The University of Cape Town

Department of Finance and Tax

Flow-Through Share as a fiscal mechanism to encourage exploration in the mining industry:

An in-depth study of the Canadian Legislation for prospective implementation in South Africa.

South African Tax Masters Dissertation

FTX5030W

2023

Richard Sauls

SLSRIC001

Abstract

An element of great concern in the South African economy is the underwhelming amount of investment in mining exploration. The South African government through the Department of Mineral Resources and Energy (DMRE) formulated a strategy to combat the deterioration discerned in mining investment. The strategy tables the introduction of a flow-through share incentive in South Africa, to stimulate investment in mining exploration (DMRE, 2022:3).

Flow-through shares, equity instruments in mining and petroleum companies, are subject to unique tax rules established through agreements between investors and investees (Jog, Lenjosek & McKenzie, 1996: 1017). This research aims to comprehensively analyse flow-through share arrangements, offering insights into their issuance, technical tax aspects, and additional incentives. Furthermore, the study identifies deficiencies in the South African mining taxation landscape, presenting recommendations to incentivise further investment in mining exploration.

The research begins with an in-depth examination of regulatory and legislative requirements, progressing from defining flow-through shares to exploring their intricate mechanics. The research provides a practical overview and understanding of the design, tax consequences and benefits of a flow through share arrangement, with specific focus on capital gains implications. The study also conducts a detailed analysis of the South African Income Tax Act, highlighting shortcomings of the legislative provisions regarding incentives incorporated within the legislation.

The findings underscore the potential significant benefits to the South African mining industry as it improves the Mining Attractiveness Index (MAI) and leveraging associated tax advantages. Despite the multifarious benefits, the research acknowledges specific areas of concern, particularly regarding capital gains tax (CGT), which may deter investment. Additionally, the study provides indication that the government needs to introduce alternative incentives, as several benefits are reaching sunset clauses.

Consequently, resulting in the deterioration of the Income Tax incentives to invest in mining.

Acknowledgements

I firstly would like to thank my Lord and Saviour Jesus Christ for providing me the strength to continue, persevere and see this dissertation through to its end.

Secondly, I would like to express my deepest gratitude to my Supervisor, Dr Alison Futter, without whom the successful completion of this dissertation would not have been possible. All insights, guidance and commentary provided allowed me to successfully complete my dissertation. Your efforts in guiding me does not go unnoticed and is greatly appreciated.

To my family and friends, you have grown with me in this journey and have always supported me throughout. A special mention to my Mom, Rochelle, Darion, Rylee, Jodie, Wavhudi, S'xolile, Meshalini, Marcia, Vuako, Mananana, Noxolo and Kekeletso. You have been of great support even in the most difficult of times. Thank you, I am extraordinarily grateful for all everything and appreciate you dearly.

To my coursework study group, you have been of great support throughout the entire program and I am grateful for your valued contribution to the successful completion of this chapter of my academic journey.

Plagiarism Declaration

I, Richard Sauls, hereby declare that the work on which this dissertation is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole or any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the University to reproduce for the purpose of research either the whole or any portion of the contents in any manner whatsoever.

Signature: Signed by candidate …… Date: 12 June 2023

LIST OF ABBREVIATIONS AND ACRONYMS

CIR	Commissioner for Inland Revenue
CITA	Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp)
Companies Act	Companies Act No 71 of 2008
CSE	Canadian Securities Exchange
DMRE	Department of Mineral Resources and Energy
DTC	Davis Tax Committee
FTS	Flow-through share
GDP	Gross Domestic Product
ITA	Income Tax Act No 58 of 1962
HDSAs	Historically Disadvantaged South Africans
MAI	Mining Attractiveness Index
MOI	Memorandum of Incorporation
MPRDA	Mineral and Petroleum Resources Development Act 28 of 2002
NEMA	National Environmental Management Act No 107 of 1998
OECD	Organisation for Economic Cooperation and Development
PDAC	Prospectors and Developers Association of Canada
PwC	PricewaterhouseCoopers
SAICA	South African Institute of Chartered Accountants
SARS	South African Revenue Service
Services Act	Intermediary Services Act No 37 of 2002
S	Section
Ss	Subsection
V	Versus
VCC	Venture Capital Company

Contents

CHAPTER 1: INTRODUCTION
1.1 Background

The mining industry proved resilient and delivered great value to the stakeholders in the 2021 financial year. This is particularly attributed to significant increases in the prices of the platinum group metals, gold, iron ore and coal respectively (Rossouw, 2021:4). The mining industry is also a significant contributor to the South African economy, having contributed to approximately 7.6% of the country's Gross Domestic Product (GDP) in the 2021 financial year (Rossouw, 2021:5).

Despite the excellent performance in the commodity prices and the high contribution made by the industry to the economy, infrastructural challenges are pertinent within South Africa (SA). This is as underinvestment in the mining industry, profoundly affect these companies. The mining sector is by its nature highly capital intensive and thus requires enormous capital investment continuously to ensure the sustainable operation of a mine (Rossouw, 2021:8).

The exploration strategy for the mining industry of South Africa issued on 14 April 2022, indicated that the exploration activity in South Africa has declined from 5% in 2003 to below 1% in 2021. Consequently, resulting in the government, through the Department of Mineral Resources and Energy (DMRE) devising a plan to attain the previous peak of the exploration activity (DMRE, 2022:3). The SA mine report indicated a positive correlation in investment in mining companies and economic development in South Africa (Rossouw, 2021:6). Thus, indicating a prospective increase of a mining company's contribution through means of investment in the industry.

The strategy tabled by the government, highlighted barrier characterisation and requisite interventions required to make the industry more attractive to invest in, consequently attributing to growth within this sphere. The strategy describes exploration activity as the "élan vital" of the industry (DMRE,2022:5). A significant barrier identified pertains to the availability of funding opportunities particularly concerning junior miners (DMRE, 2022:6). In addressing this issue, the minerals council will engage stakeholders to assess the effectiveness of funding mechanism adopted by the Canadian jurisdiction "Flow-through

shares", to combat the barrier noted and its applicability within a South African context. This not only contributes to increasing economic activity but provides valued attractiveness for the investor.

In 2014, the Davis Tax Committee (DTC), considered flow-through shares and did not deem this to be a possible solution at the time. It was noted that a detailed study should be conducted on the regulatory framework for greenfield investors (Gwala, 2018). In the recommendations provided, it was indicated that "tax incentives may ultimately serve as a sweetener in encouraging greenfield investment" (DTC, 2014:104). The budget vote speech delivered by the Honourable Gwede Mantashe (2022:8), indicated the approval by the government of the mining exploration strategy and plan which highlighted flow-through shares as a funding mechanism to attract investors considering the benefits associated with its implementation.

Flow-through shares are equity instruments acquired by investors to carry on prospecting and exploration activities in mining and petroleum companies (Jog, Lenjosek & McKenzie, 1996: 1017). There are special tax rules applicable for the issuance of these instruments established through means of an agreement entered between the investor and the investee. A key element of the agreement is a renunciation of the right by the investee to deduct the expenditure incurred in the mining exploration and development and reallocate these deductions for tax purposes to the investor (Jog, Lenjosek & McKenzie, 1996: 1018).

These tax instruments allow for all of the expenditure incurred in exploration activities to be deductible by the investor. Exploration companies, would not derive any income during the period in which the activities are undertaken and would on this basis, only accumulate expenditure that is deductible for tax purposes. Through renunciation of the right to deduct, tax-deductible expenditures by the investee, it reduces the tax liability of the investor as a consequence of the investment.

The mineral council submitted a proposal to the national treasury for the introduction of the flow-through shares, considering the benefits attached to its implementation in South Africa's socio-economic landscape. This proposal suggested that the incentive ought to

be a stand-alone component of the Income Tax Act (ITA). This recommendation stemmed from research conducted, by the council, which assessed the impact of introducing this incentive in South Africa, drawing insights from the Canadian model. It was noted that South Africa currently has in place the 12J regime (section 12J of The Income Tax Act No 58 of 1962) as an incentive for mining companies. However, proved to be restrictive in its provisions. Despite the benefits associated with the section 12J regime, it is limited to qualifying companies per s12J (1) of the ITA, which is only applicable to shares acquired in the companies before 30 June 2021 (s12J (9)), thus having limited incentives for new investment in exploration to thrive in the mining industry.

As the study conducted by the mineral council considered the Canadian model for this incentive, there is a need to consider the framework for the adoption of this tax incentive within a South African context. This framework will be considering the basic or standard flow-through shares, super flow-through share and additional tax credits and deductions provided at the provincial levels implemented within the Canadian tax jurisdiction. The share flow-through incentive available in Canada is an equity share traded on the Canadian Securities Exchange (CSE). The investment mechanism is thus to be considered as an available equity investment for mineral rights holders as a whole and not limited to Historically Disadvantaged South Africans (HDSAs).

1.2 Research Objectives

The objective of this research is to examine the suitability of the flow-through share model as a proposal for amendment to domestic tax legislation, in the context of an incentive for investment into South African mining activities. This is executed by analysis of the legislative framework as adopted by Canada considering all three spheres for the adoption of flow-through shares within the mining sector. This study is conducted in the following manner:

- Critical analysis of the flow-through shares model as implemented in Canada and tax deductions available to mines in Canada.

- Critical analysis of super flow-through shares model in the event of investment made by natural persons and tax credits applied.
- Detailed assessment of provincial-level tax credits and deductions as provided for in the Canadian legislative framework.
- Critical analysis of current tax incentives in the South African ITA, tax anti-avoidance provisions in the context of mining taxation (such as ring-fencing) and proposals for amendments to the ITA.
- Consideration of alternative incentives provided to investors following the Organisation for Economic Cooperative Development (OECD) guidelines on incentivising mining companies.
- Determining whether flow-through shares should be adopted in South Africa at all levels based on the analysis performed. This will include considering the possible administrative obstacles in mimicking the Canadian model and the implications of investment on the collection of revenue.

The above objectives are considered in detail by unpacking the way the share scheme functions, underlying legislative requirements and the tax implications of the respective flow-through shares implemented.

1.3 Research Design and Methodology

The study undertaken in fulfilment of this dissertation will be legal interpretative research. This doctrinal study will be executed through the interpretation of the legislative framework adopted in Canada, and the government proposal to adopt the legislation within a South African context.

A qualitative approach will be adopted in the execution of the research. The initial application of this study will vest focus on the current tax landscape for incentivising investment in the mining space in South Africa, with a narrowed focus on the prospecting and exploration aspect of mining. This will be specific to the introduction of flow-through-shares tax incentives and prospective legislative amendments to be adopted to incentivise investment in the mining industry.

The research will be gathered through accessing various sources including the Canadian income tax legislation and governing regulations, journal articles, published reports and related commentary provided by recognized bodies.

1. 4 Limitations of Research

The ITA contains current provisions for tax incentives; however, the government is opting for flow-through shares to be a stand-alone segment in the ITA as considered within the Canadian jurisdiction. This dissertation is thus, limited to the study of the Canadian legislative framework for the consideration of flow-through shares. This will only be consulting approaches as adopted by the tax jurisdiction and the application of these provisions from a South African perspective. In addition, the study will vest focus on legislative provisions pertaining to exploration of mining and mineral resources excluding petroleum resources taxed under the tenth schedule to the ITA.

This dissertation is also limited as it would only be considering the legislative approach as adopted by the Canadian tax jurisdiction. This is the only country selected for the review as it is the only jurisdiction adopting flow-through shares currently.

1. 5 Dissertation Structure and Layout of Research

Chapter 2

The doctrinal study commences in chapter 2 of the dissertation. This chapter introduces flow-through arrangements in detail and the regulatory requirements to facilitate the implementation of same within South Africa. This chapter also considers the requirements and qualifying expenditures together with the mechanics of the implementation of this financial instrument.

Chapter 3

Chapter 3 considers in detail the current incentives for prospecting and exploration, limitations imposed on use of these incentives and consider the pitfalls associated with the current incentives within the Income Tax Act. It assesses whether an extension to the

current regime and whether amendment to the domestic legislation as embodied in the Income Tax Act would be a more appropriate course of action to pursue.

Chapter 4

Chapter 4 considers the Canadian Income Tax, and the tax incentives provided. This chapter drills down into the three layers of the flow-through shares as a basic flow-through share instrument, super flow-through share, and the provincial level tax credits. This chapter explores both tax credits and tax deductions provided by the Canadian Income Tax Act. This chapter also concludes on the applicability of the different models within the context of South Africa.

Chapter 5

Chapter 5 interrogates factors influencing a stakeholder's view on what a sound mining exploration jurisdiction encapsulates. This is done through analysing various mining attractiveness indices per the annual survey conducted by the Fraser Institute. In addition, this chapter considers alternative approaches that may be adopted by the government in incentivising investment growth in prospecting and exploration as provided by the OECD from a tax perspective. This chapter examines a range of considerations together with course of action to be taken by government in establishing the appropriateness of the tax incentive, and the efficacy of its implementation.

Chapter 6

This chapter provides recommendations of the most suitable approach that South Africa should adopt in ensuring the efficacy of the adoption of the legislation. This will be in reference to the conclusions noted in the preceding chapters of this dissertation.

CHAPTER 2: Flow-Through Shares: Detailed overview and Regulatory requirements

2.1 Introduction

The classification of mining businesses is broadly divided into two basic categories: Juniors and Majors (Metallica Metals, 2021: 1). With junior mining companies, their main priorities are resource development and mining exploration (Metallica Metals, 2021: 1). These organisations' primary goals are to maximize the use of the available mining resources and find new mineral deposits (Metallica Metals, 2021: 1). Since exploration businesses are still in the early stages of operation, they do not yet run their ore extraction facilities. As a result, enterprises are highly dependent on equity financing to pay for their operating expenses (AT Mineral Processing, nd: 1).

This chapter examines the definition of a flow-through share, studies the components of the definition and considers the relevant aspects for housing an effective flow-through share transaction to accomplish the sub-goal of this research. The requirements for issuing these shares within the Canadian tax jurisdiction is discussed in detail, which will tailor the conditions to make it most relevant from a South African perspective. The qualifying expenses and implementation procedures of this financial instrument are addressed in this chapter.

Subdivision E of the Canadian Income Tax Act R.S.C 1985, c. 1 (5^{th} Supp) (CITA) explicitly addresses exploration and development costs relating to Principal-Business Corporations (PBCs) and flow-through share arrangements. This will serve as the main reference point for the ideas examined in this chapter. This is due to the fact that flow-through share arrangements exclusively apply to companies functioning as PBCs.

2.2 Determination of Taxable income during the year of assessment

The South African income tax is levied in terms of the statute, the Income Tax Act No 58 of 1962 (ITA). Whilst there are several taxes found within the ITA, particular focus will be on the normal taxation implications of mining exploration companies.

Per section 5(1) of the ITA normal taxation is levied annually on all persons that have taxable income to the national revenue fund, subject to the provisions of the fourth schedule to the ITA. Taxation is levied per the rates announced by the minister of finance at the annual national budget speech and varies between natural and juristic persons per section 5(2) of the ITA. Taxable income under Section 1 of the ITA

> means the aggregate of—
> (a) the amount remaining after deducting from the income of any person all the amounts allowed [...] to be deducted from or set off against such income; and
> (b) all amounts to be included […] in the taxable income of any person in terms of this Act.

The tax position of mining exploration companies primarily sits in the position of not having any taxable income as many of these companies are not yet in production, namely operating mines. Consequently, no taxation is levied on these companies for several years from the commencement of the mining exploration.

The introduction of a flow-through share arrangement permits the taxpayer to redirect the ability to deduct the expenditures incurred by the issuer to the holder of the shares (AT mineral processing, nd: 1).

2.3 Deductions applicable in the computation of taxable income

A taxpayer who is not a PBC within the Canadian tax jurisdiction may deduct exploration and development costs in calculating their taxable income. The deduction is permissible, to the extent that these expenditures have not been considered within the preceding years of assessment (Section 66 (3) of the CITA).

The year of assessment is defined within section 1 of the ITA as, “any year or other period in respect of which any tax […] is chargeable, […] in the case of a company […] be construed as a reference to any financial year of that company […] ending during the calendar year in question.”

A PBC is permitted to deduct in the determination of their taxable income, the lesser of total Canadian exploration and development expenditures incurred before the end of the year of assessment and the income that has been generated by the organisation (Section 66 (1) of the CITA). The concept of PBC is explored in more detail under the heading principal business corporation.

An important attribute of the ITA is that it permits the deduction of the expenditure incurred, to the extent that the expenses have been laid out for the purpose of trade. Consequently, establishes the permissibility of deductions in accordance with section 11(a) of the ITA. Section 1 of the ITA indicates that trade includes,

> every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any other property which is of a similar nature.

Thus, all expenditures incurred during the phases of mining, are to be laid out for the purposes of trade and on this basis, deductible in the determination of the taxable income (*Burgess v Commissioner for Inland Revenue*, (1993) SA 511, 55 SATC 185).

In terms of section 11 (a) of the ITA, all expenditures incurred, and laid out for the purposes of trade may, in the determination of taxable income be deductible by the taxpayer to the extent that the expenditure is incurred in the production of income and not capital in nature.

It is important to note that section 15 of the ITA, provides a specific deduction to a taxpayer for expenditure incurred against the income of a mining operation. The allowance deductible against income is specifically set out in section 15 (b) of the ITA as follows

> 15. There shall be allowed to be deducted from the income derived by the taxpayer from mining operations—
>
> > b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other prospecting work

> preliminary to the establishment of a mine) in respect of any area within the Republic together with any other expenditure which is incidental to such operations […]

For this deduction to apply, the company in question must meet the definition of a mining operation, in terms of section 1 of the ITA a mining operation, "include every method or process by which any mineral is won from the soil or from any substance or constituent thereof."

The distinguishing component with amounts permissible as a deduction in mining operations, is that it permits deductions incidental to prospecting activities and not expenditure incurred in the production of income (*ABC Mining Company v The Commissioner for The South African Revenue Service* ITC 24606 of 25 February 2021).

2.4 Flow-Through Shares Exploration Companies Canadian Model

2.4.1 Defining a Flow through Share

The concept of flow-through shares is not found within the ITA. Consequently, the CITA will be the point of reference used for defining this concept.

Per the CITA section 66(15):

> A flow-through share means a share […] of the capital stock of a principal-business corporation, … […] issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration […] transferred by the person under the agreement and, agrees
>
> a) **to incur**, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and
> b) **to renounce**, in prescribed form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share…

The decomposition of the definition of a flow-through share arrangement and its application to the tax jurisdiction will be considered in the following manner:

- Shares issued by the companies

- Principal business corporations who will be issuing the shares
- Qualifying expenditures that may be deductible with this share arrangement
- Agreement for the issuance of the shares
- Renunciation of the shares by the issuing company
- Filing of the shares issued by the company

2.4.2 Shares issued by the company

Shares issued in flow-through share arrangements are regarded as common shares containing rights for the subscriber of the shares (Mining Tax Canada, 2022: 1). Shares within a South African company are in terms of section 1 of the ITA, "one of the units into which the proprietary interest in a profit company is divided." This was also further defined in *Borland's Trustee v Steel Brothers and Company Ltd* (1901) 1 Ch 279

> An interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders *inter se*

The shares issued by a company are owned by a shareholder. When the shareholder acquires an interest in a company, they are entered within the securities register whether certificated or uncertificated (Section 1 of the Companies Act No 71 of 2008). Ordinary shares, preference shares, and deferred shares are among the share types that South African incorporated companies are permitted to issue (Paxton, 2019: 2).

