

Tool 3.3: Financial Mechanisms to Encourage SLO

The concept of SLO originated in 1997 from an executive with Placer Dome, a Canadian company, and since that time Canada has been actively dealing with these issues. The intent of the following section is simply to relay lessons learned in Canada as to how exploration activities can be incentivised.

Encouraging Exploration Through Financial Incentives

In Canada, mineral resources are owned by the state and administered by the Provinces and Territories. Individuals and companies may gain a right to explore for and/or mine minerals through claim staking or leasing processes. However, this right is only for the subsurface minerals and not for the surface of the land which is subject to a separate right and ownership: a situation known as severed title. In practice, the holder of a mineral right has to reach an agreement with the holder of a surface right in order to gain unimpeded access to the land in order to explore or develop a mineral resource. The separation or severed subsurface (mineral resources) and surface title or right is the dominant form of mineral resource ownership around the world, and the situation in most of the European countries.

Under Canadian mining law, the holder of a claim or mineral lease is required to conduct work on the claim in order to maintain it in good standing and hence retain ownership. Such work, called assessment work, is defined in the relevant regulations and has to be reported annually, or a payment made in lieu of actual work. Under the Canadian tax code, eligible exploration expenses – in effect the activities defined as assessment work - are deductible against taxable income.

In the 1950s, the Canadian government introduced **Flow Through shares** as an incentive to stimulate exploration for minerals, oil and natural gas. In the mining business, it is common for the ‘junior’ exploration-only companies to have no net income for tax purposes and, as a consequence, accumulate deductions for tax purposes that they may never be able to use. These companies also need to raise financing in order to continue funding exploration activities. The basic principle behind flow through share is that a mining company is willing to forgo the tax benefit from eligible exploration expenses that it incurs and can renounce these expenditures to investors buying shares in the company. The investor buying the shares can then apply the tax benefit renounced by the mining company as a deduction against their own taxable income. In this scenario, **the mining company gains financing and the investor a tax benefit.**

Following repatriation of the Canadian Constitution in 1982, which reasserted Aboriginal Rights, and following confirmation in the courts of the existence of unextinguished Native Title to traditional land, there arose the clear need to engage with Native Title holders over access to land and mineral development. Community engagement with Canadian First Nations, Inuit and Metis populations to gain and maintain a SLO became an increasingly complex, time consuming and expensive aspect of mineral exploration through the 1990s and into the present century. Under pressure from the industry, and in response to the policy imperative of continuing to encourage mineral exploration and development, the Provinces and Territories **changed the scope of assessment work to include community consultations, which allowed such expenses to contribute to maintaining mineral claims in good standing. This also expanded the definition of Eligible Exploration Expenses under the Tax Code and hence the deduction for tax purposes that accrue to the company and can be passed on to the investor as Flow Through Shares.**

The situation in Ontario is relevant to the Canadian experience. The Ontario [Mining Act](#)⁵ (1990) established a legal framework that identified the relevant expenses eligible under the Assessment Work program with the 1996 revision including, for the first time, public engagement activities of exploration stage projects. [Ontario Regulation 6/96](#) provides the following definitions and instructions:

(2) Expenses incurred on or after the date this section comes into force by the holder of mining lands in conducting consultation with Aboriginal communities in relation to exploration activities proposed to be conducted on those lands are eligible for assessment work credit in accordance with the following:

1. The expenses are not subject to the time limits or reductions under subsections 4 (1), (3) and (4).
2. For the first required unit of assessment work for a mining claim, expenses may be submitted without accompanying geoscience assessment work.
3. After the first required unit of assessment work, the expenses may only be submitted for assessment work credit if geoscience assessment work has been performed and is being reported at the same time for the claim.
4. The expenses cannot be credited towards the units of assessment work required to apply for a lease of the mining claim under section 81 of the Act.
5. The required supporting documents for the expenses are submitted. O. Reg. 309/12, s. 6; O. Reg. 274/17, s. 1.

