CRA guidance issued on new critical minerals exploration tax credit

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The 2022 Federal Budget included a new tax measure relevant to the mining sector, as part of the Federal government's "critical minerals" strategy. A new "critical minerals exploration tax credit" (CMETC) will apply to qualifying expenditures relating to exploration for "critical minerals" used in zero-emission vehicles or the production and processing of advanced materials, clean technology or semi-conductors. This includes the following:

- copper;
- nickel;
- lithium;
- cobalt;
- graphite;
- rare earth elements;
- scandium;
- titanium;
- gallium;
- vanadium;
- tellurium;
- magnesium;
- zinc;
- platinum group metals; and
- uranium.

The CMETC is a 30 per cent tax credit on qualifying exploration expenses (*i.e.*, double the existing 15 per cent mineral exploration tax credit (METC)), and follows a comparable format to the METC but is limited to qualifying "grass roots" exploration expenses for critical minerals.

The CMETC is available to individuals that complete flow-through share (FTS) agreements with qualifying corporations that incur qualifying expenditures and renounce the benefit of those expenditures to those individuals subscribing for FTS issued by the corporation. FTSs' are shares issued to investors under a FTS agreement, and are commonly used by mining companies as a financing tool. Because subscribers for FTS receive the benefit of tax deductions associated from the qualifying expenditures renounced to them by the mining corporation (and either the METC or CMETC as well),

investors will pay more for them than for regular shares of the same issuer. FTS are explained in depth here.

There are various rules associated with the new CMETC, as set out in draft legislation released August 9, 2022. In particular, qualifying expenditures under the CMETC must be certified by a qualified engineer or geoscientist as having been incurred under a plan of exploration that *primarily* targets critical minerals. Such certification is to occur via a prescribed form that has yet to be released, and "no more than 12 months before the time the [FTS] agreement is made."

A mining corporation interested in incurring expenditures that would qualify for the CMETC recently asked the Canada Revenue Agency (CRA) for guidance on certain aspects of the draft legislation that remain unclear. In particular, the CRA was asked:

- when the necessary prescribed form is expected to be released;
- whether the certification of qualifying expenditures must occur before the FTS agreement is entered into; and
- how certifications may be completed in advance of the prescribed form being released.

In its response (CRA document 2022-0949081E5, dated October 5, 2022) the CRA indicated that the prescribed form for the CMETC certification "is expected to be released to the public in the coming weeks," and will likely be filed as an attachment to one of the existing forms already filed on a FTS offering. The CRA further stated that the draft legislation does not expressly state that certification must occur before the FTS agreement is entered into, and that clarification has been requested from the Department of Finance.

Finally, as to certifications made in advance of the prescribed form being issued, the CRA stated that it would accept a letter signed by the qualified engineer or geoscientist that included the following information:

- the name, address and business number of the company offering the flow-through shares;
- the targeted critical mineral(s);
- a brief explanation of why it is expected that the mineral deposit(s) being explored will contain primarily (*i.e.* more than 50 per cent) critical minerals;
- the name, occupation and business address of the qualified engineer or geoscientist; and
- the name of the professional association to which the qualified engineer or geoscientist belongs and their membership identification number.

The CRA also indicated that it expects issuers seeking CMETC certification to prepare and make available to the CRA on request the following documents to support certification:

- map of the project area including claim outline(s) and claim number(s);
- description of the geological features of the property(ies);
- description of proposed exploration activity(ies) and how they relate to the targeted critical mineral(s);

- copies of exploration plan(s) submitted for approval to the board of directors of the corporation; and
- copies of exploration plan(s) submitted for approval to regulating authorities.

We will continue to monitor developments relating to CMETCs. Please contact the author listed below or a member of our BLG Tax team should you wish to discuss accessing these credits.

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