Flow-through shares are considered ordinary shares for purposes of the issuance and may be issued by the organisation to the extent that the company has authorised shares to be issued. It should however be noted, by regulation (reg) 6202.1 to the CITA, the shares are not permitted to be prescribed shares, thus limiting the share type to ordinary shares within a South African context. This limitation of specific designation to ordinary shares within the CITA is to avoid investors to limit risk in the event of liquidation or dissolution of the company (Chiarot, 2008: 12).

The shares of a company are set into three components, authorised, issued, and unissued shares. The components of the shares are governed by the company's Memorandum of Incorporation (MOI). According to Giles (2012: np) "A company's MOI is

the sole governing document of the company. It is binding between the shareholders themselves (if there are more than one), and between the company and each director or prescribed officer." The company's MOI must specify the authorisation and classification of shares, the number of authorised shares of each class, their rights, limitations, and other terms associated with each class of shares (Paxton, 2019: 2).

The Companies Act permits amendments to the founding statement of the company. However, to affect changes to the authorised share capital, it should be affected through a special resolution under section 36(2) of the Companies Act of South Africa.

2.4.3 Principal Business Corporation

The concept of a principal business corporation (PBC) does not exist within the South African Legislation, thus considerations will be made taking into account the CITA. Following section 66 (15) CITA a "principal-business corporation means a corporation the principal business of which is any of, or a combination of,

(a) the production, refining, or marketing of petroleum, petroleum products, or natural gas,
(a.1) exploring or drilling for petroleum or natural gas,
(b) mining or exploring for minerals,
(c) the processing of mineral ores for the purpose of recovering metals or minerals from the ores […]"

The instruments are only issued when the company is regarded as a PBC, as indicated by the definition of flow-through shares. This must be included in the legislation to facilitate flow-through transactions in the context of South Africa.

In furthering the component of the PBC for exploring or drilling for petroleum or natural gas, all actions taken by a taxpayer in connection with discovering and developing oil and gas-producing properties, even if they don't lead to producing wells (Government of Canada, 2017). Considering mining or exploring for minerals, all tasks required for finding and analysing potential minerals, creating mineable minerals, and extracting ore or minerals from the ground are included.

2.4.4 Issued under an agreement

A contract is defined as "An agreement between two or more parties with the purpose to create and bind them in a commitment" by Dreyer Engelbtecht Attorneys Inc. (n.d.: 1). The subscriber of the shares (shareholder) and the principal business company (issuer)

also enters into a contract, in addition to the acquisition of the shares within the PBC (subscription agreement).

The agreement's key features permit the PBC to transfer its right to deduct qualifying expenses on costs incurred to the extent of the consideration received (from the holder) and renounce its right to deduct costs incurred within a specified period. The agreement is made between the PBC and the first holder of the flow-through shares; as a result, only the first holder of the FTS instrument is eligible to receive the deduction (Mining Tax Canada, 2022).

When the PBC incurred the requisite expenditure, it should be noted that, expenditure actually incurred, during an assessment year, does not equate to spending that is actually paid (*Caltex Oil (SA) (Pty) Ltd v Secretary for Inland Revenue*, 1975 SA 665, 37 SATC 1). Thus, when considering from a South African perspective, this would entail a taxpayer having an unavoidable need to pay the sum when it is incurred. This, in turn, establishes the criteria under which the amount would be deductible in the year of assessment. According to Botha JA in *Port Elizabeth Electric Tramway Company v Cir*, 8 SATC 13, 1936 CPD 241, "The expenditure is actually incurred for purposes of section 11(a) in the tax year in which the obligation for the expenditure is incurred, and not in the tax year in which it is actually paid."

2.5 Qualifying expenditures

Qualifying expenditures for the issuance of flow-through shares are specifically highlighted in the CITA. Categories noted within the CITA are Canadian exploration expenditure (Appendix A) and Canadian Development expenditure (Appendix B). In considering the exploration expenditure, two general classifications exist. The categories include grassroots exploration expenditure and pre-production development costs (Chiarot, 2008: 12).

Grassroots exploration is alternatively known as greenfield exploration. Per Big Rock Exploration (nd), greenfield exploration is defined as, “the process of looking for mineral

deposits in previously unexplored areas or in areas where they are not already known to exist."

Pre-production development expenditures are expenditures incurred to bring the new mine into the process of producing commercial quantities. All the costs incurred after the completion of greenfield investment until the mine has been established for commercial production will be classified as pre-production expenditure (Mining Tax Canada, 2022).

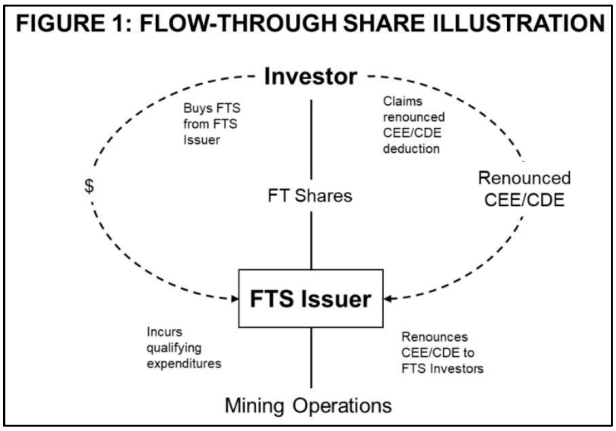
Canadian development expenditures are per Mining Tax Canada (2022) considered to be "any expense incurred in sinking or excavating a mine shaft, main haulage way or similar underground work for continuing use in a Canadian mineral resource if built after the mine has come into production, or any expense of extending any such shaft, haulage way or work."

The ITA does not expressly define exploration and development costs. However, it does consider within the tenth schedule what constitutes exploration. Per the ITA, exploration constitutes, the "acquisition, processing and analysis of geological and geophysical data or the undertaking of activities in verifying the presence or absence of hydrocarbons (up to and including the appraisal phase) conducted for the purpose of determining whether a reservoir is economically feasible to develop." The costs incurred during the process would therefore be deductible for tax purposes.

It's important to highlight that certain costs are not eligible for renouncement during the assessment year in which they were expended. Costs include:

- Administrative expenditures incurred together with financing and managerial expenses;
- Employee expenditures not directly attributable to mining exploration.
- Expenditure on property not directly attributable to mining exploration.

Figure 2.1: Diagrammatic Representation of Flow Through Share arrangement



(Mining Tax Canada, 2022)

The above diagram, illustrates flow through share arrangements, how the instruments are issued and the basic components that are embedded in the issuance of flow through shares.

2.6 Filing selling instruments (12.68)

Ensuring the proper administration and monitoring of flow through share arrangements within the fiscal system is of utmost importance. A critical aspect involves submitting the instruments to the minister for their issuance. Section 65, subsection (ss) 12.68 of the CITA provides requisite guidance in the filing of the instruments.

The requirements for filing the issue of flow through shares by a PBC entail providing the minister with a prescribed form and a copy of the selling instrument, alternatively the agreement to issue the shares to the potential shareholders. This is to be submitted to the Minister on or before the last day of the month in which the agreement is entered or the month in which the shares are to be provided to the potential investors, whichever date is earlier section 65(12.68) of the CITA. Thereafter, the minister provides a unique

identification number to the form submitted, of which the issuer will receive notification of the assigned number.

Filing the instruments with the Minister is mandatory to issue the instruments. Though a particular timeframe is allocated, in certain instances, it is permissible to file the prescribed documents at a later stage. This would be required to be filed within 90 days after the date with the minister. If submission occurs after 90 days, the Minister will at their discretion assess based on facts and circumstances whether the acceptance of documents for filing is just and equitable. In addition to this, the issuer filing the instruments will be liable for a penalty to the receiver of revenue at the date on which filing takes place. Failure to submit the requisite information to the Minister would result in the corporation being deemed not to have incurred the exploration and development expenses during the tax year (Section 65(12.702) of the CITA).

2.7 Filing requirements for renunciation of rights

When renunciation of the rights to deduct expenditures incurred in association with Canadian exploration expenditures or Canadian development expenses, the PBC by the CITA, is required to file with the minister this intention. The filing of a prescribed form containing this intention is to be submitted before the end of the month following the month in which the renunciation is made (Section 65(12.7) of the CITA). Should the PBC fail to adhere to the submission of the prescribed form, renunciation of the expenditure will not be permissible (Section 65(12.701) of the CITA).

Upon becoming entitled to the right to deduct the expenditure against their taxable income, the holder of the flow through share is also required to submit to the Minister through a prescribed form this entitlement. The uniquely identifiable number would be of paramount importance in the identification of the shares to which the entitlement relates to. This submission is required to be made by no later than the last day of the month following the month of entitlement (Section 65(12.701) of the CITA). Failure to submit the prescribed form would result in the holder of the instrument not being entitled to deduct the amount against their income.

In instances, late renunciation may also be submitted later by the issuer of the instruments than previously indicated. This affects the period in which the renunciation is deemed to

have occurred. Should the filing be made within 90 days after the corporation's tax year-end, the renunciation is deemed to have taken place at the end of the tax year of the corporation. Should the filing of the renunciation be made after 90 days of the year's end, the Minister would assess facts and circumstances and at their discretion deem the renunciation to have occurred at the end of the year. In both instances, the corporation would be liable to pay in favour of the receiver of revenue a penalty within 90 days of the renunciation.

2.8 Conclusion

This chapter has considered flow through share arrangements, and requirements for the effective issue of these arrangements within organisations. It highlighted important aspects of the definition of a flow through share arrangement and requirements to issue the instruments making it more relevant from a South African perspective. This chapter also considered filing requirements, requirements in renunciation with flow through share arrangements and qualifying expenditures the companies are permitted to deduct. A leveraged approach has been taken to understanding how this model is applied within the Canadian Tax Jurisdiction as all aspects of this type of arrangement are solely available within Canada.

The adoption of this arrangement by mining exploration companies in South Africa will require a detailed understanding of the respective aspects of flow through share arrangements. These aspects will include how the issue of these shares, monitoring of the requisite expenditure and administrative considerations for the renunciation of rights associated with the shares.

The following chapter will consider the current incentives for prospecting and exploration within the ITA, and limitations existing with the use of the currently available incentives in the ITA. It will also assess whether an extension of the current regime and amendment to the Income Tax Act would be a more administratively and practically sound course of action to pursue.

Chapter 3: Current incentives for prospecting and exploration in South Africa

3.1 Introduction

Tax incentives are measures implemented by the government with the fundamental purpose of either having individuals or businesses spend more money or reducing the tax liability incurred by taxpayers (Cambridge Dictionary, 2023: np). Within the context of the ITA, incentives available for taxpayers are in the form of rebates issued to taxpayers or deductions from income of a taxpayer.

The ITA sets out deductions for companies within section 11 (a) for general deductions and specific deductions in s11-s19. The second sub-goal of this research is to consider the current tax incentives available for the taxpayers within the ITA as it pertains to mining taxes. In this assessment, consideration will be given to existing incentives within the Act, pitfalls associated with incentives, and whether an amendment to the current legislation would be an appropriate course of action to pursue to incentivise investment. In addition, this chapter will also consider legislative components on deductions and incentives which have reached their sunset clauses for implementation and recommendations on extension as it pertains to enhancing attraction within mining investment.

The income tax dispensation for mining companies have, for a number of years been distinct from various businesses and industries. There are certain exceptions made in relation to this particular industry in order to enhance and enable growth within the industry itself (*Benhaus Mining v CSARS* (165/2018) [2019] ZASCA 17 (22 March 2019) Paragraph 3).

In *Western Platinum Limited v CSARS* [2004] All SA 611 (SCA) para 1, Conradie JA indicated that

> The fiscus favours miners and farmers. Miners are permitted to deduct certain categories of capital expenditure from income derived from mining operations […] These are class privileges. In determining their extent, one adopts a strict construction of the empowering legislation […]

Incentives within the ambit of the Act, pertaining specifically to deductions provided on expenditures incurred by mining companies are found within sections 15 and 36 of the

ITA. Allowances are issued to the mining operation for various classes of assets at the point at which the process metamorphoses to manufacturing and production, section 37A and 37B rehabilitation deductions (at the closure of the mining operation).

Before the commencement of mining activities, various phases of research may be conducted which includes, scoping study, prefeasibility, and a complete feasibility study (Rupprecht, 2004: 243). While the research activities are conducted, at the start and continuously conducted throughout the mining process, the mine is eligible for deductions in terms of section 11D of the Act. Through consideration of the Act, it is noted that, the eligibility of these deductions have reached its sunset for implementation. However, may provide specific benefits for companies with investment in research and development in the mining sphere.

A mining operation may in terms of the Act be regarded as an industrial project, thus, section 12I will be applicable. Industrial projects have in the past contained several benefits to the taxpayer which have provided effective incentives for taxpayers. This has however reached a sunset for implementation and requisite approval to be sought for effective usage of the benefits is noted within this component of the Act.

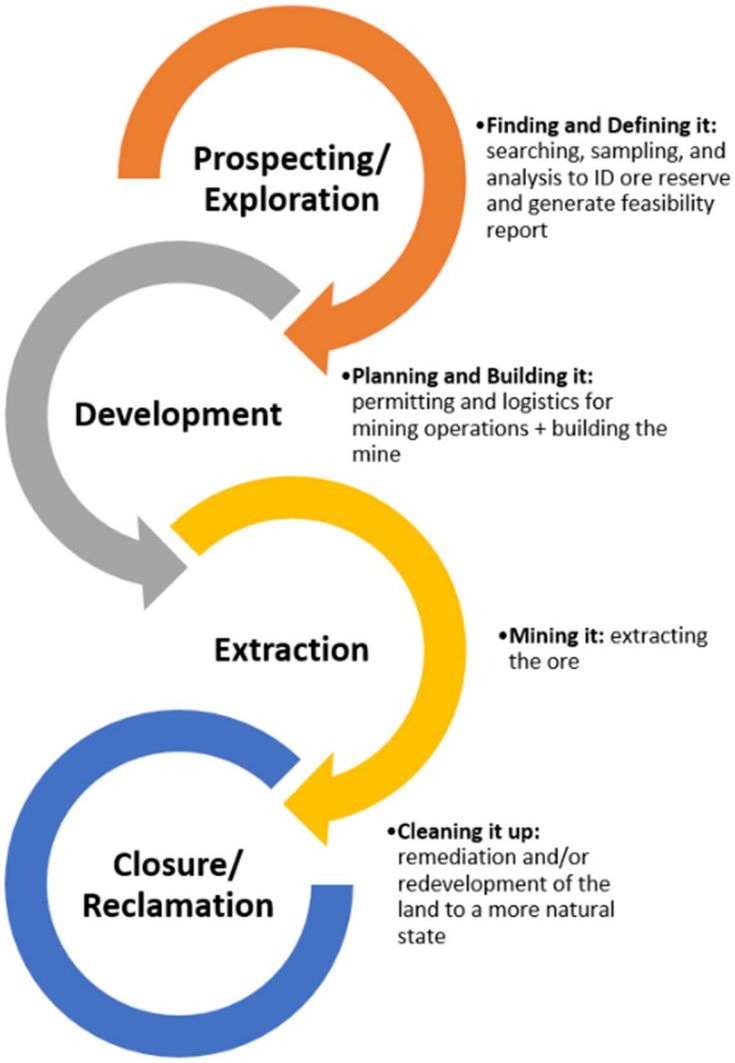
Mining operations are for the initial part of the life cycle, not profitable. Thus, require the application of Section 20 to the mining operation. In addition, consideration is made in relation to an analogous incentive to flow through share arrangements incorporated in the legislation, the Venture Capital Regime (VCC). Analysis will be done on the effectiveness of the current legislative provisions and assessment of the attractiveness of the regime. The VCC regime has reached a sunset for implementation and thus assessment will entail considering extension of the regime.

3.2 Mining Cycle

According to (Mining Concepts, 2016: 5), “Mining is the process of removing (extracting) valuable rock from the earth. Rocks that contain concentrations of valuable metals or minerals are called ore bodies. In some cases, the rock’s value is its direct use as building material.” The extraction of minerals from the earth is referred to as the mining process. The process is conducted within 4 stages, known as the mining cycle. It may be that the

stages within the mining process overlap. Consider the below diagrammatical flow of the mining process:

3.2.1 The Life Cycle of a Mine



(Superfund Research Centre, nd: 1)

3.2.2 Mining operation further processing and the Income Tax Act

A mining operation is defined within section 1 of the ITA as including “every method or process by which any mineral is won from the soil or from any substance or constituent thereof.”

A mineral is not defined per the ITA, thus, consideration must be given to the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). Per the MPRDA, a mineral is defined as “any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth or in or under water and which was formed by or subjected to a geological process, and includes sand, stone, rock, gravel, clay, soil and any mineral occurring in residue stockpiles or in residue deposits.” Fletcher Moulton LJ held the following within Great Western Railway Company v Carpalla United China Clay Company, Limited:

> If I were rash enough to venture a definition of ‘mineral’ I should say that it is any substance that can be got from within the surface of the earth which possesses a value in use, apart from its mere possession of bulk and weight which makes it occupy so much of the earth’s crust.

The above analysis made by the learned Judge provides a valuable foundation for ascertaining the meaning of a mineral.

Mining income is also not defined within the Act, however, the Act does define income. In accordance with section 1 of the ITA income constitutes, “the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax.” Thus, income within the mining context, would be the income that remains, subsequent to deducting all permissible deductions from the continuation of the mining activities.

Within *Western Platinum Ltd v C: SARS* the courts held that for income generated by a taxpayer to constitute mining income, the source of the income should be minerals taken from the earth. In addition, this income must have stemmed from furthering a mining operation. Thus, income derived from furthering a mining operation is income derived through conducting business activities of the extraction of minerals from the soil.

The importance of the above is seeing that there is a splitting point in the process, where mining activities metamorphose into manufacturing activities (SAICA, 2014: 1). This distinction in the process is fundamentally important, as varying sections of the ITA apply in the instances where the processes change from Mining activities to manufacturing activities (SAICA, 2014: 1). It is also crucially important to note that there are differences

within the timing of when specific deductions are allowed within the respective processes (SAICA, 2014: 1).

3.3 Process of Manufacture

A process of manufacture is not defined within the Act; guidance is thus sought from judicial precedence on defining what constitutes a process of manufacture. In the case of *SIR v Safranmark (Pty) Ltd* (1982 AD), Galut JA concurred with the dicta of the learned judge of the special courts with the following concluding remarks in the, then appellate division as follows:

> The expression “a process of manufacture” is not a term of art. In its ordinary meaning there are features other than the difference between the original material and the finished product which could in particular circumstances determine whether a process is one of “manufacture” or not. In the present case it seems relevant to me that a standardised product is produced on a large scale by a continuous process utilising human effort and specialised equipment in an organised manner. When to that is added the factor that the end product is, in terms of its nature, utility and value, essentially different from its main component, the process must, it seems to me, be described as one of manufacture.’

