

SR&ED Practitioner Meeting

SR&ED Planning for Medical and Dental Professional Corporations

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Nov 30, 2023

Presented by
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Director, MEUK Corporation

Status of issues 2023

		2021	2020	2019	2017	2016
1	AFP / APP funding as assistance Portion related to SR&ED?	PDF Video	PDF Video	PDF Video	PDF Video	PDF Video
2	Directly engaged – Doctor vs. MPC?	Resolved PDF Video	PDF Video	PDF Video	PDF Video	PDF Video
3	Contract eligibility tips		PDF	PDF Video		
4	Proving input on protocols	PDF Video	PDF	PDF Video		
5	Speed of objection responses > 4 years	Resolved PDF	PDF	PDF Video		

Agenda

- **Various MPC /DPC organization structures**
- **Sources of SR&ED funding & effects**
 - Example using Dr. Lamy MPV Tax case
 - AFP/APP options
- **Wages vs. Third Party payments**
- **Reporting options & recommendations**

CRA Medical issues paper 2020 – issues / organization structure

- Direction paper released
- 2 scenarios for who claims & tax effects
 - Individual Physician or
 - MPC
 - We will focus on MPC issues

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Legal person or entity	Who is directly undertaking the work?	What this means
Scenario 2: MPC	A) MPCs directly undertaking SR&ED work	MPCs doing SR&ED work for themselves & incur expenditures No contractual obligation to perform SR&ED behalf another party
	B) MPCs undertaking SR&ED work on behalf of another party	MPCs have a contractual relationship to perform SR&ED work.
	C) MPCs' employees SR&ED another party AND only physicians on contract performing SR&ED	Physicians have a contractual relationship to perform SR&ED work. See Scenario 1 (b) for more information.
	D) MPCs research behalf another party AND ALSO directly undertaking (and funding) themselves	Important contracts reflect SR&ED work behalf another party & directly undertaken (& funded) by MPCs themselves - Scenario 2 (a) and 2 (b)

Legal person or entity	Who is directly undertaking the work?	Who claims the SR&ED?	Considerations
Scenario 2: MPC	A) MPCs directly undertaking SR&ED work	MPCs	SR&ED expenditures must be paid and incurred.
	B) MPCs undertaking SR&ED work on behalf of another party	MPCs	Qualified expenditures may be reduced by assistance and contract payments.
	C) MPCs' employees SR&ED another party AND only physicians on contract performing SR&ED	Individual physicians	Qualified expenditures may be reduced by assistance and contract payments.
	D) MPCs research behalf another party AND ALSO directly undertaking (and funding) themselves	MPCs	Qualified expenditures may be reduced by assistance and contract payments.

Common structures & SR&ED effects

FULL TIME AT RESEARCH HOSPITAL

Hospital Research group - e.g
Cardiology



Allocations to Dr. X MPC (any SR&ED
assistance?)



Dr. X MPC pays SR&ED wages to Dr.
X

PART TIME AT UNIVERSITY

University Research group - e.g
Dentistry



Allocations to Dr. X personal
rather than DPC



No claim by Dr. X personally /
may claim work via DPC

INDEPENDENT PRACTICE

MPC initiates project



SR&ED wages & Third Party
payments



Various Reporting Options

Sources of funding & SR&ED effects

Legislation

- Income tax act “Reduction of qualified expenditures” (127(18))
 - “Where ...taxpayer has received, is entitled to receive or can reasonably be expected to receive a particular amount that is government assistance, non-government assistance or a contract payment that can **reasonably be considered to be in respect of** scientific research and experimental development, ...

Sample CRA denial pre 2020

-“All AFP or surgical funding SR&ED assistance”

CRA stated,

- “The doctor being a member of the Department of the hospital AFP Practice Plan is receiving **\$X of AFP academic funding** from the Government of Ontario, as well as receiving **\$Y of surgical repair funding**.
- These amounts ... considered Government Assistance ... per subsection 127(18) of the ITA.”

Sample CRA denial pre 2020 – use contract as basis for allocation

AFP agreement defined

- "Academic funds" as "monies to support teaching and research activities by Participating Physicians" and
- "Clinical Repair Funds" as "monies to support clinical activities by Participating Physicians".
- Therefore, we conclude that part of the academic funding was in respect of the SR&ED. Since **Y% of Dr. X's' time is dedicated to research per the "Letter of Offer"** provided, we are reducing the qualified expenditures by Y% of the academic funding received.

Key points of CRA positions pre 2020

- 100% of AFP & other types of funding being considered government assistance
- Using expected % R&D per contract as basis for allocation

Factors determining performance of SR&ED work

1. Are there **written or verbal agreements** between the parties? Do these agreements include an **obligation to perform medical research**?
2. Are there written or verbal **agreements** between parties and the physician(s) describing **which entity paid the expenses** related to the provision of medical services and medical research?
3. **If the agreements were verbal**, is there **objective evidence** regarding the terms of such agreements and the moment of their formation?
Emails or signed attestations may be acceptable to validate this information.

4. Do **corporate documents**, such as articles of incorporation, amendments thereto, resolutions, minutes of meetings of the directors and/or shareholders, etc. refer to:

The **major business activity** as the provision of medical services and medical **research**?

Any agreement with the **health care entities**?

