

Intelligence MEMOS



From: Jonathan Garbutt & Michael Harker
To: The Honourable Chrystia Freeland, Minister of Finance of Canada
Date: March 26, 2024
Re: CHOOSING WHICH “CRITICAL MINERALS” SHOULD BE SUBSIDIZED IS PROBLEMATIC

Finance Canada has proposed [amendments](#) via Bill C-59 to the *Income Tax Act* that expand Canada’s flow-through share (FTS) tax incentive program to include mining projects for lithium brines. This is a timely update that recognizes lithium’s growing importance to Canada’s energy storage and other clean technologies industries.

Lithium will be the first and only critical mineral explicitly identified as a “mineral resource” under the Act, which gives investors in lithium mining projects a clear path to a suite of tax incentives. While this is great for lithium, no such accommodation has been made for Canada’s other critical minerals, which points to larger problems with the tax measures intended to bolster Canada’s critical mineral mining industries.

Natural Resources Canada has identified 31 critical minerals that are found in Canada. Each has [strategic value](#) for building a competitive and sustainable economy, whether for their applicability in Canada’s own industries, their importance for developing cleaner industries in Canada, or their value for trading with Canada’s allies. With growing concerns about overreliance on potentially hostile nations for critical mineral supply and products containing them, Canada has developed a [Critical Minerals Strategy](#) aimed at expanding all aspects of Canada’s underdeveloped critical mineral value chains.

Tax measures, like the FTS and the Critical Mineral Exploration Tax Credit (CMETC) are specifically intended to promote the exploration stage of critical mineral value chains. Unfortunately, they are both undermined by restrictive and unclear legislation.

Canada’s FTS program has existed for decades and developed out of [Canada’s oil and gas sector](#). The program allows mining companies to pass exploration and development expenditures onto investors under flow-through share agreements, which allow investors, rather than mining companies, to claim deductions on their personal tax returns. The [ever popular](#) incentive generates considerable tax savings in the hands of investors and has driven a great deal of [capital](#) into the mining sector over the years.

FTS-eligible expenditures must meet the definition of “Canadian exploration expenses” (CEE) or “Canadian development expenses” (CDE), both of which rely, in turn, on the definition of “mineral resource.” To meet that definition, a deposit must either be a “base or precious metal deposit,” an “industrial mineral contained in a non-bedded deposit,” or one of the 12 or so minerals specifically listed.

Much of Canada’s lithium is found in brines suspended in confined underground aquifers. Historically, the CRA’s [position](#) has been that this bedded, non-metallic form of lithium cannot fit under the definition of “mineral resource” meaning exploration and development expenditures for these resources have been ineligible for CEE or CDE. The newly proposed version of the legislation solves this problem by adding lithium to the “mineral resource” list.

This very limited accommodation fails to address eligibility concerns for other Canadian resources. Helium, for instance, is identified as one of Canada’s critical minerals but, as an elemental gas (the only gas on Canada’s Critical Mineral list) is, like lithium brines, found in bedded deposits, and as a result, [would not fit](#) the definition of “mineral resource.”

Additionally, terminology within the “mineral resource” definition, such as “base or precious metal deposit” and “industrial mineral,” lack clear plain-language meaning and are not defined anywhere in the Act. These terms are various interpretations in different contexts, making it hard to predict which of Canada’s critical minerals qualify as “mineral resources” and what projects will be eligible for flow-through share treatment.

This creates further complications for the CMETC. The CMETC is an added tax credit for investment in critical mineral exploration but is only available for expenditures that have been renounced as CEE under the FTS program. As a result, if a deposit for a given critical mineral cannot qualify as a “mineral resource,” exploration expenditures targeting that deposit cannot be renounced as CEE, which in turn, means no CMETC is available.

Furthermore, to be eligible for the CMETC, the targeted mineral must be a “critical mineral,” as the term is defined in the Act, which lists only 15 critical minerals, half the number in the Critical Mineral Strategy. We can think of no convincing reason to exclude half of Canada’s critical minerals from a tax incentive aimed at promoting critical mineral exploration, especially one that is slated to expire in 2027.

We strongly recommend the government reconsider its proposed amendments in Bill C-59 and use this opportunity to remove unnecessary restrictions and ambiguity as to eligibility for both the FTS and CMETC incentives.

We have two simple suggestions:

The flow-through share legislative framework be amended to unambiguously include CEE and CDE for all 31 of Canada’s critical minerals. CMETC eligibility should similarly be extended by expanding the Act’s definition of critical minerals to include them all.

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