Drawing from the above, specific elements must be present in the process, including that the process should be producing a standardised product through a continuous process on a large scale. This process should also be organised and utilise the efforts of people and specialised equipment (Haupt, 2018: 180).

3.4 Corporate Income Tax Rate

South Africa has since 1 January 2001, adopted a global tax system, indicating that all resident companies within South Africa will be taxed on their world-wide-income (Revenue Laws Amendment Act, 2000). A company will be a resident for the purposes of the Act, per section 1 of the ITA when the company is incorporated, established or formed within South Africa or its place of effective management is South Africa (Section 1 of the Income Tax Act).

For tax years of assessment commencing before 31 March 2023, companies will be taxed at a rate of 28% (PwC, 2022). The rate applied to companies for tax years ending on or after 1 April 2023 is a tax rate of 27%. Special rules may be applied when dealing with corporate income tax of gold mining companies.

3.5 Research and Development

Research and development costs are pivotal elements in ensuring business success, this is also considered vital within the mining industry (Rossouw, 2021: 10). In the year 2006, section 11D was introduced within the Act. The fundamental objective of section 11D was to incentivise South African companies to enhance investment in scientific research and development (SARS, 2021).

In terms of section 11D of the Act, research and development means “systematic investigative or systematic experimental activities…” The Act contains a number of specific components to which research and development pertain and in which circumstances these elements are applied. The elements of research are considered operational costs (revenue in nature), as the cost of research do not provide an enduring benefit. When the development phase commences, the incurred costs are generally viewed as capital expenditures. It should be noted that it is irrelevant of whether the costs incurred in this process are revenue or capital when the cost incurred to fulfil the elements of section 11D of the Act, it would be permissible as a deduction in terms of the Act.

Following section 11D (2) of the Act, a taxpayer will be allowed a deduction from the determination of the taxable income an amount that is equal to 150 per cent of the expenditure incurred by the taxpayer. The research undertaken must be conducted within the Republic, actually incurred, for the furtherance of the trade and in the production of income. Further to the above, it should be noted that prior approval should be obtained from the Minister of Science and Technology.

Per section 11 D (9) of the Act, some requirements must be adhered to for requisite approval to be granted by the Minister of Science and Technology. The requirements are that the Minister of Science and Technology ought to be satisfied that:

- The taxpayer is able to prove that the expenditure incurred for which approval is sought complies with the criteria per the definition of research and development.
- Any additional requirements are adhered to following consultations held with the Minister of Finance and the Minister of Science and Technology and prescribed by regulation.

3.5.1 Shortcomings and Limitations

Research and developmental expenditure are of paramount importance when considering the strategic direction of an organisation. This component of the legislative framework has, however, reached a sunset for new implementation and obtaining the deduction in terms of the section would only be permissible should the company have received the requisite approval before 30 September 2022. This inhibits the application for new entrants into the market and disincentives market participants from embarking on research activities.

3.6 Prospecting

Prospecting activities encapsulate all activities in the preliminary establishment of the mine, in terms of section 15 (b), activities include but are not limited to “surveys, boreholes, trenches, pits”. Prospecting and prospecting operations are not defined within the Income Tax Act, however, are defined in the MPRDA as follows:

> ‘**prospecting**’ means intentionally searching for any mineral by means of any method—
>
> > (a) which disturbs the surface or subsurface of the earth, including any portion of the earth that is under the sea or under other water; or
> > (b) in or any residue stockpile or residue deposit, in order to establish the existence of any mineral and to determine the extent and economic value thereof; or
> > (c) in the sea or other water on land”
>
> ‘**prospecting operations’** means any activity carried on in connection with prospecting”.

Following the Income Tax Act, when a taxpayer incurs expenditure during the year of assessment on prospecting operations within the Republic, the expense is deductible from income generated through mining activities. The costs deductible, includes all incidental costs incurred in the prospecting operation.

When considering the expenditures deductible within the above section of the Act, the Commissioner may, at his discretion, apply an apportionment to the expenditures deductible during a year of assessment. This would therefore allow for the expenditure to be deductible in a series of instalments until such time that the expenditure is extinguished. The application of the apportionment may be applicable to all mining operations except income derived from mining diamonds within the Republic.

When the prospecting expenditure incurred has been permitted as a deduction in accordance with section 15 of the Act, this amount may not be included as the capital expenditures per section 36. This is prohibited per s 15 (b)(iii) of the Act.

3.7 Capital Expenditure - Section 36

Section 15 (a) of the Income Tax Act, provides for a deduction to be made in accordance with section 36 of the Act from the income derived from carrying on a mining operation. The deduction permissible per section 36 is a deduction of capital expenditures, granted in lieu of wear and tear allowances per s 11 (e), lease premium allowances per s 11 (f), allowance for patents per s 11 (gA) and s 11 (gC) and allowance for destruction of assets per s 11 (o) of the Act (Binding Private Ruling 182 of 6 November 2014).

In the application of section 36 of the Act, there are three crucial components that are to be considered and defined. These components include the terms, “Capital expenditure”, “Capital expenditure incurred”, and “expenditure.” These components are specifically defined within section 36 (11) of the Act.

3.7.1 Defining Terms Per Section 36

3.7.1.1 Capital expenditure
In accordance with s 36 (11) of the Act, capital expenditure means,

> expenditure (other than interest or finance charges) on shaft sinking and mine equipment, expenditure on development, general administration and management … prior to the commencement of production or during any period of non-production, in the case of any post-1973 gold mine or any post-1990 gold mine, an allowance calculated at the rate of 10 per cent per annum in the case of a post-1973 gold mine or 12 per cent per annum… expenditure (excluding the cost of land, surface rights and servitudes) the payment of which has become due on or after 1 July 1989 in respect of the acquisition, erection, construction, improvement or laying out of housing for residential occupation by the taxpayer’s employees …

3.7.1.2 Capital expenditure incurred

In accordance with s 36 (11) of the Act, capital expenditure incurred means,

> The amount (if any) by which the expenditure that is incurred during such period in respect of such mine and is capital expenditure, exceeds the sum of the amounts received or accrued during the said period from disposals of assets the cost of which has in whole or in part been included in capital expenditure taken into account (whether under this Act or any previous Income Tax Act) for the purposes of any deduction in respect of such mine under section 15 (a) of this Act or the corresponding provisions of any previous Income Tax Act

3.7.1.3 Expenditure

In accordance with s 36 (11) of the Act, expenditure means, “net expenditure after taking into account any rebates or returns from expenditure, regardless of when such last-mentioned expenditure was incurred.”

3.7.2 Deduction permissible

The deduction permissible in terms of section 15 (a) of the Act is ascertained in accordance with s 36 (7C). The total amount that may be deducted from the income of the mine, is limited to the amount of capital expenditures incurred. There are two limitations noted within the confinements of section 36, a general limit (36(7C)) to the deduction and a particular cap (36(7F)) on the deduction of capital expenditure.

The general limitation imposed indicates that the deduction permitted in accordance with the Act is limited to the capital expenditure incurred. The specific limitation indicates that the capital expenditure permissible as a deduction for a specific mine, limits the deduction to adjusted taxable income of the mine, from that specific mine’s mining activities. Relief is provided on the specific limit noted in s 36 (7F), which is applicable only when dealing with a new mine.

In certain instances, there may be a company that owns and operates more than one mine. It is important to note that in these instances, that there are varying treatments of the computation of the capital expenditure. The factor that gives rise to whether the computation is a single or separate determination of the capital expenditure redemption is noted in s36 (10). It indicates that, “where separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately.” Thus, it is required for the mines to be contiguous for redemption of the capital expenditure applied in a single computation.

Unredeemed capital expenditure are carried forward to the following year of assessment and is only used against the income of the specific mine. When more than one mine is within the structure, the amount is determined to be one mine in the capital expense redemption determination, if the mines are regarded to be contiguous. The ring fence of the capital expenditure will be determined subsequent to having considered the assessed losses in section 20 of the Act.

In the event of a disposal of the asset for which the claim had been processed either fully or partially, a recoupment will be recognised within the determination of the taxable income as a special inclusion within the gross income.

3.7.3 Qualifying expenditure

In accordance with paragraph (d) of the definition of capital expenditure as noted in section 36(11) of the Act, the following are regarded to be qualifying expenditures noted to be capital expenditure:

(i) housing for residential occupation by the taxpayer's employees … and furniture for such housing;
(ii) infrastructure in respect of residential areas developed for sale to the taxpayer's employees;
(iii) any hospital, school, shop or similar amenity … owned and operated by the taxpayer mainly for the use of his employees;
(iv) recreational buildings and facilities owned and operated by the taxpayer mainly for the use of his employees;
(v) any railway line or system having a similar function for the transport of minerals from the mine to the nearest public transport system or outlet;
(vi) motor vehicles intended for the private or partly private use of the taxpayer's employees:

The Act provides that, the capital expenditures as noted above, are deemed payable over a period of 10 years at ten successive equal instalments. The 10-year period is lessened when considering (vi) as indicated above, the period of the instalments in the deeming provision is reduced to 5 years. There are specific exclusions noted within the Act as it pertains to non-allowable deductions or disqualifying expenditures as noted per s36(11)(d) such as "cost of land, surface rights and servitudes."

When a taxpayer commences mining operations at a new mine subsequent to 14 March 1990, a portion of the unredeemed capital expenditure may be deducted by the taxpayer from the total taxable income derived by the taxpayer of other mines operated by them. This may be deducted to the extent that the deduction does not exceed 25% of the total taxable income derived from the taxpayer's other mines.

3.8 Assessed Losses

The Act defines an assessed loss in section 20(2), as "any amount by which the deductions admissible under section 11 exceeds the income in respect of which they are admissible". An amendment was proposed in relation to assessed losses in 2021 which has become effective as of 31 March 2023 (Hoek, 2022: 3). The amendment made in relation to the assessed losses primarily considered the limitation in the ability to utilise the assessed losses during a year of assessment (Hoek, 2022: 3).

The current effective deductions permissible in accordance with section 20 indicates that, the balance of assessed loss incurred by the taxpayer brought forward will be taken into account in the determination of the taxable income. The amount allowed to be taken into account for this purposes has reduced from the full balance of assessed loss to the higher of R1million or 80 per cent of the taxable income of the taxpayer.

3.9 Capital Gains taxes

Per Section 26A of the Act, with effect from the 1st of October 2001 assets disposed of by a taxpayer will attract Capital gains taxes. This tax will be levied in accordance with the rules and provisions of the Eighth Schedule to the Income Tax Act.

Following Section 26A, there will be included in the determination of the Taxable Income of the taxpayer capital gains tax consequences of the underlying transactions entered by the taxpayer.

Paragraph 5 of the Eighth schedule, provides that for natural persons and special trusts, an annual exclusion is available to exclude capital gains to a maximum of R40 000. No annual exclusion is available for companies. Per paragraph 10 of the Eighth schedule, 80 per cent of the total capital gain will be subject to taxation at the effective rate of 27% per cent.

When a capital loss is derived by a company, this may be carried forward to the following year of assessment. Consider the limitations as noted in the segment assessed losses.

3.10 Depreciation allowances

Mining operations have a crucial splitting point. This is when the process metamorphoses from mining activities to manufacturing activities. As indicated, when the manufacturing activities commence, an array of allowances are applicable within the Act. In the SA Mine report of 2021, it was noted that from the industry financial position, the primary contributors to the non-current assets of all mining operations are mining and production assets (Rossouw, 2022: 40).

Production assets will not be utilised within the mining process. Thus, allowances available are provided per section 12C, section 13 quin and section 13 of the Act.

3.10.1 Plant and Machinery

Section 12C of the Act permits a deduction of the cost of plant and machinery of 20% per annum provided that the taxpayer owns the asset. New and unused assets will contain an accelerated deduction of 40% in the first year when the asset is brought into production and 20 per cent in three succeeding years of assessment. This allowance permissible is limited to the cost of the assets and is not apportioned for a part of the year of assessment. The cost of the asset is the lower of the amount incurred when acquiring the asset and the market value of the asset at the date of acquisition.

3.10.2 Commercial buildings

Commercial buildings owned by the taxpayer are permitted for allowance per section 13 quin of the Act at a rate of 5 per cent per annum. The conditions precedent to the applicability of the allowance include, that the commercial buildings are new and unused, owned by the taxpayer and wholly or mainly used by the taxpayer in order to produce income.

The allowance permissible is limited to the cost of the assets and is not apportioned for a part of the year of assessment. The cost of the asset is the lower of the amount incurred when acquiring the asset and the market value of the asset at the date of acquisition.

On occasion, a taxpayer would not have erected the commercial building. In these instances, the taxpayer is only permitted to deduct a specific percentage of the cost. Two specific instances exist in which these would be applicable. The first occurs when the taxpayer acquires a part of the building without construction. Only 55 per cent of the cost will be permissible as a deduction. The second occurs when the taxpayer has an improvement on an existing asset. In practice, an improvement to an asset is considered a separate asset (Haupt, 2019: 198). An improvement is permitted a deduction at 30 per cent of the cost incurred on the improvement.

3.10.3 Industrial Buildings

Industrial buildings are permitted for allowance per section 13 of the Act at a rate of 5 per cent per annum. This deduction is permissible provided that the building is wholly or mainly used in the process of production.

The conditions precedent to the applicability of the allowance are distinguishable from the allowances as noted in section 13 quin of the act. This is as the allowance does not require the taxpayer to own the land on which the building is erected on and does not require the building to be new and unused (when purchased [section 13(1)(d) and (dA)]).

3.11 Environmental Rehabilitation

A company or trust established with the primary objective to apply the property owned to rehabilitate a mining operation or areas used for the purposes of continuing mining activities at the closure of the operation is exempt from the levy of taxation (section 10(1)(cP)). Parallel with the exemption from taxation is an allowance permissible from tax to eligible taxpayers, the full contribution made to the funds. In addition, all capital growth in this regard is not subject to taxation (Gilfillan, 2012). The qualifying amounts will be permissible as a deduction in accordance with s37A of the Act. This allows for deductions on specific rehabilitation expenses incurred in the rehabilitation process.

The MPRDA provides in section 41 that it is a legal requirement for all mines to make financial rehabilitation provisions prior to approval of the environmental management plan by the Minister in accordance with section 39 of the MPRDA. The financial provisioning

is administered by the Department of Mineral Resources and Energy and is regulated by the National Environmental Management Act (NEMA).

Financial provision[1] is defined in section 1 of the MPRDA as, "the insurance, bank guarantee, trust fund or cash that applicants for or holders of a right or permit must provide in terms of sections 41 and 89 guaranteeing the availability of sufficient funds to undertake the agreed work programmes and to rehabilitate the prospecting, mining, reconnaissance, exploration or production areas…" Financial provisions are regulated in by the Financial Provisioning regulations as published in accordance with the National Environmental Management Act No. 107 of 1998 (NEMA).

Strict rules are applicable in relation to the rehabilitation funds and assets within the company or trust funds and assets should be used for the sole purpose of rehabilitation of the mining operations (Gilfillan, 2012). Inappropriate utilisation of funds per the stated objectives as noted in section 37A(1)(a) attracts onerous and harsh penalties.

3.12 Royalties

Mineral and petroleum royalties ("royalties") are implemented within South Africa with effect on 1 March 2010. The levy of royalties are regulated by the Mineral and Petroleum Resources Royalty Act, No 28 of 2008 ("the Royalty Act"). In accordance with Norton Rose Fulbright (2017), a royalty in the mining context is, "a right to receive payment based on a percentage of the minerals or other products produced at a mine or of the revenues or profits generated from the sale of those minerals or other products at a mine." The imposition of a royalty will be on a taxpayer based on a transfer of a mineral resource extracted from within the Republic per section 2 of the Royalties Act. The imposition of the royalty is dependent on 2 crucial elements, a transfer and this must be a transfer of a mineral resource.

[1] Financial Provisioning is Defined in section 6(1) of the National Environmental Management Act No. 107 of 1998 as "an iterative process of impact assessment and risk profiling to identify, calculate, predict and provide for the costs of remediating and rehabilitating environmental impacts and risks associated with a reconnaissance, prospecting, mining, exploration or production operation, determined against agreed closure objectives designed to achieve an approved sustainable end state, in the short, medium and long term."

3.12.1 Mineral Resource

The term mineral resources encapsulate an array of components including, “prospecting rights for minerals, exploration rights for petroleum, mining permits, retention permits or mining rights for minerals, and production rights for petroleum issued under the MPRD Act.” (Strydom, 2023: 1)

3.12.2 Transfer

A transfer is defined within the Royalties Act as,

a. the disposal of a mineral resource
b. the consumption, theft, destruction or loss of a mineral resource, other than by way of flaring or other liberation into the atmosphere during exploration or production,

    if that mineral resource has not previously been disposed of, consumed, stolen, destroyed or lost;

When considering minerals transported temporarily out of the country, it should be noted that in these instances, it is not regarded as a transfer (Strydom, 2023: 1).

3.12.3 Income Tax Implications Royalties

The Royalties Act considers the manner in which the royalties’ taxation is determined. Once the above factors have been established to be present, there is a levy of royalty tax on the Taxpayer. The Royalties tax is determined by using a formula, from which the calculation distinguishes between refined and unrefined mineral resources to determine the royalty liability. For the purposes of the Income Tax Act implications, it is important to note that the royalty taxation levied, is regarded as an expense incurred in the production of income, and thus deductible against the determination of the taxable income (Strydom, 2023: 1).

3.13 Section 12I Tax Allowance Incentive

Section 12I of the Act was introduced to advance and endorse greenfield and brownfield investments. This specifically encapsulated industrial projects that have only a vested interest in the utilisation of new and unused manufacturing assets (Interpretation note 86, 2021: 2). The allowance provided in this instance is considered specifically for the projects

that qualify to be regarded as an industrial project. When a mining project is viewed as a significant contributor to the Industrial Policy Programme of South Africa, this project may be regarded as an industrial project. In accordance with s12I of the Act, an industrial project is, “a trade solely or mainly for the manufacture of products, goods, articles, or other things within the Republic that, is classified under “Section C: Manufacturing” in version 7 of the Standard Industrial Classification Code” should this not be noted in accordance with Section C as mentioned, items as per discretion of the adjudication committee.

3.13.1 Criteria for qualifying incentives

Section 12I of the Act, details two specific requirements to be fulfilled in order for the eligibility of the specific incentives as noted within the Act. The requirements are as follows:

1. The industrial project should be regarded as an “industrial policy project” s12I (7); and
2. The project should be a qualifying industrial policy project that adheres to the Ministerial approval requirements per section 12I (8).

3.13.2 Industrial Policy Project

Adhering to the criteria within section 12I (7) of the Act and fulfilling the requirements of constituting an Industrial Policy Project if:

The Minister of Trade and Industry is satisfied that:

- The cost of the assets to be acquired for the project will be in excess of
    - R 50 million for a greenfield project; and
    - Higher of R30 million or lesser of R 50 million or 25% of expenditure incurred to acquire assets previously used in the project.