Payments or **compensation** for the provision of medical services & **research**?

Any agreement between the **MPC and the physician**?

What **services** the physician is to provide to the MPC?

How the physician is to be **compensated** for the work performed for the MPC?

How much of the **physician's time** should be spent on **medical research**?

How much of the physician's time should be spent on **other activities**?

What portion of the physician's **remuneration** pertains to the medical **research** performed?

What method was used to determine what portion of the physician's salary pertains to the medical research performed?

AFP Practice Models – purpose & variations



HealthForceOntario

Specialist Practice Models

Compensation Options

Specialists in Ontario may be compensated through a fee for service system or through an Alternative Funding Plan (AFP) or Alternative Payment Plan (APP). AFPs/APPs are contractual arrangements between the Ministry of Health and Long-Term Care and a group of physicians, and may include other organizations such as hospitals and universities. Some AFPs/APPs also include funding for teaching and research.

These agreements provide flexibility in practice, encourage coordination and integration of medical services, and stabilize compensation for highly specialized groups, specialists and sub-specialists. AFPs/APPs have become more attractive and desirable to many physicians seeking a more balanced working life, regular hours, and acknowledgement of patient acuity, geographical challenges and financial security.

Over the years, a variety of compensation models have been developed and used by AFPs/APPs. Presently, most agreements are blended models that combine a base rate, incentive/premium payments and possibly a fee-for-service component payment. There are several remuneration methods:

- Global/block funding based on specific services or locations
- Blended funding models that include a base payment for clinical services, teaching, research, administration or indirect services plus a premium payments, which could be based on a percentage of the value of Fee-for-Service billings
- Bed utilization rate
- Sessional payment plus fee-for-service billings


AFP/APP Models

There are a variety of models used to cover:

- Specific communities and under-served specialties
- Individual departments in a single hospital
- Entire services of all physicians at a single hospital
- Services of all full-time specialists at an academic health science centre
- Province-wide gynaecology oncology, radiation oncology and medical oncology services
- Emergency services in hospitals, specialist services in the north and agreements with specialists and subspecialists associated with academic health science centres
- Regional trauma hospitals to ensure the 24-hour availability of high-level care for patients with serious trauma (Trauma Team Leader global funding agreements)
- Academic Health Science Centres, for clinical services, education and research
- Services such as psychiatry, the Regional Surgical Network, neurosurgery/neurology and anaesthesia in northern regions

For more information, read the [Ministry's Resource Manual for Physicians](#).

What portion of AFP relates to SR&ED?



<u>AFP Payment</u>	<u>Allocation?</u>
Specialist services	25%
Education	25%
Research	25%
Other factors	25%

Author's summary / opinions

- Many uses of funds,
- Nature of AFP model
 - strong argument that none, or perhaps only a minimal amount AFP funding
 - directly related to SR&ED
 - More REGULATION than ASSISTANCE
 - **Recent CRA approaches “reasonable” allocation**

Sample allocations using facts from Dr. Lamy MPC SR&ED tax judgment

- Explore these issues further
- Using facts in Tax Court of Canada SR&ED judgment for Dr. Andre Lamy MPC
- For discussion & illustration purposes
- SR&ED Tax planning ideas and alternatives

Implications of Dr. Lamy MPC case

- CRA challenged work on 2 sponsored projects
- Ruling - Dr. Lamy eligible on ALL projects
- Case provides excellent examples of
 - Strong evidence of input on protocols (Coronary Project) government sponsored & open source
 - Less evidence of involvement (Compass project) for Bayer & private
 - **Risk the CRA may challenge input despite strong evidence – e.g. Coronary project challenged**

Dr. Lamy – background HHSC contractor via MPC

[5] The issue before the Court is whether the Appellant carried out the SR&ED or whether Dr. Lamy conducted the research in his personal capacity.

II. Relevant Facts

[6] The SAF notes that the Appellant was incorporated on June 23, 2008.

[7] Dr. Lamy testified that for the past 23 years he has been a cardiac surgeon and a researcher in cardiac surgery. He performs all of his work as a cardiac surgeon at the Hamilton General Hospital. He is not an employee of the hospital; he is an “individual contractor as a cardiac surgeon”. He performs his research in his home and at his office in the Population Health Research Institute at the Hamilton General Hospital.

SR&ED integrated with cardiac surgery

[8] Dr. Lamy noted that all of his research is directed towards cardiac surgery. That research is a direct result of his experience with his patients, particularly with respect to complications that arise during surgery. He stated that his research attempts to improve the survival of patients, by either finding better techniques to decrease complications that arise during surgery or determining which medications can improve the survival of his patients after surgery.

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7 days / week via MPC

[9] He has performed this research continuously over the last 22 years, normally working on 4 to 6 projects at any point in time. He noted that during this period (and in fact for most of the last 23 years) he has worked seven days a week.

[10] He stated that, once the Appellant was incorporated in 2008, he performed all of his work as a surgeon, and carried out all of his research, as an employee of the Appellant. He testified that the Appellant, and no one else, pays him for the time he spends conducting research.

FULL TIME AT RESEARCH HOSPITAL

Hospital Research group - e.g
Cardiology



Allocations to Dr. Lamy MPC



Dr. Lamy MPC pays SR&ED wages to
Dr. Lamy

Averaged 55% of time on SR&ED

[21] During the 2013 and 2014 taxation years, he spent approximately 52 to 57 per cent of his time working on these four projects. He testified that he conducted all of his research as an employee of the Appellant.

