



# Mining Sector Tax Measures in 2014 Federal Budget

By Steve Suarez, Borden Ladner Gervais LLP

**T**he 2014 budget (the Budget) released by Canada's federal government on February 11, 2014 (Budget Day) included two tax measures of particular interest to the mining community.

## Mineral Exploration Tax Credit Extended

Individuals investing in flow-through shares (FTS) issued by a mining company may be entitled to tax benefits beyond the renounced Canadian exploration expense/Canadian development expense available on all FTS. Where the FTS issuer incurs certain qualifying expenditures (essentially Canadian exploration expenses incurred in mining exploration above or at ground level conducted in Canada) and renounces them to a holder of FTS, that holder is entitled to an investment tax credit equal to 15 per cent of the renounced qualifying expenditures (the "mineral exploration tax credit").

Currently the mining company must incur qualifying expenditures by the end of 2014 and renounce them to the investor under an agreement made before April 2014. The Budget extends the 15 per cent mineral exploration tax credit for another year, by extending (1) the date for incurring qualifying expenditures to the end of 2015, and (2) the deadline for the company and the investor to enter into the FTS subscription agreement governing renunciation to March 31, 2015.

## Tax Treaty "Shopping" Targeted in Proposed Rule

Tax treaties are agreements between two countries, whereby they agree to reduce or eliminate one country's taxation of income earned in that country by residents of the other country. This reduces the risk

of "double taxation": tax being levied on the same income by the country in which the income arises, and the country in which the recipient is resident. Reducing double taxation encourages cross-border investment that otherwise might not occur.

Tax treaties override domestic law. For example, while many payments of interest, dividends and royalties made by a Canadian to a non-resident attract 25 per cent withholding tax under the Income Tax Act (Canada) ("ITA"), if the recipient is resident in a country with which Canada has a tax treaty, Canadian withholding tax is often reduced or eliminated altogether. Similarly, most of Canada's tax treaties limit Canada's ability to tax non-residents on capital gains from the disposition of "taxable Canadian property," including shares of corporations.

The reverse is also true. Where a Canadian company has foreign operations or foreign subsidiaries, a tax treaty between Canada and the other relevant countries limits the extent to which those other countries can tax the resulting income or gains. As such, Canada's 90 or so tax treaties have a major impact on inbound investment into and outbound investment from Canada, of which the mining sector is a huge part.

In the 2014 budget, Finance announced a proposal to effectively unilaterally amend all of Canada's tax treaties. That new rule will apply whenever it is "reasonable" for the Canada Revenue Agency (CRA) to conclude that "one of the main purposes" of undertaking a transaction that results in (or that is part of a series of transactions that results in) a non-resident obtaining a tax treaty benefit is obtaining that tax treaty benefit. The "purpose" test is deemed to have been satisfied in some instances, and in three "safe harbor" situations it is presumed not

to have been met (although it is still open to the CRA to assert otherwise).

Where the proposed rule applies, Canada will allow treaty benefits to the non-resident only to the extent "reasonable having regard to all the circumstances." This proposed rule is still under consideration, and any new rule would be effective for taxation years starting after the year the new rule is enacted.

This new rule is far too general and over-inclusive, and would make it much harder for non-residents to claim treaty benefits on Canadian-source income. Canadians making payments to which withholding tax applies are liable for such tax (plus interest and penalties), and will have a hard time determining whether treaty-reduced rates apply, based on what someone else's purposes were.

That Canada would be taking such action unilaterally instead of negotiating with its tax treaty partners is most unfortunate, particularly since the OECD has a major multilateral initiative underway on this very issue that will be generating recommendations in September 2014.

Canadians with foreign investments should expect other countries to reciprocate with similar rules. The Canadian mining community should watch these developments very carefully, as cross-border investment is a huge part of this sector. For more on this new rule, go to [www.miningtaxcanada.com](http://www.miningtaxcanada.com). **M**

*Steve Suarez is a partner in the Toronto office of Borden Ladner Gervais LLP. His tax practice includes a particular focus on the natural resources sector. He can be reached at (416) 367-6702 or [ssuarez@blg.com](mailto:ssuarez@blg.com), or online at [www.miningtaxcanada.com](http://www.miningtaxcanada.com).*

# Advertise in our Saskatchewan Edition!

The Summer issue of *Canadian Mining Magazine* will be all about Saskatchewan. Contact Matrix Group Publishing Inc. for information on rates, special distribution and advertising options!  
Call (866) 999-1299 or email [sales@matrixgroupinc.net](mailto:sales@matrixgroupinc.net).



## Write for Canadian Mining Magazine!

If you have a story idea send an abstract to Editor Shannon Savory at [ssavory@matrixgroupinc.net](mailto:ssavory@matrixgroupinc.net).

Stories must be related to mining in Canada, and should not be company/product promotional.



## Helping Feed the World

Experts estimate that commercial fertilizer is responsible for the basic food needs of at least 40 percent of the world's population. Fertilizer is instrumental in ensuring a safe, low-cost, nutritious and abundant food supply.

[www.agriumwholesale.com](http://www.agriumwholesale.com)



## SIMPLE, RELIABLE, ROBUST

IBIS RADAR FAMILY : A COMPLETE SOLUTION FOR SAFETY CRITICAL SLOPE MONITORING



FPM 360



IBIS-FMT



IBIS FM

We don't need many words to describe our technology, our numbers speak for us

**90+** installations worldwide for safety critical monitoring in surface mining

**21** countries over **6** continents

**40+** major mining companies served

**>99%** radar availability

**HUNDREDS** of failures tracked and timely alerts issued

[www.idscorporation.com](http://www.idscorporation.com)

*Safe at work. Safety first.*

