BUDGET 2018: MINERAL EXPLORATION TAX CREDIT EXTENDED AND TAX SUPPORT FOR CLEAN ENERGY EXPANDED

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Budget 2018 proposes to extend (i) the “mineral exploration tax credit” for so-called “flow through shares” for another year, and, (ii) eligibility for accelerated capital cost allowances for certain investments in clean energy equipment.

Extension of the “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 reintroduced 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 2017 Budgets.

The 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 by the issuer of the shares in Canada and renounced to the flow-through shareholder. The tax credit may be applied to reduce certain federal income taxes otherwise payable by the investor.

Qualifying “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 in respect of flow-through share agreements entered into on or before March 31, 2019. Under the "look-back" rule, funds raised in a particular calendar year (e.g., the first three months of 2019) with the benefit of the program can be spent on eligible exploration up to the end of the following calendar year (2020), and renounced to the flow-through shareholder effective December 31st of the particular calendar year (2019).

Expansion of CCA Class 43.2

The capital cost allowance ("**CCA**") regime under the *Income Tax Act* (Canada) allows for deductions to be claimed in respect of certain depreciable property at rates provided in the Income Tax Regulations (the "**Regulations**").

For CCA purposes, property is divided into a series of classes, and the rate of CCA that may be claimed in respect of a particular property is dependent on its CCA class.

Under the Regulations, CCA in respect of property in Classes 43.1 and 43.2 may be claimed, on a declining-balance basis, at accelerated rates of 30 percent and 50 percent, respectively. Property in Classes 43.1 and 43.2 includes specific clean energy equipment that generates or conserves energy by using a renewable source, using a fuel from waste, or making efficient use of fossil fuels. Following the 2016 Budget, the Minister of Finance expanded the range of property that is included in Classes 43.1 and 43.2 to include certain electric vehicle charging stations and a broader array of electrical energy storage property.

Property that falls within Class 43.2 generally includes property that would otherwise be included in Class 43.1, subject to certain more demanding eligibility criteria.

Class 43.2 was introduced in 2005, and generally only applied to property acquired before 2020. Budget 2018 proposes to extend the application of Class 43.2 by providing that it will capture eligible property acquired before 2025.

by Jonathan Bright

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.