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In its 2025 election platform, the Liberal party undertook to expand the flow-through share (FTS) program, by "introducing flow-through shares to our Canadian startup ecosystem, supporting companies in AI, quantum computing, biotech, and advanced manufacturing to raise money faster." Building off of the existing mining sector regime for FTS financings, this proposal would "allow investors to deduct eligible R&D expenses [incurred and renounced by the corporation issuing the FTS] directly from their taxable income, lowering the risk of investing in innovative Canadian companies."

The Canadian federal budget of Nov. 4, 2025 (the 2025 Federal Budget) made no mention of this proposal, which is disappointing given Canada's chronic productivity issues and the many challenges we have in nurturing and growing our innovation sector (this being the tax base of the future). Canada urgently needs to mobilize its tax policy to respond to unprecedented tariff pressure and America-first tax policy stimulus occurring in the U.S. if we are to compete in the global economy. There are a wide variety of potential tax measures Canada can choose from to support Canadian businesses and workers (and those who invest in them) and thereby secure our tax base and the social programs they pay for, as described in detail elsewhere (see Productivity, Innovation and How Canada's Tax System Can Help).

While the enhancements to Canada's scientific research & experimental development program promised in the Liberal platform and included the 2025 Federal Budget are welcome, there was no mention of the promised extension of the FTS regime to the innovation sector (nor of the proposals in the Liberal platform to create a patent box regime and an "AI deployment tax credit for small and medium-sized businesses"). The lack of action on expanding the FTS program is disappointing (particularly when coupled with the removal of the Canadian Entrepreneurs' Incentive), as Canada needs to act now to support its innovation sector or risk losing it.

This article describes how the FTS regime works, to give the reader an idea of how the government's proposed extension of the FTS regime to the innovation sector might operate.

Overview

- Flow-through shares are a financing tool available to a corporation (Canco) that allows it to issue new common shares to investors at a higher price than Canco would receive for issuing "normal" shares, due to tax benefits those investors receive. Currently the use of FTS is limited to the mining sector, by virtue of what constitutes a qualifying expenditure that Canco can incur and "flow through" to FTS investors.
- Investors are willing to pay Canco a premium for issuing FTS, because a subscriber for FTS can reduce their taxes owing by claiming deductions for tax purposes created by qualifying expenditures Canco has incurred – in effect, Canco transfers (or flows through) to the FTS investor the tax deductions Canco would otherwise be able to claim itself from making these qualifying expenditures.
- Under a FTS financing, the FTS investors and Canco agree that the investors will purchase new FTS from Canco, Canco will incur an agreed amount of qualifying expenditures within a certain time period, and Canco will "renounce" the tax deductions created by those qualifying expenditures in favour of the FTS investors for their use. If Canco has no positive taxable income (as is often the case with many early-stage businesses), the present value to it of these foregone tax deductions transferred to FTS investors may be very low or even negligible. FTS financing allows Canco to monetize the value of those tax deduction with investors able to use them immediately to reduce their taxes owing and willing to subscribe for FTS at a premium. The financing agreement between the FTS investors and Canco is what makes the Canco common shares flow-through shares.
- Mining sector FTS investors may also get another tax benefit beyond renounced deductions, for even more generous tax treatment. Certain Canco qualifying expenditures also entitle the FTS investor to an investment tax credit (ITC), a dollar-for-dollar reduction in tax owing, *viz.*, a $100 ITC reduces the FTS investor's taxes owing by $100.

What are flow-through shares?

The general rule in the ITA is that a taxpayer can only deduct for tax purposes expenses that it itself incurs. FTS constitute an exception to this general principle, by allowing a corporation (Canco) that incurs certain types of qualifying expenditures to "renounce" (i.e., transfer) them to an investor who subscribes for new common shares of Canco that meet certain requirements. Essentially, the FTS investor gets to use the tax deductions that are created by Canco's qualifying expenditures and transferred to the investor via the FTS rules (thereby reducing the FTS investor's taxable income and tax otherwise payable). In return, Canco receives a premium from the FTS investor in the subscription price Canco receives for issuing the FTS to the investor. In this way, Canco is able to effectively monetize the value of the tax deductions it incurs in making certain expenses (and surrenders when renouncing them to the FTS investor).[1] Figure 1 illustrates how a FTS financing works in the mining industry under the existing FTS rules.

What is required for a FTS financing?

