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Federal Budget 2022: Good News for Mining Exploration Compagnies!

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On April 7, 2022, Finance Minister Chrystia Freeland tabled the federal government's new budget for 2022. This budget includes several tax measures relevant to the mining industry in Canada.

The Canadian federal government intends to provide $3.8 billion over eight years to implement Canada's first critical minerals strategy. One of the methods used to implement this new strategy and stimulate exploration is an investment vehicle well known to the mining industry: flow-through shares.

The 2022 budget proposes to create a new 30% Critical Mineral Exploration Tax Credit (CMETC) for certain specified minerals. Specified minerals that would be eligible for the new CMETC are: copper, nickel, lithium, cobalt, graphite, rare earth elements, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metals and uranium.

As for the regular mineral exploration tax credit, the exploration expenses must have been incurred in Canada. The renunciation of expenses must also have been made under flow-through share agreements entered into after budget day and before March 31, 2027.

It is important to note that there will be no cumulation of tax credits. Eligible expenditures will not be eligible for both the proposed new CMETC and the 15% regular mineral exploration tax credit (METC).

In order for exploration expenses to qualify for the CMETC, a qualified person (as defined in National Instrument 43–101 issued by the Canadian Securities Administrators) will further have to certify that the expenses renounced will be incurred in the course of an exploration project for specified minerals.

On this point, the measure seems to insert a new legal test of "reasonable expectation" that the minerals targeted by the exploration are "primarily specified minerals". No details have yet been issued on the mechanics of applying this test.

However, if the qualified person is unable to demonstrate that there is a reasonable expectation that the minerals targeted by the exploration project are predominantly specified minerals, the related exploration expenses would not be eligible for the CMETC and consequently, any credit granted for ineligible expenses would be recouped from the flow-through share holder who received the credit.

Pending the tabling of a more detailed legislative version, careful attention and planning will therefore be required for new flow-through share financings to ensure that they meet the legal criteria for this new tax credit.

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Our team of professionals in securities, mining law and taxation is available to answer all your questions regarding this new measure and to assist you in the implementation of a successful flow-through financing:

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