean Hydrogen ITC (**the** "**CH ITC**"), available as of March 28, 2023; and

4. The Clean Technology Manufacturing ITC (**the** "**CTM ITC**"), available as of January 1, 2024.

In the Fall Economic Statement, the Government confirmed its intention to introduce further legislation which enacts the next two major economic investment tax credits, namely the "Clean Electricity ITC" (**the "CE ITC**") and the "EV Supply Chain ITC" (**the "EV ITC**"), alongside proposed expansions and enhancements to other major economic investment tax credits, including the CTM ITC, the CH ITC, and the CT ITC. Although draft legislation of the CE ITC was first released in August of 2024, the Government undertook consultations with various stakeholders over the summer in order to better understand the needs of the market. The Fall Economic Statement's introduction of further requirements for Crown corporations wishing to utilize the CE ITC is the result of these consultations.

The Government has seen returns on the already introduced ITCs through the attraction of investment and businesses that have announced major projects across economic sectors. Such projects include the Honda Canada EV investment, the Skyview 2 Battery Energy Storage project and others. These projects will not only reduce emissions, but also promote job creation and economic growth. Projects will be attracted across Canada, reflecting a wide range of economic opportunities that span different industrial sectors.

Information on the Forthcoming CE ITC

As mentioned above, the Fall Economic Statement further discussed plans to introduce the CE ITC. Budget 2024 first announced the CE ITC, which is available to provincial and territorial Crown corporations that make investments in eligible property. It is a refundable credit equal to 15% of the taxpayer's capital cost of any "clean electricity property" located within "eligible jurisdictions". The 15% rate is reduced to 5% if certain labour conditions are not met (as presented by the Government in Budget 2023 and Budget 2024). Generally, the CE ITC is intended to encourage provincial and territorial Crown corporation service providers to adopt more renewable technologies in providing electricity services, while also lowering the cost of such services to ratepayers.

As announced in Budget 2024, the CE ITC is available to certain Crown corporations for investments in "eligible jurisdictions" as designated by the Minister of Finance. However, these Crown corporations (and their governing provincial and territorial governments) also need to meet further conditions. Such conditions are described within the Fall Economic Statement as follows:

1. **Condition 1: Commit to Publishing a 2050 Net-Zero Energy Roadmap:** Any provincial or territorial government that wishes for a Crown corporation under their control to utilize the CE ITC must release a written public statement committing to complete an "Energy Roadmap" (as detailed in the Fall Economic Statement) to achieve net-zero emissions by 2050, which is inclusive of all energy sources. Such statement needs to be published by the end of 2026; and

2. **Condition 2: Request that Crown Corporation Pass on the Benefits of the CE ITC:** the provincial or territorial government must also release a written public request to its Crown corporations expected to be eligible for the VE ITC to pass on the benefits of such ITC to the electricity "Ratepayers" (as defined in the Fall Economic Statement) in their jurisdiction.

If a government is able to satisfy both of these conditions, it can submit a letter to the Minister of Finance requesting designation. If such conditions are satisfied by June 30, 2025 and that government receives a subsequent designation from the Minister, then any eligible Crown corporations of such government would be able to access the CE ITC for investments on any eligible property that is acquired and becomes available for use on or after April 16, 2024 (for projects that did not begin construction before March 28, 2023). However, if the conditions are satisfied after June 30, 2025, then the Crown corporations investing in such province or territory's jurisdiction would need to wait to claim the EC ITC until such time as the province or territory is designated. The difference being that governments that satisfy the conditions by June 30, 2025, allow Crown corporations to receive credits for all investments on property which was operational as of April 16, 2024, whereas governments that do not satisfy these conditions by June 30, will be eligible only for credits on investments made on or after the date they receive their designation.

Additionally, the Fall Economic Statement provided details on certain reporting requirements for any Crown corporation which claims the CE ITC. Such requirements include annual public reporting on certain items, such as the annual forecasted "Cost of Service" of the Crown corporation (both with and without the CE ITC), the method used to calculate such cost, the amount of CE ITC received for the year and cumulatively by the Crown corporation, and an explanation as to how the CE ITC benefits the Crown corporation's ratepayers.

Failure to comply with such reporting requirements may lead to the Crown corporation being required to pay back an amount equal to a portion of the CE ITC that such corporation had received.