The essential ingredients for a FTS financing are the following:

1. A qualifying corporation as the issuer of the FTS. In the existing mining-sector FTS rules, a corporation must be a "principal business corporation": a corporation whose principal business is one of a number of listed businesses (e.g., mining or exploring for minerals).
2. A qualifying share (or right to a share) that meets the ITA definition of a "flow-through share". Essentially a qualifying share is an ordinary common share of a principal business corporation that bears the full risk of upside and downside: excluded from eligibility are "prescribed shares", being shares with caps or minimums on dividends or liquidation entitlements, that give the holder a put or retraction right, or that are the subject of any kind of guarantee or loss protection. A right to acquire a qualifying share (a "flow-through warrant") that is not a "prescribed right" (*i.e.*, is fully at risk) itself qualifies as a FTS.
3. A qualifying flow-through share agreement between the FTS investor and the FTS issuer (Canco) under which Canco agrees to (1) issue the FTS to the FTS investor in exchange for the FTS investor paying the subscription price, (2) incur qualifying FTS-eligible expenditures within the permissible time period equal to or greater than the subscription price, and (3) renounce to the FTS investor (using the prescribed CRA form) an amount of the qualifying FTS-eligible expenditures not greater than the subscription price, thereby transferring these deductions to the FTS investor. This agreement (which is what makes the newly-issued Canco common shares FTS) must be drafted carefully to avoid terms that would cause the Canco shares to be "prescribed shares", as above.
4. Canco actually incurring the requisite amount of qualifying FTS-eligible expenditures within the permissible time period. In the existing mining-sector FTS regime, qualifying expenditures are essentially limited to "Canadian exploration expense" (CEE), a particular tax category of expenditures which for these purposes generally consists of what are frequently called "grass-roots mining expenses", being expenses incurred for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada (including prospecting and surveying).

What are the tax consequences of buying FTS?

1. Renunciation of tax deductions to FTS Investors

Where the requirements of the FTS rules are met, the FTS are issued to the FTS investors and the qualifying expenditures incurred by Canco are renounced by Canco in favour of the FTS investors. The FTS investors are treated as if they themselves had incurred the relevant qualifying expenditures (i.e., CEE in a mining FTS financing), and they may claim those deductions in computing their taxable income to reduce the amount of tax payable on income from other sources. Canco cannot claim any tax deductions for those renounced qualifying expenditures.

Only the first holder of the FTS (*i.e.*, the one subscribing for the FTS with Canco) may claim deductions for the qualifying expenditures, not any subsequent holder of the share. It is thus important that the transaction be structured properly to ensure that the intended persons are the first holders of the FTS issued by Canco. The first holder need not continue to hold the FTS at the time the expenditures are incurred, as long as they are the first owner of the FTS.

While normally the amount paid by an investor becomes the cost for tax purposes of the property they acquire, in the case of a FTS the investor is deemed to acquire the FTS at a cost of zero, to take into account the fact that by acquiring the FTS the investor is thereby acquiring the relevant qualifying expenditures (*i.e.*, CEE in a mining FTS financing) that is deductible from income. As a result of having a FTS cost of nil for tax purposes, whenever the FTS is sold the investor will generally realize a gain equal to the full amount of the sale price. Since in most cases that gain will be treated as a capital gain (only 50 per cent of which is included in income for tax purposes), it is still quite advantageous to an investor to receive $100 of renounced expenditures that can be used to shelter $100 of other income: the accrued capital gain on the FTS will only be realized if the FTS investor sells the FTS, and even then only half of the capital gain will be included in income.

Table 1 sets out a simple example illustrating the consequences to a FTS investor who purchases 10,000 FTS of a mining company at a $1/share premium over the trading price of the "ordinary" (non-FTS) common shares of FTS Issuer, receives renounced CEE of $100,000, and later sells the FTS into the market at the prevailing trading price ($9).

2. Federal Investment Tax Credit

Under the existing mining sector FTS rules, a subset of qualifying expenditures relating to mineral exploration entitles FTS investors who are natural (*i.e.*, living) persons to an extra tax benefit beyond the tax deductions renounced to them by Canco: an "investment tax credit" or "ITC". A $100 ITC reduces the FTS investor's taxes owing (not just taxable income) by $100. Specifically:

- the Critical Mineral Exploration Tax Credit (CMETC) is a 30 per cent ITC generated by FTS qualifying expenditures on mining exploration activities from or above the surface of the earth primarily targeting critical minerals (as expanded by the 2025 Federal Budget); and
- the Mineral Exploration Tax Credit (METC) is a 15 per cent ITC generated by FTS qualifying expenditures on mining exploration activities from or above the surface of the earth for the purpose of determining the existence, location, extent or quality of a qualifying mineral (generally a base or precious metal deposit).

For example, a FTS investor who is a natural person (1) who pays $100 to buy a FTS issued by a qualifying corporation, and (2) to whom $100 of METC-eligible exploration expenditures are renounced by the FTS issuer would be entitled to a $15 METC, reducing the FTS investor's tax payable by $15. The CMETC and the METC cannot both be claimed in respect of the same renounced exploration expenditure if that expenditure qualifies for both ITCs.

Federal ITCs claimed on CEE renounced to the FTS investor on a FTS for a particular year are deducted from the FTS investor's cumulative CEE balance (CCEE) in the following year. Since a negative CCEE balance at year-end is added back to the FTS investor's income, there could be a net income inclusion for the investor if the investor does not incur any additional CCE in that later year. Also, it is important to note that the amount of provincial ITCs (see below) relating to CEE renounced to a FTS investor under a FTS is deducted from the investor's CCEE in the year the incentive is granted (typically the year in which the investor files the tax return claiming the provincial credit). Again, unless the FTS investor has or incurs other CEE, this reduction to CCEE could create a negative CCEE balance and cause an income inclusion in the later year.

