

# AME Members Guide to Canadian Exploration Expenses (CEE) (Updated 2025)

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## DISCLAIMER

The following is a non-exhaustive summary which serves to highlight some of the significant Canadian income tax considerations with respect to Canadian Exploration Expenditures (“**CEE**”).

This summary is based on the current provisions of the *Income Tax Act* (Canada) (the “**Tax Act**”), and an understanding of the current administrative policies and assessing practices of the Canada Revenue Agency (the “**CRA**”) published in writing prior to the date hereof. This summary takes into account all specific proposals to amend the Tax Act publicly announced by or on behalf of the Minister of Finance (Canada) prior to the date hereof (the “**Proposed Amendments**”) and assumes that all Proposed Amendments will be enacted in the form proposed. No assurances can be given that the Proposed Amendments will be enacted as proposed or at all. This summary does not otherwise take into account or anticipate any changes in law or administrative policies or assessing practices whether by legislative, regulatory, administrative or judicial action or decision, nor does it take into account tax legislation or considerations of any province, territory or foreign jurisdiction which may be different from those discussed herein.

**This summary is of a general nature only and is not, and is not intended to be, legal or tax advice to any particular taxpayer. This summary is not exhaustive of all Canadian federal income tax considerations. Accordingly, taxpayers should consult their own tax advisors having regard to their own particular circumstances.**

## INTRODUCTION

CEE, as defined in **Tax Act**, are certain types of Canadian exploration expenditures incurred by a company for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada which are 100% deductible by the company. In certain circumstances, CEE may also be renounced to investors who subscribe for flow-through shares issued by the company. In addition, the federal Mineral Exploration Tax Credit (15%) (or Critical Mineral Exploration Tax Credit (30%)) and similar provincial tax credits in British Columbia and other provinces, provide for additional tax credits to such flow-through shareholders. Given the importance of flow-through

financing to the Canadian mineral exploration sector, it is important that companies have a good understanding of the type of expenditures that qualify as CEE, which may be renounced to flow-through shareholders and provide attractive tax credits to such shareholders.

### **Flow-Through Shares – General mechanics under the Tax Act**

Under the Tax Act, a principal business corporation (a “**PBC**”) can renounce CEE that it could otherwise claim as a deduction on its taxable income in favour of its flow-through shareholders. The flow-through shareholders can then claim such expenses as if they had incurred them directly, and be entitled to receive income tax credits, as discussed further below under the heading “Federal Mineral Exploration Tax Credits” and “Critical Mineral Exploration Tax Credits”. Subject to the “look-back rules” in the Tax Act, such CEE must generally be incurred by the PBC within 24 months from the day that the relevant flow-through share (“**FTS**”) agreement is entered to, and such expenses must be incurred on or before the effective date of the renunciation. Flow-through shares provide for a method of financing for corporations that are just starting their business operations, and are not yet profitable.

A PBC is defined in the Tax Act to include a broad range of mining activity (including production, refining or marketing) and exploration of gases and minerals. A flow-through shareholder is a holder of “flow-through shares”, which is generally defined in the Tax Act as a share of the capital stock of a principal business corporation, or a right to acquire such a share.

### **Federal Mineral Exploration Tax Credits**

Individuals (other than trusts) that are flow-through shareholders of a PBC may be entitled to claim a 15% investment tax credit for “Flow-through mining expenditures” renounced to them. “Flow-through mining expenditures” are generally expenses deemed to be incurred by a flow-through shareholder as a result of a PBC’s renunciation of such expenses under a relevant FTS agreement. Such expenses relate to certain mining exploration activities which must be conducted from or above the surface of the earth for the purpose of determining the existence, location, extent or

quality of a “mineral resource”, as defined in the Tax Act and discussed further below. The definition of flow-through mining expenditure applies to expenses incurred after March 2024 and before 2026 and renounced under a FTS agreement entered into after March 2024 and before April 2025. Note that on March 3, 2025, the federal government proposed to extend the federal mineral exploration tax credit for investors in flow-through shares for an additional two years, until March 31, 2027.

