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FEDERAL GOVERNMENT ANNOUNCES NEW MEASURES TO ENCOURAGE MINING EXPLORATION IN CANADA

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On March 1st, 2015, the federal Minister of Finance, Joe Oliver, and the federal Minister of Natural Resources, Greg Rickford, announced important new measures to support Canada's mining industry in a speech at the Prospectors and Developers Association of Canada (PDAC) 2015 Convention.

The federal government proposes to extend eligibility for the Mineral Exploration Tax Credit for an additional year, to flow-through share subscription agreements entered into on or before March 31, 2016. The credit is equal to 15% of specified Canadian exploration expenses ("CEE") which are renounced by the issuer in accordance with such agreements. Under the "look-back" rule provided in the *Income Tax Act*[1], mining companies will therefore be able to incur CEE pursuant to such agreements until December 31, 2017.

The government also clarified that the expenditures associated with undertaking environmental studies and community consultations shall be treated as CEE even though the expenses were incurred by a mining company as a condition for obtaining a mining permit or licence. This means that expenses regarding environmental studies and community consultations which otherwise meet the requirements for being treated as CEE shall not be denied CEE treatment solely on the ground that the studies or consultations were required to obtain an exploration permit or licence. This clarification confirms that the term "CEE" shall be interpreted broadly and liberally and that the criterion for determining whether an activity constitutes exploration is the purpose for which it is undertaken, not its result.

This announcement stems from the federal government's finding that these expenses may currently receive different tax treatment from one jurisdiction to another depending on the requirements of the relevant provincial or territory regulatory authorities, even though the definition of CEE in the ITA is the same regardless of where in Canada the expenses are incurred.

It is worth recalling that there are several tax advantages to expenses incurred by mining companies being treated as CEE, particularly in the case of flow-through share financing.

The measures announced by the federal government are good news for Canada's mining industry. The extension of the validity period for the Mineral Exploration Tax Credit should help mining companies raise funds to finance their exploration activities, which is currently a sizable challenge for most of them due to difficult capital market conditions. Since mining exploration programs last over many years, the government should consider making this credit permanent to give market participants a stable investment framework.

The government's clarification that exploration expenses must not be denied CEE treatment solely because they are a precondition to obtaining an exploration permit or licence is also very timely. This announcement should allow a harmonization of the interpretation of the definition of CEE found in the ITA. Moreover, this new measure comes at a time when the provinces and territories are imposing increasingly burdensome obligations on mining companies respecting environmental studies and community consultations. The March 1st announcement puts an end to any uncertainty that may have existed by confirming that exploration expenses incurred by mining companies to comply with these requirements may constitute CEE even though they are incurred as a prerequisite to obtaining an exploration permit or licence.

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[1] R.S.C. 1985, c. 1 (5th suppl.) (the "ITA").