SR&ED Newsletter
Edition 2015 –1

Recent developments to Scientific Research & Experimental Development (SR&ED)
- project management, patents & tax credit claims.

Contents

Recent SR&ED tax cases – TECHNOLOGY issue(s) 2
- Highweb & Page - Software - Java & .NET development 2
  - LOSS - Insufficient records of advancement & hypotheses 2
- Hypercube – Software development 3
  - LOSS - lack of documentation 3
- Les Abeilles (GE) – Process development 4
  - WIN – oral testimony of credible witnesses 5
- 6379249 Canada Inc. - Printer development 6
  - WIN – problems > release still eligible SR&ED 7
- R&D Pro Innovation - Chocolate spread development 8
  - LOSS – failure to define advancement 8
- Buhler Versatile – Destruction of records 9
  - LOSS – must maintain even after CRA review 9

Recent SR&ED tax cases – FINANCIAL issue(s) 10
- Feedlott Health - Use of livestock in R&D 10
  - WIN - Eligible SR&ED contract payment 10
- Mindready Solutions - CCPC status 11
  - LOSS – defacto control various factors 11
- 6379249 Canada Inc. – complete claim 18 month deadline 12
  - WIN – evidence & credibility of witness 12

Recent SR&ED tax cases – TECHNOLOGY issue(s)

The past year has witnessed a release of a variety of smaller cases. The main issues and potential implications are outlined in the following pages. Copies of the judgments are available from the Tax Court of Canada's website.[1]

We also welcome you to view this commentary in project format.[2]

Highweb & Page - Software - Java & .NET development[3]

Facts:

The company performed software development and claimed SR&ED investment tax credits ("ITCs")

Disallowed: $25,200 in 2007 (Phase I) & **$37,975** in 2008 (Phase II).

Allowed: $2,704 in 2008 ("STA2 - Phase II").

Issue(s):

1. Evidence of advancement & systematic investigation.

Relevant legislation and analysis:

2. *Income Tax Act*[4]: 37(1)(*a*)(i) & 248(1)

SUMMARY OF HYPOTHESES: In argument, the Appellant's agent ultimately provided the actual overriding hypothesis as follows:

Phase I: The software design language "J#" could achieve interoperability, communication, and/or functionality between various software product platforms by the modification of iFactum code utilizing various operating systems.

Phase II: That iFactum could achieve compatibility across multiple web based platforms or web service content by modifying iFactum code

The **government reviewer cited** that there are many **well-known techniques** of identifying:

- the OS that an application is running on such as checking for a special DLL, .so (for AIX, Sun Solaris), .a (for Solaris), *SRVPGM in an O/S specific directory for the specific operating system and determining if it exists or not.

- C#, J#, C++, and Java porting/migrating that are publicly available with plenty of sample code (these can be found in: 1. tutorials within books, 2. the internet, and 3. MSDN).

The claimant did not counter any of these arguments.

Ruling & rationale: LOSS - Insufficient records of advancement & hypotheses

The judge felt the **eligible portion** of the work evidenced adequate **uncertainty on the methods to reconcile shared data types.**

Since the claimant did not otherwise identify the limits of the technologies from the information sources stated the judge concluded that the technology (e.g. J#, SOA Architecture) is being used as intended.

Implications and author's commentary

Strike 1: Lack of formal technical background for developers

Strike 2: Failure to document "standard practice" techniques & variables.

Of significant interest is the judge's direction on documenting the variables of experimentation;

> "Since a negative answer to the hypothesis is a more frequent outcome … accurate **records** provides one with the **deductive process for developing a different direction, speed or mode to create locate, size & arrange the "missing piece in the puzzle"."**

In the authors view this case underlines the importance of continually logging "hypotheses" + related failures / lessons learned throughout the development process.

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[1] Tax Court of Canada website [www.tcc-cci.gc.ca]
[2] View projects at: https://app.rdbase.net/Default.aspx
[3] HIGHWEB & PAGE GROUP INC. v. THE QUEEN 2015 TCC 137, Date: 2015-06-08, Docket: 2014-1703(IT)
[4] *Income Tax Act*, RSC 1985, c.1 (5th Supp.) (the "*Act*")

Hypercube – Software development[5]

Facts:

The Minister of National Revenue (Minister) **disallowed an amount of $28,800** claimed as scientific research and experimental development (SR&ED) **expenditures**.

