

Claiming Investment Tax Credits for SRED Expenditures - Sas Ansari

Author : admin

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Easy Way Cattle Oilers Ltd v The Queen, [2016 FCA 301](#)

This was an appeal from [2015 TCC 211](#) where the Tax Court of Canada dismissed an appeal because it concluded that the taxpayer had failed to comply with the requirements in [Income Tax Act](#) paragraph 127(9)(m), specifically filing the prescribed form ([T2SCH31](#)), and was, therefore, ineligible to claim Investment Tax Credits for certain of its Scientific Research and Experimental Development expenditures.

At issue was whether the prescribed form was the only way to claim investment tax credits for SRED expenditures.

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FACTS

The taxpayer did not file form [T2SCH31](#) by the deadline but did file a completed [T611](#) (supporting its claim for SRED expenditures) within the deadline set by the statute. The Minister accepted the SRED expenditures but denied the claim for input tax credits.

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ANALYSIS

The taxpayer's argument was that, because the Minister had all of the prescribed information available by the deadline (form T611), the failure to file the prescribed form by the deadline is not fatal. The Minister had all of the information necessary to make the necessary calculations to determine the investment tax credit.

The taxpayer relied on section 32 of the [Interpretation Act](#), which provides that:

32 Where a form is prescribed, deviations from that form, not affecting the substance or calculated to mislead, do not invalidate the form used.

The Federal Court of Appeal, however, held that reliance on section 32 was misguided (para 11). The purpose of this provision is to (para 13):

penalizing a taxpayer who has complied substantively with a statutory provision which requires the filing of a prescribed form containing prescribed information. In other words, section 32 applies where the taxpayer has filed the prescribed information, but has not used the prescribed Form to do so. Nonetheless, the taxpayer has substantially complied with the requirements of the form by providing the Minister the information which the Minister needs in regard to the taxpayer's claim.

The two prescribed forms - T661 and T2SCH31 - serve different purposes despite some overlap in information. T611 provides technical information regarding SRED projects to calculate eligible expenditures. The taxpayer had not filed any form or document that provided substantially all of the information on the other prescribed form (para 13). If the taxpayer could rely only on T611 and the T2, the Minister would have to second guess the taxpayer's intention regarding the Investment Tax Credit and make the calculations the taxpayer should have made (para 15). This approach is not right (para 15).

Sas Ansari, BSc BEd PC JD LLM PhD (exp) CPA In-Depth Tax 1, 2 & 3

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