A white, stylized graphic element resembling a jagged arrow or a lightning bolt, pointing upwards and to the right, located on the left side of the slide.

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Other teaching work – personally no effects on SR&ED

[12] Section 1.3 of the Employment Agreement states the following:

Time to be Devoted: During the period of his employment hereunder, the Employee [Dr. Lamy] acknowledges that unless specifically set out herein, it shall be necessary for him to devote all of his working time and attention to the affairs of the Corporation and/or its affiliates. For greater certainty, the Employee shall not devote any time whatsoever to any business whatsoever (other than for and on behalf of the Corporation or any of its affiliates).

[13] Dr. Lamy testified that he has complied with this provision. Since 2008 he has not devoted his time to any business other than the business of the Appellant of performing cardiac surgery and conducting medical research. He did however devote some time to a non-business activity, namely teaching. As stated in paragraph 5 of the SAF, he was an employee of the Faculty of Health Sciences at McMaster University where his teaching duties included lecturing on research methodology and the inclusion of students in cardiac surgery.

Available hours vs. paid hours?

Hours worked during year

Hours / Day	8	8	10	12
Days / Week	<u>5</u>	<u>7</u>	<u>7</u>	<u>7</u>
Hours / week	40	56	70	84
Vacation / holiday	5	5	3	3
Work weeks	47	47	49	49
Hours / Year	1,880	2,632	3,430	4,116

Sample allocations

Surgery / teaching	646	984	1,344	1,652
Teaching (personally)	200	200	200	200
SR&ED (55%)	1,034	1,448	1,887	2,264

Sample time & cost allocations

Legal person or entity	Available hours	Wages	SR&ED project hours	Considerations	SR&ED %	SR&ED eligible \$
Scenario 1: Individual - teaching & research	400	\$50,000	200	Proprietors cannot receive a salary (T4 income) as qualified SR&ED expenditure.	50%	\$0
Scenario 2: MPC - contracting to hospital	2,000	Salary paid by MPC = \$350,000	1,100	Qualified expenditures may be reduced by assistance & contract payments	55%	\$192,500
Totals	2,400	\$ 400,000	1,300			\$192,500

Not paid for research – Canadian funded project

[23] The contract with respect to the Coronary Project (the “Coronary Agreement”) is Tab 4 of Exhibit AR-1. The parties signed the agreement in late January and early February 2010. It is between the Hamilton Health Sciences Corporation (referred to in the agreement as the Institution), Dr. Lamy (referred to in the agreement as the Investigator) and McMaster University through the Population Health Research Institute (referred to in the agreement as PHRI). In the recitals to the agreement it is noted that the Canadian Institute of Health Research provided a grant for the study.

[26] Article 1 of the Coronary Agreement provides that in consideration for the performance of the study the Hamilton Health Sciences Corporation and/or Dr. Lamy will be paid specified amounts on a “per-subject” (patient) basis.

[27] Dr. Lamy testified that no amounts were paid under the Coronary Agreement to either him or the Appellant. He noted that in order for payments to have been made in respect of the Coronary Project, either he or the Appellant would have had to have completed the box at the bottom of page 14 of Tab 4 of Exhibit AR-1 (this is page 2 of Exhibit B to the Coronary Agreement). This box was not completed.

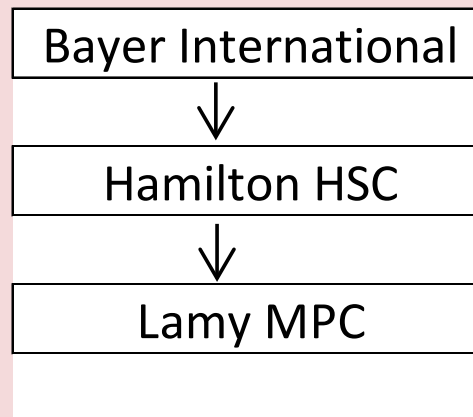
Overview of SR&ED project

2101 - Andre Lamy MPC - Coronary Project (WIN)	
BENCHMARKS	
Competitive products or processes: 56 products	
In-house technologies: 5 products / processes	
Queries to experts: 12 responses	
OBJECTIVES	RESULTS
On pump primary composite outcome CABG: 13 %	13.3
Off pump primary composite outcome CABG: 13 %	12.1
On pump repeat coronary revascularization: 0.5 %	0.8
Off pump repeat coronary revascularization: 0.5 %	1.4
UNCERTAINTIES & KEY VARIABLES	CONCLUSIONS
1 - Coronary project - on vs. off pump factors	
Cerebrovascular disease	Y
Effect of diabetes	Y
Euroscore	Y
Left ventricular function: Grade 1 to 4	Y
Number of vessels diseased	Y
	METHODS
Analysis	27000
Trials	4752
Prototypes	
	COSTS
Hours	500
Materials \$	
Subcontractor \$	

SR&ED work done at no charge – internationally funded projects

[32] On the second page of the Compass Letter of Understanding it is stated that HHSC, on behalf of Bayer Inc., shall pay Dr. Lamy for the services provided in accordance with Appendix B to the letter of understanding. Dr. Lamy testified that HHSC did not pay any amounts to either him or the Appellant in respect of the Compass Project. The only monies he received were the amounts paid to him by the Appellant as salary.