Information on the Forthcoming EV ITC

Also announced in Budget 2024, the EV ITC aims to stimulate the development of the Canadian electrical vehicle supply-chain. The Fall Economic Statement provided further details on the enactment of the EV ITC and the requirements for taxpayers who wish to claim it. If enacted as proposed in the Fall Economic Statement, the EV ITC would be a refundable ITC at a rate of 10% for taxable Canadian corporations that invest directly in eligible property between the time of January 1, 2024 and January 1, 2033. For the years of 2033 and 2034, the rate will be reduced to 5% as the program is phased out.

Under the proposals, taxable Canadian corporations will be eligible to claim the EV ITC on the cost of their investments in certain property, such as buildings, structures, and component parts. Investments in such property will entitle the taxpayer corporation to claim the EV ITC so long as the use of such property is all or substantially all (90%) for one or more of the following "EV supply chain segments":

1. EV assembly, which would comprise the final assembly of a motor vehicle that is either fully electric or a plug-in hybrid that has a battery capacity of at least 7kWh;

2. EV battery production, which would comprise the manufacturing of battery cells used in the powertrains of fully electric or plug-in hybrid vehicles, or battery modules used in the powertrains of fully electric or plug-in hybrid vehicles; and

3. Cathode active material (CAM) production, which would:

(a) include the production of CAM that is used as inputs to the manufacturing of battery cells used in the powertrains of fully electric or plug-in hybrid vehicles, but

(b) exclude preliminary processing activities, such as activities that could generally allow property to qualify for the Clean Technology Manufacturing investment tax credit.

Additionally, a corporation hoping to be eligible for the EV ITC would also be required to invest at least $100 million in each of the three EV supply chain segments described above. In order to fulfill this requirement, a corporation (either by itself or as part of a related group) would have to either:

(a) acquire at least $100 million in property eligible for the CTM ITC that has become available for use in each of the three segments; or

(b) acquire at least $100 million in property eligible for the CTM ITC that has become available for use in each of two segments and hold a qualifying minority interest in another corporation that acquires at least $100 million in property eligible for the CTM ITC that has become available for use in the remaining segment.

Lastly, the Fall Economic Statement provides details on circumstances which may lead to a taxpayer having to repay an amount of the EV ITC received. Such "recapture rules" are similar to those existing for the CTM ITC. In essence, if property, for which the EV ITC was claimed is, subsequently, used for a purpose that does not qualify for the EV ITC, within 10 years of the original date of purchase, a portion of the EV ITC could become repayable.

Expanding the CH ITC - Methane Pyrolysis

The CH ITC has been available to taxpayers since March 28, 2023. However, the Fall Economic Statement proposes to expand the eligibility of the CH ITC to include investments in technology that uses "methane pyrolysis". As such, taxpayers who are investing in technology for this purpose will now be eligible to receive a credit between 15% and 40% through the CH ITC.

Extending the Accelerated Investment Incentive

The Accelerated Investment Incentive (**the "AII"**) is a measure introduced by the Canadian Government to encourage businesses to invest in capital assets. It provides an enhanced first-year deduction for certain eligible depreciable property that is subject to the capital cost allowance ("**CCA**") rules. Generally, the AII helps businesses by allowing them to write off a larger portion of their investment in the first year, thus reducing the portion of the income they are taxed on and encouraging further investment. Under the current legislation, the AII applies to eligible property acquired after November 20, 2018, and available for use before 2028. A phase-out of the measures began for property available for use after 2023.

The Fall Economic Statement proposed to extend the life of the AII and fully reinstate the program. If passed, the proposals would re-instate the AII for qualifying property acquired on or after January 1, 2025, and that becomes available for use before 2030. It would be phased out starting in 2030 and fully eliminated for property that becomes available for use after 2033.

Additionally, certain manufacturing and processing machinery and equipment, clean energy generation and energy conservation equipment, and zero-emission vehicles qualified for an enhanced first-year allowance that provided a 100% deduction for property that became available for use before 2024. These immediate expensing measures are currently phasing out for property that becomes available for use after 2023 and before 2028. The Fall Economic Statement proposed to fully re-instate the immediate expensing measures for qualifying property. Such program would be phased out over a period similar to the other AII measure.

