



Steve Shapka
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800-170 University Avenue
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Our file Notre référence
2020-087462

December 23, 2020

Dear Mr. Shapka

Re: Flow Through Shares – Time Extension

We are writing in response to your email query of December 17, 2020 regarding the administration by the Canada Revenue Agency (the “**CRA**”) of the proposed amendments to the *Income Tax Act* (Canada) (the “**ITA**”) released by the Department of Finance on December 16, 2020 relating to the extension of timelines to spend capital raised through the issuance of flow-through shares (the “**Proposed Amendments**”).¹

In particular, you have asked whether the CRA can confirm that taxpayers should file their tax returns based on the Proposed Amendments. For example, in the absence of the Proposed Amendments, a corporation that issued flow-through shares in 2019 under the look-back rule in subsection 66(12.66) would otherwise be required to file a Form T101C (reporting any Part XII.6 taxes payable by the corporation for 2020) before March 2021. However, under the Proposed Amendments, the time period for filing the Form T101C would be extended in that situation so that it would be required to be filed before March 2022.

Our Comments

This technical interpretation provides general comments about the provisions of the ITA and related legislation (where referenced). It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance

¹ See <https://www.canada.ca/en/department-finance/news/2020/12/government-publishes-draft-legislative-proposals-supporting-jobs-and-safe-operations-at-junior-mining-companies.html>.

income tax ruling request submitted in the manner set out in Information Circular IC 70-6R10, Advance Income Tax Rulings and Technical Interpretations.

In response to Question 16 at the 2009 CRA Round Table at the Canadian Tax Foundation's Annual Conference, we made the following comments regarding the filing of tax returns based on proposed legislation:

It is the CRA's longstanding practice to ask taxpayers to file on the basis of proposed legislation. This practice eases both the compliance burden on taxpayers and the administrative burden on the CRA. However, where proposed legislation results in an increase in benefits (for example, Canada child tax benefit) to the taxpayer, or if a significant rebate or refund is at stake, the CRA's past practice has generally been to wait until the measure has been enacted.

...

Generally speaking, the CRA will not reassess if the initial assessment was correct in law. As a result, a taxpayer's request to amend their tax records to reflect proposed legislation will be denied. It is recommended that taxpayers file a waiver in respect of the normal reassessment period to protect their interests.

In the event that the government announces that it will not proceed with a particular amendment, any taxpayers who have filed on the basis of the proposed amendment are expected to take immediate steps to put their affairs in order and, if applicable, pay any taxes owing. Where taxpayers acted reasonably in the circumstances, took immediate steps to put their affairs in order, and paid any taxes owing, the CRA will waive penalties and/or interest as appropriate.

Based on the foregoing, taxpayers may file their tax returns, including any Form T101C, based on the Proposed Amendments.

We trust our comments will be of assistance.



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