[33] Dr. Lamy noted that in order for payments to be made in respect of the Compass Project, either he or the Appellant would have had to complete the box at the bottom of page 14 of Tab 3 of Exhibit AR-1 (this is page 2 of Exhibit B to the Compass Letter of Understanding). This box was not completed.



Why do research at no charge?

- Culture of contribution
- Direct improvement on clinical practices
- Ability to get more studies
-?

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Options for AFP allocations

1. Actual time spent – e.g. 55% for Dr. Lamy
2. % R&D expected per contract - if specified (CRA approach) e.g. 60%
3. Per annual associates report - if specified – e.g. 0%

Determining AFP amounts – often at group level

Sample Associates report sources of group income

<u>Gross receipts</u>	<u>('000's)</u>	<u>%</u>	<u>Nature of work</u>
OHIP billings	15,000	75%	Surgeries, patient care
AFP	4,000	20%	R&D, specialties,
Other	<u>1,000</u>	5%	Misc. income
	20,000		

Option 1 - Flow of revenues & expenses – with prorated AFP

Group allocations

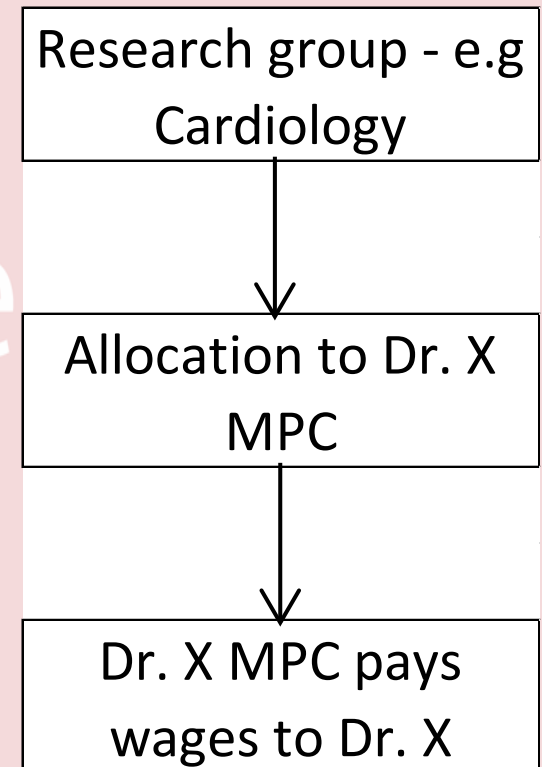
Total billings	\$ 20,000,000
AFP portion	<u>\$ 4,000,000</u>
AFP % of total	20%

Allocation to Dr. X MPC

Total billings	\$ 500,000
AFP portion (20%)	\$ 100,000
R&D % of AFP	25%
SRED portion of AFP funds	\$ 25,000 5%

Wages to Dr. X via MPC

Wages to Dr. X via MPC	\$ 350,000
SR&ED portion	<u>55%</u>
SR&ED wages	\$ 192,500
SRED portion of AFP funds	5%
	\$ 9,625



Option 2 – contracted amount & full AFP (CRA prior to 2020)

Alternate CRA calculations

R&D expected per contract		60%
Total AFP received by MPC	\$	<u>100,000</u>
SRED portion of AFP	\$	60,000

Differences

Contract (60%) vs actual (55%) R&D %

Total (\$100K) vs. prorated (\$25K) AFP

AFP received via MPC (\$500K base) vs. related SR&ED expenses (\$350K)

Option 3 - What if allocation in annual associates report?

Dr. X MPC (Associate)

Gross receipts	\$	500,000
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Distributions

Payments to associate (MPC)	\$	500,000
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Payments on account of SRED	\$	-
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Arguments for \$0 AFP reduction

- Hard to allocate R&D vs. other AFP funding components – specialities, locations, 24 hour services, ...
- Funding for R&D arguably augmented / provided by clinical revenues

Does patient work fund SR&ED?

Sample Associates report sources of group income

<u>Gross receipts</u>	<u>('000's)</u>	<u>%</u>	<u>Time spent</u>	<u>Nature of work</u>
OHIP billings	15,000	75%	45%	Clinical
AFP	4,000	20%	50%	R&D, Specialties
Other	<u>1,000</u>	5%	5%	Misc.
	20,000			