The project consisted of developing a program to read and analyze source code from Web sites to detect weaknesses.

The **only documents** introduced in evidence are the program's **tree diagram** and a log of hours worked. This tree diagram was not specifically explained in Court.

Issue(s):

- Evidence of advancement & systematic investigation.

Relevant legislation and analysis:

- *Income Tax Act*[6]: 248(1) defines the phrase "scientific research and experimental development"

Ruling & rationale:
LOSS - lack of documentation

The judge stated,

> "As stated in RIS Christie, the only reliable method of demonstrating that scientific research was undertaken in a systematic fashion is to produce documentary evidence.
>
> The Appellant has not presented sufficient facts to support his claim as a systematic investigation or search that is carried out in the field of science or technology as specifically required in the definition of SR & ED."

Implications and author's commentary

The company appears to have focused more on the business objectives than the variables of research.

Notable quote:

"What we see depends mainly on what we look for."

- Sir John Lubbock

Notable quote:

"A dwarf on a giant's shoulders sees the further of the two."

- George Herbert

[5] HYPERCUBE INC., V, The Queen 2015 TCC 65 Date: 20150317
[6] Income Tax Act, RSC 1985, c.1 (5th Supp.) (the "Act")

Les Abeilles (GE) – Process development[7]

Facts:

For 2009, the appellant claimed six projects; two were approved & four were denied.

Three of those projects related to sub-assembly manufacturing of dryers by developing **flexible production processes while improving productivity** at the Mabe/General Electric plant in Montreal.

Mabe has a plant in Montréal which performs assembly operations for General Electric. **General Electric holds 49% of the shares of Mabe** however, Mabe & the appellant are the ones under contract.

The appellant provided very little documentation to support any hypotheses or related advancements. They did provide short logs which contained limited information about the projects.

The issues to be addressed for these projects included adaptation of equipment to the various types of motors (pulley press, jigs, mandrels) & synchronization of equipment.

We are told the appellant had access to all knowledge available in the Mabe/General Electric network, but despite all the experience available through the network, no one was able to provide more than general principles; no one had specific solutions.

The appellant was also unable to find any more information by speaking with its suppliers or from Web searches.

There are three types of "deviations", according to the appellant:

(a) substitution;
(b) change in engineering;
(c) experimental development.

The controversy here concerns only those tests that represent the last type of deviation each of which involved documented approval requests.

Expert witness evidence

The **appellant** called Martin Gariépy as an **expert witness**. Mr. Gariépy has a bachelor's degree in pure mathematics, a master's degree in aerospace engineering and a **doctoral degree in mechanical engineering**.

The **respondent** (CRA) called Steven Kooi as an expert witness. Mr. Kooi has a Bachelor of Science in chemical engineering, **masters and doctoral degrees in mechanical engineering**. with 22 years of varied experience in the industry. He was the research & technology advisor (RTA) at the audit stage.

Issue(s):

1) Technological Advancement

At the heart of the controversy is whether it is technological advancement. The CRA claimed the activities involved no scientific uncertainty & were therefore routine activities solved through "trial & error."

2) Objectivity - government reviewer as expert witness

The appellant did not challenge Mr. Kooi's training and experience, but rather his **independence** since he was the original RTA on the file.