After the law was changed, the tax code could be changed in order to make community engagement an exploration expenditure. [Ontario Focused Flow-Through Share Tax Credit](#)⁶ lists community consultations as an eligible expense based on following requirements:

Eligible mining exploration expenses must result from mining exploration activities required to determine the existence, location, extent or quality of a mineral resource in Ontario. This includes:

- environmental studies or community consultations
- prospecting geological, geophysical or geochemical surveys
- drilling by rotary, diamond, percussion or other methods

You cannot claim expenses for an existing mine, including potential or actual extensions of that mine.

A Word on the Adaptability to the European Context:

The Canadian system enables any person to stake an exclusive claim to a particular piece of land they intend to access for mineral exploration. The owner of any right to the surface of the land retains that right. To maintain the right to the claim, the person or company intending to explore must demonstrate they are actively working on it and proceeding as intended. In Canada, this system has been crucial for encouraging exploration. From an SLO perspective, the model encourages junior companies to invest

⁵ Mining Act (1990) [O. Reg. 6/96: ASSESSMENT WORK \(ontario.ca\)](#)

⁶ Flow-Through Share Tax Credit [Ontario Focused Flow-Through Share Tax Credit | Ontario.ca](#)

in community consultation and engagement which ideally results in better dialogue and good communication between the industry and communities.

Although details of compatibility/implementation of the Canadian model would have to be considered separately at the national levels of each Member State, authorities working for the implementation could benefit from following (some of) the principles already adopted in Canadian Provinces and Territories. Assessment Work Credits could be a useful mechanism to ensure that mineral claims are maintained in good standing. This way governments would have a tool to steer industry towards sustainable practices. However, the Canadian model has been [criticised by the Mining Watch and the First Nations](#) for encouraging companies to prolong their exploration activities without intentions to establish operations in the area⁷. The European model would have to consider this aspect when drafting their legislation.

Considering that mineral resources in Canada are governed by the Provinces and Territories, the European implementations could adopt a somewhat similar system given the Member States have the competence to regulate mineral resources, and therefore each could implement their own assessment/incentive procedures as well.

Lessons from Saskatchewan

Another example of government assistance from Canada, is the coordinated effort between the provincial government, municipality and First Nations band. In northern Saskatchewan, the pressure of uranium exploration created some uncertainty and, in response, these three levels of government created public engagement activities for junior mining companies in Saskatchewan. A forum for junior exploration companies was carried out in 2014 to allow residents to relay their concerns, pre-empt plausible disturbances, and build lines of communication and relationships with 12-15 companies interested in drilling for samples around a uranium deposit found in the area. The three governments decided to deal with the situation by funding company-community engagement activities and helping companies by providing them free meeting rooms and taking care of other related costs.

The lesson learned from Saskatchewan is that **government can act as an initiator of dialogue**. A proactive approach helps to foster company-community dialogue and results in better collaboration between different stakeholders. **Governments can help to incentivise public engagement activities by covering the costs of junior companies and simultaneously demanding a certain quantity and quality of engagement activities**. Investing in industry-community relationship-building offers governments opportunities to not only steer public engagement of new companies exploring the area, and at the same time ensure local communities' participation in the process, but also foster desirable behaviour and responsibility in the industry.

⁷ Mining Watch & First Nations (2007)
<https://miningwatch.ca/blog/2007/2/2/mining-investors-and-tax-system>

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Disclaimer: these are only suggestions for how government can incentivise exploration activities.

As most conflicts occur in the exploration stage, governments could support junior companies in their community engagement activities by:

- Adopting a European-tailored program of 'assessment work' for exploration projects that requires public consultations
- Developing tax incentives for junior companies to steer the industry towards good practices (better community engagement and sustainability)
- Funding company-community engagement activities for junior companies by providing free meeting rooms and other related costs
- Government should also consider the local impact of numerous companies operating simultaneously in an area and support the local communities

Further Reading:

1) Assessment Work program explained in detail: O. Reg. 65/18: ASSESSMENT WORK (ontario.ca)
