



SR&ED

The Government of Canada and the Province of BC created the Scientific Research and Experimental Development (SR&ED) tax credit and refund incentive program to encourage product development and improvement among Canadian businesses. Many of our clients perform activities that qualify for the SR&ED credit. Following are some FAQs to help you understand what type of activities can qualify for SR&ED.

Who qualifies?

If you are performing research, developing new products or making new improvements to existing products you may be performing SR&ED. You don't need to own a high-tech lab or produce a news-making breakthrough to qualify. Following are some of the industries that can qualify:

- ✓ Aerospace
- ✓ Agri-food Processors
- ✓ Biotechnology
- ✓ Chemicals & Plastics
- ✓ Computer Hardware
- ✓ Digital Media
- ✓ Electronics
- ✓ Environmental Technologies
- ✓ Forestry & Wood Products
- ✓ Machinery & Equipment
- ✓ Manufactured Products
- ✓ Medical & Dental
- ✓ Mining, Oil, Gas
- ✓ Printing
- ✓ Software Development
- ✓ Telecommunications.

What kind of projects qualify?

The range of projects that qualify is wide. Any new knowledge gained in the business through 'doing' can qualify. Often it is 'business-as-usual' activities that qualify because the CRA's definition of the R&D is much wider than our ordinary understanding of the term.

We can help determine if your business qualifies. For example, if your company has done any of the following you may qualify for the SR&ED tax refunds:

- Altering production processes
- Experimenting with new materials
- Developing new products
- Developing proprietary software
- Improving crop yield, quality, nutritional value, resistance to insects, diseases or environmental stresses
- Improving production processes
- Modifying machinery
- Performing drug trials
- Testing the efficacy of treatment protocols in an uncontrolled group.

SEE SR&ED P. 2

INSIDE THIS ISSUE

- 1 SR&ED
- 3 GST on the sale of land
- 4 Around the Courts: *Costs awarded against taxpayers in Tax Court Informal Procedure*



What would we receive?

It varies. Depending on the province you reside in, Canadian controlled private corporations can receive refunds up to:

- 64% of the cost of salaries
- 33% of contractor costs
- 41.5% of the cost of materials
- 33% of the payments made to universities or research organizations to perform research which will benefit your company

Do we have to make a profit or pay tax to receive a refund?

No. The SR&ED incentive is a refund on expenses incurred by your corporation so you do not have to owe tax to receive the SR&ED refund.

Our company does not conduct 'scientific research'. Are we still eligible?

Possibly. The SR&ED program is commonly mistaken as purely research driven based on its title. In fact, 90% of the claims submitted to the CRA fall within the area of "shop floor experimental development". Businesses are likely eligible if they are developing new products or processes.

Our project failed. Are we still eligible?

Yes. If your project failed for technical reasons, you can still qualify for the refund because you learnt through experience that the path you took will not lead to success.

Does the SR&ED review involve a tax audit for the company?

No. The SR&ED Division of the CRA is a technology-focused division with offices and mandate separate from the audit division. Should the CRA wish to review your SR&ED claim, a technology expert will lead the team and will focus solely on the eligibility of the SR&ED claim. Your tax return will not be audited as a result of a SR&ED claim unless the technical reviewer is made aware of obvious fraud or illegal activity.

Will the SR&ED ITC refund or tax credit be subject to repayment?

No. The CRA are very careful to first review and assess your submission, then to make payment. As a result they will not re-open claims that have already been assessed. This is why it can take between four and 12 months for an assessment to be made.

Are the SR&ED refunds taxable?

Yes. Generally, the provincial credit is taxable in the year claimed and the federal credit is taxable in the following year.

The amount of refunds received by corporations performing qualifying activities can be substantial. **Contact us if you think you may qualify for the SR&ED credit.**



GST on the sale of land



When selling your home or any type of land – even as part of the insurance process after a fire – it is important to review whether or not the home or land sale is subject to, or exempt from, GST. Sales of used owner-occupied homes are usually GST exempt, since the owner is not a builder and the property is not sold in the course of a business.

An example where the sale of a home would be considered taxable is when an individual builds and sells new houses as their primary source of income. The land is still considered to be taxable even if the individual lives in the home for a brief period of time with the intention of building another house that the individual will move into as soon as a purchaser is found for the home they are currently occupying.

If a portion of the home is used for purposes other than the owner's residence (e.g. a portion of the home is used as an office or a bed and

breakfast) the sale of the home is considered exempt if more than 50% of the home is used primarily for the owner's use.

For example, if an individual's spouse ran a small business out of an office in the home and the office took up less than 50% of the space, the sale of this home would not be taxable for GST purposes. If less than 50% of the home is used primarily as a place of residence then the home is treated as two separate properties when it is sold and GST only applies to the portion in which the owner does not live.

If farmland is sold that includes a residence or a house, the sale is separated into two separate sales for GST purposes. The first sale is the residence plus the land that is necessary for the use and enjoyment of the house, which is subject to the rules above. The second sale is the remaining portion of farmland.

'Farmland' refers to the land that is

regularly used by a person for the purpose of producing income from a farming business carried on by that individual. The farmland includes land (i.e. bush, trees, etc.) that may not be used directly in a farming business, and fixtures such as barns or corrals.

The sale of farmland is generally considered to be taxable for GST purposes, unless the farmer sells or transfers ownership of the farmland to an individual related to the farmer (or to a former spouse or common-law partner) who will use the land for their own personal use or enjoyment, not as a farming business. If the farmer sells the land as part of a sale of the farming business, the farmer and purchaser may jointly elect to have no GST payable on the sale by completing form *GST 44, Election Concerning the Acquisition of a Business or Part of a Business*.

~ Francesca Giroux

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AROUND THE COURTS



Costs awarded against taxpayers in Tax Court Informal Procedure

If you are in a dispute with the CRA, and you file an objection but it's turned down, your next recourse is to the Tax Court of Canada. Where the federal tax and penalties in dispute don't exceed \$25,000 per year in dispute, you can use the Tax Court's *Informal Procedure*. It's still a formal Court hearing with evidence and argument, but you don't need a lawyer; you can argue the case yourself or an accountant or other agent can represent you. (It's still advisable to spend an hour with an expert tax lawyer to determine whether your appeal has any merit, what your chances are and how you should present your case).

Traditionally, since the Informal Procedure came into operation in 1991, costs would never be awarded against taxpayers. In other words, there was no real downside to appealing, because the worst that would happen would be that you'd lose your appeal and would be left with the same assessment the CRA had already issued to you.

Recently, however, the Tax Court has started awarding costs against taxpayers whose appeals are considered an abuse of process — frivolous appeals, or those where the taxpayer is making false claims. Of course, *frivolous* and *abusive* are from the judge's point of view; some of these taxpayers might have thought they had valid arguments.

Thus, for example, in recent cases in 2014, the Court ordered costs (often \$600 to \$1,000) to be paid to the CRA by the following taxpayers:

Case	Frivolous appeal / false claim
Yourkin	Taxpayer repeatedly appealed the same issue he'd lost for earlier years
Ian E. Brown	Tax protestor making frivolous arguments that he was not liable for tax
Hassan	False claim for charitable donations
Amyan	False statements in a Notice of Appeal claiming child-care expenses
Yevzeroff	Attempt to relitigate issue already decided for an earlier year

In conclusion, beware of bringing frivolous appeals!

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