(Section 12I (7) of the Act).

3.13.3 Allowances

Allowances as provided in section 12I of the Act are considered to be additional allowances provided in addition to allowances in terms of the Act. There are two

respective type of allowances granted when the company is approved as an industrial policy project (Interpretation note 86, 2021: 7). The first being an investment allowance and the second being a training allowance. The Investment allowance is solely explored below.

3.13.3.1 Investment allowance

When the company has an approved industrial project as indicated above, the additional investment allowances deductible is:

- 55% of the cost of “manufacturing assets” used in the industrial policy project (New and unused with preferred status).
- 100% of the cost of “manufacturing assets” used in the industrial policy project (New and unused with preferred status and is within an economic zone).
- 100% of the cost of “manufacturing assets” used in the industrial policy project (New and unused without preferred status and is within an economic zone).

(Section 12I (2) of the Act)

3.13.3.2 Monetary Limitations of investment allowance

With additional investment allowances provided, when dealing with greenfield projects a monetary limitation is set at R900 million (if greenfield project has preferred status) or R550 million (if greenfield project does not have preferred status). When dealing with brownfield projects a monetary limitation is set at R550 million (if brownfield project has preferred status) or R350 million (if brownfield project does not have preferred status).

3.13.4 Shortcomings and limitations

There is an overwhelming amount of benefits associated with this segment of the Income Tax Act. However, per the Explanatory Memorandum on Taxation Laws Amendment Bill, (2017: 19), “the application for approval of the project by the company is received by the Minister of Trade and Industry not later than 31 March 2020, in such form and containing such information as the Minister of Trade and Industry may prescribe.” This therefore indicates that the prospects for this implementation as a new entrant into the market is limiting.

3.14 Venture Capital Companies

In South Africa, a tax incentive introduced to encourage equity investment in small and medium-sized companies, primarily junior mining companies. The tax incentive functions in a similar fashion to flow through share arrangements, however different in the legislative provisions. This tax incentive found in section 12J of the ITA, alternatively known as the VCC regime (SARS, 2023). This portion of the ITA came into force on July 1, 2009, and has reached a sunset for implementation on 30 June 2021 (SARS, 2020: 1).

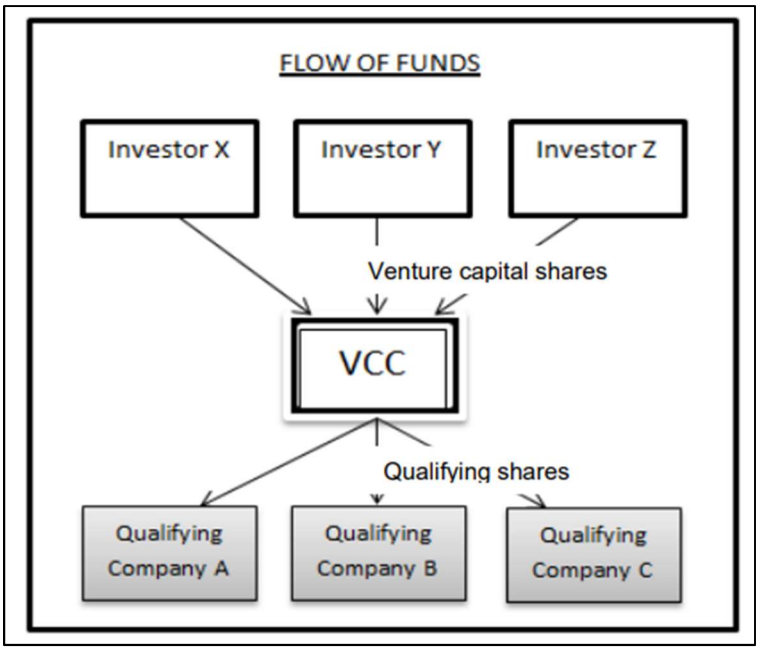
The essence of the scheme is that the holder of the share is able to deduct the full cost incurred for acquiring shares in a Venture Capital Company (VCC). A number of requirements must be satisfied for the deduction to apply. There are two levels of requirements to be adhered to as a VCC in accordance with section 12 J of the ITA. This is, at the level regarded as a VCC and at a level of a qualifying company in which a VCC holds shares. The company's sole purpose must be to manage investments in qualifying companies.. The designation of this status is contingent upon the commissioner's confirmation that all the requirements have been met.

Requirements for application of venture capital companies

- The VCC should be a resident as defined in ITA.
- The purpose of establishing the company should be to manage investments in qualifying companies.
- The tax affairs of the company should be up to date and the records should be in compliance of all legislation and regulations administered by the commissioner.
- The VCC should be registered in accordance with section 8 (5) of the Intermediary Services Act No 37 of 2002 (Services Act).

(SARS, 2020: 2-3)

Figure 3.1: Diagrammatic epresentation of flow of funds of Venture Capital Companies



The above illustration provides diagrammatic flow of funds of in a Venture Capital Company (VCC). (SARS: 2020: 5)

3.14.1 Deductions available to the investor

Section 12J (2) of the ITA sets out the deductions the investor is permitted to deduct in the determination of taxable income. There are a number of conditions for the application of the deduction claimed from the taxable income of the investor during the year of assessment.

3.14.1.1 Conditions

- If the expenditure is incurred by a company, the expenses may not be in excess of R5 million (any other persons may not exceed (R2.5 million)).
- Amounts not deducted will be lost and not carried forward to the following year of assessment.
- The deduction is only available in relation to the expenditures incurred by a taxpayer to purchase shares issued to that taxpayer by the VCC.

- Only the costs directly attributable to the acquisition of the venture capital shares are permissible as a deduction.

13.14.1.2 Short-comings of the incentive

A number of elements embedded in the incentive prove to be onerous. The following elements are noted in section 12J having a dissuasive impact on prospective investors.

- There is an array of requirements to be satisfied in order for the deduction to be granted in favour of the investor.
- It follows from the Explanatory memorandum of the Taxation Laws Amendment Bill, 2011 indicates that "[…] the deduction will only be allowed if the investments in the VCC are pure equity investments (investments with debt-like features will be completely disallowed) […]" Thus, the investor in the shares should be able to prove economic risk attached to the investment. (12J(3)(b))
- If the investor owns more than 20 percent of the equity shares in the VCC after 36 months of issue in any year, the deduction will not be applicable (12J(3B)). Which may result in the VCC losing its VCC status as it will not adhere to the requirements.
- Consequently, in the event of the loss of the status as VCC, the VCC is to include in their income for the year of assessment 125 percent of the deductible expenditures incurred by the investor in the company.

3.15 Conclusion

This chapter has explored an array of concepts as pertains to tax incentives available for the taxpayer with specific focus on the mining industry. The chapter has explored incentives both currently enacted and components in the legislation which will not be available for new entrants in the market considering the current legislative framework. Three components explored within this chapter have reached a sunset for application in a new company, are research and developmental costs, Industrial projects and Venture Capital Companies (12J).

The incentive in the ITA that was explored, analogous to the flow through share instrument as implemented in Canada is the VCC regime. The VCC regime, does however encapsulate a number of onerous provisions that are dissuasive in its

implementation. An addendum to the date of the application of the legislative provisions in this incentive would not be ideal as the administrative aspect of its application proves to be cumbersome.

Through exploring the respective segments of the literature, there has been a deterioration of incentives within the Income Tax Act. This is as more components that incentivise taxpayers to invest in the exploration space have reached their sunset dates with no new introduction of an incentive for the taxpayer to invest. It is recommended that an extension of the current regimes be brought into effect, as there has been no new incentive brought into effect for tax purposes.

Chapter 4 Flow Though Share Arrangements: Mechanics of Issue and Technical Aspects

4.1 Introduction

A flow through share is an instrument or mechanism used by mining and petroleum companies to generate sufficient funding for the exploration and development (Department of Finance Canada, 1994: 1). As of now, this is exclusively in effect in Canada. These equity instruments contain a number of tax-advantages that flow through to the respective holder of the instrument (Department of Finance Canada, 1994).

For the acquisition of this instrument, the holder acquires not only an equity stake within a business, but a right to income tax deductions as a consequence of their investment (Charriot, 2008: 23). This method of raising equity within the Canadian tax jurisdiction, has been noted as the most common method of raising equity financing for start-up exploration companies on the Canadian exchange between the years 2011 and 2019 (PDAC, 2021: 2). These shares are typically issued to provide benefit, primarily to the non-taxpaying junior mining exploration companies, which have limited access to funding (Department of Finance Canada, 1994: 1).

A flow through share arrangement is recognised as a financing method consisting primarily of three key components. The arrangement is regarded as being a financing structure, an expense for share transaction and the income tax recognition of the eligible expense renounced under the flow through share arrangement/agreement (Department of Finance Canada, 1994: 1).

The third sub-goal of this research is to explore the mechanics and tax incentives provided through the issuance of flow through share. In addressing this sub-goal, the research will provide and gain a deep understanding of the three layers of flow through shares as a basic flow through share, super flow through share and provincial level flow through shares. This chapter will explore both tax credits and tax deductions provided by the Canadian Income Tax Act and provincial level tax credits and benefits afforded to investors in advancing mining exploration in Canada. This chapter will also consider the applicability of the respective models within a South African context.

Subdivision E of the Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp) (CITA) explicitly addresses exploration and development costs relating to principal-business corporations (PBC) and flow through share arrangements. This segment of the Canadian Income Tax Act will serve as the primary reference for the components examined within this chapter. In addition, an abundance of literature exists specific to the flow through shares and flow through arrangements as published by the Prospectors and Developers Association of Canada (PDAC). Publications specifically made by this body will be considered and examined in fulfilment of this research objective.

Chapter 2 of this research paper explored the concept of flow through shares and tailored these components to make this more specific and relevant from a South African perspective. This chapter will be exploring and detail the specific arrangement within a Canadian context and detail the mechanics of the arrangement in detail.

4.2 Flow through share definition and context

Idem: Chapter 2 (2.4.1) definition of flow through shares

> A flow through share means a share … of the capital stock of a principal-business corporation, … … issued to a person under an agreement in writing made between the person and the corporation under which the corporation, for consideration … transferred by the person under the agreement and, agrees
>
> c) **to incur**, in the period that begins on the day on which the agreement was made and ends 24 months after the month that includes that day, Canadian exploration expenses or Canadian development expenses in an amount not less than the consideration for which the share or right is to be issued, and
>
> d) **to renounce**, in prescribed form and before March of the first calendar year that begins after that period, to the person in respect of the share or right, an amount in respect of the Canadian exploration expenses or Canadian development expenses so incurred by it not exceeding the consideration received by the corporation for the share…

The flow through share regime was introduced in the Canadian Income Tax Act in the year 1986 having the primary objective of generating capital funding for mining companies (Davis & Long, 2019: 6). This has proven resilient and highly effective within the Canadian equity market and these shares are traded publically (PDAC, 2021: 2). A study conducted by the PDAC on the specific funding pertaining to exploration companies over the years

2011 to 2019, indicated that approximately 65% of the equity financing of the Canadian stock exchange shares consisted of flow through shares (PDAC, 2021: 2). This has significantly contributed to the exploration spending within the Country's budget on exploration expenses (PDAC, 2021: 2).

4.3.1 Setting a price on flow through shares

A significant benefit attached to the issuance of the flow through share arrangement is the ability to attach to the issue share price a premium on ordinary value, this is primarily attributed to the benefits attached to the share for the holder of the instrument (Department of Finance Canada, 1994: 17). Considering the rationalisation of an investor, the economic consequences are regarded in addition to the fiscal benefits attached to the share (Department of Finance Canada, 1994: 17). The price of ordinary share equity, will be established through the demand and supply of shares in the equity market. Factors influencing this price factored into the cost of the equity, take into account, economic performance, tax treatments of the shares, asset portfolio diversification by investor and risk aversion (Department of Finance Canada, 1994: 17). The premium associated with the price paid for a flow through share, in comparison to the ordinary share, takes into account the eligible expenditures under the agreement. Additionally, how the fiscal treatment will affect the exploration and developmental expenses incurred and ability of utilising the deductions in relation to the exploration and development expenses by the investor (Department of Finance Canada, 1994: 17).

In the instances where the costs attached to the acquisition of a flow through share is higher, there will be a smaller premium attached to the equity share. In addition, this may also be further reduced in consequence of the liquidity risk attached to the legislative provisions currently within Canada (Department of Finance Canada, 1994: 18).

4.3.2 Maximum and minimum premium attached

There are two perspectives to be considered in establishing the maximum and minimum prices for the issuance of a flow through share (Department of Finance Canada, 1994: 18). The first would be the viewpoint of the investor and their ability to take full advantage of the tax benefits associated with the underlying transaction. Consequently, denotes the willingness of the investor to pay a greater premium. Considering the investors

perspective, these factors will include the federal and provincial benefits derived through exercise of the transaction, income tax saving which may provide benefit to the investor as taxpayer within the tax jurisdiction and the capital gain (Department of Finance Canada, 1994: 19).

The view of the company issuing the instrument, income tax value of the exploration and developmental expenditures at a given point in time, is greatly dependent on where the company is positioned from a tax paying perspective (Department of Finance Canada, 1994: 18). Thus, the ability to utilise the tax benefits attached to the expenditures and the tax treatment of these particular elements play a pivotal role in the minimum premium attached to the share issued. Consequently, when considering a start-up exploration and development company that does not have any tax obligation to the revenue authorities (being in a loss making position) would have a greater willingness to accept lower premiums than a junior mining company that has greater tax obligations (Department of Finance Canada, 1994: 18).

4.4 Flow through share arrangement

The decomposition of the components to the definition of flow through share arrangements and its application to the tax jurisdiction will be considered in the following manner:

1. The period when the expenditures are incurred
2. When the renunciation of the expenditures affects taxable income
3. Renunciation not exceeding the consideration

4.4.1 The period when the expenditures are incurred

Per section 66(15) of the CITA, the period provided for deducting the qualifying expenditures are to commence on the date on which the investor has subscribed for the flow through share. The period of the deduction of the qualifying expenditures ends on the last day of the month 24 months after the inception of the subscription agreement. Should there be qualifying expenditures incurred by the issuing company prior to the date of subscription, these expenditures will not be taken into consideration for the purposes of the flow through share arrangement (Association for Mineral Exploration, n.d.).

The period, for which the expenditures are incurred are pivotal in this arrangement, as this establishes the base of the total qualifying exploration and development expenditures that the individual investor is to take into account when conducting their tax affairs. The amount incurred by the issuing company, will form a part of the cumulative exploration and development expenditure of the issuing company. Once this time-frame of 24 months has completed the cumulative qualifying exploration expenditure will be renounced to the investor (Mining Tax Canada, 2022).

4.4.2 When the renunciation of the expenditures affects taxable income

When the PBC has incurred the qualifying expenditures, the PBC has to renounce these expenditures incurred to or in favour of the taxpayer, or subscriber of the flow through shares (Mining Tax Canada, 2022). This renunciation should occur before the last day of February, in the tax year following the 24-month period in which the qualifying expenditures have been incurred by the issuer of the flow through shares (Mining Tax Canada, 2022). As the expenditures have to be incurred prior to their renunciation, the 24-month period allows for sufficient time for accumulating the expenditures to renounce to the respective holders of the instrument.

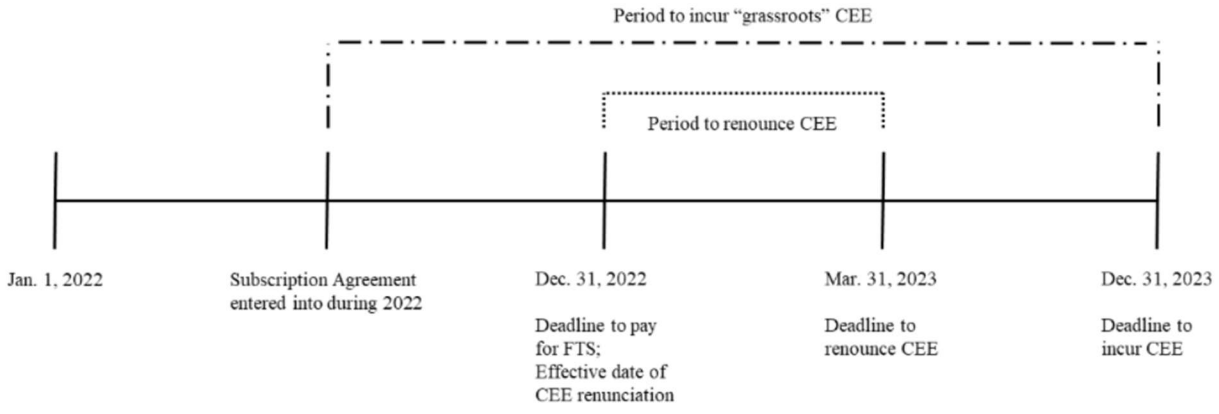
In relation to the above, there are certain exceptions to the rule. Flow through share arrangements are structured in such a manner in which the investor to the flow through share arrangement may utilise the benefits associated with the transaction to the best advantage. The exception of the rule occurs when the issuer of the instrument renounces the Canadian exploration expenses to the investor prior to the expenditure has been incurred, which are prohibited under the normal rules of flow through shares (Mining Tax Canada, 2022). There are two specific requirements to be fulfilled in order for the above transaction to be possible. The first requirement is that the flow-through share is to be issued specifically for grassroots Canadian exploration expenses and the second is that the transaction is to be at arm’s length. This principle is referred to as the look-back rule (PDAC, 2000).

This transaction is illustrated through the example below, the example is altered from (Mining Tax Canada, 2022):

4.4.3 Issue of flow through share of grassroots Canadian exploration expenditure

Company A issues a flow through share in the 2022 year and incurs grassroots Canadian exploration expenditure in the 2023 year. The subscriber to the flow through share arrangement transfers the requisite consideration for the share issue on 31 December 2022. Company A, may renounce the grassroots Canadian exploration expenses incurred in the first three months of 2023 (until 31 March 2023), retrospectively, with effect on 31 December 2022. Consequently, resulting in an exception of the standard rule of renunciation of expenditures prior to incurring qualifying exploration expenditures. This rule is known as the “look-back” rule. The application of this rule imposes an additional liability in terms of the Canadian Income Tax Act on Company A to make payment of a month-by-month time value of money tax on expenditures renounced commencing in the month of February in the year of following the year in which the issue is made. The following diagram provides an indication of the time-line, specifically applicable to “grassroots”.

FIGURE 2: GRASSROOTS FTS TIMELINE



(Mining Tax Canada, 2022)

4.4.3.1 Grassroots Canadian Exploration Expenses

In accordance with section 66.1(6)(f) of the Canadian Income Tax Act, grassroots are defined as

> Any expense incurred by the taxpayer… 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… 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

Thus, for the special rules to be applicable for the purposes of issuance of the flow through share arrangement, the purpose of the issuance, should be for incurring the above noted expenditures per the CITA.

