

[insert letter head]

[•], 2021

[insert name], Auditor
Canada Revenue Agency, Audit Division
[insert address]

Dear [•]:

Re: [•] Medical Professional Corporation (the “Taxpayer”)
Business Number: [•]
Case File Number: [•]

You have taken the position that the Taxpayer’s claims with respect to its scientific research and experimental development (“SR&ED”) expenditures and investment tax credits (“ITCs”) are not valid based on the assumption that:

- (i) the Taxpayer is an employee of [insert hospital name]; and
- (ii) payments received by the Taxpayer under its [AHSC AFP Agreement] are “government assistance” for the purposes of section 37 of the *Income Tax Act* (Canada) (the “Act”).

This is an issue that has already been specifically addressed by the Canada Revenue Agency (“CRA”), the Department of Justice (“DOJ”) and the Tax Court of Canada (“TCC”) in the case of *Common Medicine Professional Corporation v. H.M.Q.*, Court file #2018-1990(IT)G (“CMPC”).

In CMPC, the CRA and DOJ both acknowledged and the TCC accepted that the physicians in the CMPC case were not employees of St. Michael’s Hospital (or the Faculty of Medicine at the University of Toronto), and payments received under an equivalent to the [AHSC AFP Agreement] were not government assistance for the purposes of the Act. The same result should apply here.

Specifically, as a result of the CMPC case, the Taxpayer should also:

- (a) not be considered an employee of the [Hospital]; and
- (b) not be considered to have received government assistance under its [AHSC AFP Agreement]

A copy of the TCC’s Consent to Judgment for CMPC is attached to this letter. By way reference, a copy of the partially agreed statement of facts consented to by the CRA and DOJ is also included.

Right No. 8 of the Taxpayer Bill of Rights states: “you have the right to have the law applied consistently”. The TCC judgment in the CMPC case is binding on the CRA and must similarly be applied here.

As a result, we request all proposed adjustments in respect of the Taxpayer’s SR&ED claims be vacated.

* * * * *

Thank you,

[Representative Signature]

Encl.