

# Equity Tax Credit Act

## CHAPTER 3 OF THE ACTS OF 1993

*as amended by*

1995, c. 2; 1996, c. 5; 1997, c. 3, ss. 2, 3; 2000, c. 4, ss. 8-13;  
2001, c. 3, ss. 5-8; 2003, c. 4, ss. 3-13; 2004, c. 3, ss. 22, 23;  
2005, c. 6, ss. 3-6; 2006, c. 2, ss. 4-12; 2007, c. 9, s. 7;  
2009, c. 5, ss. 4-8; 2011, c. 62; 2019, c. 4, ss. 22, 23



© 2019 Her Majesty the Queen in right of the Province of Nova Scotia  
Published by Authority of the Speaker of the House of Assembly  
Halifax

This page is intentionally blank.

CHAPTER 3 OF THE ACTS OF 1993  
 amended 1995, c. 2; 1996, c. 5; 1997, c. 3, ss. 2, 3; 2000, c. 4, ss. 8-13;  
 2001, c. 3, ss. 5-8; 2003, c. 4, ss. 3-13; 2004, c. 3, ss. 22, 23;  
 2005, c. 6, ss. 3-6; 2006, c. 2, ss. 4-12; 2007, c. 9, s. 7;  
 2009, c. 5, ss. 4-8; 2011, c. 62; 2019, c. 4, ss. 22, 23

**An Act to Provide a Tax Credit  
 for Investments in Small Businesses  
 and Labour-sponsored  
 Venture-capital Corporations**

**Table of Contents**

(The table of contents is not part of the statute)

	Section
Short title.....	1
Interpretation.....	2
PART I	
Equity Tax Credit	
Registration.....	3
Criteria for eligibility.....	4
Exclusion from eligible investment.....	5
Revocation of certificate.....	6
Prohibited use of funds.....	7
Tax-credit certificate.....	8
Payment to Minister where no entitlement and repayment.....	9
Joint and several liability for repayment.....	10
Community Economic-development Corporations	
Registration.....	11
Criteria for eligibility.....	12
Application of Sections 5 to 10.....	13
Provincial guarantee.....	13A
PART II	
Labour-sponsored Venture-capital Corporations	
Interpretation of Part.....	14
Registration.....	15
Application of Sections 5 and 10.....	16
Sanctions by Minister respecting certificate.....	17
Tax-credit certificate.....	18
Payment to Minister where no entitlement and repayment.....	18A
Notice and rules.....	18B
Amalgamation deemed to have complied.....	18C
Amalgamation deemed not to be disposal of shares.....	18D
PART III	
General	
Register.....	19

Filing of returns with Minister.....	20
Maintenance and location of records.....	21
Examination of affairs .....	22
Investigations.....	23
Deemed refusal, projections and debts due Crown .....	24
Extension of time.....	25
Offences and penalty .....	26
Regulations .....	27
Repeal of Share Ownership Plan Act.....	28
Income Tax Act amended .....	29
Effective date .....	30

### Short title

1 This Act may be cited as the *Equity Tax Credit Act*. 1993, c. 3, s. 1.

### Interpretation

2 In this Act,

(a) “active business” means a business carried on in Canada, other than a specified investment business or a personal services business as defined in the *Income Tax Act* (Canada) or a specified investment business employing directly or indirectly with an affiliated corporation five or more people;

(b) “affiliate”, where used to indicate the relationship between companies, means any company where

(i) one company is the subsidiary of the other or both are subsidiaries of the same company,

(ii) each company is controlled by the same person, the same group of persons or one or more members of an associated group of persons,

(iii) each company was controlled, directly or indirectly in any manner whatever, by a person and the person who so controlled one of the companies was related to the person who so controlled the other, and either of these persons owned, in respect of each company, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof,

(iv) one of the companies was controlled, directly or indirectly in any manner whatever, by a person and that person was related to each member of a group of persons that so controlled the other company, and that person owned, in respect of the other company, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof, or

(v) each of the companies was controlled directly or directly in any manner whatever, by a related group and each of the members of one of the related groups was related to all of the members of the other related group, and one or more persons who were

members of both related groups, either alone or together, owned, in respect of each company, not less than twenty-five per cent of the issued shares of any class, other than a specified class, of the capital stock thereof;

(c) “association” means an association as defined in the *Co-operative Associations Act*;

(d) “community economic-development corporation” means a corporation or association that meets the criteria prescribed by regulation and that is registered by the Minister pursuant to Section 11;

(e) “community economic-development plan” means a community economic-development plan as defined by regulation and containing the information prescribed by regulation;

(f) “corporation” means a taxable corporation incorporated pursuant to the laws of the Province, another province of Canada or Canada that has its head office located in the Province;

(g) “eligible business” means

(i) a community economic-development corporation that has been registered by the Minister pursuant to this Act, or

(ii) any other corporation or association that has been registered by the Minister pursuant to this Act before January 1, 2020;

(h) “eligible investment” means

(i) in the case of a corporation or a community economic-development corporation, fully paid, newly issued voting common shares of the corporation, issued on or before the twenty-eighth day of February, 2022, that are non-redeemable and non-retractable, are non-convertible, are not restricted in profit sharing or participation upon dissolution and are not eligible for a tax credit allowed pursuant to the *Income Tax Act (Canada)* or a deduction from income pursuant to that Act other than a deduction pursuant to subsection 146(5) of that Act,