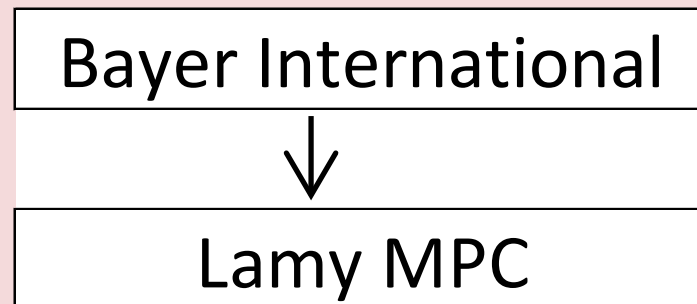
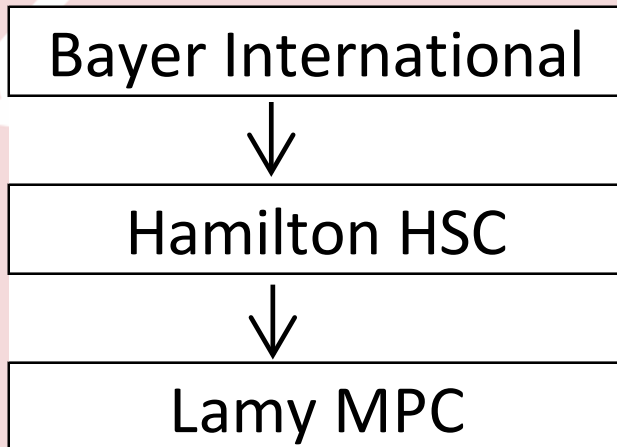
AFP allocations to SR&ED – current situation 2023

- New CRA allocations either \$0 or attempting a reasonable basis vs. 100% prior
- CRA did not propose any AFP payments to Dr. Lamy SR&ED related – just direct payments
- Some associates reports allocating SR&ED amounts (often \$0)

What if – MPC billed Bayer directly?

- E.g. private medical practice contracting with Bayer International?
- MPC Paid for data collection & analysis work

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Definition of “contract payment”

ITA 127(9)

Contract payment means

- **(a)** an amount paid or payable to a taxpayer, by a **taxable supplier** in respect [SR&ED] ...performed
 - **(i)** for or on behalf of a person ... **entitled to a deduction** in respect of **37(1)(a)(i.01)** or (i.1), and
 - **(ii)** at a time when the taxpayer is dealing at arm’s length with the person or partnership, **or**
- **(b)** an amount in respect of an expenditure of a current nature ... payable by a **Canadian government or municipality or other Canadian public authority** or by a **person exempt, because of section 149, from tax ..** for [SR&ED] to be **performed for it** or on its behalf;

Effect?

Contract payments for SR&ED only if:

- it is from a
 - “government” or
 - “taxable supplier” (i.e. another taxable Canadian company), &
- if “taxable supplier,” it intends to claim SR&ED ITC.

Implications – no reduction

Qualified Expenditures reduced by:

- Government Assistance
- **Canadian sourced payments** for SR&ED performed on behalf of a customer
(**Contract Payments**)

Qualified Expenditures not reduced by:

- **Foreign sourced** payments for SR&ED performed **on behalf of** a customer

Scope of eligible activities

- Income tax act “SR&ED” (248(1))
 - “Scientific research and experimental development... includes ... d) engineering, design, operations research, **mathematical analysis**, computer programming, **data collection**, **testing** or psychological research, where the work is **commensurate with the needs**, and directly in support, of....”

CRA Third-Party Payments Policy



Government
of Canada

Gouvernement
du Canada

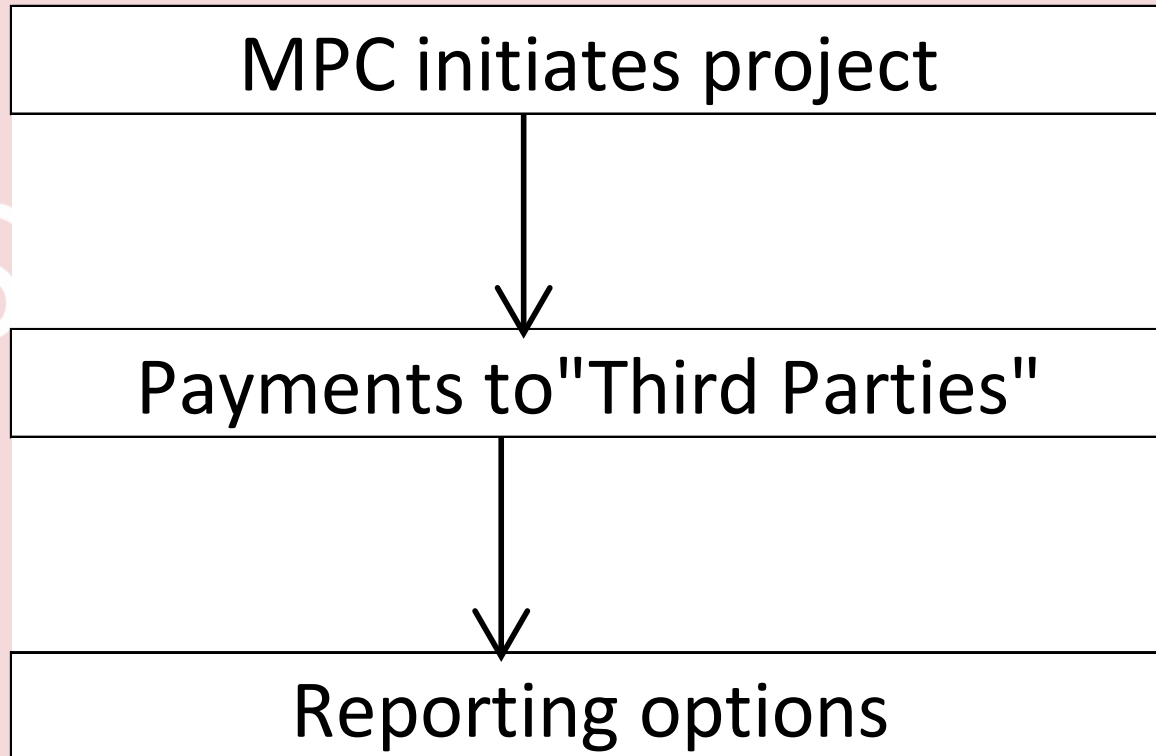
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Third-Party Payments Policy

Date: March 30, 2022

Payments to Universities



Third party payments form – step 1



Canada Revenue Agency
Agence du revenu du Canada

Code 0801
Protected B when completed

THIRD-PARTY PAYMENTS FOR SCIENTIFIC RESEARCH AND EXPERIMENTAL DEVELOPMENT (SR&ED)

Complete this form for each third-party payment and attach it to Form T661.

