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R&D Tax Update

Recent SR&ED program administration announcements

February 11, 2013 (13-1)

On January 24, 2013, the Canada Revenue Agency (CRA) provided an update on a number of initiatives designed to enhance the administration and improve the predictability of the scientific research and experimental development (SR&ED) program. This newsletter summarizes these initiatives, with a particular focus on related opportunities and challenges for claimants.

SR&ED policy review project

The long-awaited revised SR&ED administrative policy documents were released in December 2012. They supersede all existing policy information, including the various industry guidance papers which had been developed over many years of collaboration with industry. The CRA has announced that these revisions do not represent a change in policy, but rather a consolidation of existing policies.

While this may be the CRA's intent, interpretation challenges may result for a number of reasons. First, the updated documents are somewhat more abstract, in that they do not contain the previous eligibility examples and, instead, contain a more generic description of the SR&ED program. In addition, the more scientifically-oriented terminology in the revised policy documents may leave some taxpayers with added difficulty in understanding how the policy applies to them. Furthermore, the replacement of the familiar three criteria model with a five step model for assessing eligibility will be foreign to many, especially in the engineering or manufacturing industries, and may create transitional challenges. The greater emphasis on the scientific method as "the" model of systematic investigation may also be unfamiliar to many in certain industries. Finally, the specific segregation of "excluded work", while not new and certainly in accordance with the Income Tax Act, may raise questions in some taxpayers' minds as to whether or not their work would be excluded.

Despite these challenges, the policy documents have clarified and confirmed certain aspects of determining eligibility for SR&ED incentives, such as the recognition of the validity of system uncertainty as well as the need to examine projects at the highest technological level in assessing eligibility.

Given that the CRA has publically stated that its policy has not changed, we expect that activities that had been accepted in the past should continue to be accepted. However, there is much more emphasis in the updated policy on the way in which this

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work is defined, documented and conveyed. This would suggest that taxpayers would benefit from revisiting their SR&ED processes and evidence in order to facilitate the communication and demonstration of compliance.

Pilot project for pre-approval service

The CRA announced that it is introducing a pilot project for a formal pre-approval process for evaluating taxpayers' eligibility for SR&ED incentives. This process is intended to provide real-time or near real-time review of the work being undertaken with the issuance of an eligibility statement as the work progresses. This is a welcome initiative as it appears to address predictability concerns that had been raised by taxpayers in the past. However, it will be necessary for claimants to consider whether this formal process creates excessive workload in light of the multiple reviews anticipated within a given year. It will also be interesting to see how both taxpayers and the CRA are able to deal with ongoing partially completed projects, especially in the early phases of these projects where the definition or scope of a project is not always clearly established. In addition, while we understand that there will be an opt-out option for either a taxpayer or the CRA, it is not clear what carryover effects such action would have on an eventual audit or objection. In this context, the introduction of this service as a pilot project appears to be a prudent approach. Further details of the pilot project and the opportunity to participate in it can be found on the [CRA website](#).

On-line eligibility self-assessment tool

The CRA has indicated that it intends to improve its eligibility self-assessment tool to allow taxpayers to pre-determine whether they should file a SR&ED claim for their projects. The extent to which this tool will allow for the communication of the nuances of a project in an industrial setting remains to be seen. We expect that such a tool could provide some indication of eligibility, but it might be very difficult to account for subtle project variations. We do not advocate using any automated tool as a sole means of determining whether a taxpayer should file a SR&ED claim.

Improved review process for notices of objection

The CRA has hired additional scientific personnel to address SR&ED scientific eligibility issues raised by taxpayers in their notices of objection. In addition, the CRA has expanded the review process to allow for more contact between CRA personnel and taxpayers. However, in order to effectively take advantage of the improvements to the process, taxpayers will be required to thoroughly understand how the CRA assesses eligibility, and present their objections accordingly. It is unclear to what extent the CRA will use the increased contact with taxpayers to properly understand their filing positions and the related facts.

Can we assist?

Deloitte's Global R&D/Government Incentives professionals are experienced in dealing successfully with the implementation of new or revised methodologies for assessing eligibility for SR&ED incentives. This expertise is available to you as you consider how the above policies and tools can be used to your advantage.

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