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Limit on Tax Court Informal Procedures to Rise

As a result of changes to the Income Tax Act and Tax Court Canada Act being introduced through the 2013 federal budget process, the limit on tax court appeals of income tax matters made under the informal procedure will shortly increase from \$12,000 to \$25,000. Further, a \$50,000 limit on appeals of GST / HST matters will be imposed. Previously there was no limit on GST / HST matters.

This is potentially good news for some taxpayers seeking to use the informal procedure process to resolve SR&ED disputes through an appeal to the Tax Court of Canada.

The advantages of the informal procedure are that it is set up so that the taxpayer can represent himself, and legal or technical rules of evidence are generally not enforced, making this a simpler procedure. In most cases the presiding judge will assist an unrepresented taxpayer to understand the hearing process. In the general procedure the judge is concerned almost exclusively with hearing and understanding the evidence as it is presented by skilled and knowledgeable lawyers.

Further, there is no requirement for formalized pre-trial "discovery" in the informal procedure, which is often the most costly component of litigation. In addition, as a general rule, costs will not be awarded against a taxpayer who elects to proceed by informal procedure.

The main disadvantage of choosing to proceed in the Tax Court of Canada under the informal procedure is that the \$12,000 limit (soon to be \$25,000) is generally vastly less than what is at stake in most SR & ED claims. Another disadvantage is that an informal procedure ruling does not technically create a "precedent" that would bind the CRA or be of use in another hearing, even where the facts in issue are very similar. The Tax Court of Canada Act provides that an informal procedure judgment "shall not be treated as a precedent for any other case". That said, Justice Bowman, the former Chief Justice of the Tax Court was often heard to say that he would not ignore an informal procedure decision that is soundly reasoned.

LEARN MORE

For more information on how to seek redress for SR&ED claims that have been disallowed in whole or part by CRA you are invited to read Scitax Bulletin #51 "Appealing and SR&ED Claim" which is available as free download here:

<http://www.scitax.com/pdf/Bulletin.51-Appealing.SRED.Claims.05-Jun-2012.pdf>

Tax Court of Canada – Guide to Informal and General Procedures

http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/tcc-cci_Eng/Process/GST#d

The Tax Court's Informal Procedure and Self-Represented Litigants: Problems and Solutions
André Gallant

Published in Canadian Tax Journal by Canadian Tax Foundation

<https://www.fcf-ctf.ca/ctfweb/Documents/PDF/2005ctj/05ctj2-Gallant.pdf>

About Scitax

Scitax Advisory Partners LP is a Canadian professional services firm with specialist expertise in all aspects of planning, preparing and defending Scientific Research and Experimental Development (SR&ED) tax credit claims.

We offer a multi-discipline team of engineers, chartered accountants and tax lawyers to ensure that your SR&ED issues are covered from every angle.

While we normally work in concert with our client's existing accountants, our affiliated tax-dedicated chartered accounting firm – Cadesky and Associates LLP – is an expert resource for advice on any taxation matter such as may arise either during the planning and preparation of your claim or while dealing with CRA afterwards.

In addition to planning and preparing new claims, we also engage on claims that have been challenged by CRA auditors or that have received negative assessments for either scientific or expenditure eligibility. If a satisfactory settlement cannot be achieved with CRA at the local office level, we will appeal your assessment through either Notice of Objection or Tax Court of Canada procedures with the assistance of our affiliated firm of tax lawyers.



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