Updates to Scientific Research and Experimental Development Expenses

Under the scientific research and experiment ("**SR&ED**") provisions of the Income Tax Act, certain qualifying expenditures are fully deductible in the year they are incurred by certain taxpayers. This is accomplished through the form of a tax credit (**the "SR&ED ITC**"). The rate and level of refundability of this deduction vary depending on the characteristics of the taxpayer, such as legal status and size. Generally, most corporations are eligible for a 15% non-refundable ITC on qualified expenditures. However, Canadian-controlled private corporations ("**CCPCs**") have differing rates. For CCPCS, a fully refundable enhanced tax credit at a rate of 35 per cent is available on up to $3 million of qualifying SR&ED expenditures. This $3 million limit phases out based on the CCPC's prior-year taxable capital, which applies to an associated group. The limit is gradually reduced where taxable capital employed in Canada for the previous year is between $10 million and $50 million. Where a CCPC's qualifying expenditures exceed the limit, it is eligible for a 15% tax credit. Depending on whether its income in the previous year exceeds its qualifying income limit, these credits can be partially refundable.

Under the Fall Economic Statement's proposals, the limit for the 35% tax credit will increase from $3 million to $4.5 million, allowing qualifying CCPCs to claim up to $1.575 million per year of the enhanced, fully refundable tax credit. Additionally, the taxable capital phase-out thresholds will increase from $10 million - $50 million to $15 million - $75 million, respectively

Furthermore, the Fall Economic Statement proposed to extend eligibility for the enhanced, fully refundable SR&ED ITC to eligible Canadian public corporations. If enacted, an eligible Canadian public corporation could receive a 35% tax credit on up to $4.5 million of qualifying SR&ED expenditures annually. This $4.5 million limit would phase out based on the corporation's gross revenue. Specifically, the limit would be reduced on a straight-line basis when the corporation's average gross revenue over the preceding three years is between $15 million and $75 million. For corporations that are part of a corporate group with consolidated financial statements, gross revenue is reported at the highest level of consolidation. Members of such a corporate group must share the enhanced SR&ED credit's expenditure limit. For corporations not in such a group, gross revenue is reported in the corporation's annual financial statements.

If the Fall Economic Statement proposals are enacted as law, capital expenditures will be eligible for either deduction against income or investment tax credit components of the SR&ED program, similar to pre-2014 rules. This will apply to property acquired on or after the date of the Fall Economic Statement and lease costs payable from and after that date. Eligible capital expenditures will be either fully deductible in the year the property becomes available for use or able to be carried forward if not deducted in that year. Criteria will include using or consuming the property substantially in SR&ED activities in Canada.

To encourage the development and retention of intellectual property in Canada, the Fall Economic Statement also announced the Government's intention to implement a patent box regime. The Governor is reviewing feedback from consultations held earlier in 2024 and will announce details of the patent box regime in Budget 2025.

> **[Comment: A patent box regime is intended to encourage the development and retention of intelectual property stemming from research and development conducted in Canada. A patent box provides a preferential tax rate to income derived from certain types of intellectual property to incentivize research and development, and is currently used in 13 EU member states]**

Canada Carbon Rebate for Small Business

Budget 2024 announced that a portion of the carbon pricing fuel charge proceeds from 2019-20 through 2023-24 will be returned to around 600,000 businesses with 499 or fewer employees through the Canada Carbon Rebate for Small Businesses. This automatic refundable tax credit, provided directly by the Canada Revenue Agency, will deliver over $2.5 billion to small and medium-sized businesses in Canada. These tax-free rebates began being delivered via direct deposit on November 25, 2024, with cheques already in the mail.

The Fall Economic Statement proposed changes to the Canada Carbon Rebate for Small Businesses for the 2024-25 and subsequent fuel charge years to better support smaller businesses by introducing a new base payment. Small businesses with 1 to 20 employees will qualify for a payment equivalent to having 20 employees, providing a base payment. Larger businesses with over 300 employees will see their payment amounts gradually reduced as their number of employees approaches 500. The rebate will now be available to cooperative corporations and credit unions. Proceeds will continue to be automatically returned to eligible corporations through direct deposits and cheques from the CRA, separately from tax refunds.

Personal Income Tax Measures

The Fall Economic Statement also introduced a number of new personal income tax measures. A summary of them is below.

Exempting the Canada Disability Credit from Income Tax

The Canada Disability Benefit is a new program set to begin in July 2025, providing up to $2,400 annually to low-income, working-age Canadians eligible for the Disability Tax Credit. Initially, these payments would be included in taxable income, potentially affecting other income-tested benefits. However, the Fall Economic Statement proposes exempting these payments from income under the Income Tax Act to prevent reductions in other benefits. This exemption will apply starting in the 2025 tax year.

