

## SR&ED cases regarding Financial issues

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TOPICAL AREA	APPELLANT	PRIMARY ISSUE	WIN - LOSE - DRAW?	RULING & RATIONALE	IMPLICATIONS: UNRESOLVED ISSUES AND OPPORTUNITIES	LONG-TERM SIGNIFICANCE	
1) a) WAGES	Alcatel	stock options - whether SR&ED "cost" incurred	Win - round 1	SR&ED "cost" is dilution of shareholder interest	Courts contemplate "costs" not in taxable income	High	
			Draw - round 2	legislation to disallow > Nov. 14, 2005	2 year window to amend 2004 - 2005 taxation years	High	
	b)	CDD-REM	payments to "specified employees"	Win - round 1	eligible based on "evidence"	courts allow reasonable estimate of costs incurred	Moderate
				Draw - round 2	Subsequent events: "non-arm's length" payments	post 1996 - only "salary & wages" allowed "NAL parties"	Low
c)	Synchrosat	allocating salary to only SR&ED activities	Lose	only SR&ED percentage claimable	need system to document employee experimentation time	Low	
d)	Ergorecherche	time allocation - SR&ED vs. non-SR&ED projects	Lose	"reasonable" basis for allocation required	could structure "non-SR&ED" done during unpaid time	Moderate	
2) MATERIALS	Consoltech	materials used in SR&ED then sold	Win - round 1	eligible if required for SR&ED	short-lived precedent to include "commercial materials"	Low	
			Draw - round 2	Subsequent legislation repayment of ITC's on sale	Clarification: labour eligible - materials "sold" excluded	High	
3) a) CAPITAL	Dew Engineering	building vs. "other structure"	Win	temporary lab not a "building" - no fixed foundation	courts take literal interpretation of "building"	Moderate	
	b)	Aurora Marine	eligibility of Yacht expenses for SR&ED	Win	SR&ED eligible even if not otherwise tax deductible	courts took liberal interpretation of "SR&ED costs incurred"	Low
	c)	Waxman	whether cattle eligible SR&ED	Win	eligible if ASA (>90%) SR&ED intent	short-lived precedent to include "commercial materials"	Low
Draw - round 2				Subsequent events: repayment of ITC's on sale	eligible if SR&ED intent - repayment if sold	High	
4) a) ASSISTANCE/ GRANTS/ b) SALE OF PRODUCT	Com Dev Ltd.	government fees - "assistance" or	Win	fixed price contract not purchase of SR&ED	Structure SR&ED contracts-"taxpayer" to bear "risks"	High	
	Les Cultures	sale of experimental production	Win	subsequent sale irrelevant if SR&ED performed	clarifies SR&ED labour eligible despite subsequent sale	High	
5) UNPAID AMOUNTS	Chartwell	eligibility of unpaid amounts / bad	Win / lose	need to claim costs during the year incurred	opportunity to claim unpaid wages (*unless forgiven)	High	
6) a) FOREIGN EXPENSES	Data Kinetics Ltd.	foreign "mainframe" costs Canadian SR&ED?	Win	attributable to SR&ED if researcher "in Canada"	definition of "in Canada" issue of contention .	Moderate	
			Draw - round 2	Subsequent events: only payments to "taxable suppliers"	subcontractor BN# now required to claim payment	High	
	b)	LGL	data collection outside Canada SR&ED?	Lose	ineligible if physically outside Canada	courts took literal interpretation of "in Canada"	Moderate
				Draw - round 2	Subsequent events: eligible if within "EEZ"	marine work eligible to 200 nauts - still "unclear" travel abroad if >10%	Low
7) "ASA"	Quantetics	"costs" or "revenues" basis for ASA	Lose	SR&ED costs basis for eligibility	Preferential ITC's "sole purpose performers" gone 1992	Moderate	
8) a) FILING EXTENSIONS	Datacalc	extension of 18 month filing	Lose	qualified expenditures - identified by filing due	object under proper sections of ITA - see Alex Parallel	Low	
	b)	Alex Parallel Computers	Win	CRA cannot restrict Minister's power to extend deadlines	extension for reasons other than CRA IC (illness/disasters)	High	
Draw - round 2			Legislation - Nov. 17, 2005 restriction of	must file within 18 months of year end - preferably 15	High		
9) a) QUALIFIED CCPC STATUS	Mimetex	if US director with 50% of shares	Lose	actions of US director w/o consent of Canadian	consent from 1 of 2 Canadian directors solves problem	High	
	b)	HSC Research	Factors in evaluating defacto control	Win	separate directors - no control evidenced	Landmark case on definition of "defacto control"	High
	c)	Terra Remote	Is shareholder with < 50% ownership arm's length?	Win	Analysis of ITA 256 (control) & 251 (related persons)	Confusing "specified employee" (>10%) with "arm's length"	High
	d)	All Colour Chemicals	Can CCPC partners claim 35% refundable ITC's	Lose	ITA 127(8) for partnership "over-rides" 127(10.1) refunds	Qualified CCPC's should avoid using SR&ED partnerships	High
10) ITC USE	Ainsworth Lumber	ordering of ITC use - refundable vs. non-refundable	Win	Act clarifies taxpayer "may" deduct [credits] means taxpayer elects order of refundable vs. non-refundable	right to order affairs to minimize taxes	Moderate	