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Tax Alert – Canada

Concessional loans – Claimants may amend prior SR&ED claims for taxation years that are not statute-barred

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 13 November 2024, additional information was provided by Canada Revenue Agency (CRA) representatives regarding recent legislative amendments to the *Income Tax Act* (the Act) that exclude from *government assistance* certain bona fide concessional loans made after 2019.

The CRA has now clarified that claimants affected by the change in definition of government assistance may file amended tax returns and revised scientific research and experimental development (SR&ED) claim forms for the year(s) affected even if their SR&ED reporting deadline has passed as long as the taxation year is not statute-barred.

Background

Bill C-69, *Budget Implementation Act*, *2024, No. 1*, enacted on 20 June 2024, included a significant change to the definition of government assistance, which has a direct impact on the calculation of SR&ED expenditures and investment tax credits (ITCs). The amending legislation provides that a bona fide concessional loan with reasonable repayment terms from a public authority in Canada would generally not be treated as government assistance. The relieving rule is effective retroactively to 1 January 2020 and applies to loans made after 2019.

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However, Bill C-69 did not provide clarity on whether a claimant could amend their SR&ED claims from previous taxation years to reflect the change in the treatment of these concessional loans; as such, we had requested additional clarification from the CRA.

For more details, refer to EY Tax Alert 2024 Issue No. 40, *Amendments to treatment of concessional loans impact SR&ED claims*.

Key highlights

Representatives from the CRA have clarified that taxpayers impacted by the change in the definition of government assistance may submit amended tax returns with their revised SR&ED forms for the years affected even if the taxpayer's SR&ED reporting deadline has passed, provided that the taxation year is not statute-barred. However, no new SR&ED expenditures will be accepted on the amended Form T661, *Scientific Research and Experimental Development (SR&ED) Expenditures Claim*, if the taxpayer's SR&ED reporting deadline has passed.

As a result of the retroactive application of the amended definition of government assistance, amounts that are no longer considered government assistance can be removed from line 431 on Form T661.

Any amounts of assistance related to an "excluded loan,"[1] as defined in subsection 12(11) of the Act, that were previously included in income on Schedule 1, *Net Income (Loss) for Income Tax Purposes*, of the T2 *Corporate Income Tax Return* in the same tax year can be removed from Schedule 1.

In addition, Schedule 31, *Investment Tax Credit – Corporations (2022 and later tax years)*, of the T2 return (or Schedule T2038, *Investment Tax Credit*, for earlier years) should be updated to incorporate the changes made on the amended Form T661, which will result in an increase in the amount of ITCs earned. If the increased ITC amount is non-refundable, the amount can be applied to Part I income tax payable (if any), carried back up to three taxation years to recover previously paid Part I income tax or carried forward to offset Part I income tax payable in any of the next 20 taxation years.

[1] An *excluded loan* is a non-forgivable loan, evidenced in writing, that is from a payer that is a government, municipality or other public authority in Canada (or from a Canadian resident or partnership, if it is reasonable to conclude that the Canadian resident or partnership would not have made the loan but for the receipt of amounts from a public authority). In addition, bona fide arrangements for repayment of the loan within a reasonable time must be made at the time the loan was granted, and the funds must be used for the purpose of earning income from a business or property. An income inclusion will not result to the extent the amount was received by the taxpayer as an "excluded loan," pursuant to subparagraph 12(1)(x)(ix) of the Act.

In situations where a previous tax return that included government assistance is statute-barred, taxpayers may report repayments of government assistance in the taxation year in which the amount was repaid — regardless of whether the government assistance would now be considered an excluded loan — to recover the related ITCs. However, any ITCs earned will be non-refundable.

Action required

Taxpayers who received concessional loans that were reported as government assistance in tax returns that are not statute-barred should review their SR&ED claims to determine if the change in the treatment of concessional loans affects their deductible SR&ED expenditures and ITC calculations. It is advisable to consult with EY tax professionals to ensure compliance with the new legislative provisions and to optimize SR&ED benefits.

Learn more

For further information or assistance in reviewing and adjusting your SR&ED claims in light of the new rules, please contact one of the following EY advisors. Our team can assist you in assessing how the changes to the concessional loan rules affect your SR&ED claims.

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