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Ottawa Tweaks SR&ED Legislation

Filing requirements bolstered, loopholes closed

On September 16, 2016 the Canadian Department of Finance released a package of draft technical amendments to the Income Tax Act (ITA).

Included in the 33 pages of technical changes are four amendments to existing legislation governing SR&ED tax deductions and credits.

1. The most important amendment is to ITA subclause 37(8)(a)(ii)(B)(II). The phrase "in respect of scientific research and experimental development" will be changed to "for scientific research and experimental development". This will narrow the scope of SR&ED expenditures that attract SR&ED investment tax credits (ITCs), and will effectively shut down the broad-brush entitlement created by the Tax Court of Canada's February 2015 decision in Feedlot Health Services Ltd., at paragraphs [50] [58] [61-62] [68]. This change will apply to expenditures incurred after September 16, 2016.
2. ITA subsection 37(11) currently requires that SR&ED claims be filed with all prescribed information contained on the prescribed forms within the filing deadline (usually 18 months from the corporation's year-end). This rule has been reworded and clarified, primarily to add a new paragraph (b), specifically providing that "claim preparer information" (Section 9 of the T661 form) is part of the information that must be provided to the CRA.

This rule also reinforces that claims filed using other than the prescribed forms or with information deficiencies are unacceptable. One all too common deficiency is the taxpayer providing the project technical description narratives (i.e. lines 242, 244 and 246) as attachments instead of on the t661 form itself.

3. Tied in with #2 above, proposed new subsection 37(11.1) will now contain the rule stating that no deduction is allowed if the prescribed form with prescribed information is not filed on time. However, it explicitly excludes the "claim preparer information". Finance's intention appears to be that the failure to provide "claim preparer information", while still attracting penalties, will not result in the claim being disallowed. (This draft may not have been worded correctly and may well be amended before this legislation is enacted.)
4. ITA subparagraph 127(9) "specified percentage" (f.1)(i), which allows an ITC where government assistance (which reduced an earlier ITC) is repaid, will be corrected to match changes in ITC rates that took effect in 2014 as a result of the 2012 federal budget. Thus, the ITC that accrues to a taxpayer who repays assistance that had reduced qualified SR&ED expenditures incurred after 2014 will be calculated at a rate of 15% instead of 20% as appears in the extant legislation.

These amendments will not be enacted until they are introduced in a Bill in Parliament, likely in 2017.

Learn More

Tax court Canada Ruling Feedlot Health Management Services Ltd. in Tax Court Canada February 2015

http://www.scitax.com/pdf/Dckt_2012-1292-IT-G_06-Feb-2015.pdf

CRA Publication SR&ED Filing Requirements Policy December 18, 2014 (detailed explanation of requirements as of this date)

http://www.cra-arc.gc.ca/txcrdt/sred-rsde/clmng/flnqrqrmnts-eng.html#s3_0

Scitax Bulletin #58: New TCC Ruling Defines Key SR&ED Terms (FHMS Feedlot Health Management Services Ltd. in TCC)

<http://www.scitax.com/pdf/Bulletin.58.New.TCC.Ruling.Defines.Key.SR&ED.Terms.19-Feb-2015.pdf>

Supreme Court Declines Immunovaccine SR&ED Case (discusses meaning of "government assistance")

<http://www.scitax.com/pdf/Bulletin.59.Supreme.Court.Declines.Immunovaccine.SRED.Case.27-Mar-2015.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 Tax – 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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