

# CHANGES TO THE TAXATION OF RESOURCE INDUSTRIES

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On March 1, 2015, the Government announced two changes of interest to the Canadian resource sector. First, as expected, the Government proposes to extend the "super flow-through share" program for another year in order to continue to promote the exploration and development of mineral resources in Canada. Second, the Government proposes to ensure that the costs associated with undertaking environmental studies and community consultations (that are required in order to obtain an exploration permit) will be eligible for treatment as Canadian Exploration Expenses ("**CEE**").

## **Extension of Super Flow-Through Share Program**

The super flow-through share program was initially introduced in October 2000 in response to a severe downturn in mineral exploration in Canada. The program had expired at the end of 2005, but was re-introduced in the 2006 Budget in respect of flow-through shares issued pursuant to agreements made after May 1, 2006 and on or before March 31, 2007. The program was extended for additional one-year periods in each of the 2007 to 2014 Budgets.

Canada's flow-through and super flow-through share programs provide tax incentives to promote the exploration and development of mineral resources in Canada, particularly by encouraging new equity investment in junior mining companies. Under Canada's flow-through share program, a company is permitted to renounce or "flow-through" certain expenses associated with its Canadian exploration activities to investors. In turn, investors can generally deduct such expenses in calculating their own taxable income.

The super flow-through share program provides an additional benefit to those who invest in flow-through shares. Under this program, an investor may claim a 15% tax credit in respect of certain grassroots exploration expenses incurred in Canada by the issuer and renounced to the flow-through shareholder. The tax credit may be applied to reduce certain federal income taxes otherwise payable by the investor.

Grassroots mining expenditures include expenses incurred in conducting certain mining exploration activities for the purpose of determining the existence, location, extent or quality of a mineral resource.

The Government proposes to extend the super flow-through share program to apply to flow-through share agreements entered into on or before March 31, 2016. Under the "look-back" rule, funds raised in a particular

calendar year (2016) with the benefit of the program can be spent on eligible exploration up to the end of the following calendar year (2017), and renounced to the flow-through shareholder effective December 31st of the particular calendar year (2016).

### **Canadian Exploration Expense Treatment of Environmental Studies and Community Studies and Community Consultations**

Many expenses related to resource exploration in Canada are classified as CEE for income tax purposes. Generally, such expenses are 100% deductible in the year incurred, and include expenses incurred for the purpose of determining the existence, location, extent or quality of a mineral resource or an accumulation of petroleum or natural gas in Canada. In addition to expenses associated with the physical exploration of the resource, eligible expenses can include the cost of certain environmental studies and community consultations that are carried out to facilitate the physical exploration. .

Some provinces and territories in Canada require mining, oil and gas companies to undertake environmental studies and community consultation as a pre-condition to obtaining a permit or licence to explore. Under prior rules, where environmental studies and community consultations are a pre-condition, the expenses may be treated as part of the cost of the permit or licence. Expenses treated as part of the cost of the permit or licence do not qualify for CEE treatment. As such, expenses relating to environmental studies and community consultations may be treated differently for tax purposes from one jurisdiction to another (depending on the particular requirements of the jurisdiction).

The Government proposes to modify the tax rules such that CEE treatment is not denied for the cost of otherwise eligible environmental studies and community consultations solely because they are a pre-condition to obtaining an exploration permit or licence.

These changes will apply to expenses incurred after February 2015.

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#### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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