

While enhanced SRED tax credits are available only to Canadian-controlled private corporations, qualifying entities need not be controlled by Canadians nor closely held. By definition, a Canadian-controlled private corporation cannot be controlled by non-residents or public corporations, or a combination of both. Therefore, 50/50 ownership arrangements may meet this definition. In addition, venture capital organizations (which may themselves be widely held) are not generally public corporations and may qualify with 50 per cent equity held by Canadian residents. In structuring a Canadian R&D hub, it is important to examine whether the entity will qualify as a Canadian-controlled private corporation. Critical considerations include share ownership, options and other rights relating to shares, salient terms of a unanimous shareholders agreement, as well as factors that may be tantamount to control in fact of the corporation.

To qualify for SRED credits in Canada, the taxpayer must be carrying on business in Canada, incurring qualified expenditures, conducting R&D activities in Canada that are related to the business and filing timely SRED claims with the CRA. An R&D Co may be established in Canada for the express purpose of conducting R&D in Canada, and these activities may qualify for ITCs, including refundable ITCs at the enhanced rate, if the R&D Co is structured as a Canadian-controlled private corporation. An R&D Co may contract with a non-resident to perform R&D activities in Canada on behalf of the non-resident, and the non-resident may own the resulting technology. If the non-resident is non-arm's length with R&D Co, or if the non-resident is not a taxable supplier for purposes of the SRED rules, then the amount paid by the non-resident to R&D Co for research services will not be deducted from R&D Co's qualified SRED expenditures. Therefore, under appropriate circumstances, an R&D Co could enjoy the full funding benefit of refundable ITCs at enhanced rates, providing significant non-dilutive funding for future R&D activities.

Although the enhanced SRED program in Canada is available only to Canadian-controlled private corporations, there are strategies by which non-residents can leverage the program in a way that is good for both Canadian science and for the technology ownership needs of the non-resident.

¹ *The Budget Plan 2007, tabled in the House of Commons March 19, 2007 (Ottawa: Department of Finance Canada, 2007)*

