

CRA Views Regarding Critical Minerals Exploration Tax Credit (CMETC)

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Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: (1) What is the status of the "prescribed manner and form" for the certification to be provided by a qualified engineer or geoscientist in connection with the critical minerals exploration tax credit? (2) Does the certification need to be completed before the flow-through share agreement is made? (3) Can the CRA provide a process for completing the certification before a prescribed form is released to the public?

POSITION: (1) The prescribed form will be released to the public in the coming weeks, along with filing instructions, (2) The Draft Legislation is unclear and we have raised this issue with the Department of Finance, (3) See below for instructions for complying with the Draft Legislation before the prescribed form is released to the public.

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2022 - 094908

September 29, 2022

Dear XXXXXXXXXXXX

Re: Critical Minerals Exploration Tax Credit

I am writing in response to your query sent by email on September 9, 2022 relating to the new critical minerals exploration tax credit ("CMETC") which was announced on April 7, 2022 as part of Budget 2022. Draft legislation was released by the Department of Finance on August 9, 2022 (the "Draft Legislation") which included provisions relating to the CMETC that, if and when enacted, will apply as of April 7, 2022.

Your specific query relates to the certification to be provided by a qualified engineer or geoscientist ("Qualified Engineer or Geoscientist Certification"), pursuant to paragraph (e) of the proposed definition of "flow-through critical mineral mining expenditure" in subsection 127(9) of the Income Tax Act (Canada) (the "Act") which reads as follows:

(e) that, in respect of an agreement described in paragraph (c), a qualified engineer or geoscientist certifies in prescribed manner and form that the expense will be incurred pursuant to an exploration plan that primarily targets critical minerals, if the qualified engineer or geoscientist

(i) completed the certification no more than 12 months before the time that the agreement is made, and

(ii) acted reasonably, in their professional capacity, in completing the certification, and

You have stated that your client is proposing to complete an offering of flow-through shares and that such offering may be completed before the prescribed form for the Qualified Engineer or Geoscientist Certification has been released to the public. You have asked the following questions:

1. Can you please provide an update as to the status of the “prescribed manner and form”?
2. Is it the position of the Canada Revenue Agency (“CRA”) that the Qualified Engineer or Geoscientist Certification must be completed before the entering into of the applicable flow-through share agreement?
3. Is there any informal certification guidelines that the CRA can provide in terms of what will be acceptable certification prior to the prescribed form being released?

OUR COMMENTS

This document provides general comments on the application of the Act. 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 income tax ruling request submitted in the manner set out in Information Circular IC 70- 6R12, Advance Income Tax Rulings and Technical Interpretations.

Prescribed Manner and Form

A prescribed form for the Qualified Engineer or Geoscientist Certification is in the process of being completed and it is expected to be released to the public in the coming weeks. It is anticipated that it will be required to be attached to one of the existing forms that are already required to be completed in connection with a flow-through share offering, such as the T100A. Specific instructions on this point will be released at the same time the prescribed form is released.

Timing of Completing the Qualified Engineer or Geoscientist Certification

Paragraph (e) of the proposed definition of “flow-through critical mineral mining expenditure” requires that the Qualified Engineer or Geoscientist Certification be completed “no more than 12 months before the time that the agreement is made”. This wording suggests that the Certification is to be completed before the time the flow-through share agreement is made (but not more than 12 months before that time), although it doesn’t expressly mandate that the Certification be completed before the flow-through share agreement is made (rather than after). We have raised this issue with the Department of Finance.

We note that the paragraph (e) also requires that the Certification be in prescribed manner and form, as discussed further below.

Completion of Offering Before Prescribed Form is Released

An expenditure that is to be renounced under a flow-through share agreement will not meet the definition of “flow-through critical mineral mining expenditure” unless, among other things,:

? a Qualified Engineer or Geoscientist Certification is completed in respect of that flow-through share agreement, and

? that Qualified Engineer or Geoscientist Certification is made in “prescribed manner and form”.

Subject to the comments below, for a flow-through share agreement made on or after April 7, 2022 and before the date that a prescribed form for the Qualified Engineer or Geoscientist Certification is made available to the public, the CRA will accept a letter signed by a “qualified engineer or geoscientist” (as defined in the Draft Legislation) before the time the flow-through share agreement is made and that includes 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%) critical minerals

? the name, occupation and business address of the qualified engineer or geoscientist

? the name of the professional association to which the qualified engineer or geoscientist belongs and their membership identification number

The signed letter should be attached to the Form T100A for the flow-through share offering that is being made pursuant to the flow-through share agreement.

The corporation offering the flow-through shares should also keep in its records, and make available to the CRA upon request, documents that support the certification, such as the following:

? 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

? Copies of exploration plan(s) submitted for approval to regulating authorities

Potential Changes to the Draft Legislation

As noted above, the Draft Legislation relating to the CMETC has not yet been enacted and the final legislation that is enacted could differ from the Draft Legislation. It is also possible that the Draft Legislation may not be enacted at all.

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.

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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.

The above comments should be taken into account by any taxpayer seeking to claim an investment tax credit based on the Draft Legislation.

We trust our comments will be of assistance.

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