(ii) in the case of an association, a share issued, on or before the twenty-eighth day of February, 2022, that, if it were the only share owned by the member, would entitle a member to vote in the affairs of the co-operative, and that is not eligible for a tax credit allowed pursuant to the *Income Tax Act (Canada)* or a deduction from income pursuant to that Act other than a deduction pursuant to subsection 146(5) of that Act,

but does not include a replacement share;

(i) “eligible investor” means an individual who is a resident of the Province and who is at least nineteen years of age;

(ia) “Minister” means the Minister of Finance or a person designated by the Minister to perform certain duties assigned to the Minister pursuant to this Act;

(j) “replacement share” means a share issued as part of a specified issue where the purchaser has, at any time between the thirtieth day of September, 1993, and the twenty-eighth day of February, 2022, disposed of a share of any class of the eligible business;

(k) “specified issue” means

(i) in the case of an association, the issue of shares, as defined by subclause (ii) of clause (h), to a member of the association, or individual who will be a member of the association immediately after the issue, at any time between the date of registration and the date of expiration of the certificate of registration,

(ii) in the case of a corporation that will issue shares only to its employees all or substantially all of whom deal with the corporation at arms length, the issue of shares, as defined by subclause (i) of clause (h), to that employee at any time between the date of registration and the date of expiration of the certificate of registration,

(iii) in the case of a community economic-development corporation, the issue of shares, as defined by subclause (i) of clause (h), to an eligible investor at any time between the date of registration and the date of expiration of the certificate of registration, and

(iv) in any other case, the issue of shares, as defined in subclause (i) of clause (h), to the number of eligible investors, prescribed by regulation, specified in the application for registration of the corporation to an eligible investor at any time between the date of registration and the date of expiration of the certificate of registration. 1993, c. 3, s. 2; 1995, c. 2, s. 12; 1997, c. 3, s. 2; 2000, c. 4, s. 8; 2001, c. 3, s. 5; 2003, c. 4, s. 3; 2005, c. 6, s. 3; 2006, c. 2, s. 4; 2009, c. 5, s. 4; 2011, c. 62, s. 1; 2019, c. 4, s. 22.

## PART I

### EQUITY TAX CREDIT

#### Registration

**3 (1)** A corporation or association that intends to make a specified issue of shares and that meets the criteria set out in Section 4 may apply for registration pursuant to this Act by delivering to the Minister, in a form acceptable to the Minister, an application including

(a) the financial statements of the corporation or association for the preceding taxation year;

(b) a copy of the constitution of the corporation or association;

(c) except in the case of an association, a corporation issuing only to employees or a corporation making a public offering, a list of investors including the investor’s name, social insurance number, occupation and, if applicable, the relationship to any of the current shareholders of the corporation;

(d) a statement signed by an authorized officer of the corporation that the information contained in the application is true and correct;

(e) except in the case of an association, or a corporation issuing only to employees, a statement from each investor that the information contained in the application with respect to that investor is true and correct and that their investment in the eligible business complies with the spirit and intent of this Act and the regulations;

(f) any information prescribed by regulation;

(g) such other information that the Minister may require in order to determine compliance with this Act and the regulations.

(2) The Minister shall register a corporation or association, with conditions that the Minister considers appropriate, on being satisfied that

(a) the corporation or association meets the criteria set out in Section 4;

(b) the specified issue complies with the spirit and intent of this Act;

(c) the specified issue complies with the provisions of the *Securities Act* or such part of that Act as may be prescribed; and

(d) any other prescribed conditions for the registration are met.

(3) Where the Minister registers a corporation or association, the Minister shall issue a certificate of registration.

(4) The certificate of registration constitutes approval, as at the date of registration, for the corporation or association to raise the amount of equity capital referred to in the application. 1993, c. 3, s. 3; 1995, c. 2, s. 13.

#### **Criteria for eligibility**

4 The criteria referred to in Section 3 for eligibility of a corporation or association for registration are

(a) in the case of a corporation, that the corporation has authorized capital consisting of at least one class of voting equity shares;

(b) that at least twenty-five per cent of salaries and wages are paid in the Province;

(c) that the business entity or affiliated corporations or associations have fewer than five hundred employees;

(d) that the corporation or association has assets calculated in the prescribed manner of less than twenty-five million dollars, including assets of its affiliated companies or associations;

(e) that the corporation or association has revenues of less than twenty-five million dollars, including revenues of its affiliated companies or associations;

(f) that all or substantially all of the fair market value of the property of the corporation or association is attributable to property used in an active business or shares of a corporation or association that would, if it made application pursuant to this Act, be an eligible business;

(g) in the case of an association, that the association undertakes or carries on business or operations in any activity prescribed by regulation;

(h) that the corporation or association is not a business incorporated for the professional practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;

(i) that none of the officers and directors of the corporation or association are officers or directors of any other corporation or association that is currently not in compliance with this Act or the regulations. 2003, c. 4, s. 4.