For more information on third-party payments:

- See line 370 of Guide to Form T661, *Scientific Research and Experimental Development (SR&ED) Expenditures Claim*;
- Third-Party Payments Policy;
- Consult our Web site: www.cra.gc.ca/sred.

Required Information

701	Name of the third party		
702	Address (Street number and name)		
	City	Province / Territory	Postal code
704	Total amount paid in the year		
	\$		

Identify the research project(s) performed by the third-party entity for the payment

706	Project title (and identification code if applicable)					
	1.	_____	4.	_____		
	2.	_____	5.	_____		
	3.	_____	6.	_____		

Step 2

Check (✓) the appropriate box to indicate the type of entity:

711	Approved association	1 Yes	<input type="checkbox"/>
712	Non-profit SR&ED corporation resident in Canada	1 Yes	<input type="checkbox"/>
714	An approved university, college, research institute, or other similar institution	1 Yes	<input type="checkbox"/>
716	Granting council	1 Yes	<input type="checkbox"/>
718	Other corporation resident in Canada	1 Yes	<input type="checkbox"/>
721	Are you dealing at arm's length with the recipient?	1 Yes	<input type="checkbox"/>
		2 No	<input type="checkbox"/>

2. Nature of payment

Check (✓) the appropriate box to indicate the type of entity:

The payment is for:

731	Experimental development	1 Yes	<input type="checkbox"/>
732	Applied research	1 Yes	<input type="checkbox"/>
734	Basic research	1 Yes	<input type="checkbox"/>

736 Briefly explain what the payment is for:

Step 3

738 Briefly explain how the SR&ED is related to a business that you carry on:

740 Briefly explain how you are entitled to exploit the results of the SR&ED:

2.2.1 Examples of third-party payments

2.2.1 Examples of third-party payments

The following are examples of third-party payments where the criteria in [sections 2.1.1 to 2.1.3](#) have otherwise been met:

Example 1

Payments for industry-wide SR&ED carried out by an approved industrial research institute, where the claimant's business is in the same industry.

Example 2

Payments are made by a physician to fund basic medical research at a university in the physician's field of specialization.

Example 3

A pharmaceutical corporation makes a payment to a university for drug research, and their agreement gives the company the rights to any patents that result from the research.

2.2.2 Examples not considered third party payments

Example 1

A construction business makes a donation to a hospital for medical research. Although SR&ED may be done, in general it would be unrelated to the business, and the business would be unable to make use of the results of the research. Therefore the payment fails the related-to-a-business (see [section 4.0](#)) and entitled-to-exploit-the-results (see [section 5.0](#)) tests.

Example 2

A physician makes a payment to a general fund of the faculty of medicine of a university, but the donation does not specify a use for the payment. Although some of the funds may support SR&ED that the physician may exploit, some of the funds may be, and probably will be, used for purposes that are not SR&ED. Therefore the payment fails the must-be-used-for-SR&ED test.

2.3 Amount of third-party payments included in qualified SR&ED expenditures

Only 80% of the third-party payment is included in the qualified SR&ED expenditures and thi

Payment 100% SR&ED & related

3.0 Payments must be for SR&ED

To be considered as a third-party payment, a payment made by the claimant must be for the purposes of SR&ED. The claimant's obligation is to show that the payments are made for SR&ED.

Third-party payments must be made only for SR&ED work. When a payment is made for a combination of SR&ED work and non-SR&ED work, the payment will not qualify as a third-party payment. For more information on what is SR&ED, refer to the [Guidelines on the Eligibility of Work for SR&ED Tax Incentives](#). An exception to this rule is made in the case of research chairs, where a portion of a payment for SR&ED is allowed as a third-party payment under certain circumstances (see [section 7.1](#)).

4.0 Related to a business of the claimant

For **A to E entities** (see [section 2.1](#)), a third-party payment must be related to a business of the claimant. Whether a payment is to be used for, or an expenditure is made on or in respect of, SR&ED that is related to a claimant's business is generally a question of fact, which must be determined on a case-by-case basis.

Entitlement to Exploit

5.0 Entitlement to exploit the results

To be entitled to exploit the results of the SR&ED, a claimant must have **gained the right to use the results** of the SR&ED in their business **as a direct result of the payment**. Whether a claimant is entitled to exploit the results of the SR&ED is a question of fact and will be determined on a case-by-case basis.

5.1 Two basic situations

5.1.1 Resulting in a product or patent

If the SR&ED results in a product or patent, then this requirement could be satisfied if the claimant has the right to use a resulting patent (even for a royalty), or where the claimant is entitled to **distribute or market any resulting product**. If the claimant cannot use the patent or can only obtain the product through normal commercial channels, this requirement would not be satisfied.

