

Contacts

National Leader
Albert De Luca
514-393-5322

Global Leader
Natan Aronshtam
416-643-8701

Atlantic
Steven Carr
902-721-5565

Quebec
Martin Vézina
514-393-7139

Louis Boivin
418-696-3951

**Élaine-Nathalie
Lamontagne**
450-618-8112

Julien Lassonde
418-624-5331

Ontario
Brian Harrigan
613-751-5421

Len Lucier
905-315-6730

Cheryl Manuel
519-650-7715

Toronto
Anil Chawla
416-643-8006

Pesh Patel
416-643-8386

Prairies
Keith MacLaren
204-944-3558

Ryan Dumonceaux
306-343-4348

Alberta
David Arthur
403-261-8176

British Columbia
Scott Robertson
604-640-3184

Joanne Hausch
604-640-3306

R&D tax update

Latest developments

August 19, 2013 (13-5)

This newsletter provides details on the announcement of a revised T661 claim form and the release of the decision in the *Immunovaccine Technologies Inc.* case. In addition, developments in India with regards to R&D centres and transfer pricing methods are outlined. Finally, we highlight some news from Quebec and Nova Scotia.

Revised T661 claim form

The Canada Revenue Agency (CRA) recently announced that a revised Form T661, *Scientific Research and Experimental Development (SR&ED) Expenditures Claim*, will be released in October 2013. The revised form will incorporate the legislative changes coming into effect on January 1, 2014 and will ensure consistency with the consolidated SR&ED policy documents released in December 2012. The revised T661 will be effective as of its publication date but the previous version, T661(12), will be accepted until December 31, 2013.

Recent SR&ED court decision

In April 2013, the Tax Court of Canada released its decision in *Immunovaccine Technologies Inc. v. The Queen*¹. In this case, the issue was whether interest-free advances constituted "government assistance". An amount received as government assistance reduces the eligible expenditures for SR&ED investment tax credits (ITCs).

Immunovaccine Technologies received interest-free advances, repayable as a percentage of future revenues, under a federal program for fostering development in Atlantic Canada. The CRA deducted the advances from the taxpayer's SR&ED claims and related refundable ITCs on the basis that the advances received by the taxpayer constituted government assistance. The taxpayer argued that the advances constituted an ordinary loan made on reasonable terms and for the business purposes of the federal program.

The Tax Court of Canada determined that the advances were government assistance which reduced the taxpayer's SR&ED ITCs. Although the advances were not subsidies or forgivable loans, they constituted "any other form of assistance". The taxpayer has appealed this decision.

This subject is quite complex and very relevant in Canada, where the government often provides funding for innovation investments. Given the relatively small size of our economy, and the limited access to private financial markets, if not reversed on

¹ 2013 TCC 103

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appeal, this decision could put Canada at a disadvantage compared to other larger economies where private funding is more prevalent.

Deloitte is actively working to resolve this concern by promoting tax policy and legislative solutions that support innovation in Canada, while also developing appropriate arguments in defense of related tax assessments.

Global developments - India

One of the most litigated areas in Indian transfer pricing has been the determination of an arm's length price in respect of R&D activities carried out by a back office unit in India. To address this uncertainty, the Indian tax board has recently issued two tax circulars which provide:

- tests to be satisfied by an R&D unit in order to be classified as a contract R&D unit with insignificant risk, and
- aspects to be considered by the tax authorities for selecting or rejecting the profit split method as the most appropriate transfer pricing method

The conditions outlined in the two circulars are expected to provide more certainty to taxpayers, but it is possible that the profit split method might now be used more widely. Therefore, it is important to consider the impact of the circulars on the transfer pricing model followed by the taxpayer engaged in back office R&D activities in India.

Provincial news

Quebec e-business credit

Earlier in July, the Quebec Finance Minister announced certain amendments to the refundable tax credit for the development of e-business (TCEB), the main one being that the eligibility period for this measure, which was supposed to end on December 31, 2015, will be extended to December 31, 2025. Deloitte applauds this announcement, which will encourage further investment in e-business related IT development. Please see our recent newsletter [Provincial news: Recent changes to the Quebec e-business development tax credit](#) for further details.

Nova Scotia Productivity Investment Program

Nova Scotia has introduced a Productivity Investment Program that is designed to encourage businesses to become more productive, innovative and globally competitive through two incentives: the Capital Investment Incentive and the Workplace Innovation and Productivity Skills Incentive. The Productivity Investment Program is available to companies that are resident in Nova Scotia even if not headquartered in the province - a Nova Scotia subsidiary, branch or division of a company headquartered elsewhere can apply for this incentive. For further details on this program, please see our recent newsletter [Provincial news: Nova Scotia – Productivity Investment Program](#).

Albert De Luca, National Leader

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2 Queen Street East, Suite 1200
Toronto, ON M5C 3G7 Canada

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