

Developments*

Information and updates on scientific research and experimental development

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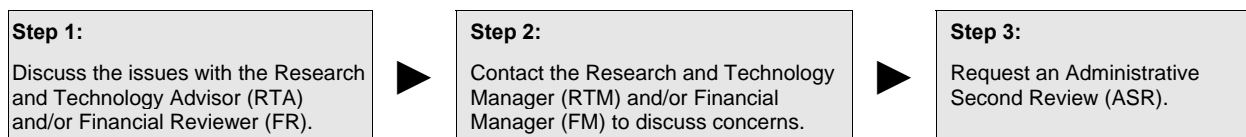
Scientific Research and Experimental Development (SR&ED) —Administrative Second Review

Fairness guidelines

Guidelines have been in place since 2000 to ensure that SR&ED claimants' concerns are addressed in a fair and timely manner. These are outlined in Application Policy SR&ED 2000-02R: *Guidelines for Resolving Claimants' SR&ED Concerns*, which reinforces the roles and responsibilities of all parties involved in an SR&ED claim review.

Three-step process

If a concern arises during the SR&ED technical and/or financial review of a claim, the claimant should undertake the following three-step process:



Step 1: Initial discussion

Speaking with the RTA and/or FR will allow the parties to discuss the project and clearly present the facts of the case. At this stage, the parties must be able to come to an agreement on those facts. Often, concerns are resolved during this first step of the process.

The Canada Revenue Agency's (CRA's) *Guide to Conducting a Scientific Research and Experimental Development Review* states that when project eligibility is in dispute the RTA will provide a draft copy of the technical report to the claimant as soon as a preliminary opinion has been established. Unfortunately, this is not common knowledge. In many cases, the technical reports are not provided to a claimant until finalized, thereby limiting the options available to claimants for resolving concerns.

As a best practice, a draft technical report should be requested when:

- a claimant feels that sufficient information, explanation and supporting documentation to support and demonstrate the project's eligibility has been provided;
- the RTA/FR is not following established policy and is unable to provide comprehensible answers to the claimant's concerns/questions; or
- the RTA indicates that he or she is denying all or part of the claim and is unwilling to resolve the claimant's concerns.

A draft report gives the RTA another chance to explain his or her rationale for reducing or rejecting the claim and to provide legislative and policy support, thereby providing further opportunity for the taxpayer to respond to the RTA's position.

A claimant's written response to the draft report allows the taxpayer to provide concrete evidence to refute any specific concerns regarding the review and the report's conclusions. More importantly, it allows the claimant to identify areas in which the CRA may have applied the SR&ED laws and policies inappropriately.

Step 2: Taking it to a higher level

A claimant whose concerns are not resolved in discussions or written communications with the RTA/FR should consider moving to Step 2 and contacting the RTM/FM.

The RTM/FM will review the facts of the claim, the history of previous discussions, the documents provided and both the claimant's and the RTA/FR's perspective on the issues. The RTM and FM are expected to work with the claimant to resolve the claimant's concerns.

Step 3: Requesting an ASR from an Assistant Director

If, after Steps 1 and 2, a claimant that believes any concerns still have not been addressed properly can take Step 3 and request an ASR. This review is made at the claimant's request in writing to the SR&ED Assistant Director to determine if:

- SR&ED laws and policies have been correctly applied; and
- the claimant has been given due process.

During the ASR, the Assistant Director (or delegate) will collect and review all the relevant information received from the parties, including details of the claimant's concerns, the RTA's and FR's positions and any additional facts and documentation the claimant submitted.

If the Assistant Director finds that due process was not provided or that the law and/or policies were not applied correctly, the claimant will be provided with an ASR.

Taxpayers' Ombudsman's SR&ED review

The independent and impartial Taxpayers' Ombudsman is responsible for ensuring that the CRA respects the taxpayer bill of rights, including the right to:

- be treated professionally, courteously and fairly at all times;
- lodge a service complaint;
- receive complete, clear, accurate and timely information from the CRA;
- have cost of compliance taken into account when administering tax legislation; and
- expect the CRA to be accountable.

The Taxpayers' Ombudsman has recently announced plans to review the SR&ED program's assessing and audit process and to determine whether the CRA is administering the SR&ED program fairly, with respect to:

- the recent changes to the application forms and procedures for the SR&ED Program; and
- the options for a claimant or an authorized representative to receive a second opinion.

Claimants should use this opportunity to both address their own review concerns and highlight common inefficiencies and/or inequities of CRA legislative interpretations and policy application, with a view to improving the overall review process.

Complete information on how to contact the Taxpayers' Ombudsman is available on the CRA website: www.taxpayersrights.gc.ca/cntct-eng.html.

For more help

For assistance with your corporation's claim, contact your local PricewaterhouseCoopers SR&ED professional listed on the next page.

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