

CRA ISSUES GUIDANCE ON CRITICAL MINERAL EXPLORATION TAX CREDIT AND CERTIFICATION REQUIREMENTS

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In spring 2022, the Federal Government proposed a significant tax change in Budget 2022 that has a significant positive impact on the ability of mining issuers operating in the resource exploration and development sector to raise capital by issuing “flow-through shares”. The proposal called for the introduction of a new 30% tax credit that would benefit investors investing in mining companies exploring for certain “critical” minerals^[1] (the Critical Mineral Exploration Tax Credit, or “**CMETC**”). This proposal is discussed in our previous article: [Budget 2022: Significant Changes to the Flow-Through Share Program Unveiled - McMillan LLP](#).

CMETC Draft Legislation

In August 2022, the Federal Government released draft legislation relating to the CMETC. While the draft legislation is structurally comparable to the regime for the existing 15% mineral exploration tax credit (“**METC**”), there are specific additional requirements issuers distributing flow-through shares must satisfy in order for investors to be eligible for the CMETC.^[2] One requirement included in the Budget 2022 announcement and in the draft legislation, is the requirement for the issuer to obtain a certification (a “**CMETC Certificate**”) from a “qualified engineer or geoscientist”, in prescribed form, that flow-through expenditures will be incurred pursuant to an exploration plan primarily targeting critical minerals.

For these purposes, a “qualified engineer or geoscientist” is an individual who:

- is an engineer or geoscientist with a university degree, or equivalent accreditation, in an area of geoscience or engineering, relating to mineral exploration or mining;
- has at least five years of experience in mineral exploration, mine development or operation, or mineral project assessment or any combination of these, that is relevant to their professional degree or area of practice;
- has experience relevant to the subject matter of the exploration project and the certification; and
- is in good standing with a professional association that has the authority or recognition by statute in a jurisdiction of Canada to regulate the profession of engineering or geoscience in Canada.

CMETC Eligibility Guidance

The Canada Revenue Agency (the “**CRA**”) has not yet published the form of CMETC Certificate, however on October 5, 2022, the CRA issued guidance respecting CMETC eligibility and interim process until the form of CMETC Certificate is released. In summary, the Guidance provided:

- the CMETC Certificate is required to be made no more than 12 months prior to the time the agreement to purchase flow-through shares is made;
- although the prescribed form of CMETC Certificate is not yet released, it will likely be required to be attached to forms already required to be filed for an offering of flow-through shares;
- the CRA expects companies providing a Qualifying Exploration Certificate to maintain and make available to the CRA, if requested, the following:
 - a. map of project area including claim outlines and numbers;
 - b. description of geological features of properties;
 - c. description of proposed exploration activities including how they relate to the targeted critical minerals;
 - d. copies of exploration plans submitted for approval to the board of directors of the corporation; and
 - e. copies of exploration plans submitted for approval to regulating authorities; and
- prior to the prescribed form of CMETC Certificate being released, it will accept a letter signed by the qualified engineer or geoscientist providing:
 - a. the name, address and business number of the company offering the flow-through shares;
 - b. the targeted critical minerals;
 - c. a brief explanation of why it is expected the mineral deposits being explored will contain primarily (i.e., more than 50%) critical minerals;
 - d. the name, occupation and business address of the qualified engineer or geoscientist; and
 - e. the name of the professional association to which the qualified engineer or geoscientist belongs and their membership identification number.

Key Takeaways

The key takeaways from the draft legislation and the Guidance for issuers undertaking flow-through share financings under the CMETC program are:

- CMETC provides a significant financing opportunity for junior mining issuers at the exploration stage focused on “critical minerals” and an attractive investment opportunity for investors;
- issuers desiring to raise flow-through funds to finance CMETC eligible activities need not wait for the prescribed form of CMETC Certificate to be released and can instead have a qualified engineer or

geoscientist certify, by letter, the information outlined in the Guidance;

- prior to launching a financing, issuers should ensure a qualified engineer or geoscientist is available and willing to provide the Qualifying Exploration Certificate to avoid any financing delays; and
- corporate governance, document collection and retention are paramount to ensure issuers are prepared in the event the prescribed documents in support of the CMETC Certificate are requested by the CRA.

If you have any questions regarding flow-through share financing and eligibility for the CMETC, members of McMillan's Tax Group and Capital Markets Group would be pleased to assist you.

[1] "Critical minerals" include: copper, nickel, lithium, cobalt, graphite, rare earth elements, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metal and uranium.

[2] The 30% CMETC is intended to serve as an enhanced alternative to the existing 15% METC, and not as a supplementary tax credit. Accordingly, a taxpayer will potentially be eligible to claim the CMETC or the METC, but not both credits.

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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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