4.4.3.2 Transaction at Arm's Length

Canada is one of the tax jurisdictions noted as a member of the OECD since 10 April 1961 and thus applies and endorses the guidelines per the OECD conventions (OECD, n.d.). The OECD specifically dealt with transactions at arm's length within the Model Tax Convention on Income and on Capital 2014 (OECD, 2014: 29). The context in which this is considered pertained more to transfer pricing arrangements, despite the context, the discussion of the arm's length principle highlighted, proves significant relevance in this instance. The principle indicates that when entering a transaction, the transaction should have substantive financial characteristics as though it was entered by independent parties (OECD, 2014: 29).

Through paragraph 1 of Article 9 of the Model Tax Convention 2014, it is indicated that an arm's length transaction is where "conditions are made or imposed between … two [associated] enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises" (OECD, 2014: 29-30).

Within the South African Income Tax Act, paragraph 31(1)(g) of the Eighth schedule to the Income Tax Act indicates that a transaction entered at arm's length is "any other asset, the price … obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market." In addition, the concept is furthered in the case of *Hicklin v Secretary for Inland Revenue* 1980 (1) SA 481 (A), 41 SATC 179 at 192, where Trollip JA described the concept of arm's length as follows:

> …It connotes that each party is independent of the other and, in so dealing, will strive to get the utmost possible advantage out of the transaction for himself…Hence, in at arm's length agreement the rights and obligations it creates are more likely to be regarded as normal than abnormal…

There should thus be a fair market value determined for the respective flow through share in order for the specific exemption rule to apply. Thus, in the issue price of the share issued, the issuer should ensure appropriate techniques are utilised in ascertaining the price of the share.

4.4.4 Renunciation ability to deduct expenditure

The third component of the definition further explored considers the amount renounced to the investor. As stipulated per the definition of a flow through share, the amount that the issuer of the shares renounces to the holder of the instrument, may not exceed the available Canadian exploration expenses or Canadian development expenses or the amount paid by the investor for the share. Thus, limiting the permissible deduction to the lower of the amount paid and expenditure incurred by the issuer.

It is thus important to note that when all the requirements have been fulfilled, the shares are issued to the investor and qualifying expenditures are renounced in accordance with the flow through share agreement entered (Mining Tax Canada, 2022). The investor in this instance, is treated as having incurred the Canadian exploration or development expenses. Consequently, deducting in the determination of taxable income, the amount renounced to the investor, reducing any tax liability accordingly until expenditures are fully utilised (Mining Tax Canada, 2022). The issuer of the flow through shares are deemed never to have incurred the exploration or development expenditure. Thus, losing on the benefit of the deduction in the determination of their taxable income.

Per the definition, it is noted that the issue of the flow through shares and the agreement under which the shares are issued occur only once (Mining Tax Canada, 2022). Thus, the first holder of the share is the only party permitted to claim deductions for the qualifying expenditures. In the event of disposition of the share by the initial holder of the share, no deduction will be granted to any subsequent holders of the same share. It is thus crucial for anyone intending to invest in these shares to ensure they are the first recipient of the share or first holder of the share. The rules applicable does not cease as a consequence of disposition (Mining Tax Canada, 2022). The first holder of the instrument will still be eligible to deduct the expenditure when these have been incurred and are renounced to the holders of the instrument, irrespective of whether the holder of the instrument holds

the instrument or not (Mining Tax Canada, 2022). The only important aspect is that the taxpayer should be the first holder of the instrument (Mining Tax Canada, 2022).

4.5 Cost of flow through share

In normal instances, when a taxpayer acquires an asset and the asset is acquired at the fair market value, the cost of the underlying asset is equal to the consideration transferred to the taxpayer. This principle mimics the concept as noted within the Income Tax Act in the South African tax jurisdiction. Consequently, this principle may be explained through South African domestic tax legislation in accordance with the provisions of the eighth schedule to the Income Tax Act. Paragraph 20(1)(a) of the Eighth Schedule indicates that the base cost of the asset is the, “expenditure actually incurred in respect of the cost of acquisition or creation of that asset.”

There is, however, an exception when dealing with flow through shares, this exception is that the investor is deemed to have acquired the asset at a base cost of zero (Mining Tax Canada, 2022). This principle exception is consequential to the substance of the underlying transaction entered. This is also a common doctrine applied within South African jurisprudence, as indicated by (Legwaila, 2011: 112), the principle permits the courts to disregard the form in which parties to a transaction may disguise the underlying substance (Legwaila, 2011: 112). To this effect, it considers the acquisition of the flow through share to be in substance acquiring the Canadian exploration or development expenditures that is deductible from income derived by the issuing entity. Thus, as a consequence of the disposition of the shares, the investor has realised a capital gain on the underlying transaction and the gain is realised on the full amount of proceeds generated by the taxpayer with the underlying transaction.

Three examples are be explored below. These examples will provide an indication of when a flow through transaction will provide benefit to the investor in these arrangements. The first example explored will consider the impact from a South African perspective when a flow through share is issued at a premium, when the share is issued at the trading value and another issued at a discount and in which instances these may prove viable and beneficial for the investor.

4.5.1 Example 1: Disposal of flow through share issued at a premium

The below example will be simplistic to ascertain and establish the possible benefit derived by the acquirer of the share. It is assumed that the investor acquires 100,000 flow through shares of a newly established mining exploration company (Company A). In the determination of the value, a premium of R1 was attached on the price of the ordinary shares of Company A. The trading price of the share is R9 per share at date of acquisition and at date of sale the share price for an ordinary share is R20 per share. This example will consider both consequences of an individual investor and a company investing in the shares. The example explored is specific to when all other factors remain constant.

ASSUMPTIONS USED	
Flow through shares acquired	100,000
Price per flow through share	R 10
Price of ordinary share	R 9
Premium per share	R 1
Income tax rate of individual tax payer	45%
Income tax rate of Company tax payer	27%
Total expenses renounced per share	R 10
Price on date of sale	R 9

	Individual		**Company**	
	Cash Paid	Cash received	Cash Paid	Cash received
Cost of flow through share (R10/share)	R 1,000,000		R 1,000,000	
Tax savings from R1,000,000 renounced Exploration expenses		R 450,000		R 280,000
Investor's proceeds from selling flow through shares in market		R 900,000		R 900,000
Tax owing on capital gain from sale of flow through shares	R 154,800		R 194,400	
Cash flow benefit/ (loss) for investor		**R 195,200**		**(R14,400)**

	Individual	**Company**
Proceeds	R 900,000	R 900,000
Base cost	(R 0)	(R 0)
Capital Gain	**R 900,000**	**R 900,000**
Annual exclusion	(40,000)	No exclusion
Net Capital Gain	**R 860,000**	**R 900,000**
Inclusion rate	40%	80%
Applied Rate	45%	27%
Tax liability on capital gain	**R154,800**	**R 194,400**

Drawing from the above, it provides an indication that when these shares are issued in South Africa and issued at a premium, these shares have a significantly positive effect on an individual investor, thus enhancing the attractiveness and willingness of the investor to invest in this instrument, provided that the investor is an individual taxpayer. On the other end, when the investor is a company, investing in these shares issued at a premium has adverse consequences for the investor who is a company.

4.5.2 Example 2: Disposal of flow through share issued with no premium

The below example has the same facts as example one with the only element altered being no premium is added

ASSUMPTIONS USED	
Flow through shares acquired	100,000
Price per flow through share	R 9
Price of ordinary share	R 9
Premium per share	R 0
Income tax rate of individual tax payer	45%
Income tax rate of Company tax payer	27%
Total expenses renounced per share	R 9
Price on date of sale	R 9

	Individual		Company	
	Cash Paid	Cash received	Cash Paid	Cash received
Cost of flow through share (R10/share)	R 900,000		R 900,000	
Tax savings from R 900,000 renounced Exploration expenses		R 405,000		R 252,000
Investor's proceeds from selling flow through shares in market		R 900,000		R 900,000
Tax owing on capital gain from sale of flow through shares	R 154,800		R194,400	
Cash flow benefit/ (loss) for investor		**R 250, 200**		**R 57,600**

	Individual	**Company**
Proceeds	R 900,000	R 900,000
Base cost	(R 0)	(R 0)
Capital Gain	**R 900,000**	**R 900,000**
Annual exclusion	(40,000)	No exclusion
Net Capital Gain	**R 860,000**	**R 900,000**
Inclusion rate	40%	80%
Applied Rate	45%	27%
Tax liability on capital gain	**R 154,800**	**R 194,400**

Drawing from the above, it provides an indication that when these shares are issued in South Africa and no premium is attached, these shares have an even greater positive effect on an individual investor, thus enhancing the attractiveness and willingness of the investor to invest in this instrument, provided that the investor is an individual taxpayer. Considering the investor is a company, it appears that provided that all other elements remain constant, that the investment only gains attractiveness partially when shares are issued at the value of other ordinary shares of the company.

4.5.3 Example 3: Disposal of flow through share issued with at a discount

The below example has the same facts as example one with the only element altered being shares issued at a discount of R1 is added

ASSUMPTIONS USED	
Flow-through shares acquired	100,000
Price per flow through share	R 8
Price of ordinary share	R 9
Discount per share	R 1
Income tax rate of individual tax payer	45%
Income tax rate of Company tax payer	27%
Total expenses renounced per share	R 9
Price on date of sale	R 9

	Individual		**Company**	
	Cash Paid	Cash received	Cash Paid	Cash received
Cost of flow through share (R10/share)	R 800,000		R 800,000	
Tax savings from R 800,000 renounced Exploration expenses		R 360,000		R 224,000
Investor's proceeds from selling flow through shares in market		R 900,000		R 900,000
Tax owing on capital gain from sale of flow through shares	R 154,800		R194,400	
Cash flow benefit/ (loss) for investor		**R 305 200**		**R 129,600**

	Individual	**Company**
Proceeds	R 900,000	R 900,000
Base cost	(R 0)	(R 0)
Capital Gain	**R 900,000**	**R 900,000**
Annual exclusion	(40,000)	No exclusion
Net Capital Gain	**R 860,000**	**R 900,000**
Inclusion rate	40%	80%
Applied Rate	45%	27%
Tax liability on capital gain	**R 154,800**	**R 194,400**

Drawing from the above, it provides an indication that when these shares are issued in South Africa and the shares are issued at a discount, these shares have an even greater positive effect on an individual investor, thus enhancing the attractiveness and willingness of the investor to invest in this instrument, provided that the investor is an individual taxpayer. Considering the investor is a company, it appears that provided that all other elements remain constant, that the investment gains greater attractiveness when shares are issued at a discounted value of other ordinary shares of the company.

4.5.4 Conclusion on the examples

1. The South African based capital gains consequences for companies, provide little incentive for companies to invest in flow through shares, despite the benefit attached in deducting expenses to the value of the investment.
2. This scheme is more effective in Canada considering the rate of inclusions of capital gains is the primary reason for more attractiveness. The inclusion rate of capital gains in the determination of taxable income is 50% (Accountor CPA Canada, 2023). Thus if government introduces the equity financing model, there is a need to interrogate the rate of capital gains required as this may impede the effectiveness of the introduction of the flow through share arrangement.
3. Significant benefit exists particularly as it relates to individual investors, these investors as a consequence of the lower capital gains inclusion rate benefit immensely from the implementation of this instrument within legislature.

4.6 Super flow through shares

Within Canada, when an investor who is an individual (natural person), acquires a flow through share and is the initial holder of the instrument, in addition to the initial deductions provided, this individual may be entitled to a mineral exploration tax credit (Mining Tax Canada, 2022). This deduction is only applicable on a more limited component of grassroots. Per sub-section 127(9) of the CITA, this is applicable for flow through mining expenditures incurred from activities conducted above the earth's surface. This additional incentive attached, thus allows for the benefit attached to exceed the maximum amount

as prescribed, thus elevating the flow through share arrangement to a super flow through share (Mining Tax Canada, 2022).

The additional tax credit provided to the holder of the investment is equal to 15 percent of specified qualifying expenditures incurred by the issuer, which flows to the investor. The costs qualifying for the requisite deduction are those specific activities involved, “to determine the existence, location, extent or quality of a mineral resource other than coal” (Mining Tax Canada, 2022). In accordance with British Columbia (2019: 1), the tax credit may be carried 3 years backward, alternatively may be carried forward for a 10-year period, after which the income tax credit expires.

This additional benefit attached for the individual taxpayer, significantly further stimulates the individual investor’s even further as the share arrangement provides greater enhanced benefits attached for individuals. Considering the three aforementioned examples, the amount of Exploration expenses renounced to the individual amounted to R1,000,000, R900,000, and R800,000 respectively. This therefore indicates that a further deduction or tax credit in the determination of taxable income will be R150,000, R135,000 and R120,000 respectively. The tax is not refundable, thus may not reduce the taxable income of the taxpayer to below R 0. However, any unused portion of these expenditures may be carried forward to the following tax years (Mining Tax Canada, 2022).

The tax credits claimed on the qualifying exploration expenditures which were renounced to the investor is deducted from the cumulative qualifying exploration expenditures in the year after the year in which this credit has been applied. Thus, this may bear the consequence of having cumulative exploration expenses that have a negative balance in example 1 the full deduction applied would have been R1,150,000. Thus, in the following year, as the exploration expenditures have reached their maximum deduction, and having taken full advantage of the additional tax credit, in the following tax year R150,000 will be added back to the investor’s income.

Through investing in the mining landscape of Canada particularly with reference to mining exploration, incentives are provided at a federal (national) level and provincial level (PDAC, 2021: 2). When provincial level incentives are provided to the investor, the amount of the value of the incentive should reduce the cumulative exploration

expenditures. Thus, may have bear the same consequence of the mineral exploration tax credit resulting in negative cumulative exploration expenditures added back in the following tax year (PDAC, 2021: 2).

The Canadian government in announcing their federal budget in 2022 announced a new Critical mineral exploration tax credit set at thirty percent (Budget, 2022: 27). This is in effect, increasing the initial fifteen percent, however, this is only applicable for exploration undertaken on specific precious metals. In accordance with (Budget, 2022: 27) the specific metals are, “copper, nickel, lithium, cobalt, graphite, rare earth elements, scandium, titanium, gallium, vanadium, tellurium, magnesium, zinc, platinum group metals and uranium.” (Budget, 2022: 27)

For the application of the above elements to the taxpayers in ascertaining the taxpayer’s tax liability during a tax period, it is crucially important that the taxpayer adheres to all the regulatory requirements. Per section 12.6 of the CITA, the elements specifically to ensure compliance pertain to, filing of selling instruments and filing of renunciations of the expenditure.

4.7 First $1 Million Canadian development expenses and flow through shares

Per section 12.601 of the CITA, further special rules are applicable for the issuance of a flow through share. This component is however specific to flow through shares issued in relation to Canadian development expenses incurred during a year. The effective date of the renunciation of the expenditures may be done at an earlier date as noted in the prescribed forms (section 12.601 of CITA). There will however only be applicable to the corporation renouncing the ability to deduct the development expenditure under specific conditions as indicated below:

- Consideration should have been transferred from the investor to the corporation for the issuance of a flow through share (s12.601 a)
- The corporation should have taxable capital amount not in excess of $15 million. (s12.601 a.1)

- Expenditures should be approved development expenditures in accordance with the definition of Canadian Development expenses per appendix B to chapter 2. (s12.601 b).

Taxable capital amount is defined in s 12.6011 of the CITA and for the purposes of the above bears the following meaning, “The taxable capital employed in Canada for its last taxation year that ended more than 30 days before that time, and the total of all amounts each of which is the taxable capital employed in Canada.”

4.8.1 Provincial Taxes Canada

The Canadian income tax system is distinctly different from the South African tax system in that the jurisdiction levies corporate income within three spheres. The three spheres of consideration within the Canadian tax jurisdiction, is the federal (governmental taxes), ten provinces (provincial level tax) and the three territories (Government of Canada, 2022). This is however not the same manner in which taxation is applied within the South Africa. With comparable consideration of how taxes will be applied within the South African Tax jurisdiction, this will be applicable only at a federal level, in accordance with the rules set out in the Income Tax Act no 58 of 1962 as amended.

In aiding stimulation of the mining exploration in Canada, at provincial levels, the CITA, contains a number of incentives in the respective provinces to ensure growth within mining exploration. This will thus be considered as a part of the research objective on how further flow through incentives provided may be adopted by the South African legislation in furthering the mandate on mining exploration advancement.

4.8.2 Newfoundland and Labrador

Within the Newfoundland and Labrador provinces, there has been established a Junior exploration assistance program (JEA) (Parsons, 2022). This program established for the benefit of junior mining companies contains a non-repayable grant consisting of two component namely Grassroots and Non-grassroots exploration.

When a corporation is to embark on Grassroots exploration, in this instance a grant provided to the corporation within the program 75 percent of the eligible costs to a

maximum of $ 150 thousand per project undertaken in Newfoundland islands and $ 225 thousand per project for projects undertaken in Labrador (Parsons, 2022). The percentage of costs considered is at 75 percent on the basis that no mineral revenue is received, this percentage of costs are reduced to 50 percent should the corporation derive revenue from the mining operations.

When a corporation is to embark on Grassroots exploration, in this instance a grant provided to the corporation within the program 50 percent of the eligible costs to a maximum of $ 150 thousand per project undertaken in Newfoundland islands and $ 225 thousand per project for projects undertaken in Labrador (Parsons, 2022). The percentage of costs considered is at 75 percent on the basis that no mineral revenue is received, this percentage of costs is reduced to 40 percent should the corporation derive revenue from the mining operations.

The total budget allocation for this grant program amounted to $ 1.3 million as at 2019 as submitted in the provincial budget.

4.8.3 Nova Scotia

The province of Nova Scotia, has established a Mineral Resources Development Fund within the province as a means to incentivise the prospectors and advancing projects improving the attractiveness of investing in this particular province (Government of Nova Scotia, 2021). This was presented as a part of the 2019-2020 budget having the total fund amount to $1.5 million. The fund is aimed at directing the funds in the following avenues:

1. Prospecting and exploration, providing funds to individuals amounting to $ 40 thousand in carrying out grassroots explorations. Should these involve student employment an additional $2.5 thousand would be allocated.
2. Shared funding exploration grants, in the instance where investors are willing to invest a minimum of $ 40 thousand within the Nova Scotia province. The fund will then match the specific amount of eligible expenditure to a maximum of $ 100 thousand dollars, to the respective party.
3. Research grant, the fund will sponsor the studies of Metallurgy at an institution of higher learning, for studies based on the Nova Scotia mineral deposits.

4.8.4 New Brunswick

The province of New Brunswick has established a number of incentives to enhance the attractiveness of prospecting and exploration. In accordance with a compilation document by PDAC (2022), these incentives:

1. New Brunswick Junior Mining Assistance Program (NBJMAP). A program that provides for a maximum cost of $100 thousand for project costs on project related costs.
2. Prospector Assistance Program (NBPAP), a program aimed at aiding prospectors exploring industrial minerals within the province. The amount of the grant is dependent on whether the prospector has a mineral claim or not. If a present claim exists, the program will pay $ 15 thousand. If no claim exists, the amount will be $ 5 thousand (PDAC, 2022).

