



Public Company & Mining Tax Tips & Traps

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- The information contained in this presentation is general in nature and does not constitute tax or legal advice. The information presented should not be relied upon without the advice of a tax advisor.
- Any tax commentary herein is based on our interpretation of current tax law including judicial and administrative interpretation. Tax law is subject to continual change, at times on a retroactive basis. Furthermore, our comments are restricted to the specific facts as set out. Should the specific facts, the law or its interpretation change, our comments or conclusions may be inappropriate.

Overview

- Review of flow-through shares
 - Eligible Costs
 - Stacked Renunciations (subsidiary holds property)
 - Important Dates & Deadlines
- GST Issues – Input Tax Credits & Holding Corporations
 - Eligible ITC's
 - CRA audits – narrow interpretation of ETA s.186
 - Proposed restrictive amendments effective July 28, 2018



Review of Flow-Through Shares

Review of Flow-Through Shares

- FTS are special common shares issued by a “Principal Business Corporation” (principal business = Mining or Oil & Gas)
- Funds raised are all spent on eligible exploration costs within specified time period (maximum 24 months)
 - regular = end of calendar Year 1
 - “look-back” = end of calendar Year 2
- Tax deductions/credits renounced to investors/shareholders to claim
- Eligible cost spending shortfall subject to 10% penalty and shareholder tax reassessments for reduced amounts (considerations involving indemnity clause)

Flow-Through Shares – Eligible Costs

- “Grass-roots” Canadian Exploration Expenses (“CEE”)
- CEE Incurred after date of first signed FTS agreement and within 24 month period following
 - Requires “look-back” renunciation to spend beyond end of first calendar year (i.e. Year 1)
 - “Look-back” portion spent in Year 2 subject to Part XII.6 tax on monthly unspent balance
- Incurred to determine mineral resource:
 - Existence;
 - Location;
 - Extent; or
 - Quality