Relevant legislation and analysis:

1) Technological Advancement

- *Income Tax Act*[8]: 248(1) definition of "scientific research and experimental development"

Ultimately, the central issue is whether the projects in question constitute:

> " (*c*) **experimental development,** namely, work undertaken for the **purpose of achieving technological advancement** for the purpose of creating new . . . devices . . . or processes, including incremental improvements thereto,"[9]

[7] LES ABEILLES SERVICE DE CONDITIONNEMENT INC. v. THE QUEEN, 2014 TCC 313, October 23, 2014

[8] Income Tax Act, RSC 1985, c.1 (5th Supp.) (the "Act")

[9] Section 248 of the *Income Tax Act* defines "scientific research and experimental development"

Types of eligible SR&ED evidence

The judge cited the case of RIS Christie:

> "…the only sure-fire way of establishing that scientific research was undertaken in a systematic fashion is to adduce **documentary evidence which reveals the logical progression between each test** and preceding or subsequent tests."[10]

If, however, a taxpayer has a **plausible explanation for the failure to adduce such evidence,** it is still open to the court to hold that, on a balance of probabilities, systematic research was undertaken.

For example, where research notes are accidentally destroyed, it should be **permissible for the trial judge to infer that systematic research was conducted**, having regard to the totality of the evidence.

In reviewing the trial decision in *RIS-Christie*, it is clear that there was a limited documentation that did not meet all of the Agency's requirements.

2) Objectivity & role of RTA vs expert witness

The judge noted some confusion between his role as a scientific advisor during the audit & as an expert witness.

> "Mr. Kooi often seems to be guided more by the Canada Revenue Agency's guidelines & policies than his personal expertise."

The judge cited instances where Mr. Kooi refers to the degree of contemporaneous documentation as required by the Agency instead of providing his own scientific opinions.

Notable quote:

" It is much easier to be critical than to be correct."

- Benjamin Desraeli

Ruling & rationale: WIN – oral testimony of credible witnesses

1) Technological Advancement

Despite the lack of detailed hypotheses the judge stated,

> "It is reasonable to expect a taxpayer to adduce documentary evidence of systematic research, including testing. If, however, a taxpayer has a plausible explanation for the failure to adduce such evidence, it is still open to the court to hold that, on a balance of probabilities, systematic research was undertaken. For example, where research notes are accidentally destroyed,..."
>
> "It **would have been useful** to have expert **evidence** that focused more specifically on the **current state of practices** and knowledge respecting assembly methods and techniques. Mr. Gariépy's report is relatively general.
>
> However, **the Act and the Regulations do not require that such written reports be produced** … it is possible to adduce evidence by way of oral testimony.
>
> Whether the Minister or a judge could conclude that the **activities purported to have been carried out** by the taxpayer were actually carried out then becomes a **question of credibility**."

2) Objectivity & role of RTA vs expert witness

The judge stated,

> "I note that what is important is the impartiality of the expert witness rather than his independence."

Implications & author's commentary

This case illustrates the high degree of emphasis that the courts will put on formal training of the witnesses.

In this case the client benefitted from the credibility of General Electric knowledge base as a definition of standard practices.

[10] *RIS–Christie Ltd. v. Canada*, [1998] FCJ No. 1890 (QL), Federal Court of Appeal

6379249 Canada Inc. - Printer development [11]

Facts:

The company filed successful SR&ED tax claims for its 2007 and 2008 taxation years to develop a new printer. At the end of 2008, 200 printers were released onto the market for sale.

After its commercial release, the company investigated the customers' complaints by testing approximately 50 printers and determined that paper was coming out of the printer curled & battery stopped after five to ten pages printed.

In 2009, they undertook a new SR&ED project with respect to the printer and claimed a **SR&ED ITC** of **$103,628 in 2009 & $49,688 for its 2010** taxation year.

The Minister took the position that at the time of **commercial production**, there were no longer technological uncertainties with respect to the printer. In addition, the work performed on the printer during the 2009 and 2010 taxation years was routine engineering.

Background of the claimant:

Mr. Raja Tuli, the Chief Executive Officer ("CEO") graduated in 1988 from the **University of Alberta in computer engineering.**

He **holds approximately 100 patents in** different technologies, software and mechanical designs & **nine patents in the field of printing technology.**

Before developing the miniature printer, he had previously designed and developed printers and slip clutches, which are components of printers.

Background of the government reviewer & expert witness:

Mr. Wierzbica has a doctorate in electrical engineering and technology, metrology from the University of Technology in Warsaw, Poland.

After immigrating to Canada in 1980, Mr. Wierzbica became a member of the Order of Engineers in 1981. He was employed for almost 20 years by Canadian companies in the high tech industry.