#### **Exclusion from eligible investment**

5 Notwithstanding clause (h) of Section 2, an eligible investment does not include a share that, in the opinion of the Minister, is or will be issued as a result of a transaction or event or a series of transactions or events the main purpose of which is to claim the tax credit pursuant to this Act. 1993, c. 3, s. 5.

#### **Revocation of certificate**

6 (1) The Minister may, at any time after a certificate of registration has been issued, revoke the certificate if, in the opinion of the Minister, the eligible business has not complied with any provision of this Act and the regulations, or the spirit and intent of this Act and the regulations, or has caused any of the following transactions or events to occur:

(a) the eligible business has issued shares of the same or substantially the same class as the shares issued as part of the specified issue, at any time after the thirtieth day of September, 1993, and before the twenty-eighth day of February, 2022, to an individual for an unreasonably low cost per right to vote such that the eligible investor is unable to exercise any real influence in the management of the corporation;

(b) the eligible business has misrepresented any information to the Minister either knowingly or through circumstances amounting to gross negligence;

(c) the eligible business has used the proceeds raised by the specified issue for any use prohibited by Section 7;

(ca) the eligible business relocates out of the Province unless it would otherwise continue to qualify for registration;



(cb) the eligible business sells assets whose original book value of purchase when deducted from the total book value of the assets of the eligible business impinges on the capital raised under this Act;

(d) any other transaction or event prescribed by regulation.

(2) Where the Minister revokes a certificate of registration at any time after a specified issue has occurred, the eligible business shall pay to the Minister an amount equal to the aggregate of the amounts of tax credits issued in respect of the specified issue.

(3) Where the Minister has revoked a certificate of registration before the specified issue as occurred, the Minister shall not issue the tax-credit receipts referred to in Section 8.

(4) Upon meeting all requirements of the Minister and the Nova Scotia Securities Commission, a community economic-development corporation may surrender its certificate of registration. 1993, c. 3, s. 6; 1997, c. 3, s. 3; 2000, c. 4, s. 9; 2001, c. 3, s. 6; 2003, c. 4, s. 5; 2006, c. 2, s. 5; 2009, c. 5, s. 5; 2011, c. 62, s. 2

#### **Prohibited use of funds**

7 An eligible business or affiliates shall not use the funds raised by a specified issue to which tax credits have been or are entitled to be claimed pursuant to Section 37 of the *Income Tax Act*

(a) for lending, except under prescribed circumstances;

(b) for acquiring securities, other than eligible investments in a corporation or Association that meets the criteria set out in Section 4;

(c) for making payments with respect to the payment of dividends to or the repayment of shareholder debt to a director, officer or shareholder of the eligible business or an associate of the director, officer or shareholder of the eligible business;

(d) for purchasing services or assets provided by Her Majesty in right of the Province or an agency or corporation of Her Majesty, where

(i) those services or assets are to be used in all or in part in a business or activity that is the same or similar to the activity previously carried on by Her Majesty in right of the Province or the agency or corporation of Her Majesty, and

(ii) the corporation has received, either directly or indirectly, any financial assistance from any government, municipality or public authority with respect to the acquisition of those services or assets;

(e) as part of a transaction or series of transactions directly or indirectly involving

- (i) the redemption or purchase of previously issued shares of the eligible business or an affiliate of the eligible business,
- (ii) the retirement of any part of a liability of a shareholder of the eligible business or one of its affiliates,
- (iii) the payment of dividends, or
- (iv) the funding of all or part of the purchase by the eligible business of all or substantially all of the assets of an existing proprietorship, partnership, joint venture, trust or company, except a proprietorship, partnership, joint venture, trust or company that is in receivership or in bankruptcy where an eligible investor or group of investors did not own at any time more than ten per cent of the voting shares of the proprietorship, partnership, joint venture, trust or company that is in receivership or in bankruptcy;
- (f) for the funding of all or part of the purchase by the eligible business of any services or assets at a price that is greater than the fair market value of the services or assets purchased; or
- (g) for other prescribed purposes. 1993, c. 3, s. 7; 1995, c. 2, s. 15; 2000, c. 4, s. 10; 2003, c. 4, s. 6.

#### **Tax-credit certificate**

**8 (1)** Where an eligible business has made a specified issue, the eligible business shall apply to the Minister within the time specified by regulation in a form acceptable to the Minister for a tax-credit certificate entitling each of the eligible investors to a tax credit pursuant to Section 37 of the *Income Tax Act* equal to thirty-five per cent of the amount received by the eligible business, in that calendar year or within sixty days of the end of the calendar year, for shares issued to those eligible investors before March 1, 2022, as part of the specified issue by the eligible business.

**(1A)** Where an eligible investor has received a tax credit certificate from an eligible business that is a community economic-development corporation for shares from a specified issue for which a tax credit certificate was issued, and the eligible investor has not disposed of the shares for five years from the date of the specified issue of shares, the eligible business shall apply to the Minister within the time specified by regulation in a form acceptable to the Minister for a tax-credit certificate entitling the eligible investor to an additional tax credit pursuant to Section 37 of the *Income Tax Act* equal to twenty per cent of the amount originally received by the eligible business from the eligible investor for the shares of the specified issue if the market value of the community economic-development corporation fund at the time of the application is greater than sixty-five per cent of the original book value of invested capital raised at the time of the issue of shares to the eligible investor from the specified issue and the community economic-development corporation has raised additional capital through other specified issues registered pursuant to Section 11 for which a tax credit has been issued.