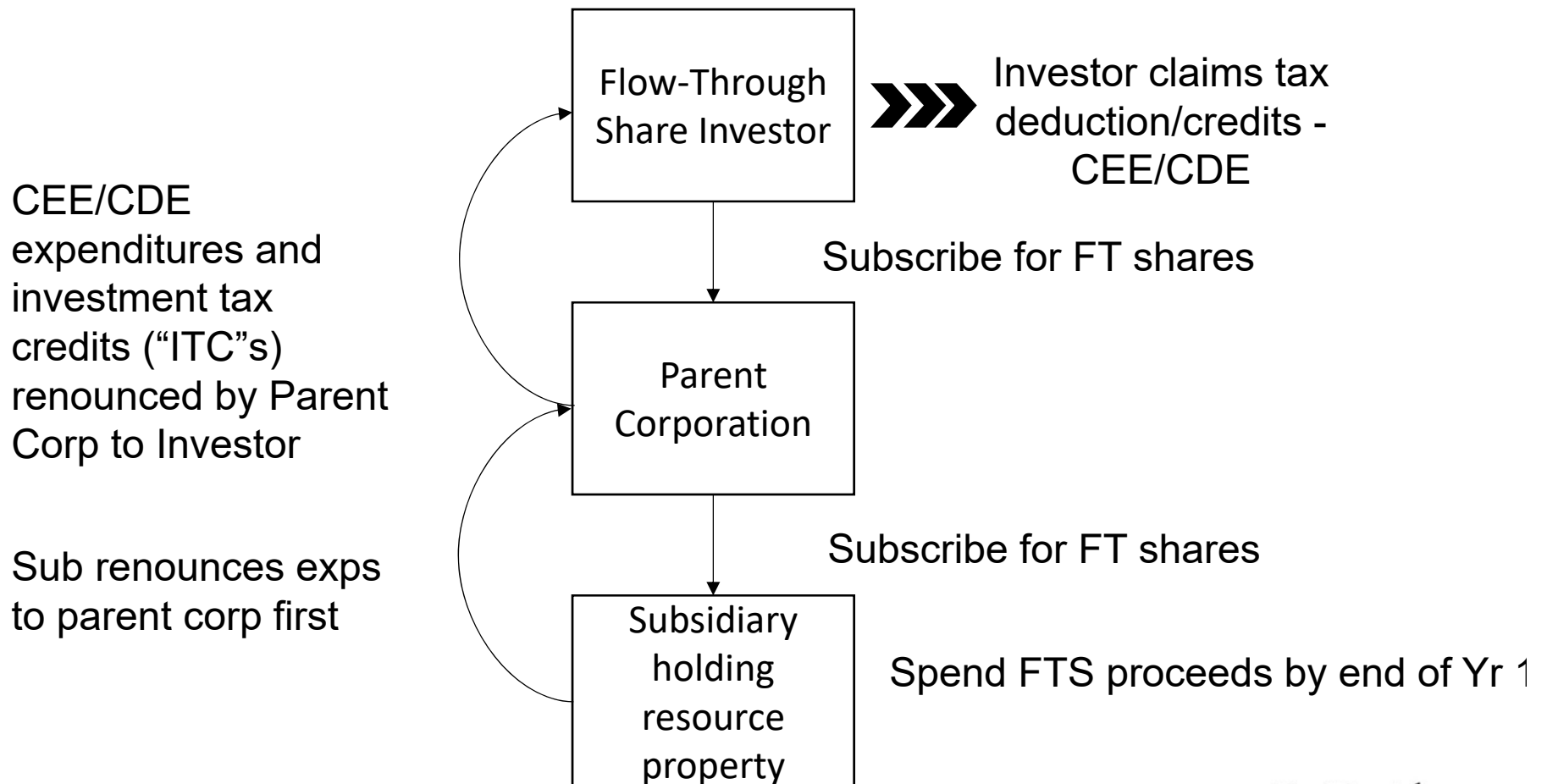
Flow-Through Shares – Eligible Costs

- Examples of eligible CEE:
 - Prospecting
 - Rotary, diamond, percussion or other drilling
 - Geological, geophysical or geochemical surveys
 - Trenching, digging test pits and preliminary sampling
 - Enviro studies/community consult costs where required under permit
- Non-eligible expenditures:
 - Development costs (“CDE”) – clearing land/sinking mine shaft/staking/permits/seismic data/production costs
 - Costs related to pre-production revenues (sampling, etc)
 - Overhead costs (“CEDOE”) – admin/leasing/financing/insurance
 - Salary costs where < 90% employee time related to direct exploration work (all or substantially all test)
 - Profits on payments to connected persons (10% shareholder) – watch management consulting arrangements to manage exploration projects

Flow-Through Shares – Stacked Renunciation

- Situations involving two-tier structures where Subsidiary owns resource property instead of Parent
- CRA position is issuing entity (i.e. Parent corp) cannot incur CEE on property for nil consideration
- Solution is “stacked” renunciation:
 - Subsidiary issues FTS to parent corp under share agreement
 - Result is two sets of FTS filings with CRA
 - Subsidiary cannot renounce to Parent on a “look-back” basis since they are considered non-arms length
 - Consider monthly T101A from Sub to Parent to reduce Part XII.6 tax on “look-back” portion renounced by Parent

Flow-Through Shares – Stacked Renunciation



Flow-Through Shares – Filing Dates & Deadlines

- T100A – Application for Identification Number (“TIN”)
 - Due by end of month following month of FTS agreement
 - Maximum late filing penalty = \$15,000
- T100B – Details of FTS and Warrants
 - No filing deadline/penalty
- T101A – Renunciation of CEE/CDE
 - Due by end of month following month of renunciation
 - Maximum late filing penalty = \$15,000


Flow-Through Shares – Filing Dates & Deadlines

- T101B – Adjustments to previous renunciation
 - Due Feb 28th of Year 3 (if “look-back” used) or 30 days after being notified in writing by CRA demanding statement
 - Maximum late filing penalty = \$2,500 plus possibly 25% of the excess renunciation
- T101C – Part XII.6 Tax Return
 - Calculate tax on “look-back” portion unspent monthly
 - Due Feb 28th of Year 3
 - Maximum late filing penalty = 17% of total tax payable

Common FTS Errors & CRA Audits

- Common Errors:

- Incorrect completion of forms
- Late filed forms
- Ineligible costs renounced
- Stacked renunciation filings incomplete, first tier shares from sub to parent missed
- Part XII.6 tax overlooked



GST Issues – Input Tax Credits & Holding Corporations

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- General Rules for ITC Claims:
 - GST registrants eligible to recover GST paid on expenditures to the extent “engaged in commercial activities” (i.e. business carried on by a corp)
 - *Exempt* transactions are excluded from the “commercial activity” definition >>> financial securities
 - Cdn public companies doing business worldwide through foreign subsidiaries and raising capital in Cdn public markets >>> **not considered** engaged in commercial activity on its own since business is in sub, **absent special look-through rules....**

GST Issues – Input Tax Credits & Holding Corporations

- Pre-amendment special relieving provisions to allow Cdn holding companies to claim ITC's (ETA S.186)
 1. Expenditures must reasonably be “in relation to” the shares or debt of its subsidiary; *and*
 2. All or substantially all of the sub's assets must be used in commercial activities
- Examples provided by CRA included accounting & legal fees on acquisition or sale of shares in sub and certain admin costs
- Pre-July 28, 2018 taxpayer argument was the parent corp's main reason for existence was to hold shares and/or debt of sub so all costs considered “in relation to” sub's shares/debt

GST Issues – Input Tax Credits & Holding Corporations

- Ongoing issue – CRA auditors assessed based on a narrow interpretation of the legislation to restrict ITC claims by holding companies
- Tax advisors/taxpayers have a broader interpretation of the legislation to allow ITC claims
- Court cases recently favored a broader interpretation (i.e. *Miedzi Copper Corp, Stantec Inc.*), however, still challenged at CRA audit level, and now proposed....
- Significant restrictive amendments effective July 27, 2018

GST Issues – Input Tax Credits & Holding Corporations

- **New proposed rules to limit HoldCo eligible ITC's to:**
 - Transactions involving the shares and debt of the subsidiary/operating corporation
 - Costs involving issuance or sale of shares or debt of the holding company to the extent that the proceeds are transferred to the subsidiary/operating corporation, and
 - Other activities of the holding company if the holding company meets a new property test, which requires that all or substantially all (90%+) of the property of the holding company is shares or debt of the operating corporations.

GST Issues – Input Tax Credits & Holding Corporations

- **New proposed rules continued....**
- Substantial changes in wording involve replacement of “reasonably” and “in relation to” in reference to shares/loans of subsidiary, with more specific provisions to determine eligibility of ITC’s
- Other proposed amendments include revising ownership test of operating corporation from “related” (i.e. 50%+) to “all or substantially all” (i.e. 90%+)