[11] 6379249 CANADA INC. v HER MAJESTY THE QUEEN, 2015 TCC 77, March 31, 2015

At Escher-Grad, Mr. Wierzbica, as Vice-President, Engineering **successfully developed**, with a team of engineers, **a low cost photoplotter**. A photoplotter is a printer used primarily for the production of PCB's (printed circuit boards).

In 2000, Mr. Wierzbica joined the directorate of SR&ED of CRA as policy advisor. Two years later, Mr. Wierzbica was promoted to the position of National Technology Sector Specialist for information technology, in Ottawa.

In that capacity, Mr. Wierzbica advised Research Technology Advisors ("RTA") on a national basis on CRA's policies with respect to the SR&ED and also assisted RTA's in their work, also on a national basis.

CLAIM HISTORY –
ACCEPTED BY SAME REVIEWER IN 2007 & 2008

In prior claims the same reviewer stated the development was SR&ED combining several contributing technologies not conceived to work together and fit in a very limited geometry.

Mr. Wierzbica stated that there was no publicly available technical information at the time that would provide guidance on how to build such a small device with printing capability.

CURRENT CLAIMS - REJECTED FOR 2009 & 2010

With respect to the 2009 and 2010 years, Mr. Wierzbica stated that if Mr. Tuli, the appellant's technical expert, considered the attempted functionality accomplished in 2008, and accordingly released the printer onto the market, the technological uncertainty at the system/printer level had been resolved and could no longer exist in 2009 & 2010.

Issue(s):

What is the point of commercial vs. experimental production?

Relevant legislation and analysis:

- *Income Tax Act*[12]: 248(1) definition of "scientific research and experimental development"

Mr. Tuli stated that when he first investigated what had gone wrong with the printer, it was clear that two technological uncertainties still existed.

[12] Income Tax Act, RSC 1985, c.1 (5th Supp.) (the "Act")

The first one was that the paper did not come out flat from the printer and the second was that the battery died out too rapidly.

After printing many pages, they observed that the felt on the slip clutch was degrading more rapidly than had been anticipated. They also observed that the motor stalled prematurely and the issue with the dynamic and static friction had not been resolved.

On the other hand, Mr. Wierzbica stated that since the appellant chose to commercially release the printer in 2008, it is clear that technological uncertainty no longer existed at the system/printer level at that time.

Ruling & rationale:
WIN – problems > release still eligible SR&ED

Before ruling the judge commented,

"Mr. Tuli is recognized as the world's leading expert with respect to miniaturization of hi-tech equipment. Mr. Wierzbica admitted in cross-examination that Mr. Tuli was the "number one expert" in the field of miniaturization of hi-tech equipment such as the printer.

During his testimony, Mr. Tuli clearly stated that, in his view, technological uncertainties existed in 2009 and 2010 at the system/printer level. The paper was still curling and the battery died out too rapidly. Mr. Tuli stated that these were the same technological uncertainties that had been encountered in 2006 and 2007.

Mr. Tuli stated that existing standard engineering procedures were not available to competent professionals in the field to solve the technological problems with the printer. If they had been available, the printer would be functioning by now.

In my view, Mr. Wierzbica (expert witness for CRA) put too much emphasis on the commercial release of the printer. In doing so, he ignored an essential element, namely, that, concretely, the printer did not function and had to be removed from the market. **During cross-examination, Mr. Wierzbica stated that if the printer had not been commercially released, the project would most probably have been accepted** for 2009 and 2010.

[In Mr. Wierzbica's own words] He stated:

> In term of SR&ED evaluation, **if they have still claimed it prior to sending it to manufacturing, most probably this project would be accepted.**"

Implications and author's commentary

This case illustrates a variety of issues:

- Even the most senior CRA officials do not understand the difference between
- commercial vs. experimental work
- is evidenced technological uncertainties.

In this case the uncertainty was clearly evident however, the mere **fact that that the client had attempted a commercial transaction blinded the CRA "scientist"** to this fact.

