
Flow-Through Shares – Time Extension

Income Tax Act

Clause 1

ITA
66

Section 66 of the *Income Tax Act* (the “Act”) provides for the deduction of certain expenses related to natural resource exploitation and clean energy generation.

COVID-19 – time extension to 36 months

ITA
66(12.6001)

Subsections 66(12.6) and (12.62) of the Act permit a principal-business corporation to renounce Canadian exploration expenses (CEE) and Canadian development expenses (CDE), such that the holders of its flow-through shares can instead claim those expenses. One of the conditions of eligibility for flow-through treatment is that the CEE or CDE must be incurred in the period that begins on the day on which the relevant flow-through share agreement is entered into and ends 24 months after the end of the month that includes that day.

In response to the COVID-19 pandemic, subsection 66(12.6001) is introduced for the purpose of extending the 24-month period provided in subsections 66(12.6) and (12.62) by 12 months. The extension applies to flow-through share agreements entered into after February 2018 and before 2021.

COVID-19 – agreements in 2019 or 2020

ITA
66(12.731)

Subsection 66(12.73) of the Act provides that, where a corporation renounces CEE or CDE under subsections 66(12.6), (12.601) or (12.62) in excess of the amount that the corporation was entitled to renounce, the corporation must reduce the amount so renounced and file a statement with the Minister of National Revenue indicating the adjustments made. This requirement also applies to renunciations made under the “look-back rule” in subsection 66(12.66) in respect of expenditures that are expected to be incurred after the renunciation is made. Subsection 66(12.66) permits a corporation to renounce to its flow-through shareholders certain types of CEE that it has incurred, or plans to incur, in a particular calendar year with effect as of the end of the preceding calendar year.

Consequential on the introduction of COVID-19-related time extensions for incurring relevant expenditures, new subsection 66(12.731) ensures that those extended periods are taken into account for the reporting requirements under subsection 66(12.73).

Clause 2

ITA

Part XII.6 (section 211.91)

Part XII.6 of the Act levies a tax on flow-through share issuers that use the “look-back” rule under subsection 66(12.66). Under that subsection, certain CEE incurred in a calendar year can be flowed through to an investor and treated as if they had been incurred at the end of the preceding calendar year.

Currently, subsection 211.91(1) applies where, because of the application of subsection 66(12.66), a corporation renounces an amount in a calendar year under subsection 66(12.6) in respect of an agreement entered into in the previous calendar year. Where this is the case, the corporation must pay a tax in respect of each month of the calendar year (other than January) of renunciation. The tax is generally equal to the balance, at the end of the month, of unexpended amounts renounced multiplied by a rate. The rate is equal to 1/12 of the annual interest rate prescribed for the purposes of determining refund interest under subsection 164(3). However, if amounts remain unexpended at the end of the calendar year of renunciation, an extra tax of 1/10 of the unexpended amounts applies.

Subsection 211.91(2) contains the reporting and payment requirements for the tax under Part XII.6. It requires the return and payment to be made before March of the calendar year following the calendar year of renunciation.

COVID-19 – expenses deemed incurred earlier

ITA

211.91(2.1)

In response to the COVID-19 pandemic, subsection 211.91(2.1) of the Act is introduced to provide relief in respect of flow-through share agreements entered into in 2019 and 2020.

Paragraph 211.91(2.1)(a) extends the filing and payment deadline in respect of Part XII.6 tax by one year.

Paragraph 211.91(2.1)(b) deems certain expenditures to be incurred earlier than they are actually incurred, in order to provide a reduction of the Part XII.6 tax that would otherwise be payable. Subparagraphs (i) and (ii) provide that, for expenses incurred in the calendar year (the “normal look-back year”) following the calendar year in which a flow-through share agreement is entered into, the expenses are deemed to be incurred in January of the normal look-back year. Since Part XII.6 tax does not apply to the extent that amounts are expended in January of the normal look-

back year, the result is that any amounts expended in the normal look-back year will be exempt from Part XII.6 tax.

Subparagraph (iii) provides that, for the purposes of applying Part XII.6 tax, expenses incurred in the calendar year following the normal look-back year are deemed to be incurred 12 months earlier than they are actually incurred. This subparagraph also ensures that the requirement in paragraph 66(12.66)(a) to incur expenditures in the calendar year of renunciation can be complied with where expenditures are incurred within 12 months of the end of the calendar year of renunciation.