4.8.5 Québec

4.8.5.1 Flow through shares incentive

Québec is the province with the most attractive additional incentives noted in advancing the attractiveness of investment in exploration. The first of which considers the flow through share arrangement. The Québec taxation Act, provides that the same rules applied in flow through shares is applicable within the province at the basic issue and disposal (PDAC, 2022). In the instance that the expenses incurred are within the province and have been executed by a non-operating company, an additional 10 percent deduction will be attributed to the qualifying expenditures. An even further 10 percent deduction allowed should these expenditures be for the purposes of grassroots (PDAC, 2022).

When the investor in shares as the first holder of the share, disposes of the share and the most recent trading price is in excess of the original. A benefit provided to the investor is referred to as the deemed capital gain exemption. Which disregards the portion of the share appreciation in excess of the cost of the flow through share upon disposal (PDAC, 2022).

4.8.5.2 Tax credits

In contrast with the other provinces, Québec has, during 2017 made available to the taxpayers of the province a tax credit that is refundable to the taxpayer from investing in exploration within the province (PDAC, 2022). The range of percentages applied in respect of the exploration expenditures are as follows:

1. A tax credit provided to the taxpayers amounting to 28 percent of the qualifying exploration expenditures provided these expenditures are incurred by a non-operating corporation. In the instance where the exploration expenditures were incurred in the Far North of Québec the percentage is increased to 38.75 percent (PDAC, 2022).
2. A tax credit provided to the taxpayers amounting to 12 percent of the qualifying exploration expenditures provided these expenditures are incurred by an operating corporation. In the instance where the exploration expenditures were incurred in the Far North of Québec the percentage is increased to 18.75 percent (PDAC, 2022).

Certain conditions must be fulfilled for the tax credit to be provided to the respective corporations. It is a requirement that the corporations have a designation place of establishment and operate a business within the province.

4.8.6 Ontario

Ontario province contain certain benefits in respect to the flow through share arrangements. This is that when a tax credit is provided in relation to a share based incentive that five percent of the credit will be a refundable amount. This is specific to eligible exploration expenses incurred within the province. This credit may also further be applied in order to reduce any tax liability of the taxpayer during a tax year (PDAC, 2019).

The province has also made available to the members of the province engaged in the advancement of mining exploration in the province a prospectors grant. This grant is provided to qualified individuals owning properties with high likelihood of economic activity. The value of this grant to be provided is up to $ 200 thousand per project covering 50 percent of the cost of the respective projects (Ontario, 2023).

4.9 Conclusion

This chapter has considered a flow through share arrangement in detail, interrogated and outlined technical aspects associated with the mechanics and the functionality of this instrument. This chapter considered two aspects as it pertains to flow through shares, the basic concept and functionality of the instrument and the concept of a super flow through share. The first considered the general overview and the impact this has on a federal level. Thereafter this chapter focused on the provincial incentives attached to this arrangement.

Highlighted within this chapter were specific elements that contain a disconnect in the manner tax is applied in Canada in comparison to the South African legislature, this was of particular relevance while exploring the provincial incentives. This is as South African jurisprudence functions not on various levels or regions set and independent governance which affect the level of taxation levied and/or incentives applicable to incentivise certain actions of the members of that province. Thus, the provincial level incentives should be considered as serving as a sweetener in the broader implementation of these instruments within the Income Tax Act.

With implementation of flow through shares, it would be of paramount importance to consider the capital gains consequences. This model has proven efficacy within the Canadian jurisdiction, as there is a significantly different model in which capital gains taxation is applied to the specific shares. Upon disposing of this share, as it is deemed to be acquired at a base cost of zero, within Canada, only 50 percent of this gain would be included in their capital gains from both individual and companies tax perspective. In structuring this component in legislature, it is crucial for a detailed analysis to be performed in order to ensure congruency in tax positions from the perspectives of taxpayers contributing to the fiscus.

Chapter 5: Alternative approaches to enhance investment in mining exploration in South Africa

5.1 Introduction

“Today’s South African mining graduates will be unemployed by the age of 40.” A terrifying statement demonstrating the forthright state of South African mining exploration currently. Paul Miller in his junior mining indaba presentation highlighted the crucial flaws and devastating consequences of the mining outlook from the country’s inability to invest and act upon the shortcomings noted within mining industry. As per (Christianson, 2022),

> The problem is not something which can be postponed for resolution at some point in the future; it is current. It takes more than a decade to bring a tier one mineral deposit from discovery to production. But such deposits, if they exist, have yet to be discovered in South Africa and no-one is looking.

The South African economy is currently at an all-time low of 0.76 per cent of the global exploration spend (Creamer, 2021).

It is thus the objective of this chapter to explore the alternative approaches that may be considered by the South African government to enhance the investment in prospecting and exploration within the country. The Fraser Institute’s annual survey conducted containing various views expressed by participants will be further explored to ascertain the elements regarded as crucial in improving the current state of mining exploration.

A study will be conducted on alternative measures implemented by highly successful mining exploration investment regions to provide viable mechanisms to be put in place for South Africa. In achieving the objectives, guidance as provided by the OECD will be consulted in considering alterative means from a tax perspective. The collated view of the research conducted will thus encapsulate a range of considerations to be made by government in establishing the appropriateness of tax incentives and the efficacy of its implementation.

5.2 Investment attractiveness index: most and least attractive mining regions globally

On an annual basis, the Fraser institute conducts a survey to ascertain the most attractive mining jurisdictions (or regions) globally (Hall, 2021). In this survey conducted, after all responses are gathered, a ranking of the countries involved in the study is ranked in accordance with whether their policy factors and mineral potential enhances or discourages investment within the specific region or country (Hall, 2021).

In 2022, the Fraser institute only obtained 180 responses having only collated sufficient data to evaluate 62 mining regions (Mejia and Aliakbari, 2022: 1). The ranking is ascertained through the investment attractiveness index (Mejia and Aliakbari, 2022: 1).

The investment attractiveness index considers best practice mineral potential, geological attractiveness and policy perception (Mejia and Aliakbari, 2022: 1). Per the study conducted, it highlighted the top ten and bottom ten regions based on the investment attractiveness index. Regions noted in the top ten were “Nevada, Western Australia, Saskatchewan, Newfoundland & Labrador, Colorado, Northern Territory, Arizona, Quebec, South Australia, and Botswana” (Mejia and Aliakbari, 2022: 1). Among the bottom ten regions are viz, “Zimbabwe, Mozambique, South Sudan, Angola, Zambia, South Africa, China, the Democratic Republic of Congo, Papua New, Guinea, and Tanzania” (Mejia and Aliakbari, 2022: 2).

The collated and global results illustrated that Canada is regarded as the second most attractive investment jurisdiction, after Australia (Mejia and Aliakbari, 2022: 22). Specific commentary was provided on Canada containing a number of elements the participants focus on in enhancing investment. The following comments extracted from the survey in relation to the Canadian mining regions

- “There is a clear license-acquisition process that incentivizes investment.” (Mejia and Aliakbari, 2022: 25)
- “Flow through tax break for exploration and the organization of the geologic database are incentives to investment.” (Mejia and Aliakbari, 2022: 26)
- “The permitting process in Ontario was well explained, not difficult, and the cost is either limited or nothing to complete” (Mejia and Aliakbari, 2022: 27)
- “A good incentive for investment is that the province offers a tax credit incentive of 35 percent for every dollar spent in Quebec.” (Mejia and Aliakbari, 2022: 27)

The above elements are in contrast to the views expressed on South Africa as an investment jurisdiction. Per the study, the most pertinent issues noted by the participants involved were, enforcement of current regulations, administration, ownership requirements and mineral cadastre system having a lack of transparency (Mejia and Aliakbari, 2022: 27).

The tax advantages from the flow through arrangements and the additional tax credits have been discussed in great detail in chapter 4 of this dissertation and will thus not be further explored in the current chapter.

5.3.1 Licensing acquisition process Canada

The licensing acquisition process in Canada, specifically British Columbia region per the commentary provided has been noted to be highly effective and considered an element incentivising investment into the region. The process in British Columbia is noted as being seamless and non-complex (BC Gold Adventures, nd).

Before commencing any mining activities, a permit must be in place (British Columbia, nd). The Chief permitting officer issues permits for the respective applicants and these permits are administered by the Minister of Energy, Mines and Low Carbon Innovation (British Columbia, nd). Two types of permits exist depending on the activities undertaken, an exploration permit in order to conduct the exploration activities, and a permit for

construction and operation activities in allowing the holder to construct and prepare the specific mineral or coal mine (British Columbia, nd).

5.3.2 Exploration permit

The Mines Act of Canada indicates that disturbance which include mechanical disturbances to designated areas require a permit. The permit to conduct exploration activities are referred to as a notice of work process (British Columbia, nd). Two specific permits exist, site specific authorisation and a multi-year area based authorisation. Clear instructions exist on the process to be followed and the required information to be supplied by the applicants prior to submitting the application. In addition to this, it is clearly indicated that the adjudication process takes one to three months to complete (British Columbia, nd). Under normal circumstances, the period does not exceed one month, however there are specific seasons which would take up to three months which are between the months November and January (British Columbia, nd). This process conducted by the applicants is fully completed once all the required information has been provided for adjudication and the requisite approvers are in agreement with the information provided and the quality of the application completed. The respective permit will then be issued to the applicant as soon as the adjudication process has been completed.

5.3.3 Construction and Operation permits

The ability to mine in production volumes, erection of the respective infrastructure and mine plans etc. is also regulated by the Mines Act (British Columbia, nd). This will regulate the specific activities undertaken on the mine sites. The process followed for the issuance of the mining permit follow a similar process as noted in the exploration permit issuance (British Columbia, nd). The validity of this will be in accordance with the term as noted in the permit.

5.4 South African Mining license, Prospecting and mining permit issuing process

In South Africa, various legislation regulates the mining sector viz, “Mineral and Petroleum Resources Development Act 28 of 2002, Mine Health and Safety Act 29 of 1996, Mining Titles Registration Act 16 of 1967, Mineral and Petroleum Resources Royalty Act 28 of 2008, Mineral and Petroleum Resources Administration Act 29 of 2008 and Broad Based Socio-economic Charter for the Mining Sect (Mining Charter)” (Irsigler, 2022).

The state is the legal custodian of rights to the minerals in South Africa. It is thus on this basis that the state issues rights, and permits in favour of applicants pertaining to the minerals and resources in South Africa (Irsigler, 2022). The holder of the right is entitled to remove from the soil the minerals and is able to dispose of the respective minerals in accordance with the rights held thereto (Irsigler, 2022).

The process of applying for a prospecting, mining right and mining permit all follow the same process in initiating the application within South Africa. All respective requirements are highlighted on the government platform and is initiated on the online system (Government of South Africa, nd). A set of requirements are to be adhered to in order for the application to be reviewed by a regional manager for further processing (Government of South Africa, nd). There is a need for the applicant to concurrently apply for environmental authorisation to conduct the respective activities (Government of South Africa, nd).

With this application, once all the requisite information is submitted on the governmental online platform, the regional manager will indicate that the process is regarded as successful (Government of South Africa, nd). This will prompt the applicant to further submit to the regional manager consultations with all key stakeholders affected by the right or permit. For the mining and prospecting right the period in which the encumbrances are to be submitted to the regional manager is 30 days subsequent to having received approval status by the regional manager (Government of South Africa, nd). For a mining

permit, the encumbrances are to be submitted within 180 days (Government of South Africa, nd). The application will then be further reviewed and submitted to the Minister of Mineral Resources and Energy to conduct a final review and issue either the right or permit.

Drawing from the aforementioned, it is evident that this may be a significantly delayed process and may take a considerable amount of time for processes to be completed. Per the Parliamentary Monitoring Group (2017), it has been noted that the total turnaround time could take up to 247 days excluding public holidays. This indicates a significant need for interrogating internal processes to enhance efficiency. In addition to this, the process requires an initial submission and then a subsequent submission on specific consultations with stakeholders prior to further processing. The process may be more efficient if all elements are to be submitted in the first phase of authorisation to the respective regional managers. This will thus, based on the outcomes, result in a direct submission of applications to the Minister of Mineral Resources and Energy. Improving the efficacy of the rights and permits issuing process.

5.5 Mineral cadastre system having a lack of transparency

South Africa per the Fraser Institute survey is noted as an unattractive investment jurisdiction as it does not have a cadastre system. According to Creamer (2022), “A cadastre is ideally an end-to-end solution that not only awards exploration and mining licences but also monitors regulation, tax and royalty collection, and revenue distribution.” The system contains a range of functionalities or applications in regard to title registry, mining activities, mineral interests and embedded in the database, any application requiring accurate description of survey ownership at a designated point (ISC, 2022).

The system functions on the following premise, when entering the system, the participant will have a dashboard containing all the rights allocated to the respective individual or company (Creamer, 2022). The participant logged into the system will be able assess their current obligations in relation to the occupied titles and rights etc. In addition, the participant will be able to log all information productions statistics (Creamer, 2022).

A participant in a mining cadastre conducted an illustration, where the participant applied for a prospecting license for uranium. The participant uploaded onto the system the geographical location of the area applied for (Creamer, 2022). The location applied for overlapped with segments referred to as restricted area (already occupied areas for the respective purpose. The system did not allow for the participant to continue as it pertained to the restricted areas, thus the participant instructed the system to make the area of application accustomed to the available area (Creamer, 2022).

The applicant would then submit the finalised documents into the system, submit the information and make requisite payments (Creamer, 2022). This will then initiate the back office processes for final requisite approval of the application. Once the application has been approved, all the requirements and obligations of the respective applicant is submitted by the DMRE providing before the issuance of the license (Creamer, 2022).

Once the applicant has submitted their application, it will be made available on the public platform. It will then be seen by all parties that a designated area has been applied for in conducting all activities. This platform thus will streamline the efficiency and accuracy of this process currently implemented by the DMRE (Creamer, 2022).

5.5.1 Cadastre system Shortcomings in South Africa

The implementation of a mineral cadastre system within the South African space, despite the significant benefit attached through its use, may pose a threat to the advancement of the jurisdictions mandate for the promulgation of the Mining Charter. In accordance with (Du Plessis, 2021) the Mining Charter was established “To ensure transformation in an industry which has demonstrable historical inequalities and difficulties; to protect and empower Historically Disadvantaged South Africans (HDSAs); and thereby to attract outsider investment to provide a revitalizing boost into the minerals sector of South Africa.” Thus, fundamentally, its promulgation serves to deracialize the ownership patterns in the mining industry (Irsigler, 2022). The promotion of the concept of Broad-based Black Economic Empowerment (BBBEE) should be an element considered with the implementation of the cadastre. There is a need for government to interrogate this

component as this appears not to be considered in the cadastre. Its implementation, aims to address an important and pertinent issue within the mining industry, however, requires a number of considerations to be made in advancing the socio-economic elements required by the Mining Charter.

5.6 OECD Mining Tax Incentives

The OECD has developed a policy framework to be considered by government when reviewing incentives to be issued to enhance investment. This framework also details the possible unintended consequences that may result from the governments decisions on the revenue allocation to the revenue generating authorities. In addition, considers the efficacy of mining tax incentives.

Per OECD (2018: 11), the efficacy of any tax incentive issued or promulgated by government should be the first consideration made. Inadequate empirical evidence exists to support theories that in developing countries incorporating a tax incentive, enhances mining investment in the mining industry (OECD, 2018: 11). Thus, a tax incentive alone, is insufficient to influence the investor confidence. A myriad of factors should be taken into account when considering investment decisions. Per Fraser Institute (2017), the order of priority in influencing investment decisions as it pertains to mining are as follows, “quality of resources, economic factors and policy climate.”

An additional element to be consulted when structuring or considering a tax incentive is the efficiency of its implementation. Indispensable in the achievement of efficiency is ensuring a lower cost in meeting the stated objective (OECD, 2018: 12). Thus, when considering the implementation of a new policy, government should test whether the incentive is efficient, the following needs to be ensured “The incentive is not redundant, losses to be incurred by government is low and cost of administering the incentive is low” (OECD, 2018: 12).

A cost benefit analysis, may prove ideal in assessing the specific incentive and this may provide valuable insight to government. Costs normally associated with the

implementation of these incentives, include loss of revenue to the revenue authorities in the jurisdiction, administration costs incurred through implementation of the new incentive and economic distortions occurring resulting from its implementation (OECD, 2018: 14). However, significant benefits may arise due to this, these benefits range from, growing Gross Domestic Product (GDP) through new mines entering the market, eventual revenues generated through mining companies operating and employment opportunities which alters the socio-economic landscape of a developing country (OECD, 2018: 14).

5.7 Considerations in the tax incentive design

When the incentive is designed, there are a number of considerations government is to consider. The design of the tax incentive should create a parallel fiscal regime (OECD, 2018: 16). Through this, it allows for fair application of the rules throughout all elements of the value-chain. If this is not in place, it allows for taxpayers in the value chain to abuse transfer pricing rules in the country (OECD, 2018: 16).

The base cost to which the incentive is to be applied requires an appropriate cost base in which application may be sought. When the incentive pertains to expenses incurred, the expenses should be clearly defined. This is what specific expenses the incentive may be applied to, or whether expenses may be carried forward to the following tax year, elements are regarded as deductible expenses and components regarded as prohibited (OECD, 2018: 16). The tax incentive provided should not have any open ended element (OECD, 2018: 16). This indicates that there should be specific parameters, indicating the effective date from which the specific incentive will be applicable, when the incentive will reach their sun-set clause (OECD, 2018: 16).

5.8 Incentives per the OECD Considerations in South Africa:

5.8.1 Income Tax holiday

An income Tax holiday is defined as, “A tax-free period. The duration may vary from one year to the entirety of the project. It may take the form of a complete exemption from profits tax, or a reduced rate, or a combination of the two.” (OECD, 2018: 20) When an

income tax holiday is an incentive provided by government as legislated, two behavioural responses may come into effect as a consequence of this payment holiday namely high grading and abusive transfer pricing.

High grading involves companies extracting relatively high levels of minerals from the soil in order to take advantage of the holiday provided. In these instances, the benefit to the companies would significantly out-weigh the initial benefit envisioned by government through the establishment of the incentive (OECD, 2018: 20). Considering that the South African royalties tax is determined based on the EBIT, there are other tax losses that may be incurred as a consequence of implementing this incentive (OECD, 2018: 20).

There are instances where a company has more than one operation, thus deriving income from more than one activity. When dealing with tax holidays, the profits may be allocated to the alternative activity, thus abusing transfer pricing (OECD, 2018: 21).