It seems almost ironic at this point since the RTA (Mr. Wierzbica) had himself developed similar technology for a photoplotter so we might assume he would have an understanding & appreciation of the technology in question.

In the author's experience **this issue is currently so misunderstood at every level of the CRA that we should expect to see additional cases of this nature** before the problem is resolved.

As a result this case is likely of considerable, long term significance.

Notable quote:

"They condemn what they do not understand."

- Cicero

R&D Pro Innovation - Chocolate spread development[13]

Facts:

This project involved the development of a chocolate spread with cream and maple syrup, cold temperate, with no synthetic ingredients and no added preservatives.

Expenditures totaling $ 10,974 for 2009 and $ 17,204 for the 2010 tax year are eligible as expenditures for SR & ED, which are **eligible for an ITC of $ 3,841 for 2009 and $ 6,021 for 2010.**

Raynald Marcoux's research & technology advisor (RTA) to the Canada Revenue Agency (CRA) valuated the project SR & ED of the appellant. He claimed the activities were carried out in a **non-systematic way.** According to him, it was simply varied the concentrations of selected ingredients and the processes, but without addressing any specific technological uncertainties.

Issue(s):

Whether the work SR&ED?

Relevant legislation and analysis:

ITA 248(1)

According to the CRA, the work done by the appellant constituted the "quality control or routine testing of materials, devices, products or processes" under paragraph 248 (1) f) or "normal data collection" under paragraph 248 (1) k) of the Act.

Ruling & rationale:
LOSS – failure to define advancement

The judge stated,

“In this case, the appellant sought to formulate a greater spread to commercial spreads and specialty spreads. She used as ingredients of food products that are very well known as cocoa butter, maple syrup, cream and other dairy products, carbohydrates and proteins. She interchanged ingredients or their proportions by formulating the spread. It was then used to cold tempering process, which is a known method, by varying the speed, time and the tempering temperature. She observed results and collected data.

The work of the appellant were essentially about the use of existing methods and ingredients to try to formulate a better spread. This work included routine engineering and usual procedures.

Having studied all the evidence and case law, I am not convinced that the work in question involved a risk or technological uncertainties that could not be removed by standard procedures or routine engineering.

Implications and author’s commentary

Strike 1: Lack of formal technical background for developers

Strike 2: Failure to document standard practice techniques & variables.

Sadly there is a **common theme** being witnessed on **smaller claims where the lead researcher has less than a Bachelor of Science** or equivalent training. In such cases the requirement to benchmark standard practice techniques becomes even more important.

Notable quote:

“Two roads diverged in a wood, and I took the one less traveled by and that has made all the difference.”

- Robert Frost

[13] R & D PROINNOVATION INC.v. THE QUEEN: 2015 CCI 186 Date: 20150723

Buhler Versatile – Destruction of records[14]

Facts:

Having its original SR&ED claim denied the appellant provided 5 binders of technical information to the Canada Revenue agency (CRA).

These were returned to the client.

According to the CRA the five binders of supporting information
- consisted primarily of emails that appear to be a mass printing of Outlook folders …
- the client has not has not identified the relevance of any of the information,
- multiple copies of many of the emails included &
- the header on most emails was missing; therefore, not evident when the emails were sent or to/from

During the examination for discovery of the Appellant's representative, counsel for the Respondent asked the representative, Mr. Allan Minaker, to provide copies of the Five Binders.

The Appellant refused to provide the Five Binders. It stated, "As this case is not a judicial review, all relevant documents have been provided."

Issue(s):

Is the claimant required to produce records to the court if they had already been provided to the CRA?

Relevant legislation and analysis:

Requirement to Produce Under Subsections 85(3) and 105(1) of the Tax Court Rules.[15]

Subsection 105(2) reads as follows:

> "Where a person admits, on an examination, that he or she has possession or control of or power over any other document that relates to a matter in issue in the proceeding and that is not privileged, the person shall produce it for inspection by the examining party forthwith, if the person has the document at the examination, and if not, within ten days thereafter, unless the Court directs otherwise."

Ruling & rationale:
LOSS – must maintain even after CRA review

In the judges, the *Rules* require the Appellant to produce the Five Binders within 30 days.