**(1B)** Where an eligible investor has received a tax credit certificate from an eligible business that is a community economic-development corporation for shares from a specified issue for which a tax credit certificate was issued, and the eligible investor has not disposed of the shares for ten years from the date of the specified issue of shares, the eligible business shall apply to the Minister within the time specified by regulation in a form acceptable to the Minister for a tax-credit certificate entitling the eligible investor to an additional tax credit pursuant to Section 37 of the *Income Tax Act* equal to ten per cent of the amount originally received by the eligible business from the eligible investor for the shares of the specified issue if the market value of the community economic-development corporation fund at the time of the application is greater than fifty per cent of the original book value of invested capital raised at the time of the issue of shares to the eligible investor from the specified issue and the community economic-development corporation has raised additional capital through other specified issues registered pursuant to Section 11 for which a tax credit has been issued.

**(1C)** Subsection (2) and subsection (3), except clause (c), apply to subsections (1A) and (1B).

**(2)** Subject to subsection (3), the Minister shall issue a tax-credit certificate in the amount referred to in subsection (1) to the eligible investors, unless the Minister considers that the eligible business or its directors, officers or shareholders are conducting its business or affairs in a manner that is contrary to the spirit and intent of this Act and the regulations.

**(2A)** A person who disposes of a share for which an additional tax credit is allowed under subsection (1A), within ten years from the date of purchase shall repay to the Minister

(a) the amount equal to the additional tax credit received under subsection (1A) including interest thereon if prescribed by regulation; or

(b) a lesser amount determined pursuant to the regulations in prescribed circumstances.

**(2B)** A person who disposes of a share for which an additional tax credit is allowed under subsection (1B), within fifteen years from the date of purchase, shall repay to the Minister

(a) the amount equal to the additional tax credit received under subsection (1B) including interest thereon if prescribed by regulation; or

(b) a lesser amount determined pursuant to the regulations in prescribed circumstances.

**(3)** The Minister shall not issue a tax-credit certificate pursuant to subsection (2) unless the Minister is satisfied that

- (a) the eligible business and its eligible investors are complying with this Act and the regulations;
- (b) other than where prescribed, the shares do not constitute a type of security that entitles the holder, in respect of the acquisition of those shares,
  - (i) to claim a tax credit pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada), other than pursuant to Section 37 of the *Income Tax Act*, against income tax payable,
  - (ii) to claim a deduction from income pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada), other than pursuant to subsection 146(5) of the *Income Tax Act* (Canada), or
  - (iii) to receive any other financial assistance from any government, municipality or public authority;
- (c) no tax credit has previously been allowed for those shares pursuant to the *Income Tax Act* or the *Income Tax Act* (Canada);
- (d) in the case of a corporation issued a certificate of eligibility where that corporation made application based on its intention to issue shares only to its employees, the investor on behalf of whom application for the tax-credit certificate is made is an employee of the corporation;
- (e) the aggregate of all entitlements in respect of the eligible investor for all tax-credit certificates applied for in the year does not exceed the amount, if any, prescribed by regulation;
- (f) the aggregate of all tax credits issued pursuant to this Part for the year does not exceed the amount prescribed by regulation; and
- (g) any other prescribed conditions have been met. 1993, c. 3, s. 8; 1995, c. 2, s. 16; 1996, c. 5, s. 4; 2000, c. 4, s. 11; 2006, c. 2, s. 6; 2009, c. 5, s. 6; 2011, c. 62, s. 3.

#### **Payment to Minister where no entitlement and repayment**

**9 (1)** Where an individual has received, directly or indirectly, the benefit of a tax credit in respect of which the person is not entitled, the amount of the benefit is payable forthwith by that person to the Minister.

- (2)** A person who disposes of a share
  - (a) that was purchased before the first day of July, 2006, within four years from the date of purchase; or
  - (b) that was purchased after the thirtieth day of June, 2006, within five years from the date of registration under subsection 3(3) by the corporation for the specified issue,

shall repay to the Minister

(c) an amount equal to the tax credits received in respect of these shares, including interest thereon where prescribed by regulation; or

(d) a lesser amount determined pursuant to the regulations in prescribed circumstances.

(3) Where an eligible business has repurchased shares in a transaction not permitted by this Act or the regulations, the eligible business shall withhold the amount of the credit and remit it along with details of the transaction to the Minister.

(4) Where an eligible business has repurchased shares in a transaction not permitted by this Act or the regulations in the event of a conversion of a registered retirement savings plan to a registered retirement investment fund or annuity, the eligible business shall withhold a monthly prorated amount of the credit and remit it to the Minister. 1993, c. 3, s. 9; 2003, c. 4, s. 7; 2006, c. 2, s. 7.

#### **Joint and several liability for repayment**

10 Where a director or officer of a corporation, a member of a group that controls the corporation or a shareholder that controls the corporation permits or acquiesces to a transaction or event or a series of transactions or events that the person knew or ought to have known at that time would cause the certificate of registration to be revoked, that person is jointly and severally liable for the repayment pursuant to subsection (2) of Section 9. 1993, c. 3, s. 10.