### **Critical Mineral Exploration Tax Credit**

Individuals (other than trusts) that are flow-through shareholders of a principal business corporation may be entitled to claim a 30% investment tax credit for “Flow-through critical mineral mining expenditures” renounced to them. “Flow-through critical mineral mining expenditures” are CEE incurred by a PBC in conducting mining exploration activity from or above the surface of the earth primarily targeting “critical minerals”, which are defined under the Tax Act to include copper, nickel, lithium, cobalt, graphite, a rare earth element, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, a platinum group metal, or uranium. The definition of flow-through critical mineral mining expenditure applies to expenses incurred after April 7, 2022 and renounced under a FTS agreement entered into after April 7, 2022 and before April 1, 2027.

In order to claim the 30% critical mineral exploration tax credit, a certificate in prescribed form must be obtained from a qualified professional engineer or professional geoscientist, certifying that the relevant CEE will be incurred pursuant to an exploration plan that primarily targets critical minerals. See Form T100A-CERT: Certification of Qualified Engineer or Geoscientist available at <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t100a-cert.html>

## **DEFINITIONS OF ‘CANADIAN EXPLORATION EXPENSE’ AND ‘MINERAL RESOURCE’ IN THE TAX ACT**

### **Canadian Exploration Expense**

The definition of CEE can be found in paragraph (f) of subsection 66.1(6) of the Tax Act:

*(f) any expense incurred by the taxpayer (other than an expense incurred in drilling or completing an oil or gas well or in building a temporary access road to, or preparing a site in*

respect of, any such well) for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada including such an expense for environmental studies or community consultations (including, notwithstanding subparagraph (v), studies or consultations that are undertaken to obtain a right, licence or privilege for the purpose of determining the existence, location, extent or quality of a mineral resource in Canada) and any expense incurred in the course of

*(i) prospecting,*

*(ii) carrying out geological, geophysical or geochemical surveys,*

*(iii) drilling by rotary, diamond, percussion or other methods, or*

*(iv) trenching, digging test pits and preliminary sampling,  
but not including*

*(v) any Canadian development expense,*

*(v.1) any expense described in subparagraph (i), (iii) or (iv) in respect of the mineral resource, incurred before a new mine in the mineral resource comes into production in reasonable commercial quantities, that results in revenue or can reasonably be expected to result in revenue earned before the new mine comes into production in reasonable commercial quantities, except to the extent that the total of all such expenses exceeds the total of those revenues, or*

*(vi) any expense that may reasonably be considered to be related to a mine in the mineral resource that has come into production in reasonable commercial quantities or to be related to a potential or actual extension of the mine*

## Mineral Resource

Paragraph (f) of the definition of CEE includes expenses incurred for the purpose of determining the existence, location, extent or quality of a **mineral resource** in Canada. A mineral resource is defined in subsection [248\(1\)](#) of the Tax Act as follows:

*mineral resource means*

*(a) a base or precious metal deposit,*

*(b) a coal deposit,*

*(c) a bituminous sands deposit or oil shale deposit, or*

*(d) a mineral deposit in respect of which*

*(i) the Minister of Natural Resources has certified that the principal mineral extracted is an industrial mineral contained in a non-bedded deposit,*

*(ii) the principal mineral extracted is ammonite gemstone, calcium chloride, diamond, gypsum, halite, kaolin or sylvite, or*

*(iii) the principal mineral extracted is silica that is extracted from sandstone or quartzite; (matières minérales ressource minérale)*

Please note that this definition is considerably different from the one commonly used by industry that was developed by the Canadian Institute of Mining, Metallurgy and Petroleum (CIM) and that is included in National Instrument 43-101 (see [CIM Definition Standards for Mineral Resources & Mineral Reserves](#)). Among the key differences is that the definition of a mineral resource in the Tax Act makes no reference to ‘reasonable prospects for eventual economic extraction’ which is core to the CIM definition. This is important because some of the guidance provided by the CRA does not consider expenditures for ‘economic’ purposes to be CEE. For example, the Mining Expenditure Review Table released by the CRA in 2022 (see Mining Expenditure Review Table section) states that costs for assessing the economic viability of the project is generally an operating expense not eligible for CEE. As such, sampling and exploration expenditures that are for economic purposes may not meet the purpose test. These can include expenditures related to metallurgical studies, bulk samples and feasibility studies.

