Cassels

COVID-19 Impact: Proposed Relief for Issuers of Flow-Through Shares

Tera Li Parizeau
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On July 10, 2020, the federal Department of Finance announced proposals to protect jobs and safe operations of junior mining exploration and other flow-through share issuers (FT Share Issuers). Legislative amendments to implement the proposals have not been released as of the date of this article and are to be released in due course.

The proposals relate generally to two rules in the *Income Tax Act* (Canada) (the Tax Act) which apply to the time period during which a FT Share Issuer must incur and renounce eligible expenditures – the general rule and the "look- back rule."

General Rule

Under the general rule, to renounce eligible expenditures a FT Share Issuer must incur such expenditures during a period that begins on the day on which the flow-through share agreement is made and ends 24 months after the end of the month that includes that day. Further, the FT Share Issuer can renounce to investors such eligible expenditures after they have been incurred and prior to March of the first calendar year beginning after the 24-month period referred to above (subject to satisfying certain requirements and filings within the prescribed time under the Tax Act).

Look-back Rule

Under the look-back rule, a FT Share Issuer may enter into a flow-through share agreement with an investor in a calendar year and renounce certain eligible expenditures effective December 31 of that year even though such expenditures have not been incurred. In this case, the FT Share Issuer must incur the eligible expenditures before the end of the calendar year following the year in which the flow-through share agreement was entered into. For example, a FT Share Issuer that enters into a flow-through share agreement with an investor in 2020 would have until December 31, 2021 to incur eligible expenditures which it could renounce to investors effective December 31, 2020.

The Tax Act imposes a tax under Part XII.6 of the Tax Act on a FT Share Issuer that has renounced eligible expenditures under the look-back rule where the expenditures are not incurred until after January of the calendar year following the year in which the flow-through share agreement is entered into.

Proposed Changes

The proposals are meant to be relieving in nature to the FT Share Issuer due to COVID-19.

The proposed changes are as follows:

> 1. To extend the period for FT Share Issuers to incur eligible expenses under the general rule by 12 months for flow-through share agreements entered into on or after March 1, 2018 and before 2021.
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> As a result of the proposed changes, the 24-month timeline for a FT Share Issuer to incur eligible expenses will be extended to 36 months after the end of the month that includes the day the flow-through share agreement is entered into.
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> 2. To extend the period for FT Share Issuers to incur eligible expenses under the look-back rule by 12 months for agreements entered into in 2019 or 2020.
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> Under this proposal, a FT Share Issuer will have until the end of the second calendar year following the year in which the flow-through share agreement was entered into to incur the eligible expenses. For example, a flow-through share agreement entered in 2020 which provides that the eligible expenses are to be renounced effective December 31, 2020 would have until December 31, 2022 (one year longer than under the current rules) to incur the eligible expenses.

3. To apply Part XII.6 tax as if expenditures were incurred up to one year earlier than the date they were actually incurred for flow-through share agreements entered into in 2019 and 2020.

Additional resources related to the impact of the COVID-19 pandemic can be found here.