

## WHAT TO DO IF YOU DISAGREE WITH CRA

If CRA has entirely or partially denied your SR&ED claim, there are two steps you can take to have their decision reviewed and potentially overturned. These two steps are the same whether the issue is "technical" or "expenditure" related, i.e. CRA has ruled that an R&D activity does not qualify as SR&ED, or that an amount claimed in respect of such activity does not attract an SR&ED benefit.

It is important to understand that CRA's role is to apply the law (which in this case is the Income Tax Act) in a similar way that police apply Highway Traffic Act or the Criminal Code. But neither CRA, nor the police create the law; the law is created by government and adjudicated by the courts according to the facts. In most cases both the police and the CRA get it right, but in some cases they don't. The key to success in either of these steps is being able to show that CRA's auditors have either misinterpreted the facts of the situation or have applied the law incorrectly.

### Step 1 - Notice of Objection

The first step is to file an objection. To do this, prepare a CRA form *T400A Objection - Income Tax Act* outlining the relevant facts of the situation and the reasons for the objection. Send this form to:

Assistant Commissioner, Appeals Branch  
Canada Revenue Agency  
250 Albert Street  
Ottawa ON K1A 0L5

Your objection must be received by the Appeals Branch no later than 90 days from the date shown on the Notice of Assessment or Notice of Re-assessment (not the date at which you received it) on which CRA notified you that your claim was denied. In some cases we have been successful in negotiating an extension beyond the 90 day period, especially if there has been any significant delay in delivering the document to you.

The Appeals Branch is separate from the SR&ED Directorate, and operates independently of it. The role of the appeals representative who will review your case is to carry out a complete, professional, and impartial review.

CRA does not charge a fee to file a Notice of Objection. However, since the Notice of Objection needs to show that CRA somehow wrongly applied the law in its assessment of your claim, taxpayers are advised to enlist professional advice either from an accountant or a lawyer. Simply writing that "CRA was not fair" will not produce a successful objection.

Another good reason to seek professional assistance is to avoid disclosing unnecessary information that could lead to additional inquiries by CRA auditors or hamper your case should you decide to pursue the matter at court.

## Step 2 – Appeal to Tax Court

If you are either not satisfied with the outcome of the above Notice of Objection process or you come to believe that CRA is not handling that process to your satisfaction, you can make an appeal to the Tax Court of Canada.

Decisions of the Tax Court of Canada can be further appealed to the Federal Court of Appeal. Decisions of the Federal Court of Appeal can be appealed to the Supreme Court of Canada, but only with the Supreme Court's permission.

Tax Court Canada has two procedures for adjudicating disputes between taxpayers and CRA:

- 1) The Informal Procedure in which the amount of tax (or SR&ED benefit) in dispute is limited to a maximum of \$25,000. Although disputes involving larger amounts can be heard through an informal procedure, the maximum amount of settlement that can be achieved is still limited to \$25,000. Rulings from informal procedures do not set legal precedents and cannot be cited as grounds in other proceedings or for future recurrences of the same issue.
- 2) The General Procedure is available for disputes of any size. Although you can represent yourself in a general procedure, there are complex rules of procedure, discovery, and evidence that require legal expertise; a lawyer specializing in tax litigation is highly recommended. General Procedure rulings do set legal precedent and can be cited in the future by the same and other taxpayers (unless or until overturned by a higher court, or there is a change in legislation).

Trials in the Tax Court of Canada typically take one day or less, particularly where the parties have agreed on all or substantially all of the facts, but in more complex and contentious cases the trial may not be completed for several weeks or even months.

Costs are recoverable by the successful party in accordance with rather modest tariff amounts, but reasonable disbursements incurred by the successful party (including expert witness costs) are generally fully recoverable.

Before the Tax Court Canada process can begin, you must first file a notice of objection with CRA. Once you have filed your notice of objection there are two timing issues to consider:

You **CAN** file your appeal to the Tax Court of Canada on the 91st day after the notice of objection was submitted, providing CRA has not ruled on your objection.

However, once CRA has ruled on your objection you **MUST** file your appeal to the Tax Court of Canada within 90 days. After 90 days have passed your right to make an appeal to the tax is lost forever.

CRA notifies you of its ruling on your Notice of Objection by sending you a document called a “letter of confirmation”. If your objection is wholly or partially allowed, CRA will also send you a Notice of Reassessment. If your objection is entirely denied you will only receive the letter of confirmation.

**Scitax** has a team of professionals (including tax-dedicated litigation lawyers) who will guide you through these processes and prepare all the necessary documents.

For further information or assistance regarding settlement of disputes with CRA through either Notice of Objection or an Appeal to Tax Court Canada, contact:

**David R. Hearn**  
**Scitax Advisory Partners LP, (416) 350-1214**

The contents of this document are based on current tax law including judicial and administrative interpretation such as exist at the date hereof. Tax law is subject to continual change, at times on a retroactive basis. Such change may result in incremental taxes, interest or penalties. We are not responsible for updating the contents of this document for changes in law or changes in interpretation of law after the date hereof. The author and Scitax Advisory Partners LP and Cadesky and Associates LLP and Richler and Tari Tax Lawyers disclaim any responsibility or liability for any reliance that any person may place on the contents of this document unless such liability has been already acknowledged by us in a written engagement contract previously executed with such person.