### COMMUNITY ECONOMIC-DEVELOPMENT CORPORATIONS

#### **Registration**

11 (1) A community economic-development corporation that intends to make a specified issue of shares and that meets the criteria set out in Section 12 may apply for registration pursuant to this Act by delivering to the Minister, in a form acceptable to the Minister, an application including

(a) the financial statements of the corporation for the preceding taxation year;

(b) a copy of the constitution of the corporation;

(c) a copy of the community economic-development plan;

(d) any information prescribed by regulation; and

(e) such other information that the Minister may require in order to determine compliance with this Act and the regulations.

(2) The Minister shall register the community economic-development corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria set out in Section 12;
- (b) the specified issue complies with the spirit and intent of this Act and the regulations;
- (ba) the constitution of the corporation provides that no individual is a specified shareholder of the corporation as that term is defined by section 248 of the *Income Tax Act* (Canada) and as if the reference to 10% in that definition were read as a reference to 20%;
- (c) the specified issue complies with the provisions of the *Securities Act* or such part of that Act that may be prescribed; and
- (d) any other prescribed conditions for the registration are met.

(3) Where the Minister registers a community economic-development corporation, the Minister shall issue a certificate of registration.

(4) The certificate of registration constitutes approval, as at the date of registration, for the community economic-development corporation to raise the amount of equity capital referred to in the application. 1993, c. 3, s. 11; 1996, c. 5, s. 5.

#### Criteria for eligibility

12 The criteria referred to in Section 11 for eligibility of a community economic development corporation for registration are

- (a) that the corporation or association is incorporated pursuant to the laws of the Province;
- (b) in the case of a corporation, that the corporation has authorized capital consisting of at least one class of voting equity shares;
- (c) that at least twenty-five per cent of wages and salaries are paid in the Province;
- (d) that the corporation or association has assets or revenues of less than twenty-five million dollars, including assets and revenues of its affiliated corporations or associations;
- (e) in the case of a corporation, that all or substantially all of the fair market value of the property of the corporation is attributable to property used in an active business or shares of a corporation where all or substantially all of the fair market value of the property of that corporation is attributable to property used in an active business or that the corporation has a constitution that restricts the corporation to making specified investments in eligible local business entities in accordance with its community economic-development plan;

(f) in the case of an association, that the association carries on business or operations in any activity prescribed by regulation or has a constitution that restricts the association to investing in eligible investments of an association that carries on business or operations in any activity prescribed by regulation. 1993, c. 3, s. 12; 1996, c. 5, s. 6; 2003, c. 4, s. 8.

#### **Application of Sections 5 to 10**

**13** Sections 5 to 10 apply *mutatis mutandis* to a community economic-development corporation issued a certificate of registration by the Minister pursuant to this Act. 1993, c. 3, s. 13.

#### **Provincial guarantee**

**13A (1)** Twenty per cent of the amount invested in eligible investments of a community economic-development corporation shall be guaranteed by the Province if the following conditions are met:

(a) annual reports as required under Section 20 are filed in a timely fashion;

(aa) the corporation was registered for the specified issue before the first day of July, 2006;

(ab) a tax credit certificate was issued under Section 8 for the specified issue;

(b) the investment requirements of the regulations are complied with; and

(c) the community economic-development corporation is in compliance with this Act and the regulations.

**(2)** The Governor in Council may make regulations prescribing the method of guaranteeing eligible investments, prescribing eligible geographic areas of the Province in which a guarantee may be given, including the terms and conditions pursuant to which the Minister may exempt from or include areas of the Province in a prescribed eligible geographic area and determining the duration of any guarantee given.

**(3)** The exercise by the Governor in Council of the authority contained in subsection (2) is regulations within the meaning of the *Regulations Act*. 1996, c. 5, s. 7; 2000, c. 4, s. 12; 2003, c. 4, s. 9; 2006, c. 2, s. 8.

## **PART II**

### **LABOUR-SPONSORED VENTURE-CAPITAL CORPORATIONS**

#### **Interpretation of Part**

**14** In this Part, “labour-sponsored venture-capital corporation” means a corporation registered pursuant to subsection 204.81(1) of the *Income Tax Act* (Can-

ada) or a corporation that has been registered by the Minister pursuant to this Act. 1993, c. 3, s. 14.

### Registration

**15 (1)** A labour-sponsored venture-capital corporation that intends to make an issue of eligible shares to an eligible investor on or before the twenty-eighth day of February, 2022, and that meets the criteria prescribed by regulation may apply for registration pursuant to this Act by delivering to the Minister, in a form acceptable to the Minister, an application containing the information prescribed by regulation.

**(2)** The Minister shall register a labour-sponsored venture-capital corporation, with conditions that the Minister considers appropriate, on being satisfied that

- (a) the corporation meets the criteria prescribed by regulation;
- (b) the issue of eligible shares complies or will comply with the spirit and intent of this Act; and
- (c) any other prescribed conditions for registration are met.

**(3)** Where the Minister registers a labour-sponsored venture-capital corporation, the Minister shall issue a certificate of registration.