Canada Carbon Rebate Rural Supplement

The Canada Carbon Rebate returns over 90% of fuel charge proceeds to Canadians in provinces where the fuel charge applies. A 20% rural supplement is available to those living outside a Census Metropolitan Area (a "**CMA**") in such provinces. Initially, eligibility for the rural supplement was based on the most recent census before the relevant taxation year, but this was paused for 2023 and 2024, using the 2016 Census instead.

The Fall Economic Statement proposes expanding eligibility for the rural supplement to individuals within a CMA who live in census rural areas (fewer than 1,000 people) or small population centres (fewer than 30,000 people) as designated by Statistics Canada. Eligibility will be based on the most recent Census before the taxation year.

Northern Residents Deduction

Individuals living in prescribed northern areas of Canada for at least six consecutive months can claim the Northern Residents Deduction in computing their taxable income. Residents of the Northern Zone are eligible for the full deduction amount, while those in the Intermediate Zone receive half.

Capital Gains Rollover on Investments

Under the Income Tax Act, individuals can defer taxation on capital gains from selling Eligible Small Business Corporation ("**ESBC**") shares if the proceeds are used to buy replacement ESBC shares within the year of sale or up to 120 days after. To qualify, the shares must be common shares issued by an ESBC, and the total asset value of the ESBC and related corporations must not exceed $50 million.

The Fall Economic Statement proposed extending the period to acquire replacement shares to include the year of sale and the entire following calendar year. It also expands the definition of ESBC shares to include both common and preferred shares and raises the asset value limit to $100 million. These changes will apply to qualifying dispositions on or after January 1, 2025.

[Comment: The proposed extension of ESBC shares to include preferred shares should enable individuals who have implemented "freeze" transactions to exchange their preferred shares of a particular ESBC for preferred shares of a different corporation. Under a freeze transaction, typically an individual exchanges their common shares for preferred shares in order to enable other family members or entities to subscribe a relatively small amount for newly issued common shares that will entitle them to participate in the future growth in value of the ESBC.]

Reporting by Non-Profit Organizations

The Income Tax Act exempts non-profit organizations ("**NPOs**") from income tax if they are organized for social welfare, civic improvement, pleasure, recreation, or other non-profit purposes. Charities have separate tax exemption rules. Currently, NPOs that claim an income tax exemption have limited reporting requirements. An NPO must file an annual information return if:

1. Its total passive income exceeds $10,000,
2. Its total assets at the end of the preceding fiscal period exceed $200,000, or
3. If an information return was required for a preceding fiscal period.

The Fall Economic Statement proposed to amend the Income Tax Act to require NPOs with total gross revenues over $50,000 to also file the annual NPO information return. This change aims to increase transparency and ensure that larger NPOs provide more detailed financial information.

For smaller NPOs that do not meet the thresholds for filing the annual NPO information return, the Fall Economic Statement proposed a new short-form return. This return will require basic information about the organization, including its business number or trust number, name and mailing address, names and addresses of directors, officers, trustees, or similar officials, a description of the organization's activities (including those conducted outside Canada), and the organization's total assets, liabilities, and annual revenues. Other prescribed information may also be required.
These measures are set to apply starting from the 2026 taxation year.

Conclusion

The 2024 Fall Economic Statement underscores the Government of Canada's ongoing commitment to fostering economic growth, attracting private investment, and advancing initiatives critical to achieving a sustainable and inclusive future. With measures addressing energy expansion, artificial intelligence, trade enhancement, Indigenous economic participation, and tax reforms, the Fall Economic Statement aims to position Canada as a leader in innovation, sustainability and economic opportunity.

However, with a federal election likely on the horizon, there is uncertainty surrounding the long-term implementation of these measures. A change in Government could result in some proposals being scaled back, revised or altogether abandoned, particularly those requiring significant financial commitments or aligning closely with the current administration's policy priorities. This underscores the importance of remaining vigilant to potential shifts in the regulatory and policy landscape.

At McLeod Law LLP, we are committed to providing our clients with comprehensive insights into these evolving policies and their potential implications. As always, our team remains available to assist with navigating these changes and leveraging opportunities that align with your strategic objectives.