It is argued that the implementation of payment holidays is both ineffective and inefficient and should not be a primary consideration to enhancing investment (OECD, 2018: 22). However, when this is regarded as a viable incentive to explore, government may attach specific conditions under which the benefit may be received. These conditions may include,

- Setting a minimum amount of individuals to employ. (OECD, 2018: 22)
- Taxable income determined in the normal manner and taxed at the zero rate or reduced rate to avoid having deductions on allowances being carried to following tax years (OECD, 2018: 22).
- Placing limitations on holiday through setting tonnages which may not be exceeded, if the threshold is exceeded tax should be levied on the organisations. (OECD, 2018: 22)
- Transfer pricing for related parties should be appropriately accounted for in terms of the country's transfer pricing rules. (OECD, 2018: 22)

5.8.2 Withholding tax Relief

Withholding taxes in accordance with the OECD (2018: 25), “Requires the taxpayer to withhold some income tax on outbound payments.” Promulgating withholding taxes in the mining context, the taxation is primarily levied on management charges, interest expenses and shareholder dividends (OECD, 2018: 25). The noted behavioural responses of taxpayers with this incentive may result in the taxpayers obtaining excessive financing to claim excessive interest deductions and have inflated management fees. Consequently, enabling evasion of taxes and erosion of the tax base.

In response to the possible courses of action followed by the taxpayers to abuse the incentive, government should ensure sufficient consideration to counter the effects. Specific measures government may consider include:

- Limiting the excessive deduction on the interest, through imposing monetary thresholds for limitation. (OECD, 2018: 26)
- Legislating and issuing prescribed treatment of management fees within the country. This could be in terms of developing a cost-plus method for management fee treatment. (OECD, 2018: 26)
- Ensure rigorous application of legislation to avoid tax base erosion.

5.8.3 Cost Based Incentives

There are numerous cost based incentives and these include, “investment allowances, investment tax credits, accelerated depreciation and loss carry-forwards” (OECD, 2018: 28). The incentives noted under the cost based incentives may be highly relevant in the mining industry considering mining is highly capital intensive.

5.8.3.1 Accelerated depreciation

Capital expenditure may result in the recognition of an asset which may be deducted by the taxpayer in a short period of time. Accelerated depreciation for the purposes of South

African legislation may not be highly relevant seeing that this already exists within the ambit of the act (OECD, 2018: 28).

5.8.3.2 Investment tax credit.

When investment tax credits are applied by the respective taxpayer in the submission of their income tax, these credits reduce the amount payable by the taxpayer and not the taxable income of the taxpayer during a tax year. Thus, may provide significant benefit for the taxpayers but may also have an adverse impact on a country's ability to generate revenue (OECD, 2018: 28).

5.8.3.3 Loss carried forward

Legislative provisions in various tax jurisdictions permit a taxpayer to carry forward operating tax losses to a future year. Generally, there are limitations in the number of years for which these losses may be carried forward by a taxpayer (OECD, 2018: 28). As mining by its nature, requires that an investor spend a substantial amount of upfront costs, the taxpayer may have significant unused tax losses that may not be utilised (OECD, 2018: 28). It may provide a taxpayer an incentive to extend the period for carrying forward losses over longer periods (OECD, 2018: 28).

This implementation, does however have certain behavioural responses from the taxpayers that may pose a risk of abuse of the system of taxation by the respective taxpayers. Taxpayers may mask the transaction through "Gold plating" (OECD, 2018: 29). The concept of gold plating is increasing the cost of the capital items to abuse the tax system through claiming greater deductions than should be allowable by the taxpayers (OECD, 2018: 29).

It is therefore important to design the legislative provisions enacted with appropriate counter-measures of the possible issues encountered (OECD, 2018: 30). These elements would include:

- Providing the appropriate specifications of which costs the incentives apply to and the duration of the incentive. (OECD, 2018: 30)
- Consideration should be given to the recoupment the taxpayers have on the costs. In these incentives specific thought should be given to the benefit of the tax revenue. (OECD, 2018: 30)
- It is important that sufficient monitoring of the import duty concessions is done specifically as it relates to mining imports. (OECD, 2018: 30)

5.8.3.4 Export processing zones

In accordance with OECD (2018: 31) an export processing zone has the characteristics that allow special incentives that encourage foreign investment. Incentives include no duties levied on exports, withholding tax relief and tax holidays. Allowing the status to be granted to an organisation's mineral processing operations is the element that stimulates value creation within the mining sphere (OECD, 2018: 31).

In the broader fiscal perspective, granting the status of an export processing zone induces entities to under-price their mining output, consequently reducing the taxable income generated by the company (OECD, 2018: 31). Thus, the implementation of this within a country may create an opportunity cost of revenue loss to the government and raise additional costs in establishing infrastructural requirements and increased subsidies granted to companies contributing to the economic development of a country (OECD, 2018: 31). Resultantly effecting efficiencies and increased wastage costs to the government (OECD, 2018: 31).

In modelling the financial consequences, it is thus crucial that government are to:

- Limit the application of this status to indirect taxes and components that require stringent monitoring. (OECD, 2018: 33)
- Rigid investigations should be done with affiliated organisations with export processing zone statuses ensuring that the companies appropriately align and apply arms-length principles. (OECD, 2018: 33)

- Transfer pricing rules should be strictly monitored to avoid any manipulation of affiliate and cross-border transactions. (OECD, 2018: 33)

5.9 Conclusion

This chapter considered the Fraser Institute's annual survey conducted specifically in mining regions regarded by survey participants as the top investment regions and those jurisdictions considered to be at the lower end of the investment spectrum. In addressing the objective of this chapter, considerations were made as it pertained to elements driving the survey participants' views of highly successful mining investment regions. Furthering this element, emphasis was placed on the one component considered crucial for South Africa to advance in the mining investment space. Additionally, this chapter emphasised possible shortcomings of a mining cadastre system in advancing the mandate of the Mining Charter in the South African mining landscape.

Alternative measures have been considered in this chapter as guided by the OECD from a tax perspective which may induce advancement in mining exploration. Through this, possible areas of abuse of the legislative provisions was identified and recommended guidance was provided with each incentive considered by government.

The following chapter is the concluding chapter which will consider all the research findings. This will collate and assess, in culmination of the executed research in accordance with the stated objectives of this dissertation.

Chapter 6: Conclusion

6.1 Introduction

The first chapter to this dissertation accentuated the broader issue faced in mining exploration within South Africa. The deterioration in mining and exploration investment was noted to be considerable. Consequently, it is necessary to focus on a strategy tabled by the government, to be implemented in the South African economy for augmentation of the current mining investment landscape. This chapter then proceeded with the introduction of a flow through share arrangement to enhance investment in mining exploration. The chapter considered the section 12 J regime as a current enacted tax incentive in the Income Tax Act that resembles closest to the proposed introduction of flow through shares to the legislation.

Per government's guidance, the Canadian flow through share scheme to be introduced, required a legal framework to be considered that earmarks the foundational design and direction of this dissertation.

In chapter 1 of this dissertation, the goal was focused on studying the legislative provisions as adopted by the Canadian Jurisdiction at all levels for adoption of the flow through shares. Thus, addressing through this study the following sub-goals of this research:

- The flow through share model as implemented by the Canadian Tax Jurisdiction.
- Super flow through shares for investments made by natural persons and the tax credits applied.
- Provincial level tax credits and deductions provided in their legislation.
- Current enacted legislation in South Africa and whether amendments to legislation is more appropriate in current context.
- Alternative approaches as provided by the OECD to enhance investment in mining.
- Whether the adoption of the flow through share arrangement in South Africa at all levels are appropriate.

6.2 Research findings

The research findings are addressed in accordance with the layout of the research on a chapter level below.

6.2.1 Flow-through share arrangements

Chapter 2 of this dissertation highlighted the concept of a flow through share arrangement and the requisite requirements in order to issue these instruments. The definition of a flow through share was provided and tailored the aspects of the model to make this more relevant from a South African perspective. Additionally, the following was considered: filing requirements, requirements in renunciation with flow through share arrangements and qualifying expenditures the companies are permitted to deduct. A leveraged approach has been taken to understanding how this model is applied within the Canadian Tax Jurisdiction as all aspects of this type of arrangement are solely available within Canada. Consequently, this chapter addressed ubiquitous components to the successful issuance of a flow through share. In addition, the author provided required considerations for the government on the monitoring and administrative aspects of this instrument.

6.2.2 Current mining enacted incentives and the mining process

Chapter 3 of this dissertation addressed the sub-goal of current enacted incentives available in the mining industry within South Africa. Emphasis was added to current incentives that are available in the legislation and components that have reached their sunset for implementation, which may be disadvantageous for new entrants in the market. This chapter highlighted that the Income Tax Act, has had no introduction of new incentives in the mining space and has more components of legislation that have reached sunset clauses. Thus, recommendations were made in relation to extensions of current regimes as no new incentives have been brought into effect which may enhance investment. Chapter 3 has also considered the currently enacted section J12 regime and highlighted the inefficiencies noted and detailed why the implementation of a flow through share incentive proves to be more efficient to implement.

6.2.3 Flow through Share Arrangements Mechanics of issuance of shares

Chapter 4 of this dissertation, interrogated in detail a flow through share arrangement, encapsulating all technical aspects of the issuance of shares. This was layered at the

most basic level at which the issuance of a flow through share arrangement could take place and further evolved in the more complexed aspects of a flow through share arrangement. The chapter tabled the disconnect in existence with the Canadian and South African legislation and noted that provincial level incentives may be considered as a point of reference in further incentivising investment as additional incentives with its implementation.

6.2.4 Alternative approaches to enhance investment in mining and exploration

Chapter 5 of this dissertation explored the mining jurisdictions ranked at different levels in accordance with their mining attractiveness index. It explored elements specific to Canada deemed relevant to key stakeholders to enhance the investment attractiveness in the jurisdiction. This was then furthered by considering the short-comings noted by stakeholders as it pertained to South Africa and the course to pursue in enhancing the attractiveness of the jurisdiction to invest in. This chapter then explored the OECD framework providing requisite guidance on alternative tax measures that may serve as a sweetener in enhancing investment in the mining landscape.

6.2.5 Concluding comments

This research has conducted an in-depth study of the flow through share regime as adopted by Canada for prospective implementation within the Income Tax Act. This research has demonstrated that there are several shortcomings within the Income Tax Act, which serve as incentive for investing in the mining industry. The findings are that there are a number of benefits associated with the implementation of flow through shares and its implementation may serve as a silver bullet in encouraging investment in the mining exploration and development.

6.3 Limitations of Scope

As this dissertation was of limited scope, certain areas of the implementation of flow through share arrangements were not discussed. These were all other tax implications as it does not pertain to Income Tax consequences, this being the South African Legislation for and the Canadian Tax Legislation equivalents of

- Value Added Tax Act, No. 89 of 1991
- Tax Administration Act, No. 28 of 2011

- the Estate Duty Act, No. 45 of 1955

This dissertation also only vested attention to legislative provisions and frameworks currently implemented in Canada as this is the only country that currently has this incentive in their legislation.

6.4 Suggestion for Future Research

It is recommended that further analysis should be conducted on monitoring of the issuance of flow through share arrangements, the administrative requirements and detailed considerations into how integrated platforms may permit the ease of regulation of these shares in the financial market. In addition, it is necessary to explore the Value Added Tax aspects to the issuance of a flow through share in ascertaining the indirect tax consequences of issuing these instruments. This may be compared with the Goods and Services Tax (GST) in Canada.

Appendix A

Extract from Canadian Income Tax Act

Canadian exploration expense of a taxpayer means any expense incurred after May 6, 1974 that is

(a) 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 an accumulation of petroleum or natural gas (other than a mineral resource) in Canada, including such an expense that is
    (i) a geological, geophysical or geochemical expense, Or
    (ii) an expense for environmental studies or community consultations (including 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 an accumulation of petroleum or natural gas),

(b) any expense (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) incurred by the taxpayer after March, 1985 for the purpose of bringing a natural accumulation of petroleum or natural gas (other than a mineral resource) in Canada into production and incurred prior to the commencement of the production (other than the production from an oil or gas well) in reasonable commercial quantities from such accumulation, including
    (i) clearing, removing overburden and stripping, and
    (ii) sinking a shaft or constructing an adit or other underground entry,

(c) any expense incurred before April, 1987 in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well,
    (i) incurred by the taxpayer in the year, or
    (ii) incurred by the taxpayer in any previous year and included by the taxpayer in computing the taxpayer's Canadian development expense for a previous taxation year, if, within six months after the end of the year, the drilling of the well is completed and
    (iii) it is determined that the well is the first well capable of production in commercial quantities from an accumulation of petroleum or natural gas (other than a mineral resource) not previously known to exist, or
    (iv) it is reasonable to expect that the well will not come into production in commercial quantities within twelve months of its completion,

(d) any expense incurred by the taxpayer after March, 1987 and in a taxation year of the taxpayer in drilling or completing an oil or gas well in Canada or in building a temporary access road to, or preparing a site in respect of, any such well if
    (i) the drilling or completing of the well resulted in the discovery that a natural underground reservoir contains petroleum or natural gas, where

(A) before the time of the discovery, no person or partnership had discovered that the reservoir contained either petroleum or natural gas,

(B) the discovery occurred at any time before six months after the end of the year, and

(C) the expense is incurred

(I) before 2021 (excluding an expense that is deemed by subsection 66(12.66) to have been incurred on December 31, 2020), if the expense is incurred in connection with an obligation that was committed to in writing (including a commitment to a government under the terms of a license or permit) by the taxpayer before March 22, 2017, or

(II) before 2019 (excluding an expense that is deemed by subsection 66(12.66) to have been incurred on December 31, 2018), in any other case,

(ii) the well is abandoned in the year or within six months after the end of the year without ever having produced otherwise than for specified purposes,

(iii) (iii) the period of 24 months commencing on the day of completion of the drilling of the well ends in the year, the expense was incurred within that period and in the year and the well has not within that period produced otherwise than for specified purposes, or

(iv) there has been filed with the Minister, on or before the day that is 6 months after the end of the taxation year of the taxpayer in which the drilling of the well was commenced, a certificate issued by the Minister of Natural Resources certifying that, on the basis of evidence submitted to that Minister, that Minister is satisfied that

(A) the total of expenses incurred and to be incurred in drilling and completing the well, in building a temporary access road to the well and in preparing the site in respect of the well will exceed $5,000,000, and

(B) the well will not produce, otherwise than for a specified purpose, within the period of 24 months commencing on the day on which the drilling of the well is completed,

(e) any expense deemed by subsection 66.1(9) to be a Canadian exploration expense incurred by the taxpayer,

(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,

(g) any expense incurred by the taxpayer after November 16, 1978 and before March 21, 2013 for the purpose of bringing a new mine in a mineral resource in Canada, other than a bituminous sands deposit or an oil shale deposit, into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft or constructing an adit or other underground entry, but not including any expense 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, (g.1) any Canadian renewable and conservation expense incurred by the taxpayer, (g.2) any expense incurred by the taxpayer after March 21, 2011, that is

(i) a specified oil sands mine development expense, or

(ii) an eligible oil sands mine development expense, (g.3) any expense incurred by the taxpayer that would be described in paragraph (g) if the reference to “March 21, 2013” in that paragraph were “2017” and that is incurred

(i) under an agreement in writing entered into by the taxpayer before March 21, 2013, or
(ii) as part of the development of a new mine, if
(A) the construction of the new mine was started by, or on behalf of, the taxpayer before March 21, 2013 (and for this purpose construction does not include obtaining permits or regulatory approvals, conducting environmental assessments, community consultations or impact benefit studies, and similar activities), or
(B) the engineering and design work for the construction of the new mine, as evidenced in writing, was started by, or on

behalf of, the taxpayer before March 21, 2013 (and for this purpose engineering and design work does not include obtaining permits or regulatory approvals, conducting environmental assessments, community consultations or impact benefit studies, and similar activities), (g.4) any expense incurred by the taxpayer, the amount of which is determined by the formula

A × B

Where

A is an expense that would be described in paragraph (g) if the reference to "March 21, 2013" in that paragraph were "2018" and that is not described in paragraph (g.3), and

B is

(i) 100% if the expense is incurred before 2015,

(ii) 80% if the expense is incurred in 2015,

(iii) 60% if the expense is incurred in 2016, and

(iv) 30% if the expense is incurred in 2017,

(h) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (d) and (f) to (g.4) incurred by a partnership in a fiscal period of the partnership, if at the end of the period the taxpayer is a member of the partnership, or

(i) any expense referred to in any of paragraphs (a) to (g) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in or right to — or, for civil law, any right in or to — such shares

Appendix B

Extract from the Canadian Income Tax Act

Canadian development expense of a taxpayer means any cost or expense incurred after May 6, 1974 that is

a) any expense incurred by the taxpayer in

(i) drilling or converting a well in Canada for the disposal of waste liquids from an oil or gas well,

(ii) drilling or completing an oil or gas well in Canada, building a temporary access road to the well or preparing a site in respect of the well, to the extent that the expense was not a Canadian exploration expense of the taxpayer in the taxation year in which it was incurred,

(iii) drilling or converting a well in Canada for the injection of water, gas or any other substance to assist in the recovery of petroleum or natural gas from another well,

(iv) drilling for water or gas in Canada for injection into a petroleum or natural gas formation, or

(v) drilling or converting a well in Canada for the purposes of monitoring fluid levels, pressure changes or other phenomena in an accumulation of petroleum or natural gas,

b) any expense incurred by the taxpayer in drilling or recompleting an oil or gas well in Canada after the commencement of production from the well,

c) any expense incurred by the taxpayer before November 17, 1978 for the purpose of bringing a mineral resource in Canada into production and incurred prior to the commencement of production from the resource in reasonable commercial quantities, including

i) clearing, removing overburden and stripping, and

ii) sinking a mine shaft, constructing an adit or other underground entry, (c.1) any expense, or portion of any expense, that is not a Canadian exploration expense, incurred by the taxpayer for the purpose of bringing a new mine in a mineral resource in Canada that is a bituminous sands deposit or an oil shale deposit into production and incurred before the new mine comes into production in reasonable commercial quantities, including an expense for clearing the land, removing overburden and stripping, or building an entry ramp, (c.2) any expense, or portion of any expense, that is not a Canadian exploration expense, incurred by the taxpayer after March 20, 2013 for the purpose of bringing a new mine in a mineral resource in Canada, other than a bituminous sands deposit or an oil shale deposit, into production in reasonable commercial quantities and incurred before the new mine comes into production in such quantities, including an expense for clearing, removing overburden, stripping, sinking a mine shaft or constructing an adit or other underground entry,

d) any expense (other than an amount included in the capital cost of depreciable property) incurred by the taxpayer after 1987

i) in sinking or excavating a mine shaft, main haulage way or similar underground work designed for continuing use, for a mine in a mineral resource in Canada built or excavated after the mine came into production, or
ii) in extending any such shaft, haulage way or work,

e) the cost to the taxpayer of, including any payment for the preservation of a taxpayer's rights in respect of, any property described in paragraph (b), (e) or (f) of the definition ***Canadian resource property*** in subsection 66(15), or any right to or interest in — or for civil law, any right in or to — the property (other than a right or an interest that the taxpayer has by reason of being a beneficiary under a trust or a member of a partnership),

f) subject to section 66.8, the taxpayer's share of any expense referred to in any of paragraphs (a) to (e) incurred by a partnership in a fiscal period thereof at the end of which the taxpayer was a member of the partnership, unless the taxpayer elects in respect of the share in prescribed form and manner on or before the day that is 6 months after the taxpayer's taxation year in which that period ends, or

g) any cost or expense referred to in any of paragraphs (a) to (e) incurred by the taxpayer pursuant to an agreement in writing with a corporation, entered into before 1987, under which the taxpayer incurred the cost or expense solely as consideration for shares, other than prescribed shares, of the capital stock of the corporation issued to the taxpayer or any interest in or right to — or, for civil law, any right in or to — such shares, but for greater certainty, shall not include

h) any consideration given by the taxpayer for any share or any interest in or right to — or, for civil law, any right in or to — a share, except as provided by paragraph (g),

i) any expense described in paragraph (g) incurred by any other taxpayer to the extent that the expense was,
i) by virtue of that paragraph, a Canadian development expense of that other taxpayer,
ii) (ii) by virtue of paragraph (i) of the definition ***Canadian exploration expense*** in subsection 66.1(6), a Canadian exploration expense of that other taxpayer, or
iii) by virtue of paragraph (c) of the definition ***Canadian oil and gas property expense*** in subsection 66.4(5), a Canadian oil and gas property expense of that other taxpayer, (i.1) an expense that is the cost, or any part of the cost, to the taxpayer of any depreciable property of a prescribed class that was acquired after 1987,

j) any amount included at any time in the capital cost to the taxpayer of any depreciable property of a prescribed class, or

k) the taxpayer's share of any consideration, expense, cost or expenditure referred to in any of paragraphs (h) to (j) given or incurred by a partnership, but any assistance that a taxpayer has received or is entitled to receive after May 25, 1976 in respect of or related to the taxpayer's Canadian development expense shall not reduce the amount of any of the expenses described in any of paragraphs (a) to (g); (*frais d'aménagement au Canada*)

Biography

Accountor CPA Canada. 2023. Corporate Tax Rate. Available: https://accountor.ca/blog/taxation/corporate-tax-rate.html#:~:text=Capital%20Gains%20Corporate%20Tax%20Rate%20Canada&text=However%2C%20only%20half%20(50%25),tax%20rate%20on%20investment%20earnings. [2023, May 17].

