

CAE Appeals TCC Decision on \$250M Government Loan

- Argues loaned funds should neither count as taxable income and nor reduce SR&ED ITCs
- Factum filing tagged "CONFIDENTIAL"

Scitax bulletin #77 (September 2021) reported on a Tax Court of Canada decision that significant portions of a \$250M loan provided to Canadian aerospace company CAE Inc. by the federal government are partly taxable as income on grounds that the terms of the loan were not "strictly commercial". The TCC further ruled that since some funds from the loan were used to pay for R&D that was claimed as SR&ED, the company's SR&ED ITCs would also be reduced.

This decision is (or should be) distressing not just to CAE, but to any other Canadian company that has received (or is receiving) loans from Canadian governments.

Not unexpectedly, last week (March 14, 2022) CAE filed an appeal of this TCC decision to Canada's Federal Court of Appeal (FCA).

What is surprising is that as of today (March 21, 2022) CAE's factum document is marked "Confidential", thus obscuring it from public scrutiny. The factum is a document that sets out the arguments that CAE will put forward at trial in support of the appeal. While the exact reasons for the document's designation as confidential are not entirely clear, it seems to follow an FCA Court Order in February that appears to require there to be a "confidential" and a "public" version of all documents in the file for the appeal. (The same had been done in the Tax Court.)

It may be that – each for their own reasons – all parties concerned may welcome the opportunity to keep this matter at least partly confidential. For example, there may be details of the SR&ED work in the file that contain proprietary information.

Clearly, it's not a good news story for CAE, which faces a substantial tax hit if they lose.

Neither is it good news for the Canadian Federal Government which is likely to face some tough questions about how the government structured these types of "incentive" loans in relation to its own taxation policies. If CAE loses this appeal, Ottawa may find itself in a position of either amending the tax laws (which would be unfair to CAE) or having the CRA enforcing a wide-ranging "claw-back" of SR&ED investment tax credits, and imposing an unexpected income tax blow to the very companies it has been trying to help. And that blow could hit well just about every sector of the economy – not just technology businesses.

Finally, we wonder why there is still no official English language translation of this very important ruling available on the Tax Court of Canada website (see below for a link to our Google translation).

Here is a screen shot from the FCA website highlighting the "CONFIDENTIAL" notation on the file.

Court number information			
Court Number :	A-264-21		
Style of Cause :	CAE INC. vs. HER MAJESTY THE QUEEN		
Proceeding Category :	Appeals	Nature :	Statutory Appeal - Tax Court of Canada
Type of Action :	Non-Action		
29 records found for A-264-21			
Doc	Date Filed	Office	Recorded Entry Summary
-	2022-03-15	Montréal	Note to file from Ahmed Lagrani, Registry Officer in Montreal dated MAR-15-2022 We received on MAR-14-2022, one original and five copies of the appellant's <u>memorandum of facts and rights under cover confidential, and also a DVD</u> , all sent to Ottawa (no copy kept in Montreal). placed on file.
-	2022-03-14	Montréal	Appellant's cover letter dated 14-MAR-2022 regarding doc. No. 13 placed on file on 14-MAR-2022
13	2022-03-14	Montréal	Memorandum <u>of fact and law (confidential)</u> + DVD from the appellant filed on 14-MAR-2022 with proof of service to the respondent 3 copies for the judges kept in Ottawa
-	2022-03-14	Ottawa	Communication from the Registry to the Judicial Administrator dated 14-MAR-2022 concerning letter ID 25

Learn More

Scitax bulletin #77 that discusses the Tax Court Canada's decision on CAE in Sep 2021

http://www.scitax.com/pdf/Bulletin.77-Tax.Court.Rules.Government.Loans.Will.Reduce.R&D.Tax.Credits_29-Sep-2021.pdf

Tax Court Canada Ruling CAE Inc., 14-Sep-2021 (WARNING: Google Translate of French Original)

https://www.scitax.com/pdf/Dckt_2016-4984-IT-G_14-Sep-2021.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 public 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 public 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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