**(4)** The certificate of registration constitutes approval as at the date of registration, for the labour-sponsored venture-capital corporation to raise the amount of equity capital referred to in the application. 1993, c. 3, s. 15; 2001, c. 3, s. 7; 2003, c. 4, s. 10; 2004, c. 3, s. 22; 2009, c. 5, s. 7; 2011, c. 62, s. 4.

### Application of Sections 5 and 10

**16** Sections 5 and 10 apply *mutatis mutandis* to a labour-sponsored venture-capital corporation issued a certificate of registration by the Minister pursuant to this Act. 1993, c. 3, s. 16; 1996, c. 5, s. 8.

### Sanctions by Minister respecting certificate

**17 (1)** The Minister may, at any time after a certificate of registration has been issued,

- (a) monetarily penalize a labour-sponsored venture-capital corporation;
- (b) charge a refundable penalty to a labour-sponsored venture-capital corporation;
- (c) restrict the sales of a labour-sponsored venture-capital corporation for such time and on such conditions as the Minister determines; or



(d) revoke the certificate of registration of a labour-sponsored venture-capital corporation,

if, in the opinion of the Minister, the registered labour-sponsored venture-capital corporation has not complied with this Act or the regulations or the spirit and intent of this Act and the regulations, or has caused any transaction or event prescribed by regulation to occur.

(1A) The Governor in Council may, by regulation, prescribe the method of calculating the penalties that may be imposed pursuant to clause (a) or (b) of subsection (1).

(2) Where the Minister revokes a certificate pursuant to subsection (1), the Minister may impose such penalty as may be prescribed. 1993, c. 3, s. 17; 2005, c. 6, s. 4; 2006, c. 2, s. 9.

### **Tax-credit certificate**

**18 (1)** Where a registered labour-sponsored venture-capital corporation has made an issue of eligible shares to an eligible investor

(a) on or before the thirty-first day of December, 2004, the labour-sponsored venture-capital corporation may apply to the Minister for a tax-credit certificate entitling each of the eligible investors to a tax credit pursuant to Section 38 of the *Income Tax Act* equal to fifteen per cent of the amount received by the labour-sponsored venture-capital corporation in that calendar year for shares issued to those eligible investors as part of the issue of shares by the labour-sponsored venture-capital corporation; or

(b) on or after the first day of January, 2005, the labour-sponsored venture-capital corporation may apply to the Minister for a tax-credit certificate entitling each of the eligible investors to a tax credit pursuant to Section 38 of the *Income Tax Act* equal to twenty per cent of the amount received by the labour-sponsored venture-capital corporation, in that calendar year or within sixty days of the end of the calendar year, for shares issued to those eligible investors before March 1, 2022, as part of the issue of shares by the labour-sponsored venture-capital corporation.

(2) Subject to subsection (3), the Minister may issue a tax-credit certificate in the amount referred to in subsection (1) to the eligible investors, unless the Minister considers that the labour-sponsored venture-capital corporation or its directors, officers or shareholders are conducting its business or affairs in a manner that is contrary to the spirit and intent of this Act and the regulations.

(3) The Minister shall not issue a tax-credit certificate pursuant to subsection (2) unless the Minister is satisfied that

(a) the labour-sponsored venture-capital corporation and its eligible investors are complying with this Act and the regulations;

(b) other than where prescribed, the eligible shares do not constitute the type of security that entitles the holder, in respect of the acquisition of those shares,

(i) to claim a tax credit pursuant to the *Income Tax Act* or the *Income Tax Act (Canada)*, other than pursuant to Section 38 of the *Income Tax Act* or subsection 127.4(2) of the *Income Tax Act (Canada)*, against income tax payable,

(ii) to claim a deduction from income pursuant to the *Income Tax Act* or the *Income Tax Act (Canada)* other than a deduction pursuant to subsection 146(5) of the *Income Tax Act (Canada)*, or

(iii) to receive any other financial assistance from any government, municipality or public authority;

(c) no tax credit has previously been allowed for those shares pursuant to the *Income Tax Act* or the *Income Tax Act (Canada)*;

(d) *repealed 2005, c. 6, s. 5.*

(e) the aggregate of all tax credits pursuant to this Act for the year does not exceed the amount, if any, prescribed by regulation; and

(f) any other prescribed conditions have been met.

(4) For the purpose of clause (e) of subsection (3), the labour-sponsored venture-capital corporation shall notify the Minister immediately upon raising the amount of capital that would cause the amount of tax credits issued, pursuant to subsection (2), to equal the amount, if any, prescribed by regulation. 1993, c. 3, s. 18; 1996, c. 5, s. 9; 2000, c. 4, s. 13; 2001, c. 3, s. 8; 2003, c. 4, s. 11; 2004, c. 3, s. 23; 2005, c. 6, s. 5; 2009, c. 5, s. 8; 2011, c. 62, s. 5.

#### **Payment to Minister where no entitlement and repayment**

**18A (1)** Where an individual has received directly or indirectly, the benefit of a tax credit in respect of which the person is not entitled, the amount of the benefit is payable forthwith by that person to the Minister.