AT Mineral Processing, n.d. *Importance of the exploration companies to the mining industry.* https://www.at-minerals.com/en/artikel/at_Importance_of_the_exploration_companies_to_the_mining_industry_3374779.html [2022, September 17].

Association for Mining Exploration. N.d. Investor Confidence. Available: https://amebc.ca/what-we-do/investor-confidence/ [2023, May 17].

BC gold adventures. n.d. OBTAINING A MINING LICENSE IN B.C. Available: https://bcgoldadventures.com/obtaining-a-mining-license-in-b-c/#:~:text=Licenses%20can%20either%20be%20purchased,through%20the%20BC%20MTO%20website. [2023, May 28].

Big Rock Exploration, n.d. Grassroots Exploration: *The Art & Science of Field Geology*. Available: https://bigrockexploration.com/2019/07/grassroots-exploration-the-art-science-of-field-geology/ [2022, November 4].

British Columbia. 2023. Mine Permitting. Available: https://www2.gov.bc.ca/gov/content/industry/mineral-exploration-mining/permitting [2023, May 28].

British Columbia. 2019. B.C. Mining flow-through share income tax credit. Available: https://www2.gov.bc.ca/gov/content/taxes/income-taxes/personal/credits/mining-flow-through#:~:text=The%20B.C.%20mining%20flow%2Dthrough,B.C.%20flow%2Dthrough%20mining%20expenditures. [2023, May 17].

Christianson, D. 2022. South African mining's big prospecting problem. Available: https://www.tralac.org/blog/article/15632-south-african-mining-s-big-prospecting-problem.html [2023, May 28].

Cambridge Dictionary. 2023. Definition of tax incentive from the Cambridge Business English Dictionary. Available: https://dictionary.cambridge.org/dictionary/english/tax-incentive [2023 , May 9].

Chiarot, C, 2008. *Flow-Through Shares: A Better Way.* Available: https://uwaterloo.ca/master-of-taxation/sites/ca.master-of-taxation/files/uploads/files/flowthroughsharepaper-finalversion-carlochiarot.pdf [2022, November 4].

Creamer, M. 2022. Minerals Council 'absolutely adamant' about need for commercially available cadastre. Available: https://www.miningweekly.com/article/minerals-council-absolutely-adamant-about-need-for-commercially-available-cadastre-2022-09-28 [2023, May 28].

Creamer, M. 2021. Expect to be unemployed from age 40, Miller warns graduates entering mining. Available: https://m.miningweekly.com/article/expect-to-be-unemployed-from-age-40-miller-warns-graduates-entering-mining-today-2021-11-15 [2023, May 28].

Creamer, M. 2020. *Flow-through must not only incentivise exploration but also market participation – Miller.* Available: https://www.miningweekly.com/print-version/flow-through-must-not-only-boost-exploration-but-also-market-participation-miller-2020-11-02 [2022, June 13].

Davis, L, and Long, M. 2019. Make Flow-Through Financing Work For You: Practical Tips For The Deal And Beyond. Available: https://www.pdac.ca/docs/default-source/members---membership/webinars/webinar-presentation-2018.pdf?sfvrsn=c6da8998_3 [2023, May 17].

Davis Tax committee. 2014. *First Interim report on mining for the minister of finance.* Available:

https://www.taxcom.org.za/docs/20151201%20DTC%20First%20Interim%20Report%20on%20Mining%20(hard-rock).pdf [2022, May 20].

Department of Finance Canada. 2022. Tax Measures: Supplementary information. Available: https://www.budget.canada.ca/2022/pdf/tm-mf-2022-en.pdf [2023, May 17].

Department of Finance Canada, 1994. Flow-Though Shares: An evaluation Report. Available: https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2016/fin/F34-4-1994-1-eng.pdf [2023, 17 May].

Government of Canada. 2022. Certificate of Qualified Professional Engineer or Professional Geoscientist. Available: https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t100a-cert.html [2023, May 17].

Government of Nova Scotia. 2021. Mineral Resources Development Fund. Available: https://novascotia.ca/natr/meb/mrdp.asp [2023, May 17].

Department of Finance Canada. 2020. Government Supports Jobs and Safe Operations of Junior Mining Exploration. Available: https://www.canada.ca/en/department-finance/news/2020/07/government-supports-jobs-and-safe-operations-of-junior-mining-exploration.html [2023, May 17].

Department of Finance Canada. 2020. Overview of Main Tax Instruments. Available: https://natural-resources.canada.ca/mining-materials/mining/taxation/mining-taxation-canada/overview-main-tax-instruments/8886 [2023, May 17].

Department of mineral resources and energy. 2022. *The exploration strategy for the mining industry of South Africa.* 14 April. Gazette notice No. 2026. [online]. Available: https://www.gov.za/sites/default/files/gcis_document/202204/46246gon2026.pdf [2022, May 20].

Engelbrecht, D, n.d: 1. *Contract Law in South African Law.* Available: https://delaw.co.za/services/contract-law-in-south-african-law/ [2022, November 6].

Fincor. 2022. Mining rehabilitation of a Company or Trust: Deductibility of amounts paid and compliance with Section 37A of the Income Tax Act – part 1 of 2. Available: https://fincor.co.za/mining-rehabilitation-of-a-company-or-trust-deductibility-of-amounts-paid-and-compliance-with-section-37a-of-the-income-tax-act-part-1-of-2/ [2023, May 9].

Gilfillan, B. 2012. COMPANY TAX, 2025. Mining rehabilitation funds February 2012 - Issue 149. Available: https://www.saica.co.za/integritax/2012/2025._Mining_rehabilitation_funds_.htm [2023, May 9].

Government of Canada, 2017. *Income Tax Folio S3-F8-C1, Principal-business Corporations in the Resource Industries.* Available: https://www.canada.ca/en/revenue-agency/services/tax/technical-information/income-tax/income-tax-folios-index/series-3-property-investments-savings-plans/series-3-property-investments-savings-plan-folio-8-resource-properties/income-tax-folio-s3-f8-c1-principal-business-corporations-resource-industries.html#N101D7 [2022, November 6].

Gwala, A. 2017. *Davis Tax Committee recommends changes to mining capex write-off rules.* Available: https://www2.deloitte.com/za/en/pages/tax/articles/davis-tax-committee-recommends-changes-to-mining-capex-write.html [2022, May 14].

Hall, M. 2021. Most attractive mining jurisdictions revealed. Available: https://www.mining-technology.com/features/most-attractive-mining-jurisdictions/ [2023, May 28].

Hoek, D. 2022. Resolving the anomaly between new assessed loss utilisation restrictions and section 36 mining capital allowances. Available: https://www.cliffedekkerhofmeyr.com/en/news/publications/2022/Practice/Tax/tax-and-exchange-control-alert-23-february-special-edition-2022-budget-speech-Resolving-the-anomaly-between-new-assessed-loss-utilisation-restrictions-and-section-36-mining-capital-allowances.html [2023, May 9].

Irsigler, B. 2022. Dentons Global Mining Guide: South Africa. Available: https://www.dentons.com/en/insights/newsletters/2022/january/17/dentons-global-mining-guide/dentons-global-mining-guide-2022/south-africa [2023, May 28].

ISC. 2022. Mineral Cadastral. Available: https://www.isc.ca/MapsandPhotos/GISData/SaskCadastral/Pages/MineralCadastral.aspx [2023, May 28].

Jog, V.M., Lenjosek, G.J. & McKenzie, K.J. 1996. Flowthrough Shares: Premium-Sharing and Cost-Effectiveness. *Canadian Tax Journal.* 44(4): 1017-1019.

Killeen, J. 2022. Prospectors & Developers Association of Canada (PDAC). Available: https://taxinterpretations.com/cra/severed-letters/2020-0873931e5 [2023, May 17].

Lazenby, H. 2015. *Flow-through share scheme a major source of funds for Canadian juniors in challenging market.* Available: https://www.engineeringnews.co.za/article/flow-through-share-scheme-a-major-source-of-funds-for-canadian-juniors-in-challenging-market-2015-05-29-1 [2022, June 14].

Legwaila, T. 2011. THE SUBSTANCE OVER FORM DOCTRINE IN TAXATION: THE APPLICATION OF THE DOCTRINE AFTER THE JUDGMENT IN COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE v NWK LTD. Available: https://heinonline.org/HOL/LandingPage?handle=hein.journals/safrmerlj28&div=8&id=&page= [2023, May 17].

Luzipho, S. 2017. Mining Licencing turnaround times, with intro by Minister. Available: https://pmg.org.za/committee-meeting/24103/#:~:text=It%20takes%20120%20days%20to,and%2023%20of%20the%20Act. [2023, May 28].

Mantashe, G. 2022. *Budget Vote Speech 2022 By The Honourable Minister Of Mineral Resources And Energy.* 19 May. Available: https://www.gov.za/speeches/minister-gwede-mantashe-mineral-resources-and-energy-dept-budget-vote-202223-19-may-2022 [2022, June 4].

Mejia, J. and Aliakbari, E. 2022. Fraser Institute Annual Survey of Mining Companies. Available: https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf [2023, May 28].

Mining Tax Canada, 2022. Flow-Through Shares. Available: https://www.miningtaxcanada.com/flow-through-shares/ [2022, September 14].

Metallica Metals, 2021. *What is a Junior Mining Company?* Available: https://metallica-metals.com/blog/what-is-a-junior-mining-company/ [2022, August 24].

Mineral Council South Africa. 2020. *Flow-through Shares To Stimulate Mining Exploration In South Africa.* October. Available: https://flow-through-shares-to-stimulate-mining-exploration-in-south-africa.pdf [2022, June 16].

Mining Matters, 2016. Mining Cycle. Available: https://miningmatters.ca/docs/default-source/mining-matters---ttsp-documents/core-concepts-mining-cycle.pdf?sfvrsn=a6f2b298_2 [2023, May 9].

Mining Tax Canada, 2022. Flow-Through Shares. Available: https://www.miningtaxcanada.com/flow-through-shares/ [2022, September 14].

Moodley, N. n.d. *Flow-Through Shares: Adapted model on the cards for junior miners.* Available: https://businessmediamags.co.za/mining/sa-mining/flow-through-shares/ [2022, June 15].

Myburg, A. 2020. *Tax incentives are essential for getting South African mining exploration investment back on track.* Available: https://www.ensafrica.com/news/detail/5636/tax-incentives-are-essential-for-getting-sout [2022, June 13].

Norton Rose Fulbright. 2017. Royalty finance - the new normal? Available: https://www.nortonrosefulbright.com/en/knowledge/publications/470758f0/royalty-finance---the-new-normal#:~:text=What%20is%20mining%20royalty%20finance,other%20products%20at%20a%20mine. [2023, May 9].

OECD. 2018. TAX INCENTIVES IN MINING: MINIMISING RISKS TO REVENUE. Available: https://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf [2023, May 28].

OECD. nd. List of OECD Member countries - Ratification of the Convention on the OECD. Available: https://www.oecd.org/about/document/ratification-oecd-convention.htm [2023, May 17].

OECD. 2014. Model Tax Convention on Income and on Capital: Condensed Version. Available: https://www-oecd-ilibrary-org.ezproxy.uct.ac.za/taxation/model-tax-convention-on-income-and-on-capital-condensed-version-2014_mtc_cond-2014-en;jsessionid=VWi7AjMGBOh6tltThUhgXug6IjHx8_wEG91qBgj6.ip-10-240-5-17 [2023, May 17].

Paxton, S, 2019. *CSSA Best Practice Guide.* Available: https://www.chartsec.co.za/documents/members/CSSA-Best-Practice-Guide-Shares.pdf [2022, October 12].

Parsons, A. 2022. Junior Exploration Assistance. Available: https://www.gov.nl.ca/iet/mines/exploration/mip/jea/ [2023, May 17].

PDAC. 2022. Written Submission on Legislative Proposals Relating to the Income Tax Act and the Critical Mineral Exploration Tax Credit (CMETC). Available: https://www.pdac.ca/docs/default-source/priorities/access-to-capital/flow-through-shares/cmetc/pdac-responds-to-draft-ita-and-cmetc-legislation_093022.pdf?Status=Temp&sfvrsn=14b7a9f_2 [2023, May 17].

PDAC. 2021. FLOW-THROUGH SHARES & THE MINERAL EXPLORATION TAX CREDIT (METC). Available: https://www.pdac.ca/programs-and-advocacy/access-to-capital/flow-through-shares [2023, May 17].

PDAC. 2019. 2019 Financial Incentives for Mineral Exploration and Prospecting in Canada. Available: https://www.pdac.ca/docs/default-source/priorities/access-to-capital/flow-through-shares/compilation-of-financial-incentives-for-mineral-exploration-in-canada-may-2019.pdf?sfvrsn=924c9998_0 [2023, May 17].

PDAC. 2000. Flow-Through Shares and the Look-Back Rule. Available: https://natural-resources.canada.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/busi-indu/met-qfi/hist-hist/pdf/flow-eng.pdf [2023, May 17].

PwC. 2023. Corporate - Taxes on corporate income. Available: https://taxsummaries.pwc.com/south-africa/corporate/taxes-on-corporate-income [2023, May 9].

Rossouw, A. 2021. SA Mine 2021: Harvest Season, call to action. (Industry report October 2021). Available: https://www.pwc.co.za/en/assets/pdf/sa-mine-2021.pdf [2022, May 14].

Rupprecht, S. 2004. "Establishing the feasibility of your proposed mining venture," International Platinum Conference 'Platinum adding value'. The South African Institute of Mining and Metallurgy, South Africa.

SAICA. 2014. 2297. Mining and prospecting. Available: https://www.saica.co.za/integritax/2014/2297._Mining_and_prospecting.htm [2023, May 9].

South African Government. 2023. Apply for a mining right. Available: https://www.gov.za/services/mining-and-water/apply-mining-right [2023, May 28].

South African Revenue Service. 2023. Venture Capital Companies. Available: https://www.sars.gov.za/businesses-and-employers/venture-capital-companies/ [2023, May 31].

South African Revenue Service. 2021. Research and Development Incentive. Available: https://www.sars.gov.za/businesses-and-employers/my-business-and-tax/research-and-development-incentive/ [2023, May 9].

South African Revenue Service. 2020. *Guide on Venture Capital Companies: Income Tax.* Available: https://www.sars.gov.za/wp-content/uploads/Ops/Guides/LAPD-IT-G30-Guide-on-venture-capital-companies.pdf [2022, June 16].

South African Revenue Services. 2019. *BINDING PRIVATE RULING: BPR 333.* Available: https://www.sars.gov.za/wp-content/uploads/Legal/Rulings/BPR/LAPD-IntR-R-BPR-2019-19-BPR-333-Venture-capital-company-investment-in-farming-operations.pdf [2022, June 16].

Strydom, B. 2012. SOUTH AFRICA - MINING AND PETROLEUM ROYALTIES - THE IMPOSITION AND CALCULATION. Available: https://bowmanslaw.com/article-documents/South-Africa-Mining-and-Petroleum-Royalties.pdf [2023, May 9].

Superfund Research Centre. 2023. Copper Mining and Processing: Life Cycle of a Mine. Available: https://superfund.arizona.edu/resources/modules/copper-mining-and-processing/life-cycle-mine [2023, May 9].

Wasserman, H. 2021. *In a shock move, govt just killed Section 12J tax breaks for venture capital*. https://www.businessinsider.co.za/budget-2021-govt-kills-section-12j-that-gave-tax-breaks-for-venture-capital-investments-2021-2 [2022, June 16].

Legislation

Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp)

Mineral and Petroleum Resources Development Act No. 28 of 2002

Revenue Laws Amendment Act No. 59 of 2000

Income Tax Act, No. 58 OF 1962, as amended

Companies Act No 71 of 2008

Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp)
The Mineral and Petroleum Resources Royalty Act 28 of 2008

Court Case

ABC Mining Company v The Commissioner for The South African Revenue Service, ITC 24606 of 25 February 2021

Benhaus Mining v Commissioner for South African Revenue Service (165/2018) [2019] ZASCA 17 (22 March 2019) Paragraph 3

Borland's Trustee v Steel Brothers and Company Ltd (1901) 1 Ch 279

Burgess v Commissioner For Inland Revenue, (1993) SA 511, 55 SATC 185

Caltex Oil (SA) (Pty) Ltd v Secretary for Inland Revenue, (1975) SA 665, 37 SATC 1
Great Western Railway Company v Carpalla United China Clay Company [1907 – 1908] (Rail 1027/182)

Hicklin v Secretary for Inland Revenue 1980 (1) SA 481 (A), 41 SATC 179 at 192

Port Elizabeth Electric Tramway Company v Cir, (1936) CPD 241, 8 SATC 13.
SIR v Safranmark (Pty) Ltd 1982 (1) SA 113 (A), 43 SATC 235

Western Platinum Limited v Commissioner for South African Revenue Service 2004 4 All SA 611 (SCA)

Regulations

Regulation 6202.1 the the Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp)

Binding Private Ruling 182 of 6 November 2014

Explanatory Memorandum on Taxation Laws Amendment Bill 2017

Regulation 6202.1 the Canadian Income Tax Act R.S.C 1985, c. 1 (5th Supp)

Book

Haupt, P. 2018. Notes on South African Income Tax. Roggebaai, South Africa: ABC Press.