## PURPOSE TEST FOR CEE

In its interpretation of paragraph (f) of the definition of CEE under the Tax Act, which generally refers to expenses incurred by a taxpayer in searching for a mineral resource in Canada, the CRA places considerable weight on what it calls the ‘purpose’ test. An expenditure will only be considered CEE under paragraph (f) of that definition if it is “*any expense incurred by the taxpayer for the*

*purpose of determining the existence, location, extent or quality of a mineral resource in Canada*".

The CRA has developed guidelines to help companies understand how it interprets the definition of CEE and the purpose test (see *CRA Guidelines on expense that qualify as CEE* further below).

One area of uncertainty with the purpose test is with respect to the word 'quality'. While the ordinary meaning of the word 'quality' can be interpreted to include economic considerations, it is the CRA's view that "quality" in this context should refer to the inherent characteristics of the mineral resource, such as its chemical composition or mechanical or physical properties, rather than being interpreted broadly to encompass other external elements such as economic or market value. In summary, the CRA's view is that determining the quality of a resource relates to assessing the natural characteristics of the mineral resource.

## **CRA GUIDELINES ON EXPENSES THAT QUALIFY AS CEE**

The CRA has released guidance to help mineral explorers understand the types of expenditures that could qualify as CEE. While these guidelines are not legally binding, they are CRA's interpretation of the Tax Act and provide guidance on how the CRA is likely to view different types of expenditures in the event of an audit or assessment.

### **Mining Expenditure Review Table - 2022**

The [Mining Expenditure Review Table](#) released in 2022 is one of the most comprehensive set of CRA guidelines to date. In many cases, the guidelines are clear and helpful. The guidelines also reinforce that the CRA generally does not consider expenditures related to economic viability as meeting the purpose test for CEE unless the expenses relate to a determination of the natural characteristics of the mineral resource, which expenses may be deductible instead under section 9 of the Tax Act. For example, metallurgical testing undertaken to determine whether any processing method is feasible for separating the pay minerals from the resource may qualify as CEE, but not if the purpose of the testing is to determine an optimal method of separation (maximizing value from processing, refining the established processes to increase project value, etc.). Similarly, bulk sampling to test the physical, chemical and mechanical characteristics of the mineral may qualify as CEE, but not if the purpose is to evaluate the optimal processing method.

Expenses incurred relating to environmental studies or community consultations (including studies or consultations that are undertaken to obtain a right, license or privilege for the purpose of determining the existence, location, extent or quality of an accumulation of petroleum or natural gas) can also be eligible CEE.

### **90% RULE FOR WAGES AND PROPERTY USED IN MINERAL EXPLORATION AND RENUNCIATION TO FLOW-THROUGH SHAREHOLDERS**

One area that mineral explorers should be aware of is that administrative expenses, known as a Canadian exploration and development overhead expense, while considered CEE under the Tax Act, cannot be renounced to flow-through shareholders.

Canadian exploration and development overhead expense are generally defined to include (i) administration, management of financing expenses in respect of the taxpayer (ii) expenses in respect of the salary, wages or other remuneration or related benefits paid in respect of a person employed by the taxpayer whose duties are not all or substantially all directed towards exploration or development activities, or (iii) expenses in respect of the upkeep or maintenance of taxes or insurance in respect of, or rental or leasing of, property other than property all or substantially of the issue of which was for the purposes of exploration or development activities.