(2) A person who disposes of a share in respect of which a tax credit has been allowed under this Part within eight years from the date of purchase shall repay to the Minister

(a) an amount equal to the tax credits received in respect of those shares, including interest thereon where prescribed by regulation; or

(b) a lesser amount determined pursuant to the regulations in prescribed circumstances.

(3) A person who disposes of a share in respect of which a tax credit has been allowed after eight years from the date of purchase shall not receive a tax credit on a subsequent purchase of substantially the same shares. 1996, c. 5, s. 10; 2003, c. 4, s. 12; 2006, c. 2, s. 10.

#### Notice and rules

**18B (1)** A labour-sponsored venture-capital corporation shall notify the Minister in writing if it proposes to

- (a) amalgamate with another labour-sponsored venture-capital corporation;
- (b) enter into an arrangement for the purchase of substantially all of the assets of another labour-sponsored venture-capital corporation; or
- (c) enter into an arrangement for the sale to another labour-sponsored venture-capital corporation of substantially all of its assets.

(2) The notification must be given at least thirty days before the proposed amalgamation, purchase or sale and must be accompanied by such information and documents as prescribed by regulation.

(3) The following rules apply for the purpose of this Act on an amalgamation of a labour-sponsored venture-capital corporation with another labour-sponsored venture-capital corporation:

1. The amalgamated corporation is deemed to be the same corporation as, and a continuation of, each predecessor corporation.
2. The amalgamated corporation is deemed to have been registered under this Part on the earliest date on which any of the predecessor corporations was registered under this Part.
3. The amalgamated corporation is deemed to have issued the eligible shares issued by a predecessor corporation for purposes of this Act, in the amount of equity capital received by the predecessor corporation on the issue of those shares.
4. Where a predecessor corporation was authorized to issue eligible shares, the amalgamated corporation is deemed to have received the Minister's approval to issue substantially similar shares at the time of the amalgamation.
5. Each of the new shares issued by the amalgamated corporation on the amalgamation in replacement of shares that were issued by a predecessor corporation is deemed to have been issued at the time that the predecessor corporation issued the replaced shares.
6. The amalgamated corporation is deemed to have made all the investments made by the predecessor corporations,

- (a) on the same date as the predecessor corporations made the investments; and
- (b) at the same historic cost used by the predecessor corporations. 2006, c. 2, s. 11.

**Amalgamation deemed to have complied**

**18C** An amalgamation of a labour-sponsored venture-capital corporation with another labour-sponsored venture-capital corporation before the ninth day of May, 2006, is deemed to have complied with Section 18B if the effective date of the amalgamation was prior to the coming into force of this Section. 2006, c. 2, s. 11.

**Amalgamation deemed not to be disposal of shares**

**18D** Subject to Sections 18B and 18C, an amalgamation of a labour-sponsored venture-capital corporation with another labour-sponsored venture-capital corporation is deemed not to be a disposal of shares for the purpose of subsection 18A(2). 2006, c. 2, s. 11.

## PART III

## GENERAL

**Register**

**19** The Minister shall maintain a register containing the information prescribed by regulation and the register shall be open for public inspection during normal business hours at places in the Province determined by the Minister. 1993, c. 3, s. 19.

**Filing of returns with Minister**

**20** Within one hundred and eighty days after the end of each of the fiscal years commencing after the end of the fiscal year of registration pursuant to this Act,

- (a) a labour-sponsored venture-capital corporation shall file annually and for eight years after its final sale of shares in the Province;
- (b) a community economic-development corporation shall file annually and for five years after the issue of tax certificates to individuals under this Act; and
- (c) any other entity registered pursuant to this Act shall file as requested by the Minister,

a return with the Minister setting out the information prescribed by the regulations. 2003, c. 4, s. 13; 2007, c. 9, s. 7.

**Maintenance and location of records**

**21 (1)** A corporation, association or labour-sponsored venture-capital corporation that is registered pursuant to this Act shall maintain records in such

form and containing such information as the Minister considers necessary to determine that this Act and the regulations are being complied with.

(2) The corporation, association or labour-sponsored venture-capital corporation shall keep the records at its records office, or at such other place in the Province that is approved by the Minister. 1993, c. 3, s. 21.

#### **Examination of affairs**

**22** (1) The Minister, or a person designated by the Minister, may, during normal business hours, make an examination of the affairs of

(a) a corporation, association or labour-sponsored venture-capital corporation that is registered pursuant to this Act;

(b) a person who is or was a shareholder of the corporation, Association or labour-sponsored venture-capital corporation; or

(c) an eligible business,

for the purpose of determining compliance with this Act and the regulations.

(2) The Minister or person making the examination pursuant to this Section is entitled, for the purpose of determining compliance with this Act and the regulations, to examine the records and securities of a corporation, association or labour-sponsored venture-capital corporation referred to in subsection (1), and make copies of those records and securities. 1993, c. 3, s. 22.

#### **Investigations**

**23** (1) The Minister, by order, may appoint a person to make whatever investigation the Minister considers appropriate for the administration of this Act and, in the order, shall determine the scope of the investigation.

