

Canadian Scientific R&D Tax Incentives

Canadian Scientific R&D Tax Incentives (SR&ED) – Another Reason to Hire Employees and Conduct R&D in Canada

Canada's Scientific Research and Experimental Development (SR&ED) program uses tax incentives to encourage businesses to perform research and development (R&D) in Canada. The SR&ED program provides more than \$3 billion annually to over 20,000 businesses operating in Canada. There are three types of SR&ED tax incentives: income tax deductions, investment tax credits and, in specific cases, refunds. These incentives consist of a mix of federal and provincial tax benefits.

SR&ED Eligibility Requirements

To be eligible for SR&ED, the applicant must be a Canadian business. In the vast majority of cases, SR&ED applicants are Canadian corporations. These corporations are eligible for SR&ED tax credits ranging between 14% and 65% of total R&D spending, depending on factors including expense type, corporate structure and province of operation. Canadian-controlled private corporations (CCPCs) are generally eligible for a higher tax credit than non-CCPCs.

The CCPC test looks at both control in fact and control in law – but as a first step, to be a CCPC, at least 50% of the voting common shares of the Canadian company must be owned (directly or indirectly) by one or more Canadian tax residents that are not public companies. At Aird & Berlis, we often work closely with our renowned [tax group](#) to help clients understand whether they qualify as a CCPC or what steps can be taken to increase the likelihood that they will be found to be a CCPC.

SR&ED credits must be used to fund "scientific research and experimental development." According to the subsection 248(1) of the [Income Tax Act](#), "scientific research and experimental development" means a "systematic investigation or search that is carried out in a field of science or technology by means of experiment or analysis." This includes:

1. basic research without a specific practical application in view;
2. applied research with a specific practical application in view; or
3. experimental development to create new, or improve existing, materials, devices, products or processes.

SR&ED does not require successful outcomes. Instead, it requires the pursuit of advancing scientific knowledge. As such, the SR&ED program does not include as eligible expenses R&D involving commercialization, research in the social sciences, prospecting, exploring or drilling, patent development and regulatory approval, routine data gathering or routine engineering. SR&ED credits may cover employee salaries, payments to Canadian contractors, materials, payments to academic institutions and overhead.

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Federal Tax Incentives

Under the federal [Income Tax Act](#), CCPCs can generally earn refundable investment tax credits at the rate of 35% on qualified SR&ED expenditures up to \$3 million. These corporations can also earn non-refundable investment tax credits at the rate of 15% on amounts over \$3 million.

Certain CCPCs may be considered “qualifying corporations” when the prior year’s taxable income does not exceed the “qualifying income limit.” For corporations with a total taxable capital of up to \$10 million, the “qualifying income limit” is \$500,000. The limit is reduced to zero when taxable capital reaches \$50 million. Qualifying corporations can earn a refundable investment tax credit at the rate of 15% on amounts over \$3 million. Forty per cent of this investment tax credit is refundable.

Foreign controlled companies can earn a non-refundable income tax credit at the rate of 15% on qualified SR&ED expenditures.

Individuals (including sole proprietorships) and trusts can earn a refundable investment tax credit at the rate of 15%.

Unused investment tax credits can be carried backwards three tax years or carried forward 20 tax years. Moreover, a positive balance in the [pool of deductible SR&ED expenditures](#) does not expire. It may be carried forward indefinitely and deducted in a subsequent tax year against all business incomes.

Ontario Tax Incentives

Under the [Ontario Innovation Tax Credit](#), eligible corporations can earn a refundable tax credit of up to 8% for qualified expenditures on scientific research and experimental development performed in Ontario up to \$3 million.

Through the [Ontario Research and Development Tax Credit](#), qualifying corporations can earn a non-refundable provincial tax credit of 3.5% on eligible scientific R&D expenditures performed in Ontario. This credit can be carried back three years or carried forward 20 years.

The [Ontario Business Research Institution Tax Credit](#) allows qualifying corporations to claim a 20% refundable tax credit for qualified expenditures on scientific R&D work performed under a contract with eligible research institutes in Ontario. Such institutes include universities, colleges and certain hospitals. The tax credit covers up to \$20 million in qualified expenditures annually, with a maximum annual tax credit of \$4 million.



Filing Successful SR&ED Claims

For-profit businesses applying for SR&ED credits must file their claims within 18 months from the end of the fiscal year for which they are claiming the credits. Filing within six months shortens the approval process and reduces the chance of an audit. Prudent SR&ED applicants should also maintain detailed records of their operations for eligible SR&ED projects. This includes:

- Collecting time records of all employees undertaking SR&ED projects;
- Recording when technological problems/uncertainty arise and how/when these issues are resolved; and
- Compiling evidence such as detailed and dated documentation to support the SR&ED work performed.

Conclusion

The SR&ED program's tax incentives allow businesses of all sizes and in all industries to keep their companies competitive by funding scientific and technological innovation. Through refundable investment tax credits that can be carried forward up to 20 years and deductible expenses that can be carried forward indefinitely, the program also places many companies in a better position to perform future R&D projects. To reap the SR&ED program's benefits and prevent the chance of an audit, companies should have a deep understanding of requisite tax laws and necessary operational procedures.

Aird & Berlis regularly works with companies to understand their SR&ED obligations and works closely with accountants and SR&ED consultants who assist with SR&ED applications. In addition to working with Canadian companies, we regularly work with foreign companies to establish their Canadian operations and assist with tax and SR&ED matters.

Contacts



Fiona Brown

Partner

T 416.865.3078

fbrown@airdberlis.com

Fiona is known for her commitment to outstanding client service. Fiona's practice focuses on advising clients with respect to employment issues related to compliance with employment standards, human rights, pay equity and occupational health and safety requirements. She also coordinates a team of lawyers to assist her clients in corporate commercial matters, litigation, intellectual property, and other areas. Fiona's responsiveness, dedication to clear communication, and hands-on approach show that she is personally invested in the success of her clients.

Fiona frequently advises international clients expanding into Canada. She works closely with lawyers and patent agents in all major practice areas and many industries, including technology, cannabis, energy, retail, manufacturing, infrastructure, construction, and others to provide her clients with a full range of legal services to take their business to the next level.

Fiona is a practical lawyer who enjoys working with clients to develop workable business solutions.



Aaron Baer

Partner

T 416.865.4636

abaer@airdberlis.com

With a strong education and background in business, Aaron brings a sensibility for framing his legal advice from the perspective of a business professional. The underlying question that consistently guides his work is whether he is adding value to his clients and furthering their business objectives.

Aaron has helped dozens of companies from the U.S., Europe, and Central and South America establish Canadian subsidiaries. He works closely with Aird & Berlis tax experts to ensure subsidiaries are set-up in a tax efficient manner. As a member of the firm's Privacy & Data Security Group, Aaron regularly advises companies that are establishing Canadian operations about Canadian privacy matters.

Aaron has a keen interest in legal technology and has played a leading role in the firm's adoption of artificial intelligence, legal project management, and data analytics tools that are transforming the practice of law. In 2018, Aaron was seconded to Diligen, a leading AI contract review company based in Toronto. Aaron is an active member of the firm's Technology Advisory Committee and an advisor to a number of leading legal tech startups.