

Alberta Investor Tax Credit Opens for Business

January 16, 2017

On December 15, 2016, the Government of Alberta ("Government") released guidelines providing details of the Alberta Investor Tax Credit ("AITC") program created under the [Investing in a Diversified Alberta Economy Act \(the "Act"\)](#). The Act came into force January 1, 2017 and provides tax credits for certain investments in qualified small businesses. The Government has allocated \$90 million to the program over its initial three-year term ending in 2019. The Government expects the program to support up to 4,400 new jobs over three years and contribute \$500 million to Alberta's GDP.

The Act defines "eligible investors" to include both: (i) corporations to which the Alberta Corporate Tax Act applies and (ii) individuals within the meaning of that term in the Alberta Personal Income Tax Act. As such, both individuals (subject to a \$60,000 annual maximum) and corporations (no maximum) are eligible to obtain provincial tax credits for 30% of amounts invested, through eligible investments, directly in an eligible business corporation ("EBC") or in a venture capital corporation ("VCC") that invests in EBCs. Both EBCs and VCCs can apply for credits to pass on to eligible investors. Eligible investments will include common shares of a VCC and various securities of EBCs as discussed further below. Investments made after April 13, 2016 will be retroactively eligible for tax credits. Investments made during 2016 will be deemed to be made during 2017 for tax purposes. Tax credit certificates will be available beginning January, 2018. Unused credits can be carried forward by both individuals and corporations for up to four years to be applied against provincial income taxes that would otherwise be payable. Credits can be revoked if the requirements of the Act and Alberta Investor Tax Credit Regulations are not met or cease to be met by the EBC or VCC. Depending on the circumstances, either the investor or the business can be liable to the Minister to repay tax credits.

EBCs and VCCs can apply to register through an online portal beginning January 16, 2017, and applications will be accepted on a first-come, first-served basis until the government's annual allocation is reached. For sample application forms for EBCs click [here](#) and for VCCs click [here](#). [The application portal for the AITC is here](#). There are detailed initial qualification criteria and ongoing obligations to be met in order for the EBCs and VCCs to stay qualified, including filing an annual report with the Minister. Both EBCs and VCC's must have initially raised a minimum of \$25,000 in equity to be eligible, and must apply for subsequent financing rounds. Specific considerations are discussed below.

EBCs

EBCs must be engaged in the business of: doing research, development or commercialization of new proprietary technologies, products or processes; creating interactive digital media, animation or video game development, digital animation; tourism; specialized or high technology agriculture activities. Many business activities are excluded from being eligible for the AITC, including: exploration for or extraction of minerals or the operation of a mine; financial services including lending, insurance, real estate and securities trading; property management and rental or leasing of land; agricultural activities other than non-traditional agricultural activities; leasing personal property; hospitality services; and retail or commercial services.

In addition to carrying on a prescribed business activity, EBC's must, among other things:

1. restrict certain payments under its articles;
2. have fewer than 100 employees according to a prescribed calculation;
3. pay at least 50% of wages to AB employees (if engaged in the export of goods or provision of services outside of AB) or 75% otherwise;
4. not have received an investment from the Alberta Enterprise Corporation;
5. conduct at least 50% of its business in a prescribed business activity in AB based on the calculation of its assets utilized in and expenses incurred in Alberta in connection with the prescribed business activity; and
6. maintain at least 80% of its assets in AB.

Investment in EBCs that will be eligible for the AITC will include: equity shares (whether or not carrying the right to vote); warrants, options or other rights to acquire equity shares; limited partnership units (for an Alberta-formed partnership with an Alberta-resident general partner. In addition, convertible debt instruments are eligible provided that: (i) there is limited security; (ii) there are no restrictions or penalties for further borrowing; (iii) the interest rate is under 12% per annum; and (iv) the instrument will convert into one or more of the previously listed securities within 18 months. The program is not limited to private and non-reporting issuers. The foregoing securities can be issued under a prospectus, exempt disclosure document such as an offering memorandum, or via private placement. A maximum of \$5 million of capital raised by an EBC will be eligible for the AITC.

Uses of capital raised under the program are restricted. Any capital raised for which tax credits have been or are entitled to be claimed under the Act cannot be used to: invest outside AB; lend to third parties; invest in land (except for use incidental to the EBCs business); acquire securities other than those of an affiliate; repay debt obligations; redeem its shares; or pay dividends.

The Act also restricts control of EBCs. EBC's cannot, directly or indirectly, be majority owned or controlled by one or more VCCs (either alone or together with certain persons closely affiliated with a VCC). Subject to certain exceptions, an eligible investor, together with its affiliates and other closely related persons, cannot directly or indirectly own more than 50% of the outstanding shares of an EBC or in any manner control the EBC.

VCCs

VCCs must apply for approval to raise equity capital under the Act. Eligible investors will be able to obtain the AITC for investments in shares of VCCs. To be registered, the Act requires that VCCs must:

1. be incorporated or continued under the Business Corporations Act (Alberta);
2. not have previously carried on business;
3. raise minimum equity capital of at least \$50,000 within one year from registration;
4. be restricted under its articles to the business of investing in and providing expertise to EBCs in which the VCC has made or proposes to make an investment in;
5. require that a majority of directors be ordinarily resident in AB;
6. have a share structure consisting only of common shares with no special rights or restrictions (except relating to redemption); and
7. subject to limited exceptions, maintain an investment protection account which contains 30% of all amounts of equity capital raised by the VCC.

VCC's are also subject to restrictions on the use of capital raised: 40% of equity capital raised during any fiscal year must be invested in one or more EBCs by the end of the following fiscal year, and at least 80% by the end of the second following fiscal year. A VCC may only incur annual expenses of 20% of its equity capital raised under the Act for: share issuance; office occupancy; legal fees; preparation of financial statements; or preparing the required annual report. Finally, the VCC may only pay an annual management fee of 3% of equity capital raised under the Act.

Investment in and control of EBCs by VCCs is limited under the Act. Investments must be at arm's length, and are prohibited if a person, together with its affiliates, owns more than 10% of a VCC's shares and that person also owns 10% or more of an EBC's shares or is closely related to the EBC. VCCs cannot invest in an EBC if the VCC has received financial support from a person closely affiliated with the EBC. Finally, EBCs are limited to raising \$10 million of capital from one or more VCCs in a two year period.

This summary of the AITC program is meant to provide an overview of eligibility for participation in the program. It is not meant to provide an exhaustive list of criteria and obligations under the Act or accompanying regulations. As the program is new, it remains to be seen how certain of the criteria will be administered by the responsible ministry, and some requirements could change based on feedback from stakeholders and participants. Businesses and investors are encouraged to forward questions relating to the AITC pertaining to their specific situation to the authors below.

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