5.1.2 Resulting in a gain of knowledge

If the SR&ED does not result in a product or patent, but results in a gain of knowledge (such as by publication of a scientific paper), then one way this requirement could be satisfied is if the claimant has, as a consequence of the payment, been **granted a preferential right** to use the results of the SR&ED (the knowledge gained) in its business. A preferential right could be access to unpublished results, or early access to results. If results are presented at a conference or published in a journal, this requirement could be met if the sponsor received a prepublication print of the paper. If the results of the SR&ED are in the public domain before the sponsor receives them, then that would not be considered to be a preferential right. Whether a claimant is granted a preferential right to use the results of the SR&ED is a question of fact and will be determined on a case-by-case basis.

Intellectual property

- IP often a “red herring”
- SR&ED eligibility based on “entitlement to exploit”
- Do NOT need to own IP but
 - positive indicator of entitlement

What payments & costs qualify – cash vs. in kind?

6.0 Types of third-party payments that qualify

Assuming that the requirements for third-party payments to **A to F entities** are met (see [sections 2.1.1 to 2.1.3](#)), payments could be direct financial contributions, funding of students or employees doing the SR&ED, or payments in kind.

6.1 Payments in kind

If property or a service is supplied for the prosecution of SR&ED, a claimant may be able to claim the fair market value as a payment. There are two issues to consider for payments of this nature:

6.1.1 Valuation of the property or service provided

In determining the amount of the third-party payment for SR&ED, the fair market value of the property or services must be used. The claimant is responsible to provide evidence indicating the fair market value of the property or service supplied.

Third Party Payments “in kind” – not repayable or capital equipment

6.1.2 Conditions under which the property or service is provided

The property or service must be provided to the university or college, without any conditions involving direct or indirect payments back to the claimant. Where payments in kind involve property or services that are provided conditionally to the university or college, the amount that may be claimed as a third-party payment for SR&ED will be determined on a case-by-case basis.

6.2 Cost of a building

Expenditures for capital property, or for the use of or the right to use capital property do not qualify for SR&ED tax incentives. Furthermore, third-party payments made to certain entities used to acquire a building, a leasehold interest in a building, or to pay an amount in respect of the rental expense, do not qualify for SR&ED tax incentives.

Legislative references Income Tax Act

Paragraph 37(8)(d) SR&ED expenditures specifically excluded

Third Party Payments “in kind” - ineligible Ontario 20% OBRI

Ontario 



[Home](#) > [Taxes and benefits](#)

Ontario business research institute tax credit

Qualified expenditure

A qualified expenditure with an eligible research institute is:

- made as a payment of money (not a payment-in-kind)
- a current expenditure that qualifies for the federal investment tax credit for purposes of section 127 of the federal Income Tax Act
- incurred for scientific research and experimental development performed by the eligible research institute in Ontario

Research Chairs – NSERC vs. others

7.1 Portion of payment for research chairs

A portion of a payment for a research chair will be considered as a third-party payment, if the claimant is able to clearly identify the portion of the total payment that is made for SR&ED.

In contrast to other research chairs, NSERC industrial research chairs are usually eligible because they typically meet the must-be-used-for-SR&ED test.

The industrial contribution to the NSERC industrial research chair that is matched by the NSERC grant to the university, for the chair, is an eligible expenditure as a third-party payment to fund SR&ED, after the industrial contribution has been made.

Documentation

Claimants may be requested by the CRA to provide proof for the answers given on Form T1263.

Documentation must be available to show:

- to whom and for what the payments were made, and the amount of the payments;
- that the payments were for the prosecution of SR&ED in Canada;
- that the SR&ED relates to the claimant's business; and
- that the claimant is entitled to exploit the results of the SR&ED.

Third party vs. contract payments

10.1 Characteristics of third-party payment vs contract expenditures for SR&ED performed on the claimant's behalf

Characteristic	Third-party payment	Contract expenditures for SR&ED performed on the claimant's behalf
Control of SR&ED	Performer	Payer
Rights	Non-exclusive (generally published) but preferential right to payer to exploit results is required	Exclusive to payer
Number of funders	Usually more than one payer	Usually limited to one payer
Type of SR&ED	Often basic or applied research	Often commercially focused
Tax treatment	Generally cash basis	Accrual

Planning ideas - Third Party payments

- Payments to NSERC, MITACS, etc.
- Easy to qualify (T-1263 form)
- additional credits (e.g. 20% (16%) OBRI in Ontario & 24% in Quebec)
- Consider “in kind” payments

Comparison – wages vs. 3rd party

I Eligible Expenses	Scene 1		Scene 2		Scene 3	
	Wages		In kind		Cash	
Wages	\$	192,500	\$	-	\$	-
Third Party (Universities)	\$	-	\$	300,000	\$	300,000
TOTAL: Eligible (deductible) R&D Expenses	\$	192,500	\$	300,000	\$	300,000
II Qualified Expenses: for ITC's						
<u>Add / Deduct</u>						
Proxy (SR&ED overhead)	\$	105,875	\$	-	\$	-
20% 3rd party reduction	\$	-	-\$	60,000	-\$	60,000
TOTAL: Qualified for SR&ED ITC	\$	298,375	\$	240,000	\$	240,000