(2) On the application of the Minister or the investigator appointed pursuant to subsection (1), and on being satisfied by information on oath that it is necessary and in the public interest for any purpose relating to an investigation pursuant to subsection (1), the Supreme Court of Nova Scotia may make an order authorizing the investigator

(a) to enter into the premises or on the land of a person at any reasonable time for the purpose of carrying out an inspection or examination;

(b) to require the production of any records, securities or things and to inspect or examine them; and

(c) on giving a receipt, to remove any records, securities or things inspected or examined pursuant to clause (b) for further inspection or examination.

(3) An application for an order pursuant to subsection (2) shall be made in the prescribed manner.

- (4) An application for an order pursuant to subsection (2) may be
- (a) made *ex parte*; and
  - (b) heard *in camera*,

unless the Supreme Court of Nova Scotia otherwise directs.

(5) Inspection or examination pursuant to subsection (2) shall be completed as soon as practicable and the records, securities or things shall be promptly returned to the person who produced them.

(6) No person shall withhold, destroy, conceal or refuse to give any information or produce any record, security or thing reasonably required pursuant to this Section by the investigator. 1993, c. 3, s. 23.

#### **Deemed refusal, projections and debts due Crown**

24 (1) Where the Minister does not register a corporation, association or labour-sponsored venture-capital corporation or where the Minister does not approve additional equity capital, issue a tax-credit certificate or authorize a payment pursuant to this Act, for which application is made, within ninety days after receipt of the application, the Minister is deemed to have refused it.

(2) A calculation or determination pursuant to this Act or the regulations may be based on projections that the Minister considers to be appropriate.

(3) An amount required to be paid to the Minister pursuant to this Act is a debt due to Her Majesty in right of the Province. 1993, c. 3, s. 24.

#### **Extension of time**

25 The Minister may extend, with or without conditions, the date of expiration of the certificate of registration of a specified issue or the time limits for meeting the investment requirements of the regulations and may grant an extension notwithstanding that the time limit to be extended has expired. 2005, c. 6, s. 6.

#### **Offences and penalty**

26 (1) Every person who

- (a) makes or assists in making a statement in any document or information required to be filed or furnished pursuant to this Act or the regulations to the Minister or to a person conducting an examination, inquiry or investigation pursuant to Section 22 that, at the time and in the light of the circumstances under which the statement is made, is false or misleading with respect to a material fact or that omits to state a material fact, the omission of which makes that statement false or misleading;

(b) willfully withholds, destroys or conceals a record or security referred to in subsection (2) of Section 22;

(c) impedes the investigator from entering premises pursuant to clause (a) of subsection (2) of Section 23;

(d) authorizes, permits or acquiesces in respect of a share purchase, transfer or redemption that is contrary to a provision of this Act or the regulations;

(e) contravenes Section 21 or subsection (5) of Section 23;  
or

(f) fails to comply with Section 20,

is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for not more than one year, or to both fine and imprisonment.

(2) Where a corporation, association or labour-sponsored venture-capital corporation registered pursuant to this Act is guilty to an offence pursuant to subsection (1),

(a) the corporation, association or labour-sponsored venture-capital corporation registered pursuant to this Act is liable on summary conviction to a fine of not more than twenty thousand dollars; and

(b) every director or officer of the corporation, association or labour-sponsored venture-capital corporation registered pursuant to this Act who authorized, permitted or acquiesced in the offence is guilty of an offence and is liable on summary conviction to the penalties provided for the offence whether or not the corporation, association or labour-sponsored venture-capital corporation has been prosecuted or convicted.

(3) A person is not guilty of an offence pursuant to this Section in relation to a statement made if the person did not know that the statement was false or misleading and, in the exercise of reasonable diligence, could not have known that the statement was false or misleading. 1993, c. 3, s. 26.

### Regulations

27 (1) The Governor in Council may make regulations

(a) prescribing forms for the purpose of this Act;

(b) governing any matter that may be prescribed pursuant to this Act;

(c) requiring any person to supply information or returns respecting any matter required in assessing compliance with this Act;

(d) establishing periods of time to be taken into account in calculations or determinations pursuant to this Act or the regulations, and varying periods set by this Act;

(da) prescribing the method of calculating penalties for the purpose of subsection (1) of Section 17;

(db) prescribing penalties, in addition to any penalty provided for under Section 26, for failure to comply with this Act or the regulations;

(e) defining any word or expression used but not defined in this Act;

(f) to carry out effectively the purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in this Section shall be regulations within the meaning of the *Regulations Act*. 1993, c. 3, s. 27; 2006, c. 2, s. 12; 2019, c. 4, s. 23.

### Repeal of Share Ownership Plan Act

28 (1) Chapter 10 of the Acts of 1992, the *Share Ownership Plan Act*, is repealed.

(2) Notwithstanding the repeal of said Chapter 10, that Chapter continues to apply to

(a) an Association, as defined in said Chapter 10, that has been issued a certificate of eligibility, pursuant to that Chapter, until the certificate expires; and

(b) an Association, as defined in said Chapter 10, that has made application for registration pursuant to said Chapter 10 on or before the thirty-first day of December, 1993. 1993, c. 3, s. 28.

### Income Tax Act amended

29 *amendment*

### Effective date

30 This Act comes into force on the first day of January, 1994, and shall accordingly be read, construed, interpreted and given effect on, from and after that date. 1993, c. 3, s. 30.