Furthermore, the judge believed the Appellant's actions have lengthened unnecessarily the duration of these proceedings he fined them costs of $2,000.

Implications and author's commentary

Though it may seem obvious in retrospect taxpayers are **required to maintain most tax related documents for at least 3 years** from the data of assessment.

Notable quote:

"The covers of this book are too far apart."

- Ambrose Bierce

[14] BUHLER VERSATILE INC.,, 2014 TCC 364, 20141118
[15] *Tax Court of Canada Rules (General Procedure)* (the "*Rules*")

Recent SR&ED tax cases – FINANCIAL issue(s)

Often, there are amounts which remain unpaid and which will only become eligible for tax credit in the year in which they are actually paid.

Feedlott Health - Use of livestock in R&D[16]

Facts:

This appeal relates to four research projects (the "Projects") involving the study of special diets, supplements and vaccines on cattle which were undertaken for sponsors. The Projects were designed to test the relationship between new diets and additives to the health and performance of cattle.

Approximately 7,000 cattle owned by third parties were studied for purposes of the Projects. The cattle were maintained in commercial feedlots and were raised for commercial production on behalf of their owners. The commercial production used standard methods, subject to the protocols of the Projects

The **disputed amounts totaling $1,649,537** represent the amounts invoiced and paid by FHMS to Jim Farms with respect to the supply of cattle for purposes of the Projects.

These costs were claimed as materials consumed based on the fact that they were intended to correlate with the feed costs.

Issue(s):

The issue is whether the disputed expenditures qualify for deduction under the proxy method in s. 37(8)(a)(ii)(B) of the *Act*

Relevant legislation and analysis:

ITA 37(8)(a)(ii)(B) & 248(1)

The judge analyzed whether the cost were related to:

- a lease of equipment,
- payment to a subcontractor for SR&ED,
- materials transformed &/or
- the commercial use of a process.

[16] FEEDLOT HEALTH MANAGEMENT SERVICES LTD. v THE QUEEN, 2015 TCC 32

Ruling & rationale:
WIN - Eligible SR&ED contract payment

Ultimately the judge concluded;

> "The work undertaken by Jim Farms is SR&ED since it is **with respect to testing and data collection** which qualifies …."

Implications and author's commentary

This **case gives direction on** a variety of issues in determining the SR&ED **costs to study living organisms** (including humans).

It further recognizes the scope of SR&ED work may include "testing" by third parties that may not constitute SR&ED on its own however, it would be included to the extent it is necessary to address SR&ED uncertainties of the project.

As a result it is likely of **significant** long term interest to claimants in the **life sciences industry**.

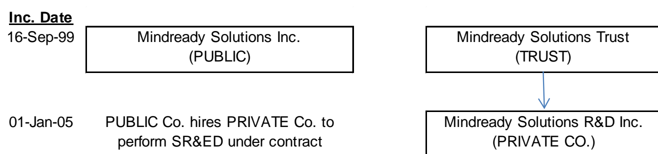
Notable quote:

"There is no defense against criticism except obscurity."

- Joseph Addison

Mindready Solutions - CCPC status

Facts:



Mindready Solutions Inc. (PUBLIC INC.) incorporated 1999 as public corporation listed on a designated Canadian stock exchange working in the field of technology for embedded systems.

Before 2005, PUBLIC INC. had scientific research and experimental development (SR & ED) and claimed an investment tax credit (ITC) at a non-refundable rate of 20% of qualified expenditures.

During 2005, PUBLIC INC. reorganized its business by isolating the SR & ED in a newly created company with all shares held by a Trust

This new company began conducting the SR&ED activities Claiming an enhance 35% rate of ITC's. For the year in dispute these amounted to **$253,957** in federal credits.

Management control of all corporate group companies was exercised by the same people.

Issue(s):

Was the company a Qualified Canadian Controlled Private Corporation as defined in the income tax act?