Credits earned vs. refunded

III Provincial Tax Credit		Wages	In kind	Cash
Refundable OITC	8%	\$ 23,870	\$ 19,200	\$ 15,360
Non-refundable ORDTC	4%	\$ 9,608	\$ 7,728	\$ 6,182
Research Institute Credit (OBRI)	20%	\$ -	\$ -	\$ 48,000
Qualified expenses Federal		\$ 264,897	\$ 213,072	\$ 170,458
Federal Investment Tax Credit	35%	\$ 92,714	\$ 74,575	\$ 59,660
IV Credits: applied vs. refunded				
Applied vs. taxes payable	Fed	\$ 25,000	\$ 25,000	\$ 25,000
	Ont	\$ 7,000	\$ 7,000	\$ 7,000
Expected ITC refunds	Fed	\$ 67,714	\$ 49,575	\$ 34,660
	Ont	\$ 23,870	\$ 19,200	\$ 63,360
ITC carry-forward (non-current)	Fed	\$ -	\$ -	\$ -
	Ont	\$ 2,608	\$ 728	-\$ 818
Total Investment Tax Credits earned		\$ 126,192	\$ 101,503	\$ 129,203

Net taxes saved

V After tax cost of I.T.C	Wages	In kind	Cash
ITC's earned = eventual taxable income	\$ 126,192	\$ 101,503	\$ 129,203
Tax Effect - Federal taxes @ 11%	\$ 13,881	\$ 11,165	\$ 14,212
Provincial taxes @ 4.5%	\$ 5,679	\$ 4,568	\$ 5,814
Net Taxes Saved	\$ 106,632	\$ 85,770	\$ 109,176

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MPC / DPC SR&ED Planning ideas

Activity

Participation in clinical trials
Published studies
Clinical treatment or testing
Brainstorming vs. Applied research

Opportunity

Wages or Third Party payments
Define specific work within study
Sample size & scope
Tie to Technological Uncertainty

Work within a team

- What if MPC evidence shows only data collection?
- Advancements made by other team members or investigators
- Eg. Dr Lamy – Coronary project – recommended protocol changes for AKI (Acute Kidney Injury) effects monitoring via serum creatinine
 - flag evidence during development – emails, etc.
 - See example next slide



Description and Rationale of Protocol Modifications

Original	Not applicable
Revision	<p>Section 8 Substudies and Ancillary Studies</p> <p><u>Renal Substudy</u></p> <p>Acute kidney injury (AKI) is an abrupt loss of kidney function and occurs frequently in people who are ill (~ 15% of cardiac surgeries, 5% of hospital admissions, and up to 50% of patients in the intensive care unit). <u>AKI is recognized by observing a sudden rise in serum creatinine.</u> This rise in serum creatinine is invariably modest and transient, with the value returning back to a level which predated the AKI. Historically AKI by this definition <u>was believed to have no lasting impact.</u> More recently a growing number of clinical studies <u>highlight the association between AKI and the subsequent development of a permanent reduction in kidney function termed chronic kidney disease (CKD, includes the need for permanent long-term dialysis).</u> This association is also supported by animal studies where the AKI event altered the renal microvasculature with subsequent upregulation of inflammatory and fibrotic signaling pathways. However, it remains unknown whether avoiding AKI prevents CKD.</p> <p>Compared to on-pump CABG, it is strongly expected that off-pump CABG will prevent AKI (73% relative risk reduction was observed in meta-analysis). The data currently collected in CORONARY will be augmented to include serum creatinine measurements <u>in the perioperative period, one year and five year/final follow-up period for study patients.</u> By doing so, it will determined if performing CABG surgery without bypass results in less CKD, and whether this association is mediated by the avoidance of transient elevations in serum creatinine (AKI).</p>

Options to report SR&ED collaborations on form T661 – e.g. published studies

218 Was any of the work done jointly or in collaboration with other businesses? Yes No

If you answered **yes** to line 218, complete lines 220 and 221.

 Add  Delete

220	Names of the businesses	221	BN*
1	University of Toronto		NR
2			

Outline scope of work

Section B – Project descriptions

Print only

Select this check box if you do not want to print the description of the project in Section B (lines 242, 244 and 246).

Note: The program selects this box by default on all copies of this form when the corresponding box is selected in Part B of Form T661. However, this choice can be modified on each of the copies.

When printing the form, the content of lines 242, 244 and 246 will be replaced by the following sentence:
"You have chosen not to print the description of the project (lines 242, 244 and 246)."

242 What scientific or technological uncertainties did you attempt to overcome?
(Maximum 50 lines)

This work was done in collaboration with the University of Toronto. |

Detail specific of MPC work vs.

244 What work did you perform in the tax year to overcome the scientific or technological uncertainties described in line 242?
(Summarize the systematic investigation or search) (Maximum 100 lines)

ADD DETAILS OF SPECIFIC WORK PERFORMED BY THE DOCTOR (MPC) WITHIN THE OVERALL STUDY.

COULD INCLUDE ADDITIONAL ANALYSIS OF SELF DIRECTED PROJECTS / PATIENT EXPERIENCES. |

Thanks!

Email questions or comments to

dsabina@meuk.net

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