3. Provincial Investment Tax Credits

Certain provinces (Ontario, British Columbia, Saskatchewan, and Manitoba) offer analogous ITCs for provincial income tax purposes in respect of comparable "grassroots" exploration activity carried out within the province. In most cases the provincial incentive offered is limited to individuals resident in that particular province.

Provincial ITCs granted generally reduce the amount of available federal ITC. The Prospectors and Developers Association of Canada has prepared a very helpful chart (see here) showing the effect of federal ITCs and provincial flow-through share incentives, including the potential income inclusions for federal and provincial ITCs in subsequent years. See here for two comparable charts showing the after-tax cost of FTS investments eligible for the federal METC and CMETC in each province (using top marginal tax rates in each province).

What else should I know about FTS financings?

Post-subscription FTS: a FTS is simply a normal common share of the issuing corporation that entitles the original subscriber to specific tax benefits because of the financing agreement between Canco and the FTS investor and is otherwise the same as "normal" (non-FTS) common shares issued by the same corporation. Once the original subscriber acquires a FTS and claims the associated tax benefits, its FTS status disappears and it is simply a "normal" common share.

Partnerships: Because the FTS tax rules are intended to reduce the cost of financing high-risk activities, some FTS investors prefer to invest in a portfolio of FTS issuers via an investment in a partnership that buys FTS in a number of different companies and thereby diversifies the risks from any single investment. FTS investments made through partnerships may be used to flow out to the partners any tax deductions and ITCs from FTS investments made by the partnership.

Charitable donations: in some cases, FTS investors hold the FTS they subscribe for only for a very short period of time and donate them to a registered charity in order to benefit from further potential tax benefits for making such donations. Special rules may apply in these circumstances.

Alternative minimum tax: natural persons and some trusts are potentially subject to "alternative minimum tax" (AMT), which recomputes the taxpayer's income allowing for fewer deductions and credits and imposes the AMT if the amount of AMT exceeds the taxpayer's regular tax owing. Taxpayers subject to AMT may find that the tax benefits of making FTS investments under the "normal" rules for calculating tax payable are diminished when computing AMT.

FTS mechanics

A number of rules govern the manner in which qualifying expenditures must be made and renounced. The basic rules are as follows:

- *When to Incur Expenditures*: the time period during which Canco must incur the qualifying expenditures begins on the date of the subscription agreement and ends 24 months after the end of the month in which the subscription agreement was made (the "24-month period"). Qualifying expenditures cannot be incurred before the date of the subscription agreement.
- *When to Renounce Expenditures*: Canco must renounce the qualifying expenditures in favour of the FTS investors by no later than the end of February in the year following the end of the 24-month period. Expenses generally cannot be renounced until they are actually incurred by the mining corporation, subject to the "look-back rule" described below.
- *Maximum Renunciation*: the amount of qualifying expenditures renounced cannot exceed the amount of Canco's available CEE or the amount paid by the investor for the FTS.

However, most FTS transactions are structured to take advantage of a special "look-back rule" that allows Canco to renounce CEE to investors effective as of before the time Canco actually incurs those expenses, which is not permitted under the normal rules. Only CEE from "grass-roots mining expenses" is eligible for this special treatment, and only where Canco and the investors deal at arm's length.

If Canco enters into a FTS subscription in one year (for example 2025) and incurs "grassroots" CEE in the immediately following calendar year (2026), and if the FTS investor paid for the FTS under that agreement before the end of 2025, Canco may renounce such "grassroots" CEE to the FTS investors during the first three months of 2026 (but effective as of Dec. 31, 2025). Where this happens, Canco is deemed to have incurred the "grassroots" CEE on the last day of 2025, making that CEE eligible to be renounced on that date. Hence, in these circumstances, it is possible to renounce expenses to FTS investors effective as of before the time Canco actually incurs them. While this shortens the time period that the investor has to pay for the FTS and the time period that Canco has to renounce and incur qualifying expenditures from the normal 24-month period, it accelerates the availability of the CEE deduction to the FTS investor by not requiring the investor to wait until Canco actually incurs the qualifying expenditures. The timeline of a "grassroots" FTS transaction is set out below in Figure 2. Note that where the "look-back rule" is used in respect of "grassroots" CEE, Canco is liable under a special provision of the ITA to pay what is essentially a month-by-month time-value-of-money tax on expenses that have been renounced but not yet incurred by the end of the month, starting in February of the calendar year following the subscription agreement (2026 in the example above).

Footnote

[1] The FTS concept gives a corporation a modest amount of the fiscal transparency that a partnership enjoys, but only as to the limited range of tax deductions the statute allows to qualify for FTS treatment.

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