Relevant legislation and analysis:

The provisions of the Act that are relevant to this dispute are: paragraph a) of the definition of "public corporation" in subsection 89 (1), the definition "private corporation controlled Canadian "as defined in subsection 125 (7), the definition" non-qualifying corporation "in subsection 127 (9), subsection 127 (10.1), the definition of" qualified corporation "as defined in subsection 127.1 (2) , subsection 251 (5) and subsections 256 (5.1) 256 (6.1) 256 (6.2).

The determination of the required influence to a company is considered to be controlled by another company requires the review of operational and economic decisions.

The court listed several factors of economic influence exercised by PUBLIC CO. on the appellant including:

i) the appellant had only client, PUBLIC CO

ii) PUBLIC CO provided surety for a loan of $ 650,000 contracted by the appellant;

iii) the external auditors have consolidated the financial statements of the appellant with those of PUBLIC CO;

iv) according to the research contract work to be executed was determined by PUBLIC CO which also retained the intellectual property arising from them;

v) royalties and revenues from licensing were clearly insufficient to support the cost of research spending.

Ruling & rationale:
LOSS – defacto control various factors

Based on the factors of influence listed above the judged concluded that there was a de facto control exercised by PUBLIC CO on the appellant. As a result it did not qualify for the enhanced credits.

Implications and author's commentary

Similar strategies have been used in recent tax cases both successfully (Perfect Fry) & unsuccessfully (Lyrtek).

While the rewards can be significant this case illustrates that there is s significant degree of judgement professional advice should be considered when structuring such arrangements.

Notable quote:

"All of us could take a lesson from the weather. It pays no attention to criticism."

- Anonymous

6379249 Canada Inc. – complete claim 18 month deadline [17]

Facts:

Mr. Tuli (President) stated that he wrote the scientific report for the March 31, 2010 taxation year. Since it was the last day for the appellant to claim the SR&ED ITC, Mr. Tuli stated that they put everything in a sealed envelope provided by the accountants, and then had one of the accountants deliver the envelope to the CRA.

They provided a copy of receipt of return evidencing that the return was filed on September, 30th, 2011 at 16:16 hrs.

The CRA claimed that the project descriptions (form T661 part 2) were missing from the claim.

Issue(s):

Did the appellant file the prescribed information with its Form T661 within the time limits prescribed by subsection 37(11) of the *ITA*?

Relevant legislation and analysis:

ITA s. 37(11)

37. (11) … "no amount in respect of an expenditure that would be … deducted under subsection 37(1) (SR&ED) unless the taxpayer files with the Minister a prescribed form containing prescribed information in respect of the expenditure on or before the day that is **12 months after the taxpayer's filing-due date** for the year."

For corporations the filing due date is 6 months from the corporation year end. This effectively creates an 18 month filing deadline for corporations.

Notable quote:

"Ideas are useless unless used."

- T. Levitt

Ruling & rationale: WIN – evidence & credibility of witness

The judge stated,

"It is important to note that the parties introduced little evidence on the issue of timeliness and what little evidence they did introduce was largely hearsay evidence. That being said, I find it difficult to understand why the appellant would have filed the Form T661 without the scientific report.

In light of the facts that Mr. Tuli was a credible witness and I do not have any reasons to doubt his testimony, I decided to give the benefit of the doubt to the appellant and accept that the scientific report was filed with the T661 on September 30, 2011."

Implications and author's commentary

This case represents the high degree of risk involved in filing claims near the 18 month deadline.

The Canada Revenue Agency has an administrative policy that they will accept changes and additions if the claims are filed within **15 months of year end**. As such it is prudent for claimants to aim for this deadline where possible.

Notable quote:

"I've missed more than 9,000 shots in my career.
I've lost almost 300 games. 26 times I've been trusted to take the game winning shot and missed.
I've failed over and over and over again in my life and that is why I succeed.'"

- Michael Jordan

[17] 6379249 CANADA INC. v HER MAJESTY THE QUEEN, 2015 TCC 77, March 31, 2015

Questions or feedback

We welcome your questions or feedback on any issues raised in this letter.

We also encourage interested parties to examine:

- past newsletters
- RDBASE.NE online R&D software &
- additional tutorials on managing R&D at

www.rdbase.net

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