



Incentives for Life Sciences Companies Doing Business in Canada

Why Canada?

- Top research communities
- More biotech companies per capital than any other country
- Highly skilled work force
- Substantial tax credits which are refundable for smaller companies. 2008 Budget Proposal:
 - Increases federal expenditure limits and phase-out thresholds for refundable SREDS for Canadian controlled private corporations ("CCPCs")
 - Extends SREDS to include certain expenditures made outside of Canada
 - Eases administration for claimants
- Government grants and investments
- Each province has its own additional generous incentives
- Concentrated patient populations for clinical studies
 - Patients are steered to specific hospitals based on diseases state
 - Allows for concentrated patient bodies for clinical trials
- More permissive approach than U.S. to stem cell Research

Ontario as an Example

- Research Community
 - Ontario is ranked #4 worldwide and has more publications than any institution other than Harvard
 - 25 research hospitals; 10,000 research scientists
- Tax credits for Basic Science and Clinical Research (SREDS)
 - With respect to the first \$3 million of current expenditures, refundable maximum annual recently increased up to \$1,245,000 (35% federally and 10% provincially) per year in Ontario for CCPCs, provided taxable income under \$700,000 and taxable capitalization under \$50 million
 - Also, for qualifying CCPCs, federal tax credit of 20% on other research and expenditures above \$3 million, of which 40% of such credits are refundable
 - Non-CCPCs receive 20% non-refundable federal credit on current and capital expenditures plus 10% certain refundable credit on first \$3 million subject to income and capital limits
 - Generally processed within 120 days
 - Banks will advance loans based on estimated refundable SREDS
- Ontario Credit
 - An additional 4.5% Ontario non-refundable credit on all expenditures proposed for 2009 and later taxable years.
- Ontario Business Research Institute (OBRI) Refundable Tax Credit
 - Up to \$4 million (20% of up to \$20 million of pre-clinical research expenditures) of refundable credit for preclinical work at certain approved academic institutions in Ontario
 - Available to for-profit companies that have a permanent establishment in Ontario
 - Advance ruling no longer required
- Next Generation of Jobs Fund
 - Grants up to 15% of company budget for approved companies investing at least \$25M or creating at least 100 jobs
 - 45 day application process
- Ontario Venture Capital Fund
 - Currently \$160 million with a planned increase to \$270 million
- Ontario Innovation Development Fund
 - Up to \$4 million per company over 2 years to select early stage companies

Depending on the tax credits and grants which are available, after tax costs can potentially go below 20 cents on the dollar.



Structures for U.S. Investors

- U.S. investors may invest through a traditional Delaware holding corporation into a Canadian entity
 - Allows U.S. investors a structure and corporate governance with which they are comfortable
 - Structure can accommodate labor sponsored VCs
- If a Canadian entity is used as the investment vehicle
 - In 2009 and later, non-residents may no longer be required to obtain a Section 116 certificate or file a Canadian tax return when Canadian property is being disposed of if a treaty relieves such non-resident of Canadian taxes on capital gains
 - Under the current Canada-U.S. tax treaty, a U.S. resident (other than an LLC that does not elect to be treated as a corporation) is generally eligible for benefits under the treaty. Current proposal is to extend exceptions to LLCs that do not elect to be treated as corporations
- U.S. companies can access non-refundable SRED credits. Also, refundable credits can be accessed through:
 - Establishing Canadian research subsidiaries
 - Contracting with CCPCs
- Offshore IP Holding affiliates can also be attractive to Canadian research based companies. Benefits of this structure are significantly greater than those available to U.S. research based companies.

Federal SR&ED credits based on qualified SR&ED expenditures. Refundable credits allow for cash rebates where no taxes are otherwise due and owing.

	Small Canadian-controlled Private Corporations			Large Public or Foreign controlled Corporations
	Credit Rate	% Refundable	Non-Refundable	Non-Refundable Credit Rate
First \$3 million in SR&ED expenditures	35%	100%	—	20%
Above \$3 million in SR&ED expenditures	20%	8%	12%	20%

Combined Provincial and Federal SR&ED tax credits on first \$3 million of SREDs*.

	Small Canadian-controlled Private Corporations			Large Public or Foreign controlled Corporations		
	Provincial Refundable Credit Rate	Federal Refundable Credit Rate	Combined Refundable Credit Rate ¹	Provincial Credit	Federal Non-Refundable Credit	Combined Credit Rate
British Columbia	10%	35%	41.50%	10%	20%	28%
Ontario ²	10%	35%	41.50%	—	—	20%
Quebec ³	37.5%	35%	60.94%	17.5%	20%	34%

¹ In calculating the combined credit, the federal tax credit is reduced by the provincial tax credit.
² Ontario and Quebec's additional R&D programs are not covered in this table.
³ In Quebec, only R&D wages are eligible for R&D tax credits, not materials, equipment or overhead.
 * This table was adapted from publications of the Government of Canada.

Now Ask: Why Not Canada?

For more information, please contact
Cheryl Reicin
 creicin@torys.com
 416.865.7373 (Toronto) 212.880.6076 (New York)

