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Taxpayers' Ombudsman Launches SR&ED Enquiry

- > Cites need to identify and investigate “systemic and emerging” issues
- > Limited to occurrences after February 21, 2007

Whether it's election fever, or the growing number of SR&ED related Notice of Objections and Tax Court Canada pleadings, Ottawa is showing renewed interest in how well CRA has been administering the SR&ED Tax Credit Program.

Last week, the Government of Canada announced that the recently appointed Taxpayers' Ombudsman would undertake an independent enquiry to find out if CRA is giving fair treatment to taxpayers who submit SR&ED claims.

The position of the Taxpayers' Ombudsman was created in February 2008 by then Minister of National Revenue, Hon. Gordon O'Connor. In broad terms the Ombudsman has two mandates: The first is to investigate specific complaints that are service – versus outcome – related. The second is to proactively investigate “systemic issues” that are likely to escalate to a level where they negatively impact a large number of taxpayers. The SR&ED enquiry is related to the second, “systemic issue” category.

The announcement seeks taxpayer input, with respect to the “Systemic Enquiry” in the following areas of concern pertaining to incidents that occurred after February 21st, 2007:

- > Did CRA adequately inform taxpayers about the recent changes to the T661 form? It is important here to note that the focus is not the form itself, but rather how well CRA communicated changes in the T661 form to the taxpayer community; and if CRA allowed adequate and reasonable time for the taxpayer community to adjust to those changes. Therefore, when reporting incidents you should keep the government focus in mind and consider, not only the form itself, but also issues such as those resulting from the replacement of the “Technology or Knowledge Base or Level” requirement with the much more restrictive new term of “Technological Obstacles”.

- > Has the cost of filing and defending an SR&ED claim changed? Will the new T661 increase the cost of preparing and submitting your SR&ED claim? Do you expect to spend more money to comply with CRA requirements for record keeping, time logs etc? Are you affected by the new requirement to submit project technical descriptions for all projects instead of the 20 largest, as was previously the case?
- > If some or all of your claim was rejected, did CRA accept your request for a “second opinion”? i.e.: an unbiased review by another auditor?
- > Did the CRA auditors assigned to review and audit your claim act in a professional and courteous manner? Did they exhibit bias against your industry or the technology topics associated with your claim?
- > Has any CRA person ever attempted to dissuade you from retaining professional advice or made negative reference to advisors’ fees? Has any CRA person suggested you should avoid using a consultant or that consultant’s fees are “too high”?

The announcement notes that this list “may be refined in the course of our enquiry and additional issues may be added”.

Taxpayers seeking to make a complaint to the Ombudsman on any of these topics can do so using the form available from the Taxpayer’s Ombudsman website <http://www.taxpayersrights.gc.ca/frm-fll-eng.pdf>. While the space on the form is limited, it is permissible to attach additional pages as may be required to fully describe the issue.

Ottawa’s last attempt at this type of review was the “SR&ED Satisfaction Survey” undertaken by CRA itself in November 2007. That survey elicited several hundred responses from all sectors of industry, industry associations and tax practitioners. Many of the findings from this survey were incorporated in the June 2008 iteration of CRA’s *SR&ED Small Business Action Plan* and ultimately led to the introduction of a new set of forms (i.e. T661-08) for submitting claims.

Learn More...

- > Full text of the Ombudsman’s SR&ED enquiry announcement:
http://www.taxpayersrights.gc.ca/systmc_nqrs/sred-rsde-eng.html
- > Definition of Systemic Issues
<http://www.taxpayersrights.gc.ca/systmc-eng.html>
- > Definition of “Technology or Knowledge Base or Level” prior to T661-08
Paragraph B, page 14 of Guide to Form T661 CRA publication # T4088 (E) Rev. 06/04
<http://www.cra-arc.gc.ca/formspubs/prioryear/t4088/t4088-07e.pdf>
- > Definition of “Technological Obstacles / Uncertainties” effective in T661-08 page 8 @ Line 242 and page 43 of Guide to Form T661 CRA publication # T4088 (E) Rev. 06/04
<http://www.cra-arc.gc.ca/E/pub/tg/t4088/t4088-08e.pdf>
- > Ombudsman’s Complaint form
<http://www.taxpayersrights.gc.ca/frm-fll-eng.pdf>

For more information on this topic, contact:

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About Scitax...

Scitax Advisory Partners is a professional services firm with specialist expertise in Scientific Research and Experimental Development (SR&ED) tax credits.

We offer a team of senior technical consultants all of whom have ten or more years experience in the SR&ED field. All Scitax technical consultants have engineering or science backgrounds and at least twenty years industry experience in their particular field prior to consulting.

Our primary function is to produce a technical submission package that most effectively communicates your SR&ED claim to CRA in a way that highlights eligibility and expedites processing. We assist you in identifying and preparing all required documentation including project technical descriptions, cost schedules, and everything else your tax preparer needs to file the claim. Once your claim is filed, Scitax will advocate for you with CRA and help you negotiate fair settlement of your claim.

While we normally work with our client's existing tax advisors, our affiliated firm Cadesky and Associates can provide a full package of tax services if required.



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