One area of uncertainty is when an employee undertakes both administrative duties and field-based exploration. To ensure that the expenses in respect of such an employee can properly be renounced by a PBC in favor of its flow-through shareholders, all or substantially all of the employee's duties should relate to the relevant field-based exploration work.

The question arises as to how *all or substantially all* is defined. It is the CRA's long-standing administrative position that *all or substantially all* means at least 90%.

There is some case law that suggest that the threshold for "substantially all" should be lower than 90%, and in some cases, as low as 75%. Notwithstanding the CRA's long-standing 90% administrative position, at the recent 2024 national Canadian Tax Foundation conference, the CRA acknowledged that the meaning of "substantially all" in the context of the excessive interest and financing expenses



limitation rules has both qualitative and quantitative components, and that a 90% threshold is not necessarily required to mean “substantially all”. Nevertheless, there remains some ambiguity in respect of what constitutes “substantially all” for the purposes of the Tax Act.

## **EXPLORATION OF BROWNFIELD PROJECTS AND INTERPRETATION OF A ‘NEW’ MINE**

Under paragraph (g) of the definition of CEE, CEE includes any expense incurred by the taxpayer for the purpose of bringing a new mine in a mineral resource in Canada into production in reasonable commercial quantities and incurred before the coming into production of the “new” mine. However, under paragraph (f) of that definition, CEE do not include development expenses or any expense that may reasonably be considered to be related to a mine in the mineral resource that has come into production in reasonable commercial quantities or to be related to a potential or actual extension of the mine.

When exploration is undertaken on a brownfield project that was once an operating mine, the CRA may deem that the work is related to the potential or actual extension of the mine and thus would not be eligible as CEE. However, in other cases, such as when a former mine has been fully closed for an extended period of time, the work may be interpreted as exploration toward the ultimate development of a ‘new’ mine that has never come into production in reasonable commercial quantities and thus could be eligible for CEE. Further analysis in this regard would be necessary to determine whether proposed exploration work might be considered in respect of a “new” mine or related to a “potential or actual extension of the mine”, and in some cases, it may be appropriate to seek a ruling from the CRA. In these situations where a ruling is requested of the CRA, they will consult with Natural Resources Canada to support their ruling.

Some of the non-exhaustive factors that are considered in determining whether the exploration work is related to an existing mine or a new mine are as follows:

- Was production in reasonable commercial quantities ever achieved on the property?
- Is the property abandoned or derelict? Has the mine entrance been permanently blocked?
- Is there a mine closure report?

- When mining stopped previously, did knowledge exist of additional mineralization?
- What was the time period between when production ceased and the proposed restart?
- Will previously developed workings be used in the new operation? What is the level of usage?
- What equipment from the previous operation can be used in the current operation?

### **EXPLORATION SUBSEQUENT TO THE RELEASE OF A PRE-FEASIBILITY OR FEASIBILITY STUDY**

Expenses in respect of feasibility studies will not be considered CEE if such expenses were incurred after the commencement of production from the Canadian resource property of the taxpayer and if the feasibility studies were done to evaluate the feasibility of a method of recovery of, or to assist in the recovery of mineral resources. However, such expenses may be deductible by a PBC under the Tax Act.

### **OPTION AND FARM-OUT AGREEMENTS**

As described in paragraph 14 of archived Interpretation Bulletin IT-125R4 – Disposition of Resource Properties., in a typical farm-out transaction, a farmor may transfer to the farmee all of the working interest in an unproven Canadian resource property in exchange for a percentage royalty in the production from the mineral resource property. The farmee agrees to pay for exploration and development and equipping costs. After the farmee recovers the total of the exploration and development and equipping costs incurred on the property ("payout"), a percentage of the working interest reverts to the farmor together with a pro rata ownership interest in the depreciable property that was acquired to equip the well.

From the farmor's perspective, it is the CRA's long-standing administrative position that the entering into of a farm-out transaction should generally not give rise to a disposition of the farmor's interest in the relevant property where the farmee agrees to perform certain farm-out services, in the form of exploration